

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

**I.A. No.252 of 2021 in**  
CP (IB) No.305/BB/2019  
U/s 30(6) r/w Section 60(5) of I&B Code, 2016

**In the matter of IA No.252 of 2021:**

Ms. Sripriya Kumar  
Resolution Professional for  
M/s. Arun Shelters Pvt. Ltd. - Applicant / RP

**In the matter of:**

Kotak Mahindra Bank Limited - Financial Creditor/  
Petitioner

**Versus**

M/s. Arun Shelters Pvt. Ltd. - Corporate Debtor/  
Respondent

**Order delivered on: 04<sup>th</sup> November, 2022**

**Coram:** 1. Hon'ble Shri Kishore Vemulapalli, Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**Present:**

The RP / Applicant in  
IA No.252 of 2021 : Ms. Sripriya Kumar  
For the R.P. : Shri Vijay Kumar, Adv.

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. This Application has been filed by Ms. Sripriya Kumar (hereinafter referred to as 'Applicant / Resolution Professional') under Section 30(6) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC/Code') seeking approval of the Resolution Plan submitted by Mr. S.M. Kamal Pasha (Proprietor – Golden Hatcheries) in consortium with Mr. Syed Fahad

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(Proprietor – Standard Farm) (hereinafter referred to as the 'Resolution Applicant' or 'RA') dated 21.07.2021 along with the Scheme of Demerger, which is annexed and marked as Annexure-K to the Application and the same shall be binding on all the stakeholders of the Corporate Debtor in respect of Project Arun Aurovilla.

**2. Brief facts of the case are given hereunder:**

- (a) The main Company Petition bearing CP (IB) No.305/BB/2019 filed by the Financial Creditor, namely, Kotak Mahindra Bank Limited u/s 7 of the Code for initiation of the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor, namely, M/s. Arun Shelters Pvt. Ltd., was admitted by this Adjudicating Authority, *vide* order dated 31.01.2020, and the CIRP of the Corporate Debtor was initiated by appointing Mr. Pankaj Srivastava as the Interim Resolution Professional and was directed to take necessary actions in accordance with relevant provisions of the Code and Regulations made thereunder.
- (b) Pursuant to the aforesaid appointment, the erstwhile RP had issued a public announcement on 04.02.2020 calling upon various creditors of the Corporate Debtor to submit their claims with proof on or before 21.02.2020, and certain claims were admitted to the tune of Rs.50.69 Crores as per report filed on 21.08.2020. The RP also filed the list of Creditors and constitution of the Committee of Creditors (CoC) on 22.02.2020 and thereafter the report certifying the constitution of the CoC of the Corporate Debtor was filed on 27.02.2020. At this stage, the RP decided to constitute a project level CoC for one of the Projects of the Company namely, Project Arun Aurovilla. The IRP at that time, based on legal advise constituted CoC following orders of Hon'ble NCLAT in *Flat Buyers Association Winter Hills vs. Umang Realtech Private Limited* and CoC was constituted only in respect of real estate project 'Arun Aurovilla'.
- (c) As a result CoC comprises only of Kotak Mahindra Bank Limited and two home buyers. Thereafter, CoC meetings were held on 02.03.2020,

17.03.2020 and 30.04.2020. In the 3<sup>rd</sup> meeting of the CoC held on 30.04.2020, the RP wanted to change the mode of operation from a project wise CIRP that is only for Project Arun Aurovilla to a Company level CIRP and proposed the inclusion of additional Creditors pertaining to Project Arun Kaustubha (also known as Arun Parkwoods). This was objected to by M/s. Kotak Mahindra Bank. Notwithstanding the objections of Kotak Mahindra Bank, the erstwhile RP decided to reconstitute the CoC by including the Creditors and filed a revised list of Creditors on 02.05.2020.

- (d) Hence, for reasons best known to erstwhile IRP, CoC was sought to be reconstituted from project wise basis viz. Project Arun Aurovilla to the entire Corporate Debtor basis. Thereafter, Kotak Mahindra Bank has filed an application bearing IA No.187 and 195 of 2020 challenging the unilateral reconstitution of CoC by the IRP, which was allowed by this Adjudicating Authority on 29.06.2020.
- (e) On 15.06.2020, the IRP was confirmed as the RP. Thereafter, the RP revised the constitution of the CoC once again and submitted a Memo to this Bench on 21.08.2020 as under to revert to the position as at the 1<sup>st</sup> CoC meeting, namely, a project wise CoC only in respect of Project Arun Aurovilla. As on 21.08.2020, the CoC of Project Arun Aurovilla comprises of the following:

| Name                 | Type             | Voting Share | Amount (in Cr.) |
|----------------------|------------------|--------------|-----------------|
| Kotak Mahindra Bank  | Secured Creditor | 88.79%       | 36.27           |
| Shashidhar Muniyappa | Home Buyer       | 9.96%        | 4.07            |
| B. Manjunath         | Home Buyer       | 1.25%        | 0.51            |
| <b>TOTAL</b>         |                  | <b>100%</b>  | <b>40.85</b>    |

- (f) Thereafter, CoC in its meeting held on 10.08.2020 replaced the erstwhile RP and the present Applicant-RP was appointed by this Adjudicating Authority *vide* order dated 11.09.2020 in IA No.322 of 2020.
- (g) Since this Adjudicating Authority (AA) had passed order of admission in respect of the Corporate Debtor and the CIRP was in progress only in respect of Project Aurovilla, the RP filed IA No.515 of 2020 to have

one more CoC constituted in respect of the remaining Corporate Debtor which is Project Arun Parkwoods. However, this Application was withdrawn by the RP as this AA by its order dated 29.06.2020 in IA Nos.187 & 195 of 2020 had passed orders for Project wise CoC in respect of Project Arun Aurovilla. Thereafter, the alleged Financial Creditor of Project Arun Parkwoods also filed IA Nos.58 & 59 of 2021 seeking for constitution of separate CoC for Project Arun Parkwoods or for constitution of single CoC for Corporate Debtor and the same was dismissed by order dated 19.03.2021.

- (h) The Applicant-RP submits that M/s. Puravankara Ltd. and M/s. Kenstream Ventures LLP has appealed, challenging the above order dated 19.03.2021, however, no notice has been ordered by the Hon'ble NCLAT in the said matter.
- (i) It is stated that as on the date of this Application, the CoC comprises of the following, a report of which is filed on 17.02.2021:

| Name                 | Type             | Voting Share | Amount (in Cr.) |
|----------------------|------------------|--------------|-----------------|
| Kotak Mahindra Bank  | Secured Creditor | 85.0%        | 34.27           |
| Shashidhar Muniyappa | Home Buyer       | 10.8%        | 4.36            |
| G S Srinivas         | Home Buyer       | 2.9%         | 1.16            |
| B. Manjunath         | Home Buyer       | 1.3%         | 0.51            |
| <b>TOTAL</b>         |                  | <b>100%</b>  | <b>40.31</b>    |

- (j) It is stated that the present RP has revised the Information Memorandum which was placed before the CoC by the erstwhile RP on 29.06.2020. The CoC in its meeting held on 29.10.2020 approved the Prospective Resolution Applicant-Eligibility Criteria of networth of Rs.50 Crores or above as of 31.03.2020 for the prospective resolution applicants (PRAs) to participate in the Resolution Process. RP then made a public announcement in the newspapers on 04.11.2020 and invited PRAs to participate in the resolution process of the Corporate Debtor.
- (k) In response to the same, the RP received Expression of Interest (EoI) from three PRAs. The RP after satisfying itself about the eligibility of Resolution Applicants shortlisted two Resolution Applicants and

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issued Request for Resolution Plan (RFRP) dated 14.12.2020 and of the two, only one Resolution Applicant i.e., Consortium of Mr. S.M. Kamal Pasha and Mr. Syed Fahad acting through their Lead Member Mr. Syed Fahad (hereinafter referred to as 'Resolution Applicant' or 'RA') submitted the Resolution Plan.

- (l) CoC at its meeting held on 22.02.2021 evaluated the Resolution Plan which proposed a payout of Rs.40.31 Cr. plus CIRP Cost. The RP placed the Liquidation Value and Fair Value of the Project Aurovilla for consideration of the CoC. CoC at its 14<sup>th</sup> meeting held on 17.03.2021 rejected the Resolution Plan submitted by the Resolution Applicant and instructed the RP to reissue invitation for EoI. Accordingly, the RP published Form-G in newspapers on 20.03.2021.
- (m) RA vide letter dated 01.04.2021 requested the RP to consider the EoI documents and the Resolution Plan submitted pursuant to the first EoI for the purpose of the reissued Form-G. The RP did not receive any other EoI, placed the Resolution Plan of the RA before the CoC in its meeting held on 09.04.2021, which was rejected again and CoC in its meeting held on 20.04.2021 decided to liquidate the Corporate Debtor.
- (n) At the request made by the RA on 01.05.2021, the Financial Creditors reconsidered a revised Resolution Plan in their CoC meeting held on 10.05.2021, with an intention to maintain the Project Arun Aurovilla as a going concern which is the objective of the Code as against liquidation. At the request of the CoC, the RP placed the revised Resolution Plan submitted by the RA before the CoC on 10.05.2021, for its independent evaluation and consideration.
- (o) After various deliberations by the RA with the CoC, the RA submitted an amended and restated Resolution Plan dated 21.07.2021. This Plan considers a pay out of Rs.53.42 Crores in 100% settlement of all financial and operational creditor claims except for Promoter claims which have not been accepted to be settled and any incremental CIRP

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costs till the date of approval of the Plan by the AA were also agreed to be funded by the RA.

- (p) CoC in its 19<sup>th</sup> Meeting held on 21.07.2021 has considered the Resolution Plan dated 21.07.2021 of the Resolution Applicant and unanimously resolved as under:

*“RESOLVED THAT pursuant to the provisions of Section 30(4) of the Insolvency and Bankruptcy Code, 2016 (“Code”) and after considering the feasibility and viability of the Resolution Plan and having satisfied that the Resolution Plan complies with the mandatory requirements under the Code read with IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“Regulations”), the consent of the Members of Committee of Creditors of Project Arun Aurovillla of M/s. Arun Shelters Private Limited (“CoC”), is hereby accorded to approve the Resolution Plan by the Consortium of Syed Kamal Pasha and Syed Fahad (“Resolution Applicant”).*

CoC in the said meeting further resolved and directed the RP to issue the Letter of Intent (LoI) to the Successful Resolution Applicant viz., Consortium of Syed Kamal Pasha and Syed Fahad and obtain the Performance Bank Guarantee from the Resolution Applicant as per the Resolution Plan.

- (q) The summary of claims admitted by RP to various Class of Creditors is given hereunder:

| <b>Sr. No.</b> | <b>Class of Creditor</b>                            | <b>Amount admitted in Rs. Crores</b> |
|----------------|---|--------------------------------------|
| 1.             | Financial Creditor<br>(Kotak Mahindra Bank Limited) | 34.27                                |
| 2.             | Home Buyers   | 6.04                                 |
| 3.             | Workmen / Employees                                 | 0.03                                 |
| 4.             | Statutory Dues and Taxes Payable                    | 0.30                                 |
| 5.             | Operational Creditors                               | 0.59                                 |
| 6.             | Related Parties                                     | 1.31                                 |
|                | <b>Total</b>  | <b>42.55</b>                         |

- (r) It is also stated that the RP conducted due diligence based on available information for disqualification if any of RA u/s 29A of the Code and obtained report from independent Chartered Accountants.

- (s) Further, the RP at the meeting of the CoC held on 21.07.2021 was provided with a note by the suspended Directors regarding the directorial disqualification of Mr. Syed Fahad. RP placed the same before the CoC and sought reply from Mr. Syed Fahad. Mr. Syed Fahad placed the common order dated 12.06.2019 of Hon'ble High Court of Karnataka wherein his WP Nos.43859/2018 and 43860/2019 challenging disqualification was allowed and the ROC had also removed their disqualification. The suspended Directors also placed on record the order dated 04.12.2019 of the Division Bench of the Hon'ble High Court of Karnataka in WA 2688/2019 challenging the common order dt.12.06.2019 passed in WP 56393/2017. Mr. Syed Fahad informed the CoC that order dt.12.06.2019 passed in WP Nos. 43859/2018 and 43860/2019 has not been stayed by the order passed in WA 2688/2019. The Hon'ble Division Bench of Karnataka High Court is however considering issue of law but has not passed any order preventing Mr. Syed Fahad from acting as Director of Company. Considering the above including the reflection of status of DIN of Mr. S.M. Kamal Pasha and Mr. Syed Fahad as 'Approved' on the portal of Ministry of Corporate Affairs and the opinion obtained from legal professional which was placed by Mr. Syed Fahad, CoC expressed satisfaction about the said compliance and proceeded to consider and approve the Resolution Plan submitted by the RA.
- (t) The RP states that *vide* IA No.514 of 2020, a period of 126 days from 18.09.2020 till 21.01.2021 was excluded from CIRP period in view of the pandemic and the ongoing litigation with regard to CIRP. Further, *vide* order dated 03.02.2021 in IA No.24 of 2021, CIRP period was extended for a further period of 90 days from 21.01.2021. The CIRP was set to expire on 21.04.2021. In view of second wave of pandemic, another exclusion was filed in IA No.170 of 2021 and the same was allowed for a period of 80 days from March 2021. Since there is error in order as period of 90 days needs to be computed from 21.04.2021, application is filed to modify the order so that period of 90 days is computed from 21.04.2021.

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- (u) After approving the Plan, a Letter of Intent was issued by RP on 03.08.2021 and same was accepted by RA on 06.08.2021, which is at Annexure-N. Further, RA has also furnished Performance Bank Guarantee for an amount of Rs.5.34 Crores, which is at Annexure-O.
- (v) The Resolution Applicant is a Consortium of Individuals viz., Mr. S.M. Kamal Pasha and Mr. Syed Fahad (father and son respectively). They have a combined networth of Rs.151.80 Crores and are eligible to participate in the Resolution process. The RA is in the business of poultry, renewable energy and in real estate. Mr. Kamal Pasha and Mr. Syed Fahad carry on the business of Golden Group which was established in 1987 and is a diversified group of Companies operating and managing poultry farms, feed mills, Agriculture, Renewable Energy, Real Estate, chemicals and many other businesses. This Group has annual turnover of more than Rs.400 Crores.
- (w) It is certified by the RP in para 4 of Form-H that the said Resolution Plan complies with all provisions of the IBC, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of the law for the time being in force. The Compliance Certificate in Form-H is at Annexure-P.
- (x) The RP submits that the present Plan does not contravene any of laws and does not seek for any waiver or concession which is contrary to law, and that the Plan is in the interest of all stakeholders of the Corporate Debtor and maximizes the value of the Corporate Debtor. Hence, the Application.

3. Mr. Arun Kumar M., the suspended Promoter and Director of M/s. Arun Shelters Pvt. Ltd. has filed objections to IA No.252 of 2021, by *inter alia* contending as under:

- (a) The Successful Resolution Applicants (SRA) were disqualified u/s 29A(e) of the Code at the time of submitting the Resolution Plan i.e., as on 21.07.2021, as also on all such earlier dates when they submitted their previous resolution plans, and that they were disqualified to act as Directors u/s 164(2)(a) of the Companies Act,

- 2013 from 01.11.2016 to 31.10.2021 as is evident from the List of Disqualified Directors dated 06.09.2017 published by MCA. This is an admitted fact and has also been recorded in the Due Diligence Report dated 27.01.2021 prepared by RVKS & Associates, Chartered Accountants, on behalf of the RP.
- (b) However, this report incorrectly states that despite such disqualification, the SRAs are eligible u/s 29A of the Code – while at the same time holding that Mr. Dinesh Ranka is disqualified on the basis of the same Circular. At the 10<sup>th</sup> CoC Meeting held on 07.12.2020, the RP and CoC have incorrectly stated that Mr. Syed Fahad and Mr. Kamal Pasha were disqualified for the period 01.11.2015 to 31.10.2020, consequently accepting that they are eligible.
- (c) The SRAs, on 16.06.2021, produced a copy of an order dated 12.06.2019 passed in WP 56393/2017 and connected Petitions (including one filed by the SRA – WP 43859/2018 and 43860/2018) by the High Court of Karnataka which prima facie appeared to have set aside the disqualification of Directorship and restore their respective DIN's of the SRAs.
- (d) The State challenged the common order in all connected Petitions and the operative portions of the above came to be stayed by the Division Bench of High Court in WA 2688/2019 *vide* order dated 12.12.2019. The order is sought to be read as limited to one petition, but it is evident that this is incorrect since the order related to a batch of petitions and the stay has been sought on the principles of law enumerated thereunder. This is strengthened by the conduct of the other Benches of the High Court of Karnataka which have disposed of writ petitions on the same issue pending consideration of W.A.2688/2019.
- (e) It is to be noted that the SRAs are Directors on the Boards of two Companies namely Golden Hatcheries Pvt. Ltd. and Kamal Farms India Pvt. Ltd. (Companies), which have been struck off from the

register on 17.07.2017 for non-filing of financial statements u/s 248 of Companies Act and remain struck-off till date. Petitions filed by the Companies to set aside the striking off u/s 252 of the Companies Act, 2013 were dismissed by this Hon'ble Tribunal on 30.08.2018.

- (f) It is evident from the above that financial statements have not been filed for three continuous financial years from 2014 onwards. Hence, the SRAs continue to be disqualified for a period of 5 years from 2017 onwards. The due diligence reports shared by the RP do not reference any of the above points of law but rely solely on the DIN status of 'approved' as seen on MCA website.
- (g) It is further contended that the RP has admitted claims by the Promoters towards remuneration (Rs.89,42,164/-) and rent payable (Rs.42,75,100/-) both of which qualify as Operational Debt and rank alongside other Employees and Operational Creditors. Nevertheless, the Resolution Plan singles out the two Promoters and proposes Nil payment on these claims while making payment of a 100% towards other similarly placed Creditors. Additionally, the Petitioning Creditor is being paid not only the Principal but also a sum of Rs.11.73 Crores in interest. The Hon'ble Supreme Court has repeatedly held that Creditors in the same class have to be treated equitably and this is a *sine qua non* for a valid Resolution Plan.
- (h) Also, the admitted liabilities of the Corporate Debtor are Rs.42,55,93,949/- and the Resolution Plan is for a sum of Rs.53,42,00,000/-. As per the registered Valuers appointed by the RP herself, the fair value of just the land and buildings of the Project are in the range of Rs.100 Crores and liquidation value is between Rs.75 Crores-80 Crores. In fact, the CoC had rejected the Plan tabled by the same SRAs twice before stating that there was wide variance between the Resolution Plan amount and the Liquidation Value of the Project Arun Aurovilla and therefore it is suspect that the CoC has approved the same Plan once again.

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(i) It is contended that the CIRP has been conducted in a mala fide manner, with the sole purpose of recovery by the Secured Financial Creditor, to the detriment of the Corporate Debtor. The RP has failed to discharge her duties and has repeatedly ignored all concerns raised. Although the CIRP was Project specific i.e. for Arun Aurovillla only, the RP failed to release any documents in relation to the other ongoing Project of the Corporate Debtor i.e. Project Parkwood. In complete violation of Section 14(d) of the Code, the RP also permitted the Secured Financial Creditor to take possession of the Corporate Office in possession of the CD while the CIRP was ongoing, and moratorium was in operation, and thus seeking to reject the Plan.

4. Ld. Counsel for the suspended Promoter of Corporate Debtor has filed a Memo dated 05.01.2022, by enclosing the interim order dated 20.12.2021 in WP No.23544 of 2021 passed by the Hon'ble High Court of Karnataka, stating that the proceedings before this Tribunal, may go on, short of making any final orders.

5. Ld. Counsel for the suspended Promoter of Corporate Debtor has filed written submissions dated 05.01.2022, by *inter alia* stating as under:

(a) The SRAs were disqualified u/s 29A(e) of the Code at the time of submitting the Resolution Plan i.e., as on 21.07.2021. The relevant date for consideration is the date of submission of resolution plan and not any subsequent date. He relied upon the decision of *Arcelor Mittal India Pvt. Ltd. vs. Satish Kumar Gupta & Ors. (2019) 2 SCC 1*.

(b) Admittedly, the SRAs were disqualified to act as Directors u/s 164(2)(a) of the Companies Act, 2013 from 01.11.2016 to 31.10.2021 as per the List of Disqualified Directors dated 06.09.2017. It is stated that irrespective of the status of the challenge to the common order, the SRAs are disqualified by operation of law, for a period of 5 years from 2017 onwards.

(c) The RP claims that Directors are separate class by themselves as they are related parties. However, there is no law that permits such

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a classification and classes of creditors are only as recognised under the Code. Related parties are only excluded from membership of the CoC and not for payment of debt when they otherwise qualify as Financial or Operational Creditors.

(d) The Resolution Plan does not maximize the value of the assets and it is an admitted fact that the assets of the CD are far in excess of its admitted liabilities and the CIRP has been conducted only for the Project Arun Auroville. The Resolution Plan is for a significantly lesser value than the value of the assets of the CD.

6. The Applicant-RP has filed Written Arguments on 07.01.2022, by *inter alia* submitting as under:

(a) The Resolution Plan in summary provides for transfer of the undertaking Arun Auroville together with all assets and liabilities of Arun Auroville to a specified purpose vehicle constituted by the Consortium by way of demerger of Undertaking Arun Auroville. The Plan does not seek any relief or concessions which are contrary to provisions of any other Act or the Code. All liabilities and debts other than those admitted shall be deemed to have been extinguished on the approval of the Resolution Plan.

(b) As regards the objections raised by the suspended Director regarding disqualification of Resolution Applicant, it is stated that the RP has conducted due diligence through an independent Chartered Accountant whose report clearly substantiates that the DIN of the Resolution Applicant, the members of the Consortium is Active.

(c) The Resolution Applicants viz. Syed Fahad and Mr. Kamal Pasha were disqualified u/s 164 of Companies Act, 2013 for failure to file annual return and balance sheet of a private limited company for a period of three years from 2011-2012 onwards. This disqualification by MCA was challenged in WP No.43859 & 43860 of 2018. Vide common order dated 12.06.2019, the Hon'ble High Court held that section 164(2)(a) of Companies Act, 2013 is prospective in nature and would not relate in respect of default by private company prior

to 01.04.2014. Based on this order Resolution Applicant's DIN has been restored and activated as default relates to period prior to 01.04.2014.

- (d) The Union of India filed W.A. No.2866 of 2019 challenging the common order dated 12.06.2019 in WP No.56393 of 2019. The Hon'ble Division Bench has stayed the order dated 12.06.2019 in WP No.56393 of 2019. It is pertinent to mention that there is no challenge to the orders passed in WP No.43859 & 43860 of 2018. It is the specific case of the Applicant that unless an order is challenged and set-aside, the same is binding on the Parties. The disqualification so far as Resolution Applicant is concerned has been set aside and said order has become final and binding. The plea of disqualification raised by suspended Director u/s 29A of the Code is therefore not applicable. Hence, the Resolution Applicant is qualified to submit the Plan.
- (e) As regards the objection raised by the suspended Director that the resolution plan value is less than liquidation value, it is stated that the Hon'ble Supreme Court in *Maharashtra Seamless Ltd. vs. Padmanabhan Venkatesh*, has held that it is the absolute direction of the CoC to approve the Resolution Plan. Liquidation value is merely to assist the CoC in deciding about the Resolution Plan and its commercial viability. Therefore, the said objection is not in accordance with law.
- (f) The Liquidation Value as determined by Valuer is on a fully constructed basis assumption and the liquidation value is therefore Rs.77 Crores. The Resolution Applicant is investing further sum of Rs.15 Crores over and above the sum of Rs.54 Crores. Further, there are deviations in the construction of project as 4 pent houses are constructed without approval. Further, Rs.35 Crores is required to make the project viable. In this regard Para 9 of the Resolution Plan may be referred, which details the investment to be made in the Project by the RA. If these costs are considered, value of Resolution Plan is far higher than the liquidation value. Mere Resolution Plan

value is not to be considered but overall commitment of Resolution Applicant to the Project to make it a going concern needs to be considered.

- (g) As regards the objection that parity to be maintained between Operational Creditors (non-related parties) and Operational Creditors (related parties), it is stated that since Plan differentiates between Related party and non-related party of Operational Creditors, the suspended Director has challenged the Plan and is now seeking payment of his remuneration as Director as part of Resolution Plan which amounts have not been approved by CoC as part of Resolution Plan as he is related party. In this regard, the decision to pay and manner of classification of creditors is within the realm of commercial consideration of the CoC.
- (h) Another issue which needs consideration is that the claim of Kotak Mahindra Bank as on CIRP date is Rs.34.27 Crores whereas the Plan provides for payment of Rs.46 Crores. Para 14.1 of the Plan states that the total amount due to Kotak Mahindra Bank as at 01.05.2021 is Rs.53.51 Crores. Kotak Mahindra Bank is the sole Secured Creditor having charge over entire Project Arun Auroville. Kotak Mahindra Bank has as part of Resolution Plan is accepting Rs.46 Crores so that all other stakeholders namely Home Buyers, Workmen, Operational Creditors get 100% of admitted claims, and such a payment plan has been approved by the CoC. This is favourable to all stakeholders as liquidation would have benefited only Kotak Mahindra Bank and not other creditors. Even legally such payment over and above admitted claim is permissible as per order of Hon'ble NCLAT dated 14.11.2018 in Company Appeal (AT) (Insolvency) No.82 of 2018, wherein, it is seen that Financial Creditors have been paid interest during the CIRP period. The order of Hon'ble NCLAT was challenged before the Hon'ble Apex Court which was dismissed summarily on 19.11.2018. Thus, the Plan submitted by the Resolution Applicant is in compliance with Sec.30 of the Code.

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7. The Resolution Applicant has filed written submissions dated 31.01.2022 by *inter alia* stating as under:

- (a) The suspended Director does not have the locus to approach this Tribunal against the Application filed by the RP. It is established principle that the suspended Directors do not have any locus to seek for an amount from the Resolution Plan since they are related party to the Corporate Debtor and has been instrumental in failing to keep the Corporate Debtor as a going concern; and has filed this objection only because the Plan did not provide for any payment to him.
- (b) The Resolution Plan is one of those rare plans which ensure that all the dues of the Corporate Debtor are settled 100% and CoC in its commercial wisdom has passed unanimous resolution approving this Resolution Plan. The CoC in its commercial wisdom has unanimously approved this Resolution Plan which should be considered by the Tribunal.
- (c) Further, it is stated that the Tribunal has to consider whether the CoC along with other Creditors of the Corporate Debtor are being paid back their dues and whether the Corporate Debtor can be revived even if the chances are slight. If the CoC have even a meagre chance to receive their returns and the Corporate Debtor could be revived, which is a better option against the present circumstance, where if the Resolution Plan proposed by the Resolution Applicant is not approved by this Tribunal then the purport of the Code will stand to fail.
- (d) The RP along with the CoC have already considered the specific issue of whether the RA is eligible to submit the Resolution Plan u/s 29A of the Code. Under para 4 of Form-H, the RP has undertaken the exercise of confirming whether the RA is eligible by engaging the services of Chartered Accountants to perform a detailed due diligence about the compliance of the RA u/s 29A. The suspended Directors of the Corporate Debtor had previously claimed that RAs were disqualified by virtue of Order of Stay dt.04.12.2019 in WA No.

2688/2019, however the said order specifically stated that the judgment in so far as WP No.56393/2017 was stayed. The said stay order is silent about any reference to WP 43859 and 43860/2018, where the RAs were allowed to continue as the Director of their respective Companies. The order in WP No.43859 and 43860/2018 are final and binding on the Resolution Applicant and vide the said Order their DIN has been restored in the Ministry of Corporate Affairs website.

- (e) The Resolution Applicant even if taken to be disqualified, has been requalified from 31.10.2021. The purpose of Section 29A is to ensure that any Company having a disqualified Director does not take over the management of Corporate Debtor. However, as on the date of takeover after approval from this Tribunal if the Resolution Applicant is qualified then the same would not be against Section 29A. The Resolution Applicant therefore as on date is not disqualified to act as a Director.
- (f) The Resolution Applicants are individuals managing a sole proprietorship and they have come together as a consortium to file the Resolution Plan. Therefore, the Resolution Plan by itself had been valid on the date of submission and since the Resolution Applicant are no more disqualified as on the date the Resolution Plan can still be adopted.

8. The Suspended Director has also filed additional submissions on 23.08.2022, by *inter alia* submitting as under:

- (a) The CoC has been wrongly and illegally constituted to include only the Creditors of a single project i.e. Project Arun Aurovilla as opposed to all the Creditors of the Corporate Debtor by wrongly placing reliance of the decision in *Flat Buyers Association of Winter Hills 77, Gurgaon v. Umang Realtech Pvt. Ltd. 2020 SCC Online NCLAT 1199*. The Hon'ble NCLAT has, in *T. Prabhakar v. S. Krishnan 2021 SCC Online NCLAT 625*, clarified that the Umang Realtech decision has been passed considering the peculiar facts of the case which cannot

be applied to all CIRPs of real estate Companies. The Hon'ble NCLT, Chennai Bench in *Mr. N. Kumar, RP, M/s. Sheltrex Developers Pvt. Ltd. v. Tata Capital Housing Finance Ltd. IA(IBC)/ 1245(CHE)2020 in CP (IB) 889(CHE)/2019* clarified that the concept of Project wise CIRP is unknown to the Code and its allied rules and regulations. All other claims by other Creditors of the CD have been kept in abeyance by the RP.

(b) It is stated that the suspended Director has also challenged the constitution of the CoC *vide* WP 23544/2021 before the Hon'ble High Court of Karnataka, which was disposed *vide* Order dt.11.03.2022. The Order dt.11.03.2022 has been subsequently challenged in Appeal bearing WA 545/2022 which is still pending before the Hon'ble High Court of Karnataka.

9. Learned Counsel for the Petitioner has filed a Memo dated 21.09.2022, by enclosing the copy of order dated 03.09.2022 passed by the Hon'ble High Court of Karnataka in W.A. No.545 of 2022 dismissing the writ appeal filed by Mr. Arun Kumar, wherein, it is observed that in case, the resolution plan is accepted, liberty is reserved to the appellant to take recourse to the remedy of appeal u/s 32 of the Code.

10. Ld. Counsel for the RP has relied upon the following decisions:

- (a) *Order of Hon'ble Supreme Court in Case No.363 (2011) in Krishnadevi Malchand Kamathia vs. Bombay Environmental Action Group;*
- (b) *Order of Hon'ble Supreme Court in Case No.569 (2021) in Pratap Technocrats (P) Ltd. vs. Monitoring Committee of Reliance Infratel Limited;*
- (c) *Order of Hon'ble Supreme Court in Civil Appeal No.4242 (2019) in Maharashtra Seamless Ltd. vs. Padmanabhan Venkatesh.*
- (d) *Binani Industries Ltd. vs. Bank of Baroda & Anr. in Company Appeal (AT) (Insolvency) No.82 of 2018 dated 14.11.2018 passed by Hon'ble NCLAT.*

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11. Ld. Counsel for the suspended Promoter has relied upon the following decisions:

- (a) *Comed Chemicals Ltd. vs. C.N. Ramchand*, (2009) 1 SCC 91;
- (b) *Zacharia Maramkandathil Mohan vs. Union of India*, (2021) 227 Comp Cas 447;
- (c) *Mukut Pathak vs. Union of India*, (2020) 222 Comp Cas 383;
- (d) *Yashodhara Shroff vs. Union of India*, ILR 2019 Kar 3768;
- (e) *Arcelormittal India (P) Ltd. vs. Satish Kumar Gupta*, (2019) 2 SCC 1: 2018 SCC OnLine SC 1733.

12. Heard Ms. Sripriya Kumar, learned Resolution Professional, Shri Vijay Kumar, learned Counsel for the Applicant / Resolution Professional and carefully perused the pleadings on record.

13. The Corporate Debtor herein, namely, M/s. Arun Shelters Private Limited was incorporated on 04.01.2005 and the CIRP proceedings were initiated against the Corporate Debtor by this Adjudicating Authority, vide order dated 31.01.2020 passed in C.P. (IB) No.305/BB/2019. The present application is filed for approval of the Resolution Plan submitted by Mr. S.M. Kamal Pasha in consortium with Mr. Syed Fahad ('Resolution Applicant'). The approval has been sought under the provisions of Section 31(1) of the Code.

14. In pursuant to the public announcement inviting claims from the Creditors of the Corporate Debtor, the IRP had constituted the Committee of Creditors. The list of Financial Creditors of the Corporate Debtor being Members of the CoC and distribution of voting share among them is as under (Para No.5 of Form H):

| Sr. No. | Name of Creditor                 | Voting Share (%) | Voting for Resolution Plan (Voted for / Dissented / Abstained) |
|---------|----------------------------------|------------------|--|
| 1.      | M/s. Kotak Mahindra Bank Limited | 85.0             | For  |
| 2.      | Mr. Shashidhar Muniyappa         | 10.8             | For  |
| 3.      | Mr. G.S. Srinivas                | 2.9              | For  |
| 4.      | Mr. Manjunath B.                 | 1.3              | For  |

15. The details of stakeholders and the amounts provided for them under the Resolution Plan given in Para No.7 of detailed Form-H filed on 05.09.2022 are as under:

(Amount in Rs. Lakh)

| Sl. 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:  |                |                 |                                       |   |
|                    |                               | (i) who did not vote in favour of the resolution plan                        | -NA-           | -NA-            | -NA-                                  | -NA-                                      |
|                    |                               | (ii) who voted in favour of the resolution plan                              | 3627.28        | 3427.28         | 4600.00*<br>(* inclusive of interest) | 126.81%                                   |
|                    |                               | <b>Total [(a) + (b)]</b>   | <b>3627.28</b> | <b>3427.28</b>  | <b>4600.00</b>                        |   |
| 2.                 | Unsecured Financial Creditors | (a) Creditors not having a right to vote under sub-section (2) of section 21 | 788.01         | -Nil-           | -NA-                                  | -NA-                                      |
|                    |                               | (b) Other than (a) above:  |                |                 |                                       |   |
|                    |                               | (i) who did not vote in favour of the resolution plan                        | -NA-           | -NA-            | -NA-                                  | -NA-                                      |
|                    |                               | (ii) who voted in favour of the resolution plan                              | 764.81         | 604.05          | 604.05                                | 78.98%                                    |
|                    |                               | <b>Total [(a) + (b)]</b>   | <b>1552.82</b> | <b>604.05</b>   | <b>604.05</b>                         |   |
| 3.                 | Operational Creditors         | (a) Related Party of Corporate Debtor  | 285.99         | 132.17          | -Nil-                                 | 0.00                                      |
|                    |                               | (b) Other than (a) above:  |                |                 |                                       |   |
|                    |                               | (i) Government   | 997.97         | 30.11           | 30.11                                 | 3.01%                                     |
|                    |                               | (ii) Workmen   | -NA-           | -NA-            | -NA-                                  | -NA-                                      |
|                    |                               | (iii) Employees  | 73.06          | 3.37            | 3.37                                  | 4.615%                                    |
|                    |                               | (iii) Other OCs  | 323.43         | 58.95           | 58.95                                 | 18.23%                                    |
|                    |                               | <b>Total [(a) + (b)]</b>   | <b>1680.45</b> | <b>224.61</b>   | <b>92.43</b>                          |   |
| 4.                 | Other debts and dues          |  | -Nil-          | -NA-            | -NA-                                  | -NA-                                      |
| <b>Grand Total</b> |                               |  | <b>6860.55</b> | <b>4255.94</b>  | <b>5296.48</b>                        |   |

The above comprises of Claims as considered for Arun Aurovillla Project. The detailed list of claims received by RP and admitted to extent of Rs.42.55 Crores has also been filed on Feb 19, 2021 and is also presented in the Resolution Plan document.

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

# Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

16. The compliance of the Resolution Plan as given in the Para No.9 of the Form-H is given hereunder:

| Section of the Code / Regulation No.                    | Requirement with respect to Resolution Plan  | Clause of Resolution Plan                     | Compliance (Yes / No) |
|---|--|---|-----------------------|
| Section 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?   | Refer 2(c)(vii)                               | 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?   | Refer Affidavit of RA                         | Yes                   |
| Section 30(1)   | Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?   | Refer Affidavit of RA                         | Yes                   |
| Section 30(2)   | Whether the Resolution Plan –  |   |                       |
|   | (a) provides for the payment of insolvency resolution process costs?   | Refer 13                                      | Yes                   |
|   | (b) provides for the payment to the operational creditors?   | Refer 14.6                                    | Yes                   |
|   | (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?   | Refer 14.1-14.2 and 14.3                      | Yes                   |
|   | (d) provides for the management of the affairs of the corporate debtor?  | Refer 19                                      | Yes                   |
|   | (e) provides for the implementation and supervision of the resolution plan?  | Refer 15 & 22                                 | Yes                   |
|   | (f) contravenes any of the provisions of the law for the time being in force?  | Refer 33                                      | No                    |
| Section 30(4)   | Whether the Resolution Plan  |   |                       |
|   | (a) is feasible and viable, according to the CoC?  | Refer Minutes of 19 <sup>th</sup> CoC Meeting | Yes                   |
| (b) has been approved by the CoC with 66% voting share? |  |   |                       |
| Section 31(1)   | Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?  | Refer Minutes of 19 <sup>th</sup> CoC Meeting | Yes                   |
| Regulation 35A  | Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board? | Intimated to Board and Refer Para 8           | Yes                   |
| Regulation 38(1)  | Whether the amount due to the operational creditors under the resolution plan has been   | Refer 14.6 & 14.7                             | Yes                   |

|                   |   |  |   |
|-------------------|---|--|---|
|                   | given priority in payment over financial creditors?   |  |   |
| Regulation 38(1A) | Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?   | Refer 14   | 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.<br>(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?   | Refer 24<br><br>Not Applicable   | No<br><br>-NA-                          |
| Regulation 38(2)  | Whether the Resolution Plan provides:<br>(a) The term of the plan and its implementation schedule?<br>(b) For the management and control of the business of the corporate debtor during its term<br>(c) Adequate means for supervising its implementation?  | Refer 15<br><br>Refer 19<br><br>Refer 22   | Yes<br><br>Yes<br><br>Yes               |
| 38(3)             | Whether the resolution plan demonstrates that-<br>(a) it addresses the cause of default?<br>(b) it is feasible and viable?<br>(c) it has provisions for its effective implementation?<br>(d) it has provisions for approvals required and the timeline for the same?<br>(e) the resolution applicant has the capability to implement the resolution plan? | Refer 10 & 17<br>Refer 17 & 42<br>Refer 15 & 22<br><br>Refer 35<br><br>Refer 2(c), 10(d),<br>10(e) & 16 r/w<br>Annexures A&B | Yes<br>Yes<br>Yes<br><br>Yes<br><br>Yes |
| 39(2)             | Whether the RP has filed applications in respect of transactions observed, found or determined by him?  | Intimated to Board and Refer Para 8  | Yes                                     |
| Regulation 39(4)  | Provide details of performance security received, as referred to in sub-regulation (4A) of Regulation 36B.  | Refer 14.1(d)  | Yes                                     |

**17.** The approval of the resolution plan has been sought under Section 31(1) of the Code, which reads as under:

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

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*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.”*

**18.** The conditions provided for in Section 31(1) of the I&B Code, 2016 for approval of Resolution Plan are therefore:

- (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.

**19.** It is submitted by the RP that, the CoC in its 19<sup>th</sup> Meeting held on 20.07.2021 & 21.07.2021 has approved the Resolution Plan submitted by Mr. S.M. Kamal Pasha (Proprietor – Golden Hatcheries) in consortium with Mr. Syed Fahad (Proprietor – Standard Farm) with 100% of voting shares and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

**20.** The provisions of Section 30(2) of the I&B Code, 2016 are as follows:

*“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 been distributed in accordance with the order of priority in sub-section (1) of section 53,*

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*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) conforms to such other requirements as may be specified by the Board.”*

**21.** 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:

**Section 30(2)(a):** Para 13 of the Resolution Plan (Page No.150 of the Application) *inter alia* stated that the RP has provided an estimate of Rs.0.46 Crore for CIRP costs pertaining to Arun Aurovilla including cost

incurred as well as cost in the balance period up to conclusion of CIRP date. The above amount of Rs.0.46 Crore reflects the estimate as provided by the RP till April 2021. In the event of any increase in the above, such costs shall be considered as CIRP costs and are agreed to be settled in priority over other Creditors.

**Section 30(2)(b):** Para 14.6 of the Resolution Plan (Page No.158 of the Application) *inter alia* stated that the Operational Creditor claims for Goods and Services provided to Project Arun Aurovilla, namely, Mango Financial Advisors LLP – Rs.41,59,500/-, Difesa Security Services – Rs.92,408/- and Sonu Marketing – Rs.16,43,253/- will be settled at 100% of the amounts of claims admitted, on or before the 44<sup>th</sup> day from the date of approval of Resolution Plan by NCLT in priority over Financial Creditors and Home Buyers. As regards the payment to the Financial Creditors who did not vote in favour of the Resolution Plan, it is seen in Form-H that all the Financial Creditors have voted unanimously in favour of the Resolution Plan.

**Section 30(2)(c):** Para 19 of the Resolution Plan (Page No.176 of the Application) stated that effective from NCLT Approval Date, a Monitoring Committee comprising of members as detailed below shall be considered as constituted, and the said Committee shall also exercise all the powers of the erstwhile Board of Directors in decision making pertaining to Project Arun Aurovilla:

- a. One representative nominated by the Resolution Applicants
  - Mr. Syed Fahad (DIN: 01865406)
- b. One representative nominated by the Secured Creditors
- c. Monitoring Agent who will chair the meeting.

Further, it is proposed to retain Ms. Sripriya Kumar the existing RP as the Monitoring Agent with approval of the CoC as per the Terms and Conditions to be mutually approved by the CoC.

**Section 30(2)(d):** Para 15 of the Resolution Plan (Page No.168 of the Application) provides that the implementation of the Resolution Plan shall

commence immediately from the NCLT Approval Date, and completion of the implementation of the Resolution Plan shall be carried to ensure Settlement of Claims – within 12 months from the date of NCLT approval of the Resolution Plan. It is also stated that the Resolution Applicant shall make all good faith efforts to meet the indicative timelines mentioned in the Plan.

Para 22 of the Resolution Plan (Page No.178 of the Application) provides that the responsibility of the affairs of the Project Arun Aurovilla of the Company and implementation and supervision of the Resolution Plan after the Date of Approval by NCLT shall be of the Monitoring Committee, assisted by Monitoring Agent. It *inter alia* provides various duties and responsibilities of the Monitoring Committee to ensure implementation of the Resolution Plan.

**Section 30(2)(e):** At Para 33 of the Resolution Plan (Page No.182 of the Application), the Resolution Applicant confirms that the Resolution Plan is devised in strict compliance of all the applicable laws, rules & regulations.

22. We are now examining the compliance of the proviso to Section 31(1) of the I&B Code, 2016 that the Resolution Plan has provisions for its effective implementation. Para 22 of the Resolution Plan at Page No.178 of the Application stated the responsibility of management of the affairs of Project Arun Aurovilla of the Company and implementation and supervision of the Resolution Plan after the date of approval by NCLT, shall be of the Monitoring Committee, assisted by the Monitoring Agent. Para 15 of the Resolution Plan details the terms of the Resolution Plan and the timeline of Implementation Schedule, which shall commence immediately from the NCLT Approval Date, and completion of the implementation shall be carried to ensure Settlement of Claims – within 12 months from the date of approval of Resolution Plan.
23. As regards the financing requirement and source of financing, Para 16 of the Resolution Plan provides that the Plan has provided an outlay of Rs.53.42 Crores towards settlement of dues to the home buyers and financial and other creditors and has estimated a further working capital

of Rs.40 Crores to complete the Project including initial fund infusion of Rs.15 Cores to start the Project. The said outlay is proposed to be financed to the SPV, through 100% internal cash accruals / debt by the Resolution Applicant and their companies as debt and/or equity contribution to the Project.

- 24.** We have discussed above that the requirements under section 31(1) of the Code are satisfied in the present case. In Para 4 of Form H, the Resolution Professional has certified that the Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') and does not contravene any of the provisions of the law for the time being in force. The RP has also certified that the Resolution Applicant Syed Consortium has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility u/s 29A of the Code to submit the Resolution Plan and the contents of the said Affidavit are in order. Copy of the Affidavit of the Resolution Applicants regarding their eligibility u/s 29A has been annexed to the Application. The RP has submitted that the Resolution Plan has been approved by the CoC with 100% voting shares in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering its feasibility and viability and other requirements specified by the CIRP Regulations. The RP engaged the services of RVKS & Associates, Chartered Accountants, to perform a detailed due diligence about the compliance of the Resolution Applicants in terms of Sec.29A of the Code. Such due diligence was approved by the CoC. The Report of RVKS & Associates, Chartered Accountants, dated 27.01.2021 confirms that Resolution Applicants are qualified and in compliance of Sec.29A of the Code.
- 25.** Pursuant to Regulation 38(3)(a) of the CIRP Regulations regarding whether the Resolution Plan demonstrates that it addresses the cause of default, it is *inter alia* stated at Para 10 & 17 of the Resolution Plan (Page Nos.142 & 172 of the Application) that the primary cause of Project failure in this case

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was because of the inability of the Promoter to infuse the requisite funds for the purpose of completion of the Project and the Project is presently on a stand-still basis. The current Promoter has borrowed money from Corporation Bank initially to complete the Project, has defaulted there and taken money from Kotak Mahindra Bank to only settle the debt owing to Corporation Bank. He has not invested any funds from his side as equity towards the Project. Due to the same, the Project has been burdened with debt and has failed. The Resolution Plan addresses this cause of default and rectifies the same by settling the Creditors and providing to infuse funds and marketing capabilities to convert the dormant asset into a performing one.

26. Pursuant to Regulation 38(3)(b) of the CIRP Regulations regarding the feasibility and viability of the Resolution Plan, the Resolution Applicant at Para 42 of the Resolution Plan (Page No.189 of the Application) has presented a Financial Model of projected Receipts & Payments out of the Project which establishes the feasibility and viability of the Plan.
27. Pursuant to Regulation 38(3)(c) of the CIRP Regulations regarding whether the Resolution Plan has provisions for its effective implementation, it is *inter alia* stated in Para 15 & 22 of the Resolution Plan (Page No.168 & 178 of the Application) that the Resolution Applicant has sufficient financial and operational capability to execute the Project. The Resolution Plan clearly indicates the sources of funds, implementation schedule and supervision during implementation and the repayments are expected to be completed in 12 months from the date of approval by the Adjudicating Authority.
28. Pursuant to Regulation 38(3)(d) of the CIRP Regulations regarding whether the Resolution Plan has provisions for approvals required and the timeline for the same, it is *inter alia* stated in Para 35 of the Resolution Plan (Page No.182 of the Application) that other than the approval of the NCLT approving this Plan, no other prior approval of any regulatory authority is necessary for implementation of this Resolution Plan. Routine regulatory approvals required to revive the Project are also considered in the Plan.

- 29.** Pursuant to Regulation 38(3)(e) of the CIRP Regulations regarding whether the Resolution Applicant has the capability to implement the Resolution Plan, it is stated in the Resolution Plan (Page No.131 of the Application) that the Resolution Applicant has sufficient financial and operational capability as demonstrated from their net worth certificates and other documents as per the Annexures A & B annexed to the Resolution Plan.
- 30.** It is stated that the Resolution Applicant would float a Special Purpose Vehicle (SPV) which shall be incorporated / nominated within 30 days from the date of approval of the Resolution Plan by the CoC and this SPV would take over the Project Arun Aurovilla by way of demerger. The details of the Demerger Scheme and Reduction of Capital have been discussed under Para 12 of the Resolution Plan. Upon approval of the Resolution Plan by this Tribunal, the business undertaking of Project Arun Aurovilla will be demerged in favour of the SPV. The business undertaking of Project Arun Aurovilla shall stand transferred to and vested in or deemed to be transferred to and vested in the SPV, as a going concern, in accordance with Section 2(19AA) of the Income-tax Act, 1961.
- 31.** It is stated that the RA and the SPV shall make payment of Rs.53.42 Crores towards discharge of liabilities of the demerged undertaking resulting in implementation of Resolution Plan. The Resolution Plan was presented with an estimate of CIRP costs with the express understanding that any additional CIRP costs till date of approval of this Resolution Plan have also been agreed to be paid. Kotak Mahindra Bank Ltd., being Secured Creditor will retain its charge and security over the land and building of Project Arun Aurovilla. However, the same shall be released on full payment being made by the Resolution Applicant (RA).
- 32.** Further, the very rationale behind Scheme of Demerger as part of the Resolution Plan is to ensure that the business undertaking Project Arun Aurovilla which alone is a subject matter of CIRP is dealt with independently in the Resolution and that assets and liabilities that are part of the Business Undertaking Project Arun Aurovilla are segregated in favour of SPV of RA and RA shall discharge liabilities of the Project Arun

Aurovilla and resolve the CIRP. This will ensure that Project Arun Aurovilla is continued as a Going Concern.

- 33.** In consideration for demerger, shareholders of CD *viz.*, Mr. Arun Kumar and Mrs. Suchitra N would be issued Class A shares of aggregate value of Rs.1,000 as token consideration for demerger. These Class A shares shall not rank *pari passu* with the existing shares of SPV and will have differential voting rights. Upon payment of the First Tranche Payment by the SPV and after completion of the demerger of the Business Undertaking to the SPV and issuance of Class A Shares in the SPV to the erstwhile shareholders of Arun Shelters, the Class A Shares, shall be cancelled in accordance with the order(s) of the NCLT sanctioning the Resolution Plan u/s 31 of the Code.
- 34.** Since the said demerger and reduction is an integral part of the Resolution Plan u/s 31 of the Code and will be made effective pursuant to order of the NCLT sanctioning the Resolution Plan in terms of Section 31 of the Code. The order of the NCLT sanctioning the Resolution Plan shall also be deemed to be an order under Sections 66, 230 and 232 of the Companies Act, 2013 confirming the demerger and the reduction of share capital.
- 35.** As part of the reliefs and waivers sought in the Plan, it is *inter alia* stated that, in the event any application filed by the RP u/s 43 to 51 or 66 of the Code continues even after NCLT Approval Date, the SPV/RA shall not bear any cost in relation to the same.
- 36.** According to Regulation 39(4) of the CIRP Regulations, the Resolution Applicant shall furnish evidence of receipt of performance security as required under sub-regulation (4A) of Regulation 36B which came into effect from 24.01.2019. In this regard, the Applicant stated that as required under the terms of the Code, the CIRP Regulations and the RFRP, the Resolution Applicant has, upon being issued the Letter of Intent (as defined in the RFRP), and within the timelines and in the manner specified in the RFRP, submitted a Performance Bank Guarantee of Rs.5.34 Crores, being 10% of the Resolution Amount under the Resolution Plan, from YES Bank Ltd. *vide* Bank Guarantee No.022BG01212180001 dt.06.08.2021, a

copy of which is at Page 212 of the Application. It is stated therein that the said Bank Guarantee shall be valid till 05.08.2022 with an additional claim period of 12 months thereafter.

- 37.** Pursuant to the directions given by this Tribunal on 29.08.2022, the Applicant / RP *vide* Diary No.3707 dated 05.09.2022 has filed a Memo enclosing the revised Compliance Certificate (Form-H), and further submits that with reference to IA No.84 of 2021, the 2<sup>nd</sup> Respondent – Mr. Ramusa has only paid Rs.4 lakhs for booking four apartments of worth Rs.3 Crores and have registered Agreement to Sell. It is also the case of 2<sup>nd</sup> Respondent that no payment beyond Rs.4 Lakhs has been paid by the 2<sup>nd</sup> Respondent. The Applicant prays that in terms of Resolution Plan, the agreements stated in IA No.84 of 2021 may be terminated and cancelled as the Plan contemplates clean slate theory and since no final sale deeds have been executed, these Agreements stand terminated by virtue of the Resolution Plan. Further, it is necessary to point out that no claims has been filed before the RP by Mr. Ramusa. The said Memo is taken on record.
- 38.** Further, the RP in Form-H stated that he has determined 2 transactions based on the Avoidance Review Report submitted by an independent professional services firm M/s. RVKS & Associates. The two transactions as under have been intimated to the Board and Avoidance applications have also been filed before the Adjudicating Authority as under:

**Transaction 1:** The Promoter of the Corporate Debtor has created an encumbrance by way of Registration of Memorandum of Agreement of sale of 4 Apartments of Arun Aurovilla to one Mr. Ramusa, amounting to Rs.75 Lakhs each in respect of which no consideration has been received by the Corporate Debtor. The RP has filed an application bearing IA No.84 of 2021 seeking to set aside this transaction under Section 66 of the Code.

**Transaction 2:** One of the Financial Creditors / erstwhile home buyer – Mr. Manjunath has filed his claim stating a Principal payment of Rs.34 Lakhs. Of the same, only Rs.20 Lakhs is traceable to the books of the Company, as received. The RP has filed an application bearing IA No.223

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of 2021 seeking to recover Rs.14 Lakhs from the Promoter under Sec.66 of the Code.

- 39.** In respect of the reliefs and concessions, it is declared that whatever reliefs and concessions entitled by the Resolution Applicant by virtue of the approval of the Plan, are entitled to it in accordance with Law. In respect of the remaining, it is not possible for us to issue any direction except to say that the Resolution Applicant may take appropriate steps in accordance with Law in respect of the said reliefs and concessions and the public authorities / government authorities / any other party would duly consider the said requests / applications of the Resolution Applicant in accordance with Law.
- 40.** In the circumstances and for the aforesaid reasons, the instant I.A. bearing I.A. No.252 of 2021 is allowed and accordingly, the Resolution Plan dated 21.07.2021 along with the Scheme of Demerger ('Resolution Plan') submitted by Mr. S.M. Kamal Pasha (Proprietor – Golden Hatcheries) in consortium with Mr. Syed Fahad (Proprietor – Standard Farm), which is annexed and marked as Annexure-K to the Application, is hereby approved. The Resolution Plan so approved 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 to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan. Under the provisions of section 31(3) of the Code, we also direct as under:
- (a) The Bank Guarantee referred in Para 36 above, shall be extended till the complete implementation of the Resolution Plan.
- (b) The moratorium order passed by this Adjudicating Authority under Section 14 of the Code on 31.01.2020 in the main CP shall cease to have effect; and

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(c) The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Board to be recorded on its database.

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**MANOJ KUMAR DUBEY** ✓  
**MEMBER (TECHNICAL)**

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**KISHORE VEMULAPALLI** ✓  
**MEMBER (JUDICIAL)**