



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**IA Nos. 100/2021, 268/2022, 332/2022
in
CP (IB) No. 10/Chd/Hry/2018
(Admitted Matter)**

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

In the matter of:

M/s Educomp Infrastructure
& School Management
Limited

...Corporate Debtor

And in the matter of:

IA Nos.100/2021, 268/2022 and 332/2022

Mr. Paramjit Gandhi,
having its registered office at
R-2/221, Raj Nagar,
Ghaziabad, Uttar Pradesh

...Applicant/Successful Resolution Applicant

Vs.

1. Mr. Ashwini Mehra,
Chairman, Monitoring Committee,
Educomp Infrastructure & School Management Limited
having its registered office at
514, Udyog Vihar, Phase-3,
Gurgaon, Haryana

...Respondent No. 1

2. Andhra Bank
having its registered office at
R-3, Green Park,
New Delhi 110016

...Respondent No. 2

3. Axis Bank
having its registered office at
Axis House, 4th Floor, Tower-1, Plot No. 1-4,
Sector-218, Noida,
Uttar Pradesh 201304

...Respondent No. 3

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4. Bank of India
having its registered office at
New Delhi Large Corporate Branch,
Chandralok Building, 36, Janpath, New Delhi 110001 ...Respondent No. 4
5. Corporate Bank
having its registered office at
101, American Street,
Chennai-600001 ...Respondent No. 5
6. Karnataka Bank
having its registered office at
Corporate Finance Branch,
K-13, Chaudhary Building, Connaught Circus,
New Delhi-110001 ...Respondent No. 6
7. Punjab National Bank
having its registered office at
LCB, 781-785, Rayala Tower,
Anna Salai, Chennai-600002 ...Respondent No. 7
8. State Bank of India (e-SBOP)
Stressed Assets Management Branch
having its registered office at
6th Floor, Mohan Singh Place,
Connaught Place, New Delhi-110001 ...Respondent No. 8
9. Yes Bank Limited
having its registered office at
48, Nyay Marg, Chanakya Puri,
Delhi- 110021 ...Respondent No. 9

Order delivered on: 11.11.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through video-conferencing:

For the Applicant-

Successful Resolution Applicant
in IA No. 100/2021 and 268/2022:

1. Mr. Aman Kashyap, Advocate
2. Mr. Arora Vishwas Kumar, Advocate

For Respondent No. 1/Resolution
Professional in IA Nos. 268/2022
and 332/2022

1. Mr. Rohit Khanna, Advocate
2. Mr. Raghav Kapoor, Advocate
3. Mr. Anshul Sehgal, Advocate

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For the erstwhile COC-respondent
Nos. 2 to 9 in IA Nos. 100/2021
and 268/2022

1. Mrs. Munisha Gandhi, Senior Advocate
2. Mr. Siddhant Kant, Advocate
3. Ms. Charu Bansal, Advocate
4. Ms. Prabhsimran Kaur, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No. 332/2022

1. The present application is filed by the Successful Resolution Applicant under Section 60(5) of the Insolvency and Bankruptcy Code for placing on record the site inspection reports. The same are taken on record and the IA is disposed of accordingly.

IA Nos. 100/2021 and 268/2022

2. These applications are filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (herein referred to as "Code") by Mr. Paramjeet Gandhi-Successful Resolution Applicant (herein referred to as "Applicant") against Mr. Ashwini Mehra, Resolution Professional/Chairperson of Monitoring Committee of Corporate Debtor (herein referred to as "Respondent No. 1") and eight other banks i.e. Andhra Bank, Axis Bank, Bank of India, Corporate Bank, Karnataka Bank, Punjab National Bank, State Bank of India (e-EBOP), Yes Bank Limited as both applications deals with the encroachment on the land of the corporate debtor and consequential implementation of the Resolution Plan, they are taken up together, being interrelated.

3. The brief facts as stated in the applications and the written submissions filed by Diary Nos. 798/1 dated 09.05.2022, 584/01 dated 26.04.2022, 584/4 dated 06.05.2022, 00316/13 dated 20.04.2022 and 00316/11 dated 27.07.2021 are that the applicant has submitted the Resolution Plan on the

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basis of the Information Memorandum provided by the Resolution Professional through virtual data room and this Adjudicating Authority has approved the Resolution Plan by order dated 14.12.2020. Post approval of the plan, the applicant visited the properties of the corporate debtor in order to prepare for taking over the possession of the same. As per the submissions of the applicant, some of the parcels of the land of the corporate debtor were encroached upon by the local villagers and the same were used for their farming activities. It is submitted by the applicant that as per applications (IA No. 339/2021 and 340/2021) filed by respondent No. 1, certain properties of the corporate debtor are still under encroachment as of April 2021. The applicant has also attached photographs of immovable properties reflecting the encroachment over the properties of the corporate debtor. The applicant has averred that respondent No. 1 has failed to fulfil his duties as per prescribed under Section 18, 20 and 25 of the Code as he has failed to protect and preserve the assets of the corporate debtor and rendered the properties open to encroachment post preparation of Information Memorandum. As per the Resolution Plan, Financial Creditors were to be substituted with new FCs/lenders in order to provide funds to the Resolution Applicant, however, the said encroachment created hindrance in the disbursement of funds by new Financial Creditors. It is contended that the sale of the corporate debtor on "As is where is basis", does not mean that the vacant properties mentioned in the Information Memorandum will subsequently stand encroached at the time of offering it to the Resolution Applicant.

4. The respondents have submitted that all Resolution Applicants including the applicant were afforded an opportunity to conduct site visits but the



applicant did not participate in the same. The applicant has not approached the Tribunal with clean hands as he did not raise the issue of alleged encroachment during the pendency of an application for approval of the Resolution Plan and the applicant is also claiming encroachment on 09 sites out of 62 sites of the corporate debtor thereby attempting to seek time for the implementation of the Resolution Plan. Respondent No. 1 has maintained the status of the assets of the corporate debtor as a going concern and reasonable care has been taken while performing the duties.

5. In IA No.100/2021, Respondent No. 2 to 9 i.e. the members of the erstwhile Committee of Creditors of the corporate debtor filed a reply by Diary No. 00316/2 dated 10.03.2021 and 00316/16 dated 10.05.2022 in which it has been inter alia stated that the applicant has completely disregarded the process document which clearly stated that the applicant had the responsibility to conduct his own due diligence and site visit and ascertain the facts with regard to the parcels of Land in question. It is also stated that the applicant has disregarded its own categorical stipulation in the Resolution Plan that the same had been submitted for the acquisition of corporate debtor on "as is where is basis". On the basis of this, it is claimed that the applicant cannot go back on its own stipulation and link the clearance of encroachment to the implementation of the Resolution Plan. Reliance has been placed on the decisions of ***Drushti Engineers & Developers Vs. Union of India***, 2021 SCC Online Bom 83 dated 25.01.2021, ***United Bank of India Vs. Official Liquidator and others.***, (1994) 1 SCC 575 dated 06.10.1993, ***Socrato Capitals Pvt. Ltd. Vs. Tirumala Realson Pvt. Ltd.*** 2019 SCC Online NCLT 24366 dated 12.07.2019, ***Palogix Infrastructure***



Private Limited Vs. ICICI Bank Limited 2017 SCC Online NCLAT 266 dated 20.09.2017 and E S Krishnamurthy & Ors. Vs. M/s Bharath Hi-Tech Builders Pvt. Ltd. Civil Appeal 3325 of 2020 dated 14.12.2021.

5.1 In **IA No. 100/2021**, the applicant has prayed for seeking directions to R-1 to clear the properties of the corporate debtor from the encroachment prior to the implementation of the resolution plan and to extend the time limit for implementation beyond seven days when the properties of the Corporate Debtor are clear from encroachment.

5.2 In **IA No.268/2022**, it is prayed to appoint a local commissioner to inspect and ascertain the correct, true, fair, impartial and unbiased status of the encroachment over the properties of the corporate debtor without causing prejudice to the prayers made in IA No.100/2021.

6. In the case at hand, the CIRP was initiated by order dated 15.06.2018, and after the constitution of the CoC, the applicant has submitted Resolution Plan on the basis of the Information Memorandum and through fData Room provided to him by the Resolution Professional. The Resolution Plan was approved by the CoC on 23.12.2019 by 100% votes and CA No. 898/2019 was filed under Sections 30 and 31 of IBC, 2016. This Adjudicating Authority has allowed the CA No. 898/2019 and approved the Resolution Plan by the order dated 14.12.2020.

7. As the main issue relates to the responsibility for protecting the assets of the corporate debtor till the handing over of the same to the Successful Resolution Applicant, the relevant parts of the emails on this subject between the



RP and the SRA and those of the minutes of the meeting of the Monitoring Committee are extracted below :

7.1 Extract from an email dated 24.12.2020 (attached as Annexure-3 page 142 of the application) from Successful Resolution Applicant to Resolution Professional:

“The undersigned had submitted his Resolution Plan on the basis of the information that was contained in the Information Memorandum and the Data Room and provided to us. As such, the offer of the undersigned was predicated on the veracity of such information. Amongst such information, the below-listed properties were shown as vacant land parcels and/or under the possession of EISML:

S. No.	Location	Enclosure
1.	Land admeasuring 4.69 acres situated at Sy. No. 153/2A and 153/2B, Minnampalli Village, Ayothiyapattanam Sub Registration District, Valapaddy Taluk, Salem District, Tamil Nadu	A
2.	Land admeasuring 206.25 acres situated at village Pata, Tehsil Ramgarh, District Alwar, Rajasthan	B
3.	Universal Academy, Bazpur (building) built upon 2.5 acres of land situated at village Shoka Nangla, Bazpur, Uttarakhand	C
4.	Land admeasuring 3.16 acres situated at Hadbast No.137, Khewat No.201, Khatauni No.274. Mustil No.34, Village Lamba, Tehsil Bondh Kala. District Bhiwani, Haryana (Charkhi Dadri Property)	D
5.	Land admeasuring 7.04 acres situated at No.82, Karunilam Village, Chengalpattu Taluk, Kancheepuram District, Tamil Nadu	E
6.	Land admeasuring 39.42 acres situated at Institutional Area Group- 'F', SADA, Gwalior, Madhya Pradesh	F
7.	Land admeasuring 42.58 acres situated at Haripura, Mohanmagaria, Hanumangarh,	G

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	Rajasthan	
8.	Land admeasuring 6.52 acres situated at Dasna, Ghaziabad, Uttar Pradesh	H
9.	Universal Academi, Kashipur (building) built upon land admeasuring 2.76 acres situated at Kashipur, Uttrakhand	I

The offer made by the undersigned was on the basis that the above properties are vacant and/or under EISML's possession and will be readily available for possession to the undersigned as part of the implementation of the Resolution Plan. As such, during our diligence prior to submitting the Resolution Plan, the above information, on ground appeared to be as stated by the Resolution Professional.

However, now, post approval of our Resolution Plan by the Hon'ble NCLT, when the undersigned has commenced the process for implementation of the Resolution Plan, the undersigned visited the aforesaid property sites so as to prepare for smooth taking over of the same.

During the visit, it was observed that the said properties are not lying vacant, instead, the same have been encroached by the locals. It has also been observed that the local villagers/farmers have been using the land parcels for their own farming activities. The photographs taken by the undersigned during the visit, evidencing the encroachment on the aforementioned land parcels are enclosed with this letter indicated above. The land photographs are being sent in two separate mails as being heavy files".

(Emphasis Supplied)

7.2 Extract from an email dated 29.12.2020 (attached as Annexure-6 page 155 of the application) from Resolution Professional to Successful Resolution Applicant:

"The sale is on an "as is where is" basis. This is clearly acknowledged in multiple places in the Process Document as well as in your own resolution plan dated September 19, 2019 which has now been approved by the Hon'ble NCLT, Chandigarh ("Resolution Plan"). Please refer to Clause 3 of the Resolution Plan, wherein it is stated that - "We understand that the proposed sale is on as is where is basis and we



have. perused and independently verified the information provided as above."

As a logical corollary to the above, no representations or warranties have been given by either the Resolution Professional or the Committee of Creditors to any of the resolution applicants. In fact, independent diligence was expected and prescribed under the Process Document. This is clearly laid out in the disclaimers set out in the virtual data room as well as in the Process Document. For instance, Clause 1.11 1(f) of Process Document provides that "The Resolution Applicant acknowledges that neither the CoC nor the Resolution Professional or the Process Manager are providing any representations or warranty(ies) express or implied regarding the status of business, business prospects, or assets of the Company nor do they have any obligation to give such representation or warranty in relation to the Company and the CoC/ Resolution Professional / Process Manager assume no liability whatsoever in this respect."

In discharge of my duty as RP, I have taken all necessary steps required to be undertaken to protect the interest and value of the assets of the Corporate Debtor, including whenever any specific issues were brought to my notice. For instance, vide email dated January 21, 2020, you had raised certain concerns in relation to encroachment of certain land parcels of the Corporate Debtor. Based on your email, the RPs team had immediately visited the land parcels, and vide my email dated January 28, 2020, it was confirmed to you that there were no signs of encroachment on those land parcels and also that the updated tile reports clearly indicated that the title of the land parcels is with the Corporate Debtor".

(Emphasis Supplied)

7.3 Extract from the email dated 04.01.2021 from the Successful Resolution Applicant to Resolution Professional:

"The undersigned would then like to clarify that he has not denied anywhere in his trailing email that the 'acquisition of EISML and its assets is not on "as is where is" basis. However, the said acquisition on "as is where is" could not mean that the status of properties enumerated in the Information Memorandum and the Data Room as lying vacant and whose possession is with the CD. is encroached at the time of offering it to the Resolution Applicant (i.e. the undersigned).



The sale on "as is where is" implies that the sale of the properties is as per the conditions shown to the buyer. Here, we are talking about a change in that condition as shown to the buyer. In this regard, we would like to point out that we are not questioning encroachment on the land parcels such as the land admeasuring 39.42 acres situated at Institutional Area Group - 'F', SADA, Gwalior, Madhya Pradesh, which were shown to be with encroachment and we are happy to take such land parcels as was shown in the IM i.e. with encroachment thereupon".

(Emphasis Supplied)

7.4 Extract from email dated 10.01.2021 (attached as Annexure-7 page 163 of the application) from Resolution Professional to Successful Resolution Applicant:

"I reiterate that in view of clear stipulations (i) on sale being on 'as is where is' basis; (il) that RA should do an independent diligence, and that (ill) that no representation is made by RP or CoC to the RA, the alleged encroachment of certain parts of vacant parcels of land by farmers will not give rise to any obligation on the part of Monitoring Committee (MC) to get those vacated. My view is shared by lenders and is based on advise of and our respective counsels".

(Emphasis Supplied)

7.5 Extract from an email dated 12.01.2021 (attached as Annexure-7 page 161 of the application) from Successful Resolution Applicant to Resolution Professional:

"It is disappointing to see that you have wrongly noted that the implementation of the Resolution Plan is not contingent upon or linked to encroachment issue. The same is completely opposite to the stand taken and the statements made by the undersigned in his correspondences and even in the meeting held on January 07, 2021. The undersigned has been clearly and unequivocally stating that the encroachment over the properties of the Corporate Debtor post submission of the Resolution Plan and its approval by the COC, materially impacts the implementation of the Resolution Plan.

The undersigned further reiterates that the sale on "as is where is" implies that the sale of the properties is as per the conditions shown to



the buyer. However, in the present case, the conditions of the properties of the Corporate Debtor have undergone substantial and material change in the form of encroachment, post it was showcased to the buyers that the properties are un-encroached. That the same occurred during the CIRP and under your (as Resolution Professional) stewardship. Such change/encroachment could have been avoided had you (as Resolution Professional) taken appropriate steps towards protecting and preserving the assets of the Corporate Debtor, i.e. EISML, as a continuous exercise.

As far as the question of there being no obligation on the part of the Monitoring Committee to get the encroached properties vacated, the undersigned reiterates that as Chairman of the Monitoring Committee, you continue to be duty bound to manage the affairs of the Corporate Debtor until the Completion Date. As such you continue to remain responsible, liable and answerable for any and all such issues which adversely impact the assets of the Corporate Debtor, i.e. EISML”.

(Emphasis Supplied)

7.6 Extract from 3rd Monitoring Committee meeting dated 19.01.2021

(attached as Annexure-11 page 192 of the application):

“You have also not recorded the objections raised by the undersigned regarding encroachment over the properties of the Corporate Debtor and have recorded only your views. You are requested to record my strong reservations of not being in a position to implement the Resolution Plan until and unless that issue is constructively resolved”

7.7 The Chairman, Monitoring Committee, had responded to the above-said extract to Mr. Gandhi via email dated 18.01.2021 (attached as Annexure-11 page 192 of the application):

“In relation to encroachment of land, the RA's emails have already been placed before the MC members and were even discussed in the meeting with you”

7.8 Extracts from the email from the Resolution Applicant by the Resolution Professional (attached as Annexure-11 page 193 of the application):



"On the issue of land encroachment, certain lenders expressed their views that the chairman of the MC should take steps to facilitate Mr. Gandhi in getting the encroachments cleared, including sending letters to revenue authorities. But Mr. Gandhi expressed views that just initiation of steps might not be sufficient and if the encroachment on certain land parcels are material, it would become a condition to implementation of plan. He informed that his teams are visiting the properties and trying to understand the exact nature of encroachment and if he finds any major issue, he might not be able to go ahead before the encroachment is removed. The other members expressed their view that eviction of encroachment is a lengthy matter and the same cannot be a condition to implementation which was never a part of the approved resolution plan.

The RA stated that he wishes to see some action from the MC and wishes that a fact-finding mission can be initiated to take the discussions forward. The RA also expressed his view that encroachment has occurred post diligence conducted by him at time of submission of plan in September 2019. The legal counsel to the MC chairman clarified for the benefit of Mr. Gandhi that the sale process under IBC was on an "as is where is" basis, with no representations or warranties being given to the RA. One of the lenders expressed the view that the RA is well aware of how vacant and boundary-less large land parcels can get encroached specially by the locals/ farmers and since he plans to run the business with a massive Real Estate portfolio, he should be ready to deal with such issues.

The lenders expressed their concern on the fact that the removal of encroachment was never a condition which was imposed by Mr. Gandhi previously for implementation of the plan and that this issue has been discussed in multiple MC meetings before this. Representatives from few banks stated that a collective effort is required between all MC members to ensure implementation of the plan in a time bound manner, especially considering that the timeline for implementation as per the Plan has already lapsed. There were discussions on whether MC chairman can approach relevant authorities under the guidance of Mr. Gandhi to get the encroachment related issues resolved.



Mr. Gandhi reiterated that a concrete effort is required from all MC members in this regard, and also informed the MC members that certain closed Universal Academy schools have been encroached upon as well. The MC members highlighted that since Mr. Gandhi and his team have already conducted a detailed check and are aware of the various issues in different and parcels, he should share this information with the in members, including Mr. Mehra: One of the lenders also pointed me that Mr. Gandhi has a court order (i.e. NCLT approval order dated December 14, 2020) confirming he is the Successful Resolution Applicant. Further, the title deeds are already in place, and Mr. Gandhi has had the opportunity to conduct detailed diligence around these, since, these documents were uploaded on the VDR. Accordingly, the MC members were of the view that the encroachments should not be a major issue, since the title is already clear, and only help is needed in taking possession. As an enabler, to the extent any help or support is needed by Mr. Gandhi, it was discussed that the MC members will be happy to extend the same (to the extent within their power). Mr. Gandhi should let them know details of encroachment of land parcels as well".

(Emphasis Supplied)

8. We have heard the learned counsels for the parties and carefully gone through the relevant documents and submissions made before us.
9. In the present case, the main issue relates to the role and responsibility of the Monitoring Committee, Resolution Professional and the Successful Resolution Applicant, when the land to be handed over to the Successful Resolution Applicant is found to be under encroachment subsequent to the approval of the plan.
10. Certain facts mentioned in the emails etc. quoted in Para 7 above need to be noticed for a proper adjudication of the matter involved.
 - i. Nine properties, which were shown as vacant land parcels of the EISML in the Information Memorandum and through the data room provided to the Successful Resolution Applicant, were subsequently



found to be under encroachment by the Successful Resolution Applicant, when visited the properties just after the approval of the Resolution Plan by this Adjudicating Authority on 14.12.2020.

- ii. The Successful Resolution Applicant in its communication in December 20 and January 21 i.e. just after the approval of the Resolution Plan, has clearly stated that he is not against taking over the assets on “As is where is basis” and is ready to take over the land parcels with encroachment at Gwalior, Madhya Pradesh as the same was reflected as such in the Information Memorandum and through Data Room provided to them.
- iii. The Successful Resolution Applicant has not stated that there is misrepresentation with respect of the status of the property but has clarified that the aforementioned nine parcels of land were not encroached upon at the time of the due diligence done by the Successful Resolution Applicant in pursuant to the Information Memorandum and through Data Room during the resolution process and before submitting his resolution proposal.
- iv. The Resolution Professional has taken a stand that the sale being on “As is where is basis”, the Resolution Applicant is expected to carry out independent diligence and clear the encroachments if any. It is further stated by the Chairman, Monitoring Committee/Resolution Professional that neither he nor the CoC or Monitoring Committee has any obligation to get the lands vacated on encroachment.



- v. As mentioned in the minutes of the 4th meeting of the Monitoring Committee held on 19.01.2021, the Chairman of the Monitoring Committee has not entertained the plea of the Successful Resolution Applicant and certain other lenders to write letters to the Revenue Authorities for clearing the land encroachment(s). He has further expressed an opinion that clearance of encroachment cannot be a condition for implementation of the plan as the same was never a part of the approved Resolution Plan. In the said meeting, the Chairman and members of the Monitoring Committee stated that they will be happy to extend their support to clearance of encroachments if the Successful Resolution Applicant let them know the details of land encroachment parcels.

11. From the above summary, it is clear that one of the issues for adjudication is to decide whether this hands-off policy of the Monitoring Committee with regard to assets of the corporate debtor during the period of the moratorium ending with the approval of the Resolution Plan is in keeping with the provisions of the Code. The relevant parts of the Sections of the Code on the duties of IRP/RP are extracted below for the sake of clarity:-

Section 18:-****

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

Section 20 (1) *The interim resolution professional shall make every endeavour to protect and preserve the value of*



the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

Section 25. *(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*

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

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

12. For a proper appreciation of the role and responsibility of the Resolution Professional, we refer to the Bankruptcy Law Reforms Committee Volume I (November 2015) which in Chapter 4 under the title 'Institutional Infrastructure' has focused on the role and responsibilities of the Resolution Professional and the relevant extracts from the same are as under : –

“Insolvency professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process.”

“In performing these tasks, an IP acts as an agent of the adjudicator. In a way the adjudicator depends on the specialized skills and expertise of the IPs to carry out these tasks in an efficient and professional manner. The role of the IPs is thus vital to the efficient operation of the Insolvency and Bankruptcy Resolution Process.”

“In the case of Insolvency Resolution, a failure of the process may result from two main sources: collusion between the parties and poor quality of the execution of the process itself. Hence, it is important that the professionals responsible for implementing the insolvency resolution process adhere to certain minimum standards so as to prevent failures of the process and enhance the credibility of the systems as a whole.”



13. In this context, a further reference is made to the decision of the Hon'ble NCLAT in the ***GP Global Energy Private Limited Vs. Mr. Sandeep Mahajan and Ors, Company Appeal (AT) (Insolvency) No. 954 of 2021 dated 06.05.2022*** wherein, the role of the Monitoring Committee in facilitating removal of encroachment on the land of the corporate debtor and also the issue of granting an extension of time for payment to the Successful Resolution Applicant have been discussed and it is held:

“After approval of the Resolution Plan, Monitoring Committee under the statutory scheme is to function for the process of implementation of Resolution Plan and has not to act as any adversary body to the Resolution Applicant. If there were any genuine roadblocks found in the implementation of the plan, Monitoring Committee as well as Monitoring Professional is to use their good offices to sort out the difficulties and not to create roadblocks themselves in successful resolution of the Corporate Debtor xxxx”.

(Emphasis Supplied)

In the same case, the Hon'ble NCLAT has made a further reference to another decision of the NCLAT in ***Company Appeal (AT) (Ins.) No. 1038 of 2021, Tricounty Premier Hearing Service Inc vs. State Bank of India & others'*** dated 20.01.2022 wherein, after considering the decision of the Hon'ble Apex Court in the case of ***'Ebix Singapore Private Limited vs. CoC Educomp' in Civil Appeal Nos. 3224, 3560 of 2020 and 295 of 2021, Dated 13.09.2021***, the Tribunal rejected the plea that the Adjudicating Authority has no jurisdiction to extend the time for complying with the financial obligations in the Resolution Plan.



14. It is now well settled that the primary focus of the Code is to ensure the revival and continuation of the corporate debtor by protecting the corporate debtor from its own management. The Code is thus, beneficial legislation which puts the corporate debtor back on its feet. In this context, an onerous responsibility is cast on the Resolution Professional and Monitoring Committee to continuously work towards the maximization of the value of the assets of the corporate debtor and also among other things, to supervise over the transition of the corporate debtor from the earlier management to the Successful Resolution Applicant. In order to balance the interest of all the stakeholders of the corporate debtor, the RP and the CoC during the CIRP process and subsequently the Monitoring Committee have to ensure that the assets of the corporate debtor are utilized to their maximum extent so as to ensure maximum returns. In the case at hand, as mentioned in the minutes of the meeting of the Monitoring Committee and extracted in Para 7 above, when informed about the encroachment on the properties by the Successful Resolution Applicant, the Monitoring Committee consciously refused to write letters to the Revenue Authorities to prevent such encroachment there by abetting an act which will greatly diminish the value of the assets of the corporate debtor. In the course of the present proceedings, nothing has been brought on record to suggest that the RP and subsequently the Monitoring Committee took any step to protect the property of the Corporate Debtor from encroachment. The encroachments did create roadblocks in the implementation of the Resolution Plan and as observed in the order of the Hon'ble NCLAT in the case of **GP Global Energy Private Limited (Supra)**, the Monitoring Committee and the Monitoring Professional are "to use their good



offices to sort out the difficulties and not to create roadblocks themselves in successful resolutions of the corporate debtor”. Prima Facie, the encroachments had taken place when the assets of the corporate debtor were in the control and custody of the Resolution Professional/Monitoring Committee and the Code mandates them to preserve and protect the assets of the corporate debtor. The minutes of the meeting of the Monitoring Committee submitted do not indicate that any constructive discussion on the removal of the encroachment had taken place. Rather, the Monitoring Committee misinterpreted the concept of “as is where is” to justify their inaction to remove the encroachment and making it look as if the Successful Resolution Applicant is solely responsible for removal of the same.

15. A great reliance has been placed by the respondents on the fact that the impugned assets were proposed to be transferred on “As is where is basis” and under clauses 1.3.7 and 1.3.9 of the Process Document, which was unconditionally accepted by the applicant, the Successful Resolution Applicant was to conduct its due diligence before submitting its Resolution Plan. This logic conveniently hides the fact that there is a considerable time gap between the time of submission of the Resolution Plan by the Resolution Applicant and approval of the Resolution Plan by this Adjudicating Authority. Furthermore, none of the judicial decisions relied upon by the Respondents support their case. The reliance placed by the respondent on the case filed as ***United Bank of India v. Official Liquidator and Ors. (1994) 1 SCC 575 dated 06.10.1993*** is wholly misconceived. This judgment relates to the sale of the property and assets of a company in liquidation by the official liquidator under the orders of the Court.



Therefore, it is observed that the official liquidator cannot and does not hold any guarantee or warranty in respect of the property sold. That is because the official liquidator proceeds on the basis of what the records of the company in liquidation show. Thus, it is for the intending purchaser to satisfy himself in all respects as to the title and encumbrances and so forth of the immovable property that he proposes to purchase. In the present case, the assets are in the custody of the respondents and they are mandated under the Code to protect and preserve the same.

16. Furthermore, under the provisions of Sections 18, 20 and 25 of the Code, the Resolution Professional is mandated not only to take control and custody of these assets but also to preserve and protect these assets. Further, the concept of “as is where is” can’t be applied mechanically and each case is to be seen in its own facts. This is evident from the decision of the Hon’ble Supreme Court in the case of ***Haryana Financial Corporation and Ors. Vs. Rajesh Gupta***, Civil Appeal No. 829 of 2003, dated 15.12.2009, wherein the Hon’ble Apex Court has considered the decision in the case of ***United Bank of India v. Official Liquidator and Ors.*** (1994) 1 SCC 575 dated 06.10.1993 and has held that where the appellant corporation has not disclosed the entire details of a property then it is not entitled to take the plea that the respondent has accepted the plot on “as is where is basis” and, thus, cannot wriggle out of a confirmed bid.

17. Keeping in mind that the object of the Code is the revival of the corporate debtor through the Resolution Process rather than liquidation, this Bench allows a further time of 90 days from the date of this order to both the



parties to implement the Resolution Plan. Thus, the Successful Resolution Applicant's prayer to extend the time limit for implementation beyond 7 days is acceded to. He is, however, directed to comply with the financial obligations within the stipulated period of 90 days in the Resolution Plan without linking it to the clearance of the properties of the corporate debtor from encroachment. The Chairman of the Monitoring Committee is directed to initiate all actions to remove the encroachment over the properties of the corporate debtor especially the nine properties mentioned in the email dated 24.12.2020 sent immediately after the approval of the Resolution Plan by this Adjudicating Authority. He can approach the Revenue and Police Authorities for necessary steps to be taken by them for the removal of the encroachment. The jurisdictional Revenue and Police Authorities are directed to extend full cooperation to the Chairman of the Monitoring Committee in this regard. Considering the fact that it is the duty of the Monitoring Committee to ascertain the extent of the encroachment over the properties of the corporate debtor, we are of the view that there is no requirement for this Adjudicating Authority to separately appoint any local Commissioner to inspect the properties and furnish a report.

18. In the result, IA No. 100 of 2021 is partially allowed as above and IA No. 268 of 2022 is dismissed and disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

November 11, 2022
PB/SA

Sd/-

(Harnam Singh Thakur)
Member (Judicial)