NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

I.A (IBC)/43/2021
In C.P (IB)/09/GB/2019

Coram:

Hon'ble Shri Rohit Kapoor, Member (J) : Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conferencing

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY TRIBUNAL, GUWAHATI BENCH ON 08.04.2022.

<u>Name of the Company</u> Piyush Periwal

... Petitioner

VS

Stressed Assets Stabilization Fund (SASF) & Ors

... Respondents

Section: Under Section 60 (5) of IBC, 2016.

SL.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. ABHIJIT SARKAR	Advocate	Petitioner	Present in
2.	MR. ABHISHEK PRASAD	Advocate	Respondent	Video Conference

ORDER

The Applicant is represented through respective learned counsel(s).

The case is fixed for pronouncement of order.

The order is pronounced in the open court, vide separate sheet.

Sd/-

(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority

Sd/-

(Rohit Kapoor)
Member (Judicial)
& Adjudicating Authority

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

I.A (IBC)/43/2021
In C.P (IB)/09/GB/2019

<u>In the matter of:</u>

Mr. Piyush Periwal residing at 12E, Judges Court Road, Kolkata- 700027, West Bengal

... **Petitioner**

VERSUS

STRESSED ASSETS STABILIZATION FUND having its Principal Office at 3rd Floor, D-Wing, IDBI Tower, WTC Complex, Cuffe Parade, Mumbai-400005.

... **Respondent No. 1**

Mr. Sandip Khaitan, Resolution Professional having his office at Sanmati Plaza, 2nd Floor, Christian Basti, G.S Road, Guwahati-781005 ... **Respondent No. 2**

Mr. Anand Varma, Advocate, representing Resolution Professional having office at 29/1201, Lotus Boulevard, Sector 100, Noida 201304, Uttar Pradesh ... **Respondent No. 3**

PLBB PRODUCTS PRIVATE LIMITED, having its registered Office at 3rd Floor, Junction Mall, R.K.B Path, Dibrugarh, Assam-786001 ... **Respondent No. 4**

Praful Jindal, Advocate, representing Respondent No. 1, Having office at 1B-2/23, LGF, Madam Sara, Mathew Lane, Near St. Mary School, Safdarjung Enclave, New Delhi- 110029 ... **Respondent No. 5**

Order delivered on. 08.04.2022

Coram:
Hon'ble Shri Rohit Kapoor, Member (J)
Hon'ble Shri Prasanta Kumar Mohanty, Member (T)

Hearing through Video Conference

ORDER
[Per se: Prasanta Kumar Mohanty, Member (T)]

1. **This present application is filed under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 alleging the conflict of interests between the Respondent No. 1 (SASF), Respondent No. 2, the Resolution Professional (Sandeep Khaitan), Respondent No. 4 the Resolution Applicant (PLBB Products Pvt. Ltd.) and the Respondent No.3, Mr. Anand Verma, Advocate representing both the Resolution Professional and the Resolution Applicant. Respondent No. 5, Mr. Praful Jindal, Advocate of Respondent No. 1- SASF has also represented the Respondent No.2- the Resolution Professional before the Hon'ble NCLAT in the appeal preferred by the Petitioner**. He has submitted that the Respondent No. 3 Mr. Anand Verma has attended most of the CoC meetings and was privy to all confidential information of the CD. He has acted in collusion with the Resolution Professional and the Respondent No. 1, the Financial Creditor (SASF) **to further the cause of the Respondent No. 4**- the other Resolution Applicant, **M/s PLBB Products Pvt. Ltd**. He submits that **this Application is filed because of the conspiracy hatched by the Respondents Nos 1 to 5 to facilitate a hostile takeover of the CD, by its competitor. Following reliefs have been sought by the Petitioner:**

i. An order be made removing the respondent no. 2 as the Resolution Professional in the matter.
ii. An order be made setting aside all acts of the RP in which the RP had been instrumental, as unfair, biased, motivated and lacking in transparency.
iii. An order be made removing the respondent no. 3 in the matter.
iv. An order be made disqualifying the respondent no. 4 as a Resolution Applicant in this matter.

2. **The Petitioner is a MSME promoter, shareholder, and a member of the suspended Board of Directors of National Plywood Industries Limited (NPIL). NPIL is the Corporate Debtor, undergoing CIRP by an order of**

admission dated 26.08.2019 passed by this Ld. Tribunal and Respondent No. 2 was appointed as the IRP and subsequently RP in this matter.

3. **Briefly stated, the series of events which have prejudiced the entire CIRP and objectives of the IBC** as a result of undue influence exercised by the Respondent No. 1, the Financial Creditor (SASF) in league and concert with the other Respondents as mentioned by the Petitioner in his petition, that:

3.1 RP has admitted the wrong and **inflated claim of SASF** to ensure that SASF should have the undisputed majority in the CoC. The RP acted arbitrarily and with unfettered bias notwithstanding **the direction passed by this Learned Tribunal in its order dated 09.12.2020 in IA No. 89 of 2019 directing the RP to verify the claim amount of the FC minutely and transact the proceedings with utmost dedication strictly in accordance with the provisions of the "Code", Rules and Regulations of IBC/IBBI. This act is now under question before this Hon'ble Tribunal in IA No. 27 of 2021 in C.P. (IB) No. 09/GB/2019. Serious questions on the claim of the respondent No. 1 have also been raised by the Hon'ble Guwahati High Court in its order dated 04.06.2021 in a petition filed by the Principal Borrower-National Boards Limited. The Respondent No. 1 and 2 have also been restrained by the Hon'ble Guwahati High Court in its aforesaid interim order from taking any coercive steps against the CD and the Principal Borrower.**

3.2 On 20.01.2020, when the counsel of the respondent No. 1 conceded before the bar that the dates mentioned in the application filed by the respondent no. 1 were wrong, the Hon'ble NCLAT in its orders dated 25/11/2019 had upheld the order of admission dated 26.08.2019 passed by this Tribunal. **The Hon'ble Supreme Court by its order dated 20.01.2020 set aside the order dated 25.11.2019 passed by the Hon'ble Appellate Tribunal on grounds of limitation**. **The matter was remanded back to the Appellate Tribunal for consideration afresh based on fresh dates. On 28.01.2020 the observations made by this Hon'ble Tribunal made it clear that the**

order of admission had not attained finality and as the matter was receiving the consideration of the Hon'ble Appellate Tribunal, the respondents i.e. the RP and SASF should act in accordance with law.

3.3 The IA No. 1194 of 2020 filed by the respondent no. 1 before the Appellate Tribunal for the resumption of the **CIRP was not considered by the Hon'ble Appellate Tribunal in its order dated 19.03.2020. The RP in collusion with respondent no. 1, without any order of resumption of CIRP resumed the CIRP arbitrarily to give undue benefits to respondent no. 1. It is a matter of record that the final order of admission against the corporate debtor was passed by the Hon'ble Appellate Tribunal only on 24th November, 2020 following the order of remand by the Hon'ble Supreme Court dated 20.01.2020. Under such circumstances, the time taken for legal proceedings was in any event required to be excluded from the period of CIRP.**

3.4 The RP has acted in a manner which is detrimental to the interest of the CD. He has clearly acted in consultation with the legal counsel **who is a member of the board of directors of a competitor of the CD. An opinion was taken by the RP from the said counsel who had also** been paid his professional fees by the RP. The said opinion was however shared only with respondent no. 1 acting on the biased opinion given with vested interests, **the RP has ensured that the CD no longer remains going concern. The arbitrary refusal of the supply of essential materials classified under section 14(2) of the Code from its associate company since May 2020 was one of the primary reasons that the CD is no more a going concern. The CD being a solvent MSME concern under the stewardship of RP has incurred massive financial losses and the asset value and reputation of CD has been severely depleted. Production was suspended since 07.07.2020 and lockout notice was issued by the RP on 28.01.2021. Sales of approx. Rs. 3.50 crores per month prior during the CIRP period gradually reduced each month under the RP's management and finally came to a complete halt from**

July 2020. All business activities of the CD are at a standstill and the workers, employees and staff members have not been paid their dues. Suppliers and creditors have not been paid for supplies made during the CIRP period. Mandatory compliances with the various authorities have not been complied with and are long overdue resulting in defaults for non-compliance. The Respondent No. 2's family business is akin to that of the CD's and this fact of possible conflict of interest was not disclosed to the various authorities at the time he consented to become the IRP for the CD. This fact was pointed out by a COC member in his email to the RP and the COC on 18.05.2020.

3.5 After the said arbitrary resumption of the CIRP by the RP in collusion with respondent no. 1, the process of submission and consideration of the Plans of the Prospective Resolution Applicants (PRAs) who had expressed interest was unilaterally terminated by the voting of the respondent no. 1 in the 7th CoC meeting held on 22.06.2020. **A second Expression of Interest was rolled out on 27.06.2020 only to allow the respondent no. 4 to participate in the process. The RP and Respondent no. 3 did not disclose that both have beneficial interest and a relationship with the Resolution Applicant "PLBB Products Private Limited" and its associate firm "Damayanti Tea".** Mr. Praful Jindal, Advocate being respondent no. 5 also had a conflict of interest as he has appeared for the Respondent No. 1 and 2 respectively. The resolution plan of the respondent no. 4 was unilaterally approved in the 15th CoC held on 1st June, 2021 with the majority voting share in favour of respondent no. 4.

3.6 **The "PLBB Products Pvt. Ltd." was incorporated only on 20.07.2020. However, and very surprisingly the promoters of PLBB Products Pvt. Ltd. submitted their EOI on 12.07.2020 even without the company being in existence**. The RP however, acknowledged respondent no. 4 as a successful resolution applicant in his provisional list on 17.07.2020. **It is clear there from that the second roll out was made only to facilitate the submission of EOI**

by PLBB. Notwithstanding the fact that the respondent no. 4 is a company, classified under category-1 as mentioned in Annexure – I and does not meet the requirements to become a prospective resolution applicant, the respondent No. 4 was allowed to participate as a Resolution Applicant. Strong objections were made by another member of the COC and a prospective Resolution Applicant but the same was rebutted by the RP in an email, the contents of which proves the bias and partiality shown by the RP to include the respondent no. 4 as a Prospective Resolution Applicant. The IBBI, on a complaint filed by the OC and the COC member acknowledged the fact of lack of transparency in their letter dated 29.01.2021.

3.7 The voice of the suspended management and other operational creditors who were the members of the COC were always suppressed. No suggestion was sought from them. Neither were they consulted before taking commercial decisions in the COC meetings. The RP never allowed them to speak. **Despite the settled law wherein it was held by the Hon'ble Apex Court that the scheme of the Code makes it clear that the directors, though not members of the COC, have a right to participate in every meeting of the COC, they were also never allowed to voice any opinion**. In addition, for effective participation as vitally interested parties in discussion on resolution plans, they have the right to receive copies of the resolution plans presented to the COC. **The Hon'ble Supreme Court also clarified that under Regulation 21 (3)(iii) of the CIRP Regulations, the notice of the COC meeting is required to be given to all the directors of the suspended Board of the CD as well.** In terms of Regulation 19(1) of the CIRP Regulations, the Resolution Professional is required to give notice of every COC meeting to the participants including the members of the suspended board of directors which must contain copies of all the documents relevant for matters to be discussed, including the resolution plans. **The same was not followed.**

3.8 The Evolution matrix presented by the RP on 27.07.2021 before this Hon'ble Tribunal is arbitrarily prepared without giving the petitioner an opportunity for negotiation in the COC which was solely done by the respondent no. 4 in concurrence with the respondent nos. 2 and 3. The plan of the petitioner was clearly disclosed to the respondent no. 4 before the said negotiation held on 28th May, 2021. Accordingly, the respondent No. 4 had without any authority or permission, modified their COC approved plan several times till 22.05.2021 as mentioned by the RP and which is evident from the minutes of the 15th COC meeting held.

3.9 **Respondent Nos. 2,3 and 5 having beneficial interest in and advising the respondent nos. 1 & 4 compromised the confidentiality and sanctity of the process to favour the respondent no. 4 and resultantly also the respondent no. 1-SASF. Despite the interim stay directed by the Hon'ble NCLAT vide its order dated 03.03.2021, the RP clearly proceeded to share the petitioner's plan with select COC members despite a stay by Hon'ble Appellate Tribunal.** It is also a strange fact that the respondent no. 4 was allowed to modify a COC approved plan pending for approval with the Adjudicating Authority filed by the RP being IA No. 61 of 2020 prior to the negotiation to be held on 25th May, 2021. **It is clear that the modification of the plan was done post the submission of the plan by the MSME promoter on 01.03.2021 in order to match the terms and possibly improve upon its earlier approved plan. This can be ascertained if all the three plans in question are collectively evaluated as submitted and suitably compared, which will prove the collusion**. The RP did not share any plan of the Respondent no. 4 with the suspended board or the other OCs who were sitting members of the COC. The entire process was conducted with a single window clearance by the Respondent no. 1. Nearly all COC members wrote to the RP between 21st May, 2021 and till 25th May, 2021 seeking the plan details for evaluation and reasonable time to do so. Other FC's also wrote to the RP and COC to consider allowing them reasonable time to examine, evaluate and comment on the plans **due to the raging pandemic situation but their requests were all ignored.** Resultantly, the final meeting on 28.05.2021, where the plan was approved was attended by only the respondent no. 1 as the sole COC member as all the other FCs were directly or indirectly affected by the Covid pandemic. The entire process was being conducted as a money recovery exercise in collusion to further the interest of the respondent no. 1. **In fact, a FC and member of the COC who was compelled to abstain from the process due to his ill-health, passed away on 08.06.2021 after being on the ventilator for several weeks.**

3.10 The RP, to facilitate the respondent no. 1, reclassified the status of a financial creditor "DILLIP CONSTRUCTION PVT. LTD" to an operational creditor. Challenging the said arbitrary act of the RP the said financial creditor filed an application being IA No. 14 of 2021 before Hon'ble Tribunal. It is a settled law that the COC has no role in deciding the status of a creditor or admission of a claim. As such an exercise cannot be treated as an exercise of its commercial wisdom, the Respondent no. 2 having no adjudication power, could not overturn the earlier decision and re-classify a creditor from financial to operational based on a resolution by a majority of the COC.

4. The Petitioner has submitted in detail the collusion and conflict of interest between Respondent No. 1 and other Respondents:

4.1 Misuse of IBC as a money recovery forum by Respondent No.1 aided by the Resolution Professional (Respondent No.2)

i. M/s IDBI Bank Limited (Lender) had given a loan of Rs.3.20 crores (Rs.3.07 crores being the disbursed amount) to M/s National Boards Limited (Principal Borrower, or "PB"). Against this loan, M/s National Plywood Limited (the Corporate Debtor, or "CD") was the Corporate Guarantor. There were several other personal guarantors to this loan. On 03.12.2001, on the alleged failure of the PB to repay the loan within the stipulated time frame as a result of a force majeure situation, this loan was recalled, and the Corporate Guarantee against the CD was invoked. The lender then filed an application in the DRT, Guwahati against the PB to recover their dues but did not make the CD a party to the proceedings. This loan, to the extent of the amount pending which was Rs.2.15 crores of the Rs.3.07 crores, was then transferred to the Respondent No.1 by the Lender on 30.09.2004. The DRT, on 05.01.2005, issued a Recovery Certificate to the amount of Rs.5.43 crores against the PB and two personal guarantors. Against this, the PB executed a Negotiated Settlement (NS) with Respondent No.1 to the amount of Rs.2.158 crores on 30.04.2005. Against this NS, the PB repaid Rs.0.9224 crores. What remained was a sum of Rs.1.23 crores against which Respondent No.1 had attached land assets of the PB of a much higher value which it still continues to hold on to. The sale of this land could have easily allowed the PB to pay the pending dues as per the NS but it was the Respondent No.1 mis-represented and obtained an order from the DRT preventing the sale of this asset which consequently prevented the PB from repaying the balance so that proceedings against the PB could continue.

ii. The CD had been under the aegis of BIFR from 2003 until SICA was repealed on 01.12.2016 and the IBC came into effect in its place. There is no bar on proceedings against a corporate guarantee when under BIFR but Respondent No.1, while proceeding against the PB and other guarantors, did not make the CD a party to any recovery proceedings with respect to this loan. It is settled law that such declaration of sickness would not have barred a proceeding against the CD before the Debts Recovery Tribunal [(2003) 4 SCC 305]. It is submitted that Respondent No.1 had initiated parallel proceedings with the CD with respect to another loan, for which it was also the Operating Agency (OA) in the CD's proceedings in the BIFR. **Respondent No.1 also issued a No Dues Certificate to the CD on**

15.07.2016 and even then, no mention of any liability due from the CD with respect to the PB's loan was made by Respondent No.1. In fact, even in the financials of the CD prepared during BIFR under Respondent No.1 as the OA, there was no liability, not even contingent, with respect to this loan of the PB in the books of the CD nor in the information utility (IU). Also, there was no further demand/notice from the Respondent No.1 on the CD for this outstanding after 03.12.2001.

iii. **After having settled all secured loans under BIFR, the CD was in the process of recovering and underwent a preferential issue of equity shares and warrants, receiving fresh investment in 2018**. **It is at this time that Respondent No.1, on 12.03.2019, i.e., 18 years after having invoked the Corporate Guarantee against the CD, proceeded to file a Section 7 application against the CD with respect to the PB's loan.**

iv. The Section 7 application under IBC was filed by Respondent No.1 for recovery of an inflated, exorbitant, and baseless claim **of Rs. 133.54 crores from the CD**. They pleaded that, being the guarantor, the CD was liable to make payment of Rs. 133.54 **crores for an outstanding of Rs 1.23 crores as reflected** in the books of the PB. **This exorbitant demand pushed the CD to a point of no-return and left it with very limited options. Then**, **on 26.08.2019, this application was admitted by this Hon'ble Tribunal and CIRP was initiated against the CD**. The Hon'ble NCLT in its order of admission observed that *"As far as the above referred plea as regards to exorbitant claim of Rs 133 Crores is concerned, the above plea is beyond the pleadings and scope of an enquiry under Section of the IBC."*

v. In the Section 7 application, Respondent No.1 had nominated Mr. Sandeep Khaitan (Respondent No.2) as the Interim Resolution Professional of the CD. It is submitted that Respondent No.2's father runs a plywood dealership and has long-standing business relationships with competitors of the CD. Further, Respondent No.2 business is in loan syndication and settlement of stressed corporates with banks. **Once CIRP was initiated against the CD, the Respondent No.1 filed a drastically different claim of Rs.16.12 crores with the Respondent No.2. Very surprisingly, the Respondent No.2 accepted this claim without bringing this difference in amount to the notice of the Hon'ble Tribunal and without any verification with the books of the CD (which did not reflect any** amount due to Respondent No.1) and the books of the PB as on 2018-19 (wherein the amount due to Respondent No.1 was only the balance sum of Rs.1.23 crores). In a recent Judgement dated 20.12.2021 by the Hon'ble NCLT, Cochin Bench in ***M/S. Roxel Trading GMBH Versus Ms. Satyadevi Alamuri & Ors.,*** the following has been observed:

> *"The excess amount claimed by the Applicant has already been received by them from the Corporate Debtor and this amount was adjusted by the Applicant against the dues of Matheel. Hence the Resolution Professional has not accepted that amount which has already been paid. If that amount is also accepted by the Resolution Professional, that would be violation of the IBC and detrimental to the interests of other creditors of the Corporate Debtor. Moreover, the applicant has not disputed the receipt of such amount from the Corporate Debtor."*

vi. It is also a fact that the suspended Board of the CD had disputed this admitted claim from the very initial stage of its admission but were not at all consulted by Respondent No.2 before admitting it. **That Respondent No.1 had filed an application against the CD claiming Rs.133.34 crores against dues from the PB of Rs.2.15 crores of which Rs.0.92 crores had been repaid, and that Respondent No.1 then changed the claim amount to Rs.16.12 crores were questioned by the Hon'ble NCLT, Hon'ble NCLAT and Hon'ble Guwahati High Court. The**

Hon'ble NCLT in an order dated 09.12.2020 directed Respondent No.2 to minutely verify the claim. However, the Respondent No.2, in collusion with Respondent No.1, submitted the Compliance Report without any verification from the suspended management, the books of the CD or the PB. Further, the Hon'ble High Court Guwahati in an interim order on 04.06.2021 in WP 2699 of 2021 directed the Respondent Nos. l and 2 not to take any coercive action for the said debt from the CD or the PB till final disposal of the matter. **The Hon'ble High Court also observed that the guarantor's liability cannot exceed that of the PB, which in this case was kept by the NS to be Rs. 2.15 crore of which Rs. 92.24 lakh was already paid**. It is submitted that this order of the Guwahati High Court, still in effect, and the fact that Rs. 92.24 lakh was accepted as payment by Respondent No.1 against the NS, was suppressed by Respondent Nos. l and 2 from the Adjudicating Authority in its original application of admission. Since this claim of the Respondent No.1 is still under adjudication with this Hon'ble **Tribunal in IA 27 of 2021 and the Hon'ble Guwahati High Court, the very constitution and voting share of the COC is uncertain**. The IRP/RP (Respondent No.2) had formed the Committee of Creditors even without proper verification of the Respondent No.1's claims as a Financial Creditor. Therefore, under these circumstances, any important decisions taken by the Respondent No.1 for the COC would be a nullity.

> *"Section 18 is relating to the duties of an Interim Resolution Professional. Section 18(1)(b) mandates the IRP to receive and collate all the claims submitted by the creditors under the public announcement made under Section 13 and 15. Section 18(1)(c) authorizes IRP to constitute a Committee of Creditors. Section 21(1) imposes a precondition for the collation of all claims received to determine the financial position of a Corporate*

Debtor. The word 'collation used in Sub-section 21(1) means verification of claims.

The success of the corporate insolvency resolution depends entirely on the validly constituted committee of creditors.

Completing the Corporate Insolvency Resolution Process strictly in terms of provisions of the I&B Code, as per the Code and Regulations made thereunder, are an essential element of the CIRP. Skipping any statutory process as per the Code would have significant repercussions and impact on the entire Resolution Process under the Insolvency and Bankruptcy Code 2016. In the circumstances, we think it proper to scrutinize every step of the corporate Insolvency Process in the instant case, to see whether it conforms with the statutory provisions under the Insolvency and Bankruptcy Code and Regulations thereunder. Further, we have to see whether any of the procedures prescribed under the Code can be skipped on the pretext of the commercial decision of CoC." ***It is also pertinent to mention that when the Constitution of the Committee of Creditors itself is found to be tainted, then the decision of that COC cannot be validated on the pretext of exercise of commercial wisdom. (Company Appeal (AT) (insolvency) No. 348 of 2020 of Hon'ble NCLAT.)***

Respondent No.1 was the sole member of the COC when they appointed the IRP, Respondent No.2, as the Resolution Professional for the CD. Thereafter, with their inflated admitted claim and with the CD **having had no secured lenders, Respondent No.1 came to control 71.05% of the Committee of** Creditors (COC) of the CD. In the very first COC meeting (wherein Respondent No.1 was the sole FC), Respondent No.2 took permission to hold COC meetings at short notice and thereafter proceeded with COC meetings ensuring that the Respondent No.1 would be the sole attendee. More than six months after having admitted claims of other FCs of the CD, Respondent No.2 arbitrarily reclassified some FCs as OCs to increase Respondent No.1's share in the COC to 87.76%. It was done in the very meeting where the Respondent 4 was confirmed as a PRA and the Respondent No.3, an advocate of the promoters of Respondent No.4 was also proposed as a legal counsel of the Respondent No.2 on behalf of the CD. It is submitted that these FCs that were reclassified by Respondent No.2 were the very FCs that objected to the prejudiced ongoing in the COC meetings. Together, Respondent No.1 and 2 jointly proceeded with a single window CIRP process solely with the interest of money recovery for Respondent No.1 and the CD, an MSME concern, was rendered a complete non-going concern despite having had a strong upward growth trajectory after coming out from the aegis of BIFR.

vii. From as early as in the 2nd and 3rd COC meetings, Respondent **No 1 refused to allow Respondent No 2 to raise interim finance for keeping the CD as a going concern as its** only objective was to maximize recovery of money from the CD's assets. COC meetings were conducted with the sole objective of ratification of expenses as presented by Respondent No.2 and to discuss the litigation matters between the Applicant and Respondent Nos. 1 and 2.

viii. The Hon'ble Supreme Court, vide order dated 20.01.2020, set aside the order of the Hon'ble NCLAT dated 25.11.2019 which in turn upheld the order of admission of section 7 by the Hon'ble NCLT dated 26.08.2019. Thereafter this Hon'ble Tribunal vide order dated 28.01.2020 directed status quo on the respondents (Respondent Nos.1 and 2) with respect to CIRP proceedings. Consequently, by his own admission, Respondent No.1 claimed he was bound by court orders from conducting any activity on behalf of the CD, including proceeding with CIRP. At this time, the two Respondents 1 & 2 in collusion intentionally chose to continue to hold on to the bank accounts of the CD without any order or direction from the Adjudicating Authority despite all management of the CD being conducted by the Board. All urgent payments were halted even though the CD was an MSME concern. These were intentionally done in collusion by the Respondent No.1 & 2 to force the Petitioner and the suspended management of the CD to succumb to pressure and initiate a settlement of their money recovery which could lead to them withdrawing their application under the provisions of the Code. In fact, the Respondent No.1 made sure that the Respondent No.2 was paid his fees, even for the period he did not work for the CD, being in hiatus. This catalyzed the Respondent No.2's acquiescence in following their instructions. In this period, **the management of the CD resumed productive activity and tried to revive the CD to keep it as a going concern but was severely impeded by the non- cooperation and unauthorized suspension of banking activity by the Respondent** No.1. It is clearly that depletion of assets of the CD and stagnation of business activity was of no concern to either Respondent. Production in the CD's unit ceased from 07.07.2020 and a layoff was declared by Respondent No.2 with the approval of Respondent No.1 on 28.01.2021. Even at this point, Respondent No.1 refused any interim finance to the CD, despite being assured reimbursement of the same as CIRP costs at the time of Resolution. However, the Respondent No.**1 did sanction a sum of Rs. 26 lakhs in the 17th COC meeting towards litigation costs proposed to be incurred by the Respondent No.2 to facilitate the Respondent No.2 to appeal against the order of this Hon'ble Tribunal dated 07.10.2021 in IA 51 of 2020.** They also made it clear that all such consequential legal costs by the Respondent No.2 including the fees of senior counsels would be reimbursed by them as the majority COC Member to ensure that proceedings continued against the Applicant. It is also a fact that no other COC Member has contributed to this proposal of the Respondent No. 1 in the 17th COC meeting.

ix. **Respondent No.2 even filed two new trademark applications without having taken COC approval of the same. These applications had several illegalities, including the personal office address of Respondent No.2 being given as that of the CD's, the reputed logo of the CD being modified, the power of attorney being doctored by Respondent No.2 and the product line of the CD being modified. Despite these anomalies, and that prior COC approval had not been taken for the applications,** Respondent No.1 proceeded to **ratify the expenses towards** the application and when this was challenged by the Applicant in IA 47 of 2021, Respondent No.1 **claimed ignorance of the above anomalies in their reply affidavit.** This is just one of the many instances of the hand-in-glove collusion between Respondent Nos. 1 and 2 to cover each other's malfeasance and the complete negligence, bias, mala-fide intention, and misconduct in the management of the CD.

x. Further glaring proof of the collusion between Respondent Nos. 1 and 2 is their collective representation in the different Tribunals in matters related to CIRP of the CD. **Respondents No. 1 and 2 have both been represented by the same advocate, Mr. Praful Jindal (Respondent No.5) in different Tribunals in matters pertaining to the CD and the Applicant. It is on record that Respondent No.5, who has represented Respondent No.1 in the Hon'ble NCLT in CP(IB)09/2019, has also represented Respondent No.2 in five independent hearings in CA (AT) 932 of 2019 in the Hon'ble NCLAT.** It is recorded in the minutes of the 13th COC meeting held on 4.03.2021, that the advocate of Respondent No.2 as appointed by Respondent No.1 to represent the former in matters related to the CD, has defended Respondent No.1 denying allegations on their behalf. Further elaboration of this is in the written note on Respondent No.3 and is not included here for brevity. Additionally, IA 51 of 2020 was filed by Respondent No.2 against the Applicant but was dismissed by the Hon'ble NCLT on 07.10.2021. **Respondent No.1, despite not being party to the IA, filed an appeal in the matter which is pending in the Hon'ble NCLAT.** Respondent Nos.1 and 2 both filed similar appeals in the matter. It is evident that the Respondent No.2 has been acting at the behest of and for the benefit of Respondent No.1 instead of the CD.

4.2 Collusion between Respondent Nos. 1 And 2 to allow a back door entry to Respondent No.4 in the Resolution Plan Process and to discriminate against the Applicant.

i. **Respondent Nos. 1 and 2 colluded to abandon the Resolution Plan process in the 1st Rollout that was underway** only to allow Respondent No.4, a front for competitors of the CD, a backdoor entry into becoming a Resolution Applicant for the CD. The entire second round of the Resolution Plan process was conducted by the COC led by Respondent No.1 and Respondent No.2 in a way that discriminated against the Applicant, the MSME promoter of the CD. This entire matter is being dealt with in a separate IA (35 of 2021)

ii. At the time of the Hon'ble Supreme Court's set aside order, the **Resolution Plan process was underway with two approved PRAs,** the Applicant and M/s JSVM Plywood Industries Ltd. After the set aside order, Respondent No.2 called an unauthorized 4th COC meeting on 27.01.2020 wherein the COC led by Respondent No.1 decided to extend the deadline for submission of Resolution Plans. In the hearing in this Hon'ble Tribunal on 28.01.2020, when asked if any major decisions had been taken in this COC meeting, both Respondents suppressed this decision. This fact can be confirmed in this Hon'ble Tribunal's order dated 28.01.2020 in IA 07 of 2020. When CIRP resumed on 27.04.2020, instead of continuing with the Resolution Plan process that was already underway, **the Respondents, in the 6th and 7th COC**

meetings, decided to roll out a second invitation for Expressions of Interest. This abandonment of the previous Resolution Plan process was done without any intimation to or approval from the Hon'ble NCLT. This decision of the Respondent No.2 approved of by Respondent No.1 was based on the submission of Respondent No.2 **that he had solicited "potential players in the industry" who were willing to submit Resolution Plans.** This act was fuelled by the fact that the possibility of recovering more money from other Resolution Applicants was more lucrative for the Respondent No.1. It is evident that they have acted in collusion outside the sanctity of the COC for the individual gain of the Respondent No.1.

iii. **Respondent No.1 approved of M/s PLBB Products Private Limited (Respondent No.4) as a Resolution Applicant of the CD in the second roll-out of EOI's despite Respondent No.4 being ineligible to file a Resolution Plan on several fronts, such as the fact that Respondent No.4 was not an entity at the time of submission of EOI's on 12.07.2020 and was only incorporated on 20.07.2020, that the Eligibility Criteria based on which Respondent No.4 applied as a Resolution Applicant was privately distributed by Respondent No. 2 and that too without the prior mandatory approval taken by the COC, that Respondent No.4 was not an SPV/Consortium as was approved of in the Eligibility Criteria, etc.**

"Section 36A of the Code provides as under.

(f) an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code,'

(g) an undertaking by the prospective resolution applicant to the effect that it shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue

loss to itself or any other person and comply with the requirements under sub-section (2) of section 29."

Despite the above violations, the COC led by Respondent Nos. 1 & 2 not only allowed Respondent No.4 to file a Resolution Plan for the CD but also approved of it in an act of blatant collusion. It is submitted that this Resolution Plan of Respondent No.4 was approved of on 10.11.2020 despite the CD no longer being a going concern and despite the order of admission of section 7 against the CD not having attained finality and still pending with the Hon'ble NCLAT. The order of admission only attained finality on 24.11.2020, well after the Respondent No. 1's led COC approval of the Resolution Plan. This plan was then placed on 11.11.2020 by Respondent No. 2 with the Hon'ble NCLT in IA 61 of 2020, for approval.

iv. **The Applicant, as an MSME promoter, filed IA 05 of 2021 for an opportunity to submit a Resolution Plan. This Hon'ble Tribunal, vide order dated 10.02.2021 allowed the MSME Promoter to file a Resolution Plan by 01.03.2021. It is a matter of record that the final order of admission against the CD was passed by the Hon'ble Appellate Tribunal on 24.11.2020 following the order of remand by the Hon'ble Supreme Court on 20th January 2020. In such circumstances, there could be no question of the MSME promoter submitting a resolution plan on any earlier date, particularly as this would have meant abandoning the challenge to the order of admission, which was sub-judice at the time.** In view of the clear objective of the Code as now expressed by the Hon'ble Tribunal through the judgment of **Saravana Global Holding Limited & Ors. —Vs- Bafna Pharmaceutical and Ors.** ***"MSME promoter need not compete***

***with other Resolution Applicant",* the MSME promoter should have been given preference but was instead discriminated against by Respondent No.1 and 2 who colluded in their attempts to disqualify the MSME promoter and prevent him from filing a Resolution Plan**. This was apparently done as the Respondent No.1 stood to individually gain at the cost of other stakeholders from the Plan of the Respondent No.4.

4.3 The 15th COC meeting for negotiation, upon both the Applicant and the Respondent No. 4. Resolution Plans ,was a complete and concerted farce and the COC led by Respondent No. 1 did not provide equal opportunity to both Resolution Applicants for negotiation. Respondent No.4 was allowed to modify their plan on multiple occasions prior to the COC meeting meant for negotiation, that too outside of the COC meetings. With Respondent No. 3 as a common advocate between Respondent Nos. 2 and 4, Respondent No.4 had access to confidential information with regards to the Applicant's plan which they used to their advantage to modify their plan. Despite the above, and despite Respondent No.4 being ineligible as mentioned earlier, **the COC led by Respondent No. 1 approved of their plan and rejected the Applicant's plan without giving him any** opportunity to modify his plan as had been given to Respondent No.4. It is submitted noted that of the 7 members of the COC, only 2 approved of Respondent No. 4's plan and, if Respondent No. 1's inflated claim had not been admitted by Respondent No. 2, the composition of the COC would have been drastically different. **Further Respondent No. 4's plan was non-compliant on several other grounds, s**uch as the fact that they had not disclosed their source of funds, and that they had put a cap on CIRP costs in their plan, but none of these were even questioned by Respondent Nos. 1 and 2 in the COC meeting and their plan was approved of.

4.4 It is in this calculated and collusive manner that Respondent No. colluded with Respondent Nos. 2,3,4 and 5 to ensure that CIRP of the

CD is conducted purely for their own benefit without any interest of the CD or its other stakeholders in mind. The COC led by Respondent No. 1 has not only rendered the CD, an MSME, as a non-going concern, but has actively ensured that revival of the CD becomes impossible. Respondent No. 1's entire aim in this matter has been recovery of money that is not even due to them by misusing the IBC, 2016, defeating the very purpose of the Code.

4.5 In the aforesaid circumstances, your petitioner **prays to set aside the aforesaid acts done by Respondent No. 1 in collusion with other** respondents to approve the resolution plan of Respondent no. 4, under the guise of commercial wisdom.

4.6 All necessary steps may be taken against the colluding Respondents who have violated several provisions of the IBC and misused this forum to destroy the business foundation of the **CD which has affected the livelihood of hundreds of employees, workers, creditors, vendors, and dependents. This has all been done** in complete violation to the principles and objectives of the Code.

4.7 Hence it is prayed that necessary orders as may be deemed fit by this Hon'ble Tribunal may be passed for the interest of justice.

5. On the other hand, Respondent No. 1 i.e. SASF has submitted that:

5.1 **SASF is a Special Purpose Vehicle (SPV) Trust, constitutes by the Government of India for acquiring 'stressed' and 'non-performing assets' of IDBI Bank** Ltd. Furthermore, the Trustees serving on the Board of trustees are appointed by the Government of India and the Board function under the aegis of the Government of India through the Department of Financial Service, Ministry of Finance. The Accounts of the Trust are audited by the CAG. All the employees including the Official Respondents of the Trust report to the board through the Executive Trustee, who is appointed by the Government of India.

5.2 As per the Section 7 Application, the Financial Creditor has stated that there has been a **default by the Corporate Debtor of Rs.**

133,54,94,330.00 (Rupees One Hundred Thirty-Three Crores Fifty-Four Lakhs Ninety-Four Thousand Three Hundred Thirty only) and outstanding as on 01.12.2018, in the following manner:

SL. NO.	PARTICULARS	AMOUNT (In Rs.)
1.	**Principal amount i.e.,** total amount disbursed to the Principal Borrower (A)	**3,07,71,127.00**
2.	**Interest on Principal** Amount from 10.06.1997 till 01.12.2018 (B)	**10**,34,57,696.00
3.	Further **Interest on Interest** from 01.07.1997 till 01.12.2018 (C)	**91**,66,97,649.00
4,	**Liquidated Damages** on Interest Amount from 01.07.1997 till 01.12.2018 (D)	**25,**84,11,289.00
5.	**Liquidated Damages on Principal** Amount from 01.01.2000 till 01.12.2018 (E)	2,60,91,585.00
6.	Loan amount of Rs. 6,500/- towards expense account along with Interest, Further Interest, Liquidated Damages (F)	34,984.00
	Total= A+B+C+D+E+F	**133,54,94,330.00**

5.3 SASF has stated the default amount is of Rs. 133,54,94,330.00 (Default Amount) as on 01.012.2018, in the CIRP Application which was calculated on the contractual rate agreed by the Principal Borrower/NBL in the underlying Financing Documents executed by it. Hence the Respondent no. 1 being a government trust and the officers being government employees did not make any false statement knowing it to be false to attract sec 75 of the IBC. Moreover, the officers of the Respondent No. 1 are deputed on a temporary basis from IDBI Bank and hence, the account of the Corporate Debtor has been handled by various officers during the course of the years. Hence, the outstanding amounts in any loan account are part of the institutional records and there is no discretion on any of the officers to put an outstanding amount at their discretion. The amount of default has been calculated over the years based on loan documents. terms of the guarantee furnished by the Corporate Debtor which obligates the Corporate Debtor to pay the principal, interest and damages. It was also categorically brought to the notice of this learned Adjudicating Authority in the Form-I of Section 7 Application that out of the sanction amount of Rs. 3,20,00,00.00 (Rupees Three Crores Twenty Lakhs only) an amount of Rs. 3.07,71,127.00 was disbursed to the Principal Borrower.

5.4 There is nothing on record to suggest that the Financial Creditor has suppressed any fact. In Section 7 Application, the Financial Creditor furnished the computation of defaulted amount and statement of accounts which were duly annexed at "Schedule A and Annexure-18' of the application filed under Section 7 of Code, 2016, before this Hon'ble Adjudicating Authority. It has also been categorically brought to the notice of this learned Adjudicating Authority that **the amount of Rs. 3.08 Crores has been disbursed to Principal Borrower out of the sanctioned loan amount of Rs. 3.20 Crore** at Para-1 of Part-IV of CIRP application. It is submitted that in the Form C, the Respondent had based its claims on the Recovery Certificate.

5.5 There is no merit in the contention of the Applicant that the Applicant was not given fair opportunities to revise and submit better/improved plan to the COC. It is submitted that both, the Applicant herein and the successful Resolution Applicant (Respondent No. 4) were treated at par by the COC. The Minutes of the 15th CoC Meeting dated 25.05.2021, makes it abundantly and unambiguously clear that the COC gave fair opportunity to Mr. Periwal i.e., the Applicant, to submit a commercially viable resolution plan. In fact, the said CoC Meeting was adjourned from 25.05.2021 till 28.05.2021, to provide an opportunity to Mr. Periwal to reconsider/re-evaluate his plan and submit a revised/ improved/ commercially viable resolution plan. It is submitted that during the course of 15th CoC Meeting on 28.05.2021 the CoC posed a direct question to the Applicant *"as to whether his plan (revised plan as submitted) represents his best commercial offer?",* which was replied in affirmative by Mr. Periwal. From the Minutes of

Meeting dated 25.05.2021, it is evident that both the Resolution Applicants i.e., the Applicant and the Respondent No. 4 were treated at par and equal opportunity was provided to both of them to submit their revised improved plans and to participate in the meetings. Thus, it is clear that the Applicant was asked by the CoC to improve its commercial plan as allowed by this Hon'ble Tribunal, and the revised improved plan submitted by the Applicant was duly evaluated and considered by the CoC. It was only after the CoC considered and evaluated revised plan submitted by the Applicant and Respondent No. 4 and upon drawing comparison between both plans before it, the plan of the successful Resolution Applicant (Respondent No. 4 herein) was found to be more commercially viable than that of the Applicant herein. **Thus, the allegation of the Applicant that his plan was discriminated, is not correct and cannot be accepted**. The evaluation matrix applied by the CoC in evaluation of both the plans was same. Both the Resolution Applicants (Applicant and Respondent No. 4) participated in the CoC meetings. Hence, no discrimination can be alleged on the face of record or otherwise. The relevant extract of the Minutes of Meeting dates 25.05.2021, is reproduced herein under for ready reference of this learned Adjudicating Authority:

> *"Accordingly, the RP in consultation with the members of the CoC and the R.A.s reached a consensus that both the Resolution Applicants be given another final chance to present their best bids before the CoC and come up with compliant and best plans possible."*

5.6 The RP submitted that further time could be granted to R.A.s to submit their best and compliant plan so that the same can be placed before the CoC for voting in the next sitting of the adjourned meeting. It is submitted that the contention of the Applicant that its plan was leaked to the successful Resolution Applicant (Respondent No. 4) to improve its resolution plan is completely baseless and the Applicant be put to strict proof to the same. It is submitted that any revision improvement, if at all, by the successful Resolution Applicant (Respondent No. 4) to its plan is in fact consistent with this learned Adjudicating Authority Order dated 10.02.2021, whereby the CoC was given liberty to negotiate with the Resolution Applicant(s) and attempt to elicit a better/ improved resolution plan. Furthermore, the Code, 2016, itself contemplates submission of best commercial resolution plans, and the submission of an improved plan cannot by itself mean there is collusion between the CoC and Resolution Applicant, as alleged by the Applicant herein.

5.7 .The claim of Rs. 1612 Lakhs of the Answering Respondent has been duly vetted and approved by the Resolution Professional and included the same in the Information Memorandum. The Applicant ,in an unsuccessful attempt to challenge the claim of the Answering Respondent, has filed multiple (04) applications and one writ petition alleging that claim of the Answering Respondent is wrong and has been unjustly inflated to Rs. 1612 Lakhs. It is submitted that the Applicant/Resolution Applicant in its resolution plan cannot unilaterally seek to treat a claim differently from what has been admitted by the Resolution Professional and as stated in the Information Memorandum. The said arbitrary reduction of claim of the Answering Respondent by the Applicant is patently wrong and illegal and not in compliant with the provisions of the Code, 2016 and the Regulations made therein.

5.8 The claims of the Respondent No. 1 are neither trumped up as the same has been accepted by the Resolution Professional based on the Recovery Certificate. The Applicant may be put to strict proof in respect of his baseless and frivolous allegations of fraud and collusion by and between the Answering Respondent and other Respondents arrayed in the instant Application.

5.9 The allegation of conflict of interest and collusion between the Respondent No. 1 and the Resolution Professional is untrue and has been made to prejudice this Hon'ble Bench. It is again reaffirmed **that Mr. Praful Jindal's name inadvertently was** recorded in the order sheet of Hon'ble NCLAT as appearing for the Resolution Professional.

Mr. Praful Jindal (Respondent No. 5) is a junior lawyer working under Mr. Sidhartha Barua who has been engaged by the Respondent No. 1. Mr. Jindal's appearance has been inadvertently recorded as appearing for the Resolution Professional. In the course of all the hearings before the Hon'ble NCLAT, Mr. Praful Jindal was present and assisting Mr. Ritin Rai (Senior Counsel appearing before the Hon'ble NCLAT and this Ld. Adjudicating Authority) and Mr. Sidhartha Barua, hence the Mr. Praful Jindal has never appeared for the Resolution Professional. In fact, it may be so if one occasion, the name of the counsel is recorded wrongly then at times the same record of wrong appearance is carried forward to other dates of appearances. It has been categorically submitted by Mr. Sidhartha Barua that Mr. Praful Jindal who is twenty-eight years is his junior and assists Mr. Sidhartha Barua as his Junior lawyer and at no point of time did he represent the RP. Hence the allegation of collusion is baseless.

5.10 The commercial wisdom of the Committee of Creditors in approving or rejecting a resolution plan is essentially based on a business decision. Such commercial wisdom of the Committee of Creditors is non-justiciable. Even the enquiry postulated under Section 31 of the Code, 2016, is limited to matters covered under section 30(2) of the Code, 2016, when the resolution plan does not confirm to the stated conditions. Hence, a successful resolution plan cannot be challenged by filing an application under Section 60(5) of the Code, 2016. Further the details of the 2nd Expression of Interest has been recorded in the 5th CoC meeting which was attended by one of the directors of the suspended board. **The 2nd Expression of Interest was rolled out to achieve the object of the Code. 2016, to maximize the value of the assets and to ensure that best possible resolution plans are drawn out.**

5.11 The Request for Proposal (RFP) allowed the submission of Expression of Interest by a SPV/SPC and hence, there is no infirmity with respect to the same or the fact that the Respondent No. 4 was incorporated after submission of the Expression of Interest. **The RFP specifically**

provides that lead member of the Consortium can submit a resolution plan prior to the incorporation of the entity. Further the RFP provides that a person can submit Resolution Plan either individually as a resolution applicant and/or as constituent of a consortium. The Petitioner is taking shelter to such a contention only as it is an unsuccessful resolution applicant. The Answering Respondent at all times was conducting itself in accordance with the Code, 2016, the conduct of the Applicant is questionable, as the Applicant as Resolution Applicant was not entitled to get a copy of the plan submitted by Respondent No. 4. The Applicant is deliberately misinterpreting the judgement passed by the Hon'ble Supreme Court in ***"Vijay Kumar Jain vs. SCB".*** The contention of the modification of the plan by the Respondent No.4 does not hold any merit, specifically in light of the fact that (1) such modifications was permitted by this Adjudicating Authority vide Order dated 10.02.2021 and (ii) similar opportunity was give to the Applicant herein; however, the Applicant chose not to file a revised plan and instead categorically stated that the Plan submitted by the Applicant was the best commercial plan that could be offered by him. Further, the CIRP process has to be completed in a time bound manner and hence, the contention that some of the CoC members were not provided with adequate opportunity to evaluate the plans is baseless. As stated above, neither the Applicant as a resolution applicant and JSVM as a related party of the Applicant could not be privy to the resolution plan submitted by the Respondent No. 4.

5.12 The CoC in its commercial wisdom has approved the resolution plan submitted by Respondent No. 4 and rejected the plan of the Applicant. **Commercial wisdom of the CoC is paramount and the Legislature has not endowed this learned Adjudicating Authority jurisdiction to analyze or evaluate** the commercial wisdom of the CoC. It is denied that the Respondent No. 1 colluded with the Respondent No. 2 or the Respondent No. 4.

6. The Petitioner has further submitted in details the collusion and conflict of interest between Respondent No. 2 and other Respondents:

6.1 Material Irregularities:

i. Respondent No. 1 filed an application under Section 7 of the Code with a claim amount of Rs.133.54 crores. This inflated claim amount was disputed by the Petitioner for the CD, the Corporate Guarantor, in IA 27 of 2021 in CP(IB) No. 09/GB/2019 pending disposal with this Hon'ble Tribunal, and the Principal Borrower, National Boards Limited, in WP (C) 2699 of 2021 in the Guwahati High Court; which has, in an interim order dated 04.06.2021, restrained Respondent Nos.1 and 2 from taking any coercive steps against the CD and Principal Borrower with regard to this claim amount. **The said order was suppressed from this Hon'ble Tribunal by the Respondent Nos. 1 & 2 in collusion.** A copy of the orders dated 04.06.2021 and 02.12.2021 have been annexed.

ii. After having their Section 7 application admitted and CIRP initiated against the CD based on an inflated claim of Rs.133.54 crores against an outstanding balance of Rs.1.23 crores in the books of the Principal Borrower (PB), **Respondent No. 1 arbitrarily filed a claim of Rs.16.12 crores with the Respondent No.2. The Respondent No. 2, without questioning the Respondent No.1 for this drastic difference in claim amount or notifying this Hon'ble Tribunal of the same, admitted the said claim, by virtue of which Respondent No. 1 held 71.05% voting** share in the Committee of Creditors (COC) of the CD. It is submitted that the management of the CD disputed this claim amount since its very admission **as this exorbitant sum has never appeared in the books of the CD or the PB**.

iii. This claim amount has also been questioned by this Hon'ble Tribunal in its order dated 09.12.2020 in IA 89/2020 wherein it directed Respondent No. 2 to minutely examine the claim. **Respondent**

No.2 submitted a compliance report on 24.12.2020 without verifying the claim with the management of the CD or with the records of the CD or the PB. With an intent to suppress the same and withhold any challenge, a copy of the Compliance report was served on the Petitioner by the Respondent No. 3 in collusion with the Respondent No 2, much after the same was filed with the Hon'ble Tribunal. It is a pertinent fact that this Hon'ble Tribunal has made these observations again in its orders in IA 05 of 2021 and IA 51 of 2020. **The Hon'ble NCLAT has also made the same observation in their order dated 07.09.2021 in CA (AT) (INS) 160 of 2021.** Instead of keeping the interests of the CD at the forefront, **Respondent No.2 has been enabling Respondent No.1 to use IBC as a money recovery forum and ensuring that they receive a sum far exceeding their actual dues at the expense of the other creditors and stakeholders of the CD.**

iv. **That, just after the rollout of FORM - G for second EOI on 27.06.2020, Respondent No.2 arbitrarily reclassified claims of legitimate FCs of the CD as OCs.** This reclassification was done without **Respondent No.2 having the adjudicating power to do so and in collusion** with Respondent No. 1 purely to benefit them, remove dissenting voices from the COC meetings, and **increase Respondent No.1's shares in the COC from 71.05% to 87.76% thereafter**. Copies of Voting share in 7th CoC meeting and 8th CoC meeting have been enclosed.

v. **Respondents No. 1 and 2 have been represented by the same advocate, Mr. Praful Jindal (Respondent No.5).** It is on record that Respondent No.5, who has represented Respondent No.1 in the Hon'ble NCLT in CP(IB)09/2019, has also **represented Respondent No.2 in five independent hearings in CA (AT) 932 of 2019 in the Hon'ble NCLAT.** Representing Respondent No.2 in multiple hearings after fulfilling all video conference SOPs **is by no means an inadvertent error** in the recordings of the Hon'ble Appellate Tribunal **but a blatant act of collusion**

between the Respondent Nos 1, 2 & 5. Reference is drawn to Annexure-A1, pages 42-46 of the rejoinder in IA 43/2021 dated 04.10.2021.

vi. The first Form G inviting EOIs was published in November 2019 in widely circulated, renowned **newspapers in Assam, West Bengal and Tamil Nadu, including Aajkaal, Amar Assam, Financial Express and North East Times with a collective circulation of over 5,00,000 copies. Whereas, the Form G of the second EOI rolled out by the Respondent No.2 on 27.06.2020 was only published by Respondent No. 2 in one local newspaper chain in Assam, The Assam Rising and its sister publication Dainandin Barta, having a reported circulation of 28,000 copies. This was deliberately done as a formality since an understanding had already been arrived at between the Respondents 1, 2 & 4 to enable the Respondent No.4 to participate in the resolution process of the CD.**

vii. **The Eligibility Criteria for prospective resolution applicants to partake in the EOI process was issued by the Respondent No.2, without an approval of the COC and the same was not published in the public domain and was sent to Respondent No. 4 privately by Respondent No. 2, prior to filing of the EOI. Even IBBI has also noted that the CIRP process was not conducted in a transparent manner vide their letter dated 29.03.2021**. It is pertinent to mention here that the process of proceeding with the Resolution Plan from the PRAs of the first EOI was not possible due to the hiatus arising from the **status quo order passed** by this Hon'ble Tribunal on 28.01.2020. Reference is made to Annexure — A9 at Page 67 of the rejoinder in IA 43/2021.

viii. The invitation for the second rollout was made, **in collusion between Respondent No.1 and 2 to allow a backdoor entry to Respondent No.4** for the greater beneficial interest of Respondent No. 1 and depriving the MSME promoter from filing the Resolution Plan and forced the MSME promoter to compete with the other Resolution Applicant. This was done despite it being a settled law that **MSME promoters need not to compete with other Resolution Applicants to regain the control of the CD**. Reference is made to the Judgment of ***Sarvana Global Holdings Limited vs Bafna Pharmaceuticals Pvt. Ltd.*** Annexure — A15, Pages [393 to 406], of the application.

ix. **Respondent No. 4 filed an EOI on 12.07.2020 prior to it being incorporated on 20.07.2020**. As a non-entity, Respondent No. 4 was not eligible to be a prospective resolution applicant (PRA) and, despite objections by COC members, was accepted as a PRA by Respondent No. 2. The COC led by Respondent No.1 did not even assess the credibility of the Respondent No.4 and allowed them to file their Resolution Plan on 05.09.2020. **This was done after the Respondent No.3 also became the legal counsel for the Respondent No.2 and took his chair in the COC Meetings**. Further, the Information Memorandum (IM) was incomplete at the time and the claim list was updated by Respondent No. 2 on 28.09.2020 after the filing of the plan by Respondent No. 4. **It is submitted here that this entire process was conducted by Respondent No. 2 while the admission of Respondent No. 1's application u/s 7 of the Code was yet to attain finality, being pending with the Hon'ble NCLAT, which only happened on 24.11.2020.**

x. **That Advocate Anand Verma (Respondent No.3), having represented Damayanti Tea Industries, a unit of Chandrabali Commercial India Pvt. Ltd., promoter of which is also the promoter of Respondent No. 4, was nominated by Respondent No. 2 to be his legal representative in matters related to the CD and this was approved of by Respondent No. 1 outside of a COC meeting. Respondent No.3 was appointed from 14.08.2020, shortly after Respondent No.4 was accepted as a PRA of the CD on 17.07.2020. This conflict of interest was**

never disclosed to the COC, and the Respondent No.3 participated in COC meetings of the CD, being privy to confidential information including the Resolution Plan of the Petitioner, nuances of which was then evidently shared with the promoters of Respondent No. 4 based on which they modified their plan prior to any negotiation with the COC. Reference is made to Annexure-A5, pages 104-107 of the application in IA 43/2021.

xi. **Respondent No. 2 also consented to act as an IRP in another Section 7 application (CP(IB)No.05/GB/2021) by the same Damayanti Tea Industries, managed by the promoter of Respondent No 4. Respondent No.3 was also the advocate for the promoter of Respondent No.4 in the same application. This is evidence of a relationship between Respondent Nos. 2, 3 and 4 outside of the matter of the CD, which further proves that Respondent No. 2 is prejudiced in favour of Respondent No. 4.** (Reference is made to the Annexure-A5, pages 102-103 of the application in IA 43/2021).

xii. In blatant violation of the orders of the Hon'ble Tribunal dated 10.02.2021 in IA 05 of 2021 and the Hon'ble NCLAT dated 18.05.2021 in CA(AT)160 of 2021, despite the plan of Respondent No. 4 being approved by the CoC on 10.11.2020 and Respondent No. 2 filing an application before this Hon'ble Tribunal being I.A No. 61/2020 on 11.11.2020 u/s 30 of the code for approval, Respondent No. 4 was allowed to modify their bid till 22.05.2021. **This modification was done without any approval from the COC or Judicial Authority as it is a settled law that a plan pending for approval by the Adjudicating Authority cannot be modified.**

xiii. **The Adjudicating Authority and the Hon'ble NCLAT expressly directed the COC to negotiate upon the plans already submitted and in possession with the Respondent No 2. Hence, there was no scope for amendment/modification of**

any of the plans prior to the proposed negotiation with the COC. The amendments/ modifications were done on or before 22.05.2021, prior to the COC meeting to be held on 25.05.2021, and Respondent No. 4's bid was increased by Rs. 210 lakhs only to better the evaluation matrix parameters in comparison to the MSME Promoter's plan submitted on 01.03.2021. This was done with a breach of confidentiality and in collusion by the Respondent No.2 and Respondent No.3. The said fact was suppressed by the Respondents.

xiv. It is submitted that Respondent No. 2, in collusion with Respondent No. 1, not only overlooked but actively tried to circumvent all the ineligibilities of Respondent No. 4 and all the non-compliant aspects of their plan. **Despite Respondent No. 4 being a non-entity at the time of submission of EOI's, not being an SPV/Consortium as defined in the Eligibility Criteria, not having disclosed their source of funds in their Resolution Plan, having capped CIRP costs, etc., the Respondent No. 2 accepted their plan as compliant and the COC led by Respondent No.1 exclusively accepted and approved it without considering the collective wisdom of other financial creditors of the CoC.**

xv. Further, the COC led by Respondent No.1 in collusion the Respondent No.2 did not give the Petitioner, an MSME promoter, the same opportunity to modify/negotiate upon the Resolution Plan as was amply given to Respondent No.4 and the Petitioner was discriminated at every step of the Resolution Plan process by the Respondent No. 2. **Instances of discrimination include but are not limited to the freezing of the Petitioner's personal bank accounts without any court order/ direction/ approval (Copy of the letter from the bank confirming that the debit freeze on all bank accounts in which the petitioner is a signatory was done as per the instruction received from the Respondent No. 2 vide an email dated 20.04.2020 is enclosed**

herewith and marked as ANNEXURE — A3), filing of a false FIR, filing of a baseless application against the Petitioner much after the proposed timeline for such applications, provision of the code of compliance report to the Petitioner to complete with a 48 hour notice before the COC meeting despite having had the plan in his possession for 83 days prior, an attempt to negotiate upon the Petitioner's plan on 28.05.2021 while knowing yet suppressing from the COC and the Petitioner that the EMD furnished by the Petitioner expired on 25.05.2021 and needed to be renewed, etc. This was also done during a period of strict lockdown when the other COC Members had sought a short deferral of the said 15th COC Meeting to seek reasonable time to assess and evaluate the Plans prior to taking any decision. All these were intentional attempts to harass and disqualify the Petitioner from filing a Resolution Plan for the CD. This is despite the settled law that MSME promoters need not compete with anyone in the Resolution Plan process to regain control of the CD.

xvi. The non-circulation of Resolution Plans to all Financial Creditors of the CD, let alone all members of the COC of the CD, was another collusive attempt by Respondent No. 2 to restrict decision-making in the COC only to the Respondent No. 1. In the case of the CD, it was only **the Respondent No.1 as the sole COC Member in attendance** who took the decision of approval of the Resolution Plan of the Respondent No.4 without taking the collective consent of all the other COC Members who**, due to the severe lockdown situation were unable to attend the meeting to assess and deliberate on the Plans. This was an intentional** act by Respondent No. 2 in collusion with Respondent No.1 who controlled the COC such that none of the other FCs had a say in the Resolution Plan selection process. Further, as is settled law in Vijay Kumar Jain vs Standard Chartered Bank, the Resolution Plan must be shared with all members of the COC prior to the meeting wherein it is discussed. Even so, once the Resolution

Plan is approved of, there is no question of secrecy or bar on circulation of the Plan with all constituents of the COC including OCs and the suspended board but the same was still not been done by Respondent No. 2.

xvii. **The Respondent No. 2 filed two new trademark applications for the CD's brands with a new logo and product line that were similar to that of Respondent No. 4. He also attempted in his applications to transfer the address of ownership of the brand to that of his own office in Guwahati instead of the CD's** office. Very surprisingly, the Respondent No.2 has challenged the appointment of Arun Jhunjhunwala, a director of the CD and not involved him in any COC Meetings after his appointment. This is pending adjudication with this Hon'ble Tribunal. However, in his own application filed under an affidavit for the new trademark, the Respondent No. 2 has acknowledged and filed the MCA records of the CD which includes Mr. Jhunjhunwala as a director of the CD. **These new applications were made in July 2021 just after the COC led by Respondent No.1 had approved the Resolution Plan of Respondent No. 4. Respondent No. 2 had not taken the approval of the COC nor from the Adjudicating Authority for these new applications and withdrew them once the matter was brought to the notice of this Hon'ble Tribunal in IA 47/2021 by your petitioner.**

xviii. He also modified the notice and minutes of the 16th COC meeting **to have the expenses related to his trademark applications be approved of by the COC** by suppressing the **fact that they were new applications rather than renewal applications. He also falsified a power of attorney for the same which was a gross violation**. **Further, he attempted to take approval of these applications after having submitted them even though the Code clearly specifies that new applications require prior permission of the COC.** Despite this, Respondent No.1 in the 16th COC meeting went ahead and ratified the expenses towards this application post its submission, showing **how Respondent Nos. 1 and 2 were hand-in-glove and in agreement on all wrongful** occurrences in case of the CD. The management of the CD has requested the Respondent No. 2 for recordings of the COC meetings multiple times but he has refused to acknowledge any of the requests. A mere examination of the recordings vis-à-vis the minutes issued is evidence enough of the Respondent No. 2 not conducting CIRP in a transparent, honest manner.

6.2 Acts done with Malicious Intent, by the Respondent No. 2 in collusion with Respondent No. 1 to ensure that the CD no longer remained a going concern:

i. Since the beginning of CIRP, Respondent No.2 in collusion with Respondent No.1 has focused solely **on hastily completing** the CIR Process and recovering moneys for Respondent No.1 while making sure that the CD did not remain a going concern.

ii. **In violation of Section 14(2) of the Code, Respondent No. 2 in collusion with Respondents No. 1 and 4 suspended all manufacturing activity of the CD since 07.07.2020. He also sold raw material from the factory instead of utilizing the available labor and the raw material to manufacture finished goods that would fetch the CD far better margins. This is despite the CD** being an MSME concern having the potential to do **substantial business and survive during the lockdown due to COVID-19. A layoff of the factory of the CD was declared by the Respondent No. 2 on 28.01.2021** on the advice of the Respondent No 4 whose promoters visited the factory of the CD on 09.12.2020 with specific authority from the Respondent No.2 and declared their intent to the factory management, even before their Plan had been approved by this Hon'ble Tribunal.

iii. Operations were discontinued **despite a major supplier and Operational Creditor of the CD having supported the CD with supply of raw material and finished goods** at agreed preferred rates and extended credit terms. The Respondent No. 2 in collusion with Respondent No. 1, **withheld their legitimate**

payments for supplies during the CIRP period and refused further procurement of essential goods under Section 14(2) from regular suppliers, despite not finding any other supplier of resin and raw material, purely with malicious intent to debilitate the CD. **This was also observed by the Hon'ble Supreme Court in its order dated 22.04.2021 which allowed the said MSME supplier and major Operational Creditor of the CD to take appropriate steps for recovery of their dues from the CD,** for the supply of materials. The same is presently pending adjudication with this Hon'ble Tribunal.

iv. **Respondent No.2, with the approval of the COC led by Respondent No.1 has undertaken several steps to not only render the CD as a non-going concern at present, but to ensure that the CD had no scope of revival after completion of CIRP.** These are inclusive of, but not limited to, the following:

   a. Financials have not been prepared for FY19-20 and FY20-21.
   b. GST payments are pending in lieu of which the GST license of the Head Office of the CD in Kolkata and New Delhi has been cancelled.
   c. TDS payments are pending for Q4 of FY2020-2021
   d. Mandatory BIS licenses have expired and not been renewed. Other compliances also remain pending.
   e. The website of the CD has not been updated after 29.09.2020 to include the latest orders in the CIRP matter.
   f. **Salaries of staff of the CD have been paid in part or not at all for more than 1 year. As a result, the CD no longer has a company secretary or factory manager**, risking valuable assets.

v. **Rent and electricity for the CD's offices during the CIRP period are pending and in default.** As a result, access to the Delhi warehouse and Bengaluru office have been denied by the respective landlords and the CD's valuable documents and assets remain in their possession. Electricity dues for the CD's Delhi office remain due for over a year. Rent and electricity for the CD's head office in Kolkata also remain due and the landlord is threatening to disconnect the electricity upon being advised by the Respondent No.2 to do so when asked to clear the dues.

vi. In the 17th COC meeting held on 21.10.2021, **Respondent No.1 clearly stated that they were unwilling to provide interim finance to the CD to render it a going concern but were willing to bear all litigation expenses of the Respondent No.2 against the suspended management of the CD. For this purpose, on the explicit request of the Respondent No.2, the Respondent No.1 infused a sum of Rs.26 lakhs in the account of the CD to enable the Respondent No.2 to file the appeals while urgent and extremely critical payments of the CD are still pending as on date.**

6.3 The CIRP must be just, fair and equitable to all stakeholders and cannot place the interest of one financial creditor at a higher pedestal at the cost of other stakeholders. The CIRP has been conducted by Respondent No.2 in collusion with Respondents No.1, 3, 4 and 5 in a secretive, prejudicial, biased and collusive manner in violation of the principles of natural justice and the spirit of the Code.

6.4 It is therefore prayed that this Application be admitted, and necessary orders be passed in the interest of justice.

7. On the other hand, Respondent No. 2, i.e., the Resolution Professional has submitted that:

7.1 The present application under section 60 (5) IBC not maintainable:

i. It is submitted that the present application which effectively challenges the decision of the CoC of approving the resolution plan of Respondent No. 4 is not maintainable under Section 60(5) of the Code. It has time and again been held that Section 60 (5) of the Code ***"…does not invest the NCLT with the jurisdiction***

to interfere at an applicant's behest at a stage before the quasi-judicial determination made by the Adjudicating Authority" and that ***"...no vested right infers in any resolution applicant to have its plan approved under the Code...". *[Arcelor Mittal India Pvt. Ltd. vs. Satish Kuma Gupta & Ors. (2019) 2 SCC 1, para 81; Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531, para 130; Arcelormittal India Pvt. Ltd. Abhijit Guhathakurta, & Ors. CA(AT)(Insol.) No. 524/ 2019, para 9,10].**

ii. The approval/rejection of a resolution plan is in the exclusive domain of the CoC and its commercial wisdom is a sacrosanct. The exclusive domain of the CoC vis a vis approval or rejection of a resolution plan has been upheld in numerous judgments passed by the Hon'ble Supreme Court, such as in ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors.* (2020) 1 SCC 531**, ***Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. & Ors.* (2021) SCC Online SC 313** and ***India Resurgence Arc Pvt. Ltd. vs. M/s. Amit Metaliks Ltd. & Anr.* (2021) SCC Online SC 409**. In addition to the same the jurisdiction of the Hon'ble Adjudicating Authority is limited to the statutory provisions of the Code, which does not vest the Hon'ble Adjudicating Authority with any equity jurisdiction to entertain a challenge against a CoC approved resolution plan. (As held in ***Pratap Technocrats (P) Ltd. & Ors. vs. Monitoring Committee of Reliance Infratel Ltd. & Anr*. 2021 SCC Online SC 569, para 26, 36-40, 47; *Ebix Singapore Pvt. Ltd. vs. COC of Educomp Solutions Ltd.* 2021 SCC Online SC 707, para 116**).

7.2 The claim of conflict of interest/collusion with any of the parties in the present application is unsubstantiated:

The Applicant's allegation of conflict of interest/collusion of the RP with the other Respondents lacks proof and is entirely based on assumptions/conjectures of the Applicant. The allegations have been made with the object to hinder, hamper and derail the CIRP proceedings. The same is apparent from the contents of the allegations which are completely vague. Order VI, Rule 4 of the Civil Procedure Code, 1908 mandates specific pleadings to substantiate allegations of collusion or conflict of interest. The onus of proving collusion has not been fulfilled by the Applicant.

i. **RP has no relationship with either Respondent No. 4 or Damayanti Tea Industries which could be termed as collusive:** Reliance on the consent letter rendered by the RP in *Damayanti Tea Industries v. Bochapathar Tea Estate Pvt. Ltd.,* i.e. an unrelated matter is not a proof of collusion or conflict of interest. The services alleged to be rendered by the RP were services set out under the Insolvency and Bankruptcy Code, 2016, which are not prohibited, and rather permitted. Pertinently, no service was actually rendered. Consent Letter at best can only be treated as an offer for service to be rendered. In any event, the Insolvency and Bankruptcy Board of India (Insolvency Professionals Regulations) 2016 (“Regulations"), more specifically the Code of Conduct for Insolvency Professionals (set out in the First Schedule to the Regulations), Regulation 23A allows providing the services under the Code. Hence, the RP's engagement by a creditor enjoying more than 10% of the voting power or the corporate debtor or any other related parties or even a successful resolution applicant is not prohibited under the IBC, provided the services rendered are under the ambit of the Code. In any event the consent letter was only an offer, where under no services were in fact rendered.

ii. **Respondent No. 5 has never represented the RP before the Hon’ble NCLAT in CA (AT) (Ins.) No. 932 of 2019:** The applicant has relied on incorrect court appearances of Respondent No. 5 to drive the argument that Respondent No. 5 has represented the RP in the NCLAT appeal. It is submitted that appearances marked for court proceedings are not conclusive proof of attorney-client relationship. Appearances for court proceedings are not free from errors and should not be taken as a proof.

iii. **RP admitted Claim of Respondent No. 1 after due verification- No case of collusion/conflict of interest:** The balance sheet of National Boards Ltd. ("NBL"), a related party/ principal borrower, for the year 2017-18 & 2018-19 revealed that the liability amounting to Rs. 450.70 Lakhs as duly shown in the audited annual accounts for the year 2017-18 in respect of Respondent No. 1 was abruptly reduced to Rs. 123.65 Lakhs in the balance sheet 2018- 19 without any justification. A perusal of the balance sheet reveals that there was a reduction without any payments being made by NBL to Respondent No. 1 during the period from 01.04.2018 to 31.03.2019, which could have reduced the balance of liability owed to IDBI bank/SASF. It was further observed from the Accounts of FY 2018-19 that an amount of Rs 3,27,05,868.00 had been disclosed with a nomenclature "Adjustment for earlier Year (2005-06)" and the said amount was reduced from the accumulated carried forward loss i.e. Accumulated carried forward loss was reduced from Rs. 8,20,84,056.00 to Rs. 5,04,35,944.00 which included the loss of the FY 2018-19 of Rs. 10,57,756.00. On full scrutiny of the said annual accounts RP did not find any explanation anywhere in the entire accounts about the said adjustment**.** Not only this, both the balance sheets for the year 2017-18 & 2018-19 failed to take into account the interest @ 12% fixed by the Hon'ble DRT vide order dated 03.01.2005. The RP had duly filed a compliance report / affidavit (in IA 89 of 2019) dated 24.12.2020 outlining the reasons and the process adopted to admit the claim. Hence, it is absurd of the Applicant to suggest that the RP has acted in an arbitrary fashion. The absence of collusion between Respondent No. 1 and the RP can also be ascertained from the fact that the claim of Respondent No. 1 has been admitted at Rs.

16.12 Crores after due verification by the RP. The details of the calculation have been provided.

iv. **The reason for publication of 2nd EOI was to facilitate value optimization and to have more resolution applicants- No case of collusion**: The primary objective behind a 2nd EOI was simply to attract more resolution applicants and to strive for value maximization. It is an indisputable fact that both the Applicant and JSVM in the 1st round of EOI failed to submit a resolution plan within not only the stipulated time period but also the extended time. Since the 1st round of EOI did not garner the desired results, the RP after being instructed by the CoC published the 2nd EOI. The rationale for the same has been well captured in the minutes of the 6th and the 7th CoC meeting. The 2nd EOI was duly published in newspapers of wide circulation as per the Code. There was no omission on the part of the RP in that regard. Hence, in contrary to the submission made by the Applicant that the whole process was to facilitate Respondent No. 4 to become the Resolution Applicant does not hold ground as there were other interested entities who had expressed an interest in submitting EOIs. Also, after the expiry of the last date to submit the EOI (i.e. 12.07.2020), EOIs were submitted by SREI SMAIT (on 30.08.2020), Megnathan Sankar (on 15.09.2020) and Puneet Advisory Services Pvt. Ltd. (on 12.10.2020). Since, the said EOIs were submitted after the expiry of the last date the same were not accepted by the RP after discussion with the CoC. Hence, no collusion existed on the part of the RP to favour Respondent No. 4 in any shape or form. The submissions alleging the same are without any basis and are liable to be rejected.

v. **The Applicant's Plan was not leaked by Respondent No. 2:** There was no leakage of the resolution plan submitted by the Applicant by the RP. The Applicant has no proof to substantiate the same. Secondly, there was no material change in the plan submitted by Respondent No. 4. Thirdly, the Applicant was given ample opportunity to submit a modified plan which he chose not to do so.

vi. **Opportunity to modify/ submit the best resolution plan was given to the Applicant as well:** The Applicant has conveniently not disclosed the fact that ample opportunities were given to him as well to modify and submit his best compliant plan. However, he chose not to make modifications; the same is evident from the minutes of the 15th CoC meeting held on 25.05.2021. It is further submitted that **Respondent No. 4 was not given multiple opportunities,** contrary to what the Applicant would like this Hon'ble Tribunal to believe. A revised plan was submitted by Respondent No. 4 on 22.05.2021 after being informed that the 15th CoC meeting would be held on 25.05.2021. The plan submitted prior to 22.05.2021 by Respondent No. 4 had been approved by the 12th CoC meeting on 10.11.2020. The revised plan had no increase in the resolution proceeds except for the legally mandated additional CIRP costs of Rs. 30 Lakhs .It is clarified that Respondent No. 4's revised plan was in consonance with the order passed by this Hon'ble Tribunal dated 10.02.2021 wherein the Hon'ble Tribunal had expressly given CoC the liberty to negotiate with existing resolution applicant. Hence, none of the rights of the Applicant was hampered or prejudiced in any manner in the afore stated circumstances.

vii. **No case of collusion/conflict of interest due to the fact that copies of the resolution plan were not given to the Applicant and JSVM:** It is a matter of law that copies of the resolution plan cannot be provided to a competitor resolution applicant. The same has been clearly laid down in ***Committee of Creditors of Meenakshi Energy Ltd. through State Bank of India v. Consortium of Prudent ARC Ltd. & Vizag Mineral and Logistics P. Ltd.*** **CA (AT) (CH) (Insolvency) No. 166 of 2021, para 111:**

"111. In fact, the Resolution Plan furnished by one or the other Resolution Applicant is a confidential one and it cannot be disclosed to any Competing Resolution Applicant..."

In addition to the same, copies of the resolution plan cannot be given to parties which are not participants of the COC, viz. related parties (which is JSVM in this case). Applicant's incorrect interpretation of the judgment passed by the Hon'ble Supreme Court in Vijay Kumar Jain vs. Standard Chartered Bank (2019) 20 SCC 455 does not help its case. On the contrary, reliance is placed on Para No. 19.5 of Vijay Kumar Jain (supra):

"19.5. Last but not the least, a resolution plan which has been approved or rejected by an order of the adjudicating authority, has to be sent to participants which would include members of the erstwhile Board of Directors — vide Regulation 39(5) of the CIRP Regulations. Obviously, such copy can only be sent to participants because they are vitally interested in the outcome of such resolution plan, and may, as persons aggrieved, file an appeal from the adjudicating authority's order to the Appellate Tribunal under Section 61 of the Code."

Hence, it is apparent that the right to obtain a copy of the Resolution Plan by an OC is only in respect of OCs who are members of the CoC. Since, JSVM was a related party of the CD and hence not a member of the CoC, it cannot be provided with a copy of the Resolution Plan.

viii. **The RFRP permitted a submission of resolution plan by an SPV/SPC:** As per the RFRP, submission of Resolution Plan by an SPV / SPC was permitted (clause 1.7.7, 1.7.8 and clause 2 (b) of appendix 2). Not only submission of a Resolution Plan by an SPV/ SPC was permitted, but Respondent No. 4 also fulfilled the other eligibility criteria. Upon examination of the documents, including a minimum tangible net worth certificate, submitted by Respondent No. 4 to substantiate its eligibility it was seen that the net worth requirement was duly fulfilled by the promoter(s) of Respondent No. 4. Also, it is well understood that the eligibility criteria are not to be mandatorily published as per the provisions of the Code.

ix. Dilip Constructions Pvt. Ltd. (DCPL) has been classified as per its form B claim: DCPL is being considered as an OC only because DCPL has filed a claim of Rs. 5,91,08,820.00 (Rupees Five Crores Ninety-One Lakhs Eight Thousand Eight Hundred and Twenty Only) as an Operational Creditor . I.A. No. 14 of 2021 relates to a claim amount of Rs. 4,00,00,000 (Rupees Four Crores Only), which the RP vide its email dated 09.07.2020 had requested DCPL to lodge as an Operational Creditor instead of a Financial Creditor, as upon verification of the claim from the documents it was found by the RP that the same could not be considered to be a financial debt. Needless to state, under Regulations and under the Code an RP is duty bound to vet and verify the claims received by it. It is also important to point out that despite requesting DCPL, DCPL has not filed its claim in respect of Rs. 4 Crores as an operational creditor till date; and its other claim of Rs. 5,91,08,821 (Rupees Five Crores Ninety-One Lakhs Eight Thousand Eight Hundred and Twenty-One Only) which was filed as a OC has been duly admitted.

x. **No case of conflict of interest has been made out with the law firm Fox & Mandal:** The legal opinion in question was taken from a reputed tier 1 law firm (not from an individual lawyer). **Thus, the signatory of the legal opinion being a director in a purported competitor of the CD is inconsequential** and irrelevant. A tier 1 law firm will have hundreds of clients; one cannot assume that a conflict of interest will surely arise due to one person in the whole firm being a director of a purported competitor. Regardless of the same, the important fact herein is that the legal opinion has survived the test of law, in as much as even the Hon'ble Supreme Court has held that the setting aside of the appellate order of the Hon'ble NCLAT would not have the effect of the order of admission being set aside.

xi. **Neither the RP nor the RP's family has any connection with manufacturing of plywood: and hence cannot be considered as competitors:** The RP's father ,who is now in his 80s, has a small business in retail sale in plywood which is presently in no shape or form connected with the CD's form of business.

xii. **Allegations against the RP have been made as a counter blast:** The Applicant is utilizing every means possible to derail the CIRP and undermine the authority of the RP. The same can be ascertained from the fact that the Applicant and his close aides / relatives have filed various frivolous complaints against the RP before the IBBI, albeit without success. No adverse findings have been rendered by IBBI in any of the complaints and to the best of the RP's knowledge, all the complaints filed have been closed. Pertinently, the allegations levelled in the complaints have been similar, if not identical, to the allegations raised in the present application which the IBBI had closed after going through the contents of the complaint which were devoid of merit. Thus, it is apparent that the Applicant has resorted to forum shopping to extract a favorable order.

7.3 Applicant continues to misrepresent settled facts

i. The Applicant continues to misrepresent the facts which have been settled even by the Hon'ble Supreme Court. It is submitted that the fact that the CIRP was never set aside or stayed is now indisputable. **Since the CIRP was never stayed or set aside there can be no question of resumption of CIRP**.

ii. The issue that the Order dated 26.08.2019 had not attained finality or was set aside is no longer res integra in view of the judgment and order dated 22.04.2021 passed by the Hon'ble Supreme Court in Sandeep Khaitan, Resolution Professional for National Plywood Industries Ltd. v. JSVM Plywood Industries Ltd. & Anr., para 16:

> *"...We would think that setting aside the appellate order of the NCLAT by this court and remanding the appeal would*

not have the effect of setting aside the order admitting the application.”

7.4 The CD is still functioning as a going concern: the RP has worked in furtherance of the same

i. The business model of the CD before the initiation of the CIRP was predominantly trading with related parties wherein substantial purchases of Trading goods were done from related parties and were sold further, to other group companies / related parties. Around 80% of the purchases in the books of Margherita Factory’s were sourced exclusively from JSVM (a related party of the CD). Hence, the CD's business model cannot be classified as a predominantly manufacturing unit.

ii. The manufacturing was temporarily suspended in addition to the temporary layoff owing to the illegal acts of the suspended board. The layoff notice dated 28.01.2021 was a direct result of the illegal transfer of funds from the CD, and the non-receipt of the receivables from related parties. Also, the business of the CD was affected due to the Covid pandemic.

iii. **In so far as the question of raising interim finance is concerned** it is submitted that the need for the same was not required in the beginning of the CIRP. The business of the CD was affected largely due to the Covid pandemic and the illegal actions of the Applicant along with the suspended board.

iv. Manufacturing activity of the CD was also suspended because JSVM, a related party has discontinued supplies of glue and resin. Regardless of the same, the RP has been restrained by the 14th CoC meeting to carry out any business transactions with related parties.

> *"...SASF representative submitted that they are not agreeable and not giving any in principal approval to the related party transactions given the business model of the company & money getting unduly stuck. Further he stated that if RP raises finance then the further transactions should be done with independent parties with proper realizations post sales and not with related parties....”*

v. The officers of the CD have been instrumental in hindering and obstructing a smooth functioning of the CD. The same has resulted in non-compliances of statutory provisions due to the continued non-cooperation by the Company secretary and the Accounts head of the CD, which has resulted in imposition of fines and penalties by the BSE.

vi. The RP also took action against illegal siphoning of funds from the coffers of the CD as the custodian. Transactions to the tune of Rs. 35.79 lakhs were undertaken by the Applicant with active connivance with the Suspended Board during the pendency of the CIRP, in violation of Section 14 of the Code. Even the authorities of ICICI Bank have conceded that the transactions were unauthorized could fructify due to ***"Operational Inadvertence"*** of the said bank. Reliance is placed on the Hon'ble Supreme Court's judgment dated **22.04.2021** in Criminal Appeal No. 447/2021 titled as *Sandeep Khaitan, Resolution Professional for National Plywood Industries Ltd. v. JSVM Plywood Industries Ltd. & Anr.*, wherein the Hon'ble Supreme Court had found the fraudulent transfer of Rs. 32.50 lakhs to the JSVM accounts to be violative of Section 14 of the Code. Consequently, the RP was forced to file an FIR dated **27.04.2020** for the illegal transfer of Rs. 35,79,000/- from the accounts of the CD.

vii. The Applicant has tried to allege misconduct with the running of the CD on the basis of the RP trying to procure a secure trademark for the CD. The same is not relevant for the adjudication of this Application as the Applicant has filed a separate application bearing IA No. 47 of 2021 which lies pending before this Hon'ble Tribunal. Regardless of the same, the RP states that the trademark applications were filed to secure a trademark for the CD which due to the omission of the Applicant / suspended board have been left in peril. It is submitted that the CD has been functioning without a registered trademark of the word "National" or "National Plywood" since 1973.

viii. RP as the custodian of the assets of the CD had filed a reply to the Examination report dated 08.03.2019 on 05.07.2021. However, being aware of the fact that the one-month time period to furnish a reply to an objected application had long expired, the RP, as and by way of abundant caution (and to further the steps taken by the Suspended Board) filed fresh applications seeking registration of the already existing and utilized brand/ Trademark of the CD. It is relevant to point out that the RP had also filed for trademark renewal of the brand of the CD *"National Laminart"* and same has been successfully renewed up to 31.08.2026.

ix. The impugned trademark applications sought to register the above said stylized mark which was already being used the CD. Since the said mark was admittedly a valuable asset (**valued at Rs. 6.74 Crore**s), the applications were filed with the sole objective of securing and safeguarding it.

x. Further, the Applicant's reliance on the **copyright** registration of "National Plywood' under the Copyright Act, 1957 is completely misplaced and misleading in as much as both are different domains of law. A registration under the Copyright Act cannot in any manner imply that it is also a registration under the Trademark Act, more so when the scope and application of both the Acts are completely different and independent of each other.

7.5 The RP had given his official address for ease of correspondence since there have been occasions in the past wherein important communications (such as form notices / letters) delivered to the CD's registered address (under the control of the CD's related parties) were not forwarded to the RP. In any event, the issue of correspondence address is irrelevant as the Applications were made under the CD's name and not the RP's name.

7.6 In conclusion what follows is that the Applicant after being unsuccessful with his plan being approved has filed the present application with the sole purpose to derail the CIRP and undermine the financial wisdom of the CoC. The Applicant has been unsuccessful in exhibiting any case of collusion or conflict of interest.

7.7 In light of the foregoing, the present application is liable to be rejected.

8. The Petitioner have submitted in detail the collusion and conflict of interest between Respondent No. 3 and other Respondents:

8.1 On 12.07.2020 the Respondent No. 4 (M/s PLBB Products Pvt. Ltd) filed an Expression of Interest (EOI) for filing a Resolution Plan for the CD. On 17.07.2020 the Respondent No. 2 prepared the list of Prospective Resolution Applicants (PRA), which included the name of the Respondent No. 4 as a PRA even though the Respondent No. 4 was incorporated only on 20.07.2020. Reference is drawn to Annexure - A8, Pages:111-128, of this application.

8.2 Mr. Sunil Kumar Agarwalla is the promoter of Respondent No. 4 as well as of M/s Damayanti Tea Industries, a unit of Chandrabali Commercial India Pvt. Ltd (CCIPL) which is an associate concern of the Respondent No.4. The Respondent No.3 is the advocate of the promoter of Respondent No. 4, Mr. Sunil Kumar Agarwalla, representing Damayanti Tea Industries in several hearings before this Hon'ble Tribunal. It is submitted that the section 7 application filed by Damayanti Tea under the counsel of Respondent No.3 is for a substantial amount in excess of Rs 3 crores. Hence, considering the gravity of the said case, it is not comprehensible that an application of such a large amount and of such importance was done by his advocate- the Respondent No.3 without knowing his client, the promoter of the company.

8.3 The Respondent No. 3, based in New Delhi, was nominated by Respondent No. 2 to be his legal representative for the CD even though Respondent No. 2 is based in Guwahati and the CD's Corporate and Registered office are in Kolkata and Assam respectively. Respondent No.3 was proposed to be appointed on a

monthly retainership basis to be paid by the CD. (Reference is to the Annexure A5 pages 104 to 107 of this application)

8.4 The appointment of Respondent No. 3 was done in haste without vetting by the COC Members. The appointment of Respondent No. 3 confirmed by Respondent No. 1 by an email was only ratified in the COC Meeting on 14.08.2020. **The appointment of Respondent No. 3 was done just 3 days after the Respondent No.4 was accepted as a Resolution Applicant of the CD on 27.07.2020**. Thereafter, in collusion with Respondent No.1 who holds 87.76% voting share of the COC, **Respondent No.2 managed to appoint the counsel of the Respondent No.4 as his own legal representative, that too outside of a COC meeting. Respondent No.3 then participated in all COC meetings of the CD, thereafter, starting from the 9th COC Meeting held on 09.09.2020.**

8.5 It is surprising that despite Respondent No.3 being appointed as the counsel of Respondent No.2 from 14.08.2020, Respondent No.5 (the counsel of Respondent No.1) **was allowed to be the counsel of Respondent No.2 thereafter in several hearings on 18.08.2020, 27.08.2020, 08.09.2020 and 14.09.2020 in the Hon'ble NCLAT in CA(AT)(INS) 932 of 2019. This clearly indicates a collusion between** Respondent Nos.1, 2, 3, 4 & 5.

8.6 Respondent No. 3 has acted under the influence of Respondent No. 4 and helped them negotiate with Respondent Nos. 1 and 2 privately outside of the COC. Respondent No. 4 was allowed to amend their resolution plan multiple times outside of COC meetings between 05.09.2020 and 10.11.2020 **before the order of admission of Respondent No.1's application u/s 7 of the Code had even attained finality on 24.11.2020.** No authority was deemed to have been sought from this Hon'ble Tribunal where the said plan of Respondent No.4 was approved of by the COC led by Respondent No.1 and submitted for approval. Further, with regards to the compliance of Respondent No. 4's plan, the occurrences of the 12th COC meeting are evidenced of the fact that Respondent Nos.1, 2, 3 and 4 have acted in complete collusion to make Respondent No.4 a successful Resolution Applicant. The minutes of the 10th COC meeting dated 18.09.2020 state the following on page 4:

> *"The RP enquired upon the members present whether he should appoint an external agency to undertake the compliance check of submitted plan under code and regulations. The representative of SASF replied stating that the RP should determine the compliance of the plan with the help of his legal counsel."*

It is pertinent to bring to the notice of this Hon'ble Tribunal that Respondent No.1 directed Respondent No.3, who is also the legal counsel of the promoter of Respondent No.4, to evaluate the compliance of Respondent No.4's Resolution Plan. This is in complete conflict of interest and does not reflect the expected transparency, a fact that was also suppressed from the COC.

8.7 After the Respondent No. 4 filed their resolution plan on 05.09.2020, Respondent No. 2 on 18.09.2020 under legal counsel of Respondent No.3 filed an application under Sections 25(j), 43, 45, 49 read with Sections 44, 48 and 66 of the Insolvency and Bankruptcy Code, 2016 in relation to preferential, undervalued, fraudulent and extortionate transactions involving the CD **against the MSME Promoters with a mala-fide intention to disqualify the MSME Promoter from being a Resolution Applicant. This was done despite the Respondent No.2** having been fully satisfied with the transactions done by the CD in its normal course of business. This is evident from the fact that after due diligence by his team, the Respondent No.2 approved the audited accounts of the CD for the FY 2018-19 and signed the minutes of the AGM approving the same on 30.09.2019. This Hon'ble Tribunal in its order dated 07.10.2021 dismissed the Respondent No.2's application in IA 51 of 2020. The Hon'ble NCLAT also observed the same in its order dated 07.09.2021.

8.8 The Respondent No. 3 has acted at the behest and interest of his client, Respondent No. 4, facilitating them to initiate a hostile takeover of the CD. **Under the advice of Respondent No. 3, Respondent No. 4 challenged the order dated 10.02.2021 passed by this Hon'ble**

Tribunal in IA 05 of 2021 allowing the Petitioner, an MSME promoter to file a Resolution Plan. This is despite the Respondent No.4 not even being a party to the IA 05/2021. Respondent Nos. 1 and 2, who were Respondents to this appeal, supported the said appeal in their affidavits-in reply and chorused for a stay of the order dated 10.02.2021 before the Hon'ble NCLAT. However, the Hon'ble NCLAT vide their order dated 18.05.2021 allowed the Petitioner's Resolution Plan to be considered and negotiated by the COC.

8.9 The Respondent No.3, present in COC meetings of the CD, was privy to all confidential documents and proceedings since his appointment in August 2020. **Respondent No.3 was also recorded as being present in the COC meetings discussing the Resolution Plans both Respondent No.4 and the Petitioner** of the promoter of . This **is in clear conflict of interest as Respondent No.3 is also the counsel** Respondent No.4. All unauthorized modifications of Respondent No.4's Resolution Plan outside of the COC were also done with the knowledge and concurrence of Respondent No. 3 despite there being no judicial directions nor COC approval. This involvement of Respondent No.3 in these confidential matters of the COC and with the knowledge of the Petitioner's Plan enabled Respondent No. 4 to unauthorizedly modify its COC-approved plan that was pending approval with this Hon'ble Tribunal by a sum of Rs 210.00 lakh to increase their score in the Evaluation Matrix vis-à-vis the Petitioner's Plan. This modified plan of Respondent No 4 was exclusively approved by the Respondent No.1 as the sole COC Member available in the 15'h COC Meeting. The said Plan of Respondent No.4 was submitted by the Respondent No.2 and Respondent No.3 to the Adjudicating Authority **in a fresh IA No.31 of 2021 after withdrawing IA No. 61 of 2020 with the COC approved 1st** Plan of the Respondent No.4 which was still pending approval by this Hon'ble Tribunal. **This act of re-submitting the modified plan even while the earlier plan was still pending approval with the Adjudicating Authority is in contravention to settled law.** This was done under the advice of the Respondent No.3 purely with an intent to favor the Respondent No.4.

8.10 The above mala-fide acts of Respondent No. 3 prove that he was prejudiced and had deliberately suppressed his relationship with the promoter of Respondent No.4. It is for the beneficial interest of the Respondent No.4 that the Respondent No.3 took the aid of Respondent Nos 1 & 2 in platform of the COC of the CD of which he was also the legal counsel representing the Respondent No.2.

8.11 His such acts of suppression, misuse of office and professional mis- conduct to further the interest of the Respondent No.1 have violated the principles and provisions of the Code besides causing immense harm to the interest of the various other stakeholders of the CD.

Hence, it is prayed that this application be admitted and appropriate orders be passed for the interest of justice.

9. On the other hand, Respondent No. 3 has submitted that:

9.1 Present application is not maintainable under section 60 (5) of IBC: The present application is not maintainable under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 for the following reasons:

i. Firstly, the present application has been filed by the Applicant who is an unsuccessful resolution applicant. It is a settled law that an unsuccessful resolution applicant does not possess any inherent right to seek approval of his resolution plan once it has been rejected by the CoC. Contrary to the averments made by the Applicant, Respondent No. 3 has had no role to play in the rejection of the Applicant's plan by the CoC. The same has been done by the CoC in exercise of its powers under the Code. The Applicant at this stage cannot indirectly seek acceptance of its rejected resolution plan through the present application. It has been held both by the Hon'ble Supreme Court and the Hon'ble Appellate Tribunal that **an unsuccessful resolution applicant**

has no vested right in law to challenge the commercial wisdom of the CoC which is sacrosanct. In the judgment of ***Arcellormittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors.* (2019) 2 SCC 1** the following was held:

"75. What has now to be determined is whether any challenge can be made at various stages of the corporate insolvency resolution process. Suppose a resolution plan is turned down at the threshold by a Resolution Professional under Section 30 (2). At this stage is it open to the concerned resolution applicant to challenge the Resolution Professional's rejection? It is a settled law that a statute is designed to be workable, and the interpretation thereof should be designed to be workable, and the interpretation thereof should be designed to make it so workable...

76. Given the timeline referred to above and given the fact that a resolution applicant has no vested right that his resolution plan be considered it is clear that no challenge can be preferred to the Adjudicating Authority at this stage. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. This is also made clear by the first proviso to Section 30 (4), whereby a Resolution Professional may only invite fresh resolution plans if no other resolution plan has passed muster."

Hence, the present application is liable to be dismissed as the Applicant has no entitlement to get his rejected plan approved by this Hon'ble Adjudicating Authority.

ii. Secondly, the present application is based on a misplaced assumption that Respondent No. 4 submitted an improved plan, which is incorrect on the basis of the following:

   a. This Hon'ble Adjudicating Authority vide order dated 10.02.2021 had allowed the CoC to negotiate with the existing Resolution Applicant (Respondent No. 4) in express terms. Hence, the CoC acted as per the directions of this Hon'ble Adjudicating Authority.

   b. Respondent No. 3 during the 15th CoC meeting held on 25.05.2021 on behalf of the RP had advised the CoC that adequate time be given to the Applicant to make his resolution plan compliant with the Code. Subsequently, the Applicant was given ample opportunity to submit a compliant and commercially best resolution plan. Hence, no discrimination was caused to the Applicant. Respondent No. 3 has never been called upon to advise upon questions which fall within the exclusive commercial discretion of the CoC.

iii. Lastly, as per the Applicant's own comparison chart there have been no improvements in the plan of Respondent No. 4 except adding the legally mandated CIRP costs from September 2020 till May 2021. Hence, it is apparent that the allegation of the Applicant that the plan of Respondent No. 4 was an improvement of the previous plan is misplaced and incorrect. The plans of the Applicant and Respondent No. 4 were considered solely and exclusively by the CoC. It is also submitted that the voting on the plans by the CoC happened on 01.06.2021 however, the present application was only filed on 06.08.2021 impleading the submitting Respondent as a party with no basis. It is apparent that the Applicant had no serious grievance with Respondent No. 3 till his resolution plan was rejected by the CoC.

9.2 The allegations of conflict of interest are vague and lack specific details:

i. So far as the allegations of conflict of interest against Respondent No. 3 is concerned, it is submitted that the allegations are vague and lack specific details which could point towards any potential conflict of interest. It is a settled law that serious allegations of conflict of interest or collusion cannot be filed in a general statement and needs to be substantiated by proof. The onus in this case lies upon the Applicant to prove the same which has not been duly fulfilled.

ii. It is a matter of law that the onus of proof lies on the person alleging misconduct/conflict of interest/collusion, which in this case the Applicant has not fulfilled. The Applicant has based his contentions on assumptions with no hard proof/ evidence to substantiate the same. The application fails to lists out specifics on what information has been disclosed or what material improvements have been made to the plan submitted by Respondent No. 4.

iii. Order VI Rule 4 of the Civil Procedure Code, 1908 stipulates that allegation of conflict of interest necessitates specific pleadings. The underlying principles of Order VI Rule 4 would also apply to the proceedings apart from civil suits ***(Rengali Hydroelectric Project v. Giridhari Sahu*** **(2019) 10 SCC 695).** On application of the same, it is evident that the Applicant has failed to provide with specifics of any potential conflict of interest.

iv. It is clarified that Respondent No. 3 was **engaged as a lawyer for Respondent No. 2 on 14.08.2020,** almost a year after the initiation of the CIRP of the Corporate Debtor/ Company ("CD"). Certainly, much after the 2 rollouts seeking expressions of interest ("EOIs") and after both the Applicant and Respondent No. 4 had already participated in the process of plan submission. Hence, the allegation that the evaluation matrix presented by the RP was done in concurrence of Respondent No. 3 is downright false. It is submitted that Respondent No. 3 had no connection, familiarity or knowledge with any of the participants in the CIRP, including Respondent No. 2 and 4 prior to his appointment and definitely no relationship with or interest in Respondent No. 4 after his appointment.

v. The allegation of beneficial relationship and interest in Respondent No. 4 is false and without any basis, proof or specifics. It is submitted that Respondent No. 3 has neither communicated nor interacted with any of the promoters of Respondent No. 4.

9.3 Present application is a counterblast to harass Respondent no. 3

i. The Applicant has raised no objection to the engagement Respondent No. 3 as the Applicant was aware of the engagement since August 2020 and was aware about Respondent No. 3's appearance in Section 7 application for Damayanti Tea Industries since January 2021. The reason for the present malicious application filed by the Applicant is to merely to harass Respondent No. 3 for having performed his professional duties in a diligent manner and for having filed and argued the following:

a) In IA 51/ 2020 wherein Respondent No. 3 on behalf of the RP, pointed out the diversions at the hands of the Applicant during the relevant lookback period based on the detailed transaction audit report.

b) Filed the Rejoinder in IA No. 37/ 2020 pointing out the trail of funds from the accounts of the CD in complete violation of Section 14 of the Code.

c) Filed and argued the SLP (Crl.) No. 1549/ 2021 against a related party of the CD, namely JSVM Plywood Industries Ltd. ("JSVM"): The Hon'ble Supreme Court held that the suspended board had illegally transferred Rs. 32.50 Lakhs on 18.04.2020 in blatant violation of Section 14 of the Code.

d) On the instructions of the RP, filed an MA bearing no. 1090/ 2021 before the Hon'ble Supreme Court seeking compliance of the judgment dated 22.04.2021. After hearing the arguments of Respondent No. 3, the Hon'ble Supreme Court permitted the RP to approach this Hon'ble Adjudicating Authority to issue directions to JSVM to refund the diverted funds.

ii. The present application is an attempt to harass and intimidate Respondent No. 3 discouraging him from moving appropriate applications seeking reparatory measures during the CIRP.

9.4 No beneficial relationship exists between Respondent No. 3 and Respondent No. 4

i. It is preposterous to suggest that there exists any beneficial relationship/ interest between Respondent No. 3 and 4. Respondent No. 3 was appointed as the lawyer of RP only

14.08.2020, after a year of initiation of the CIRP. By this time two EOIs had been published by the RP. Hence, it is established that Respondent No. 3 has had no part/role to play in the rolling of the EOIs. As far as the allegation of a beneficial relationship between Respondent No. 3 and 4 is concerned it is submitted that Respondent No. 3 had represented one, Damayanti Tea Industries (an independent and unconnected party to the present CIRP proceedings) in a professional capacity.

ii. Respondent No. 3 appeared only as a lawyer for Damayanti Tea Industries in Section 7 application before this Hon'ble Adjudicating Authority taken up in the month of January, 2021. The same was much after the resolution plan of Respondent No. 4 was approved by the CoC on the 10.11.2020.

iii. Respondent No. 3 was engaged by Mr. Shyamal Dey, an executive of Damayanti Tea Industries and received instructions for the Section 7 application from the said executive. Even the nominal fees for the engagement was paid by Damayanti Tea Industries. Accordingly, Respondent No. 3 filed a Section 7 application against one, Bochapathar Tea Estate. It is submitted that the parties in the said application have neither any connection nor any relevance to the adjudication of the present application. The application has since been dismissed by this Hon'ble Adjudicating Authority vide order dated 23.08.2021.

iv. If the allegations of the Applicant are taken at face value, then it would mean that no lawyer should take assignments against or for any of the litigants that he/ she has represented in the previous matter.

9.5 In any event Respondent No. 3 was never privy to any confidential information relating to the CD. The contentions alleging the same are false and the Applicant be put to strict prove for the same. It is also submitted that there has been no leakage of any confidential information as alleged by the Applicant.

9.6 Damayanti Tea Industries is an unrelated party of Respondent No. 4 and the connection drawn by the Applicant is a stretch. Respondent No. 3 has never in the past represented Respondent No. 4 in any way which could be deemed to be beneficial which could give rise to a conflict of interest.

9.7 In the light of the aforesaid submissions, the application lacks substantial proof against Respondent No. 3, and is devoid of any reasons and is liable to be dismissed.

10. The Petitioner have further submitted in detail the collusion and conflict of interest between Respondent No. 4 and other Respondents:

10.1 The second roll-out of the Resolution Plan process was initiated by the Respondent Nos. 1 and 2 despite the original process pending with two successful submissions of EOIs. An inclusion of SPVs and SPCs in the Eligibility Criteria for filing EOIs was only done in the second roll-out of Invitations for EOIs and not in the first, and that too without the explicit approval/consent of the COC. Further, the Eligibility Criteria was not published in the public domain. The entire second roll-out, with this new inclusion, was done purely to allow PLBB Products Pvt. Ltd (PLBB), Respondent No.4 (R4) to file a resolution plan for the CD.

10.2 Respondent No.4, at the time of filing the EOI, was not even an entity, not an SPV, SPC or Consortium, and neither Respondent No.4 nor its promoters had any prior experience in the industry in which the CD operates. All these factors were deliberately overlooked by Respondent Nos. 1 and 2. It is evident that false statements were submitted by the promoters of the Respondent No.4 in collusion with the Respondent No. 2 to mislead the COC and vitiate the process as laid down in the Code. **All norms of propriety were violated, and rules bent by the Respondent No. 2 to allow the Respondent No.4 to file their EOI as an entity which had not even come into existence.** When a COC Member pointed out the ineligibility of Respondent No.4, the Respondent No. 2 justified their existence without even verifying any of the facts put forth by the COC Member. **Even the Articles and Memorandum of Association of the Respondent No.4 (a non-entity at the time of submission of EOI) does not include the SPV/SPC criteria.** False and wrongful undertakings have been submitted by them in violation to the provisions under Section 36A of the Code. Norms were blatantly flouted by the Respondent Nos 1 to 3 in collusion to camouflage the deviation permitted by them to allow the Respondent No.4 to become a successful Resolution Applicant.

10.3 After the first Resolution Plan of Respondent No.4 was approved of by the COC led by **Respondent No.1, Mr. Sunil Kumar Agarwalla**, and Mr. Harsh Gupta, the promoters of Respondent No.4, visited the CD's unit on 09.12.2020 in Margherita (Assam), **met the factory manager and stated their intent to reduce the number of employees and to release the senior staff after their acquisition of the CD. Subsequently, a layoff in the CD's unit was** declared by **Respondent No. 2 on 28.01.2021**. **This was followed by Respondent No. 2 stopping urgent payments (wages, salaries, rent, electricity, statutory dues etc.) of the CD as if its resolution/acquisition was already completed.** Mr. Rakesh Garg of Aggarwal Plywood Co. New Delhi, as the representative of Mr. Harsh Gupta, the promoter of Respondent No.4, visited the CD's warehouse in New Delhi on 29th July 2021, on the pretext of verifying the stock of the CD as instructed by Respondent No. 2. He declared to the CD's employees the acquisition of the CD by Respondent No. 4, seeking suggestions from them regarding the feasibility of transferring unsold stock of the CD's warehouse to Kolkata where Mr. Gupta's office is located. All these acts were perpetrated by the Respondent No.4 as if they were already successful Resolution Applicants of the CD, even though approval of their plan remained pending with this Hon'ble Tribunal.

10.4 It is also a fact that a representative of Respondent No. 4 called the Petitioner on 17.12.2020 at 18:57 hours threatening him to refrain from resisting the takeover of the CD by Respondent No. 4. Once the

Petitioner was given the opportunity to file a Resolution Plan by the Hon'ble Tribunal on 10.02.2021, Respondent Nos. 1, 2 and 4 did everything in their power to prevent him from doing so. The (A)RP, Mr Ashok Tibrewala, representing the Respondent No. 1, in his visit to the CD's office on 18.02.2021 made similar threats to the Petitioner in the presence of other suspended Directors of the CD and independent witnesses. The Petitioner was then compelled to immediately file a complaint with the police on the same day, against which an FIR was subsequently registered on 26.03.2021. (Reference is drawn to the complaint and FIR filed by the petitioner collectively enclosed as ANNEXURE A-16, pages 124 - 125 of the rejoinder.)

10.5 The 15th COC meeting held on 25.05.2021 and 28.05.2021 to negotiate on the Resolution Plan was a farce as Respondent Nos. 1 and 2 had already negotiated with Respondent No. 4 outside of the COC and decided to accept their plan in any circumstance. This is despite the settled law that the Petitioner as an MSME promoter need not compete with any other applicant. Details of the ineligibility of Respondent No.4 as a Resolution Applicant and the process by which Respondent Nos. 1 and 2 discriminatorily accepted their modified plan over that of the Petitioner have been disclosed in the pending IA 35 of 2021 and are not being included here for brevity.

10.6 **It is also strange that, without any approval from any authority and in violation of settled law, Respondent Nos. 1 and 2 allowed Respondent No.4 to modify their plan on 22.05.2021 after it being already approved of by the COC led by Respondent No.1 and submitted to the Hon'ble NCLT in November 2020, by the Respondent No.2. It is submitted that a Plan approved by the COC and then sent to the Adjudicating Authority for approval could not have been modified/amended without an explicit approval from the Adjudicating Authority.** That it was done which violates the provisions of the Code and the law as laid out by the Hon'ble Supreme Court in EBIX Singapore Pvt Ltd in CA 3224 of 2020 as follows:

> *"If the legislature in its wisdom, were to recognize the concept of withdrawals or modifications to a Resolution Plan after it has been submitted to the Adjudicating Authority, it must specifically provide for a tether under the IBC and/or the Regulations. This tether must be coupled with directions on narrowly defined grounds on which such actions are permissible and procedural directions, which may include the timelines in which they can be proposed, voting requirements and threshold for approval by the CoC (as the case may be). They must also contemplate at which stage the Corporate Debtor may be sent into liquidation by the Adjudicating Authority or otherwise, in the event of a failed negotiation for modification and/or withdrawal. These are matters for legislative policy."*

Once all three plans are compared, it will be easy to find out the ways in which Respondent No.4 modified their plan. If Respondent No. 4's plan was complete and approved by the COC there was no need to modify the plan, that too before the 15th COC Meeting on 25.05.2021 wherein the plans were to be negotiated upon. It is obvious that the terms of the 1st Plan of Respondent No.4 were altered to benefit them vis-à-vis the Petitioner, albeit after his plan details were exposed, and all this was done in collusion between Respondents 1-4.

10.7 Even otherwise, the modification of the plan despite it being previously approved by the COC was done illegitimately outside the purview of the COC by misrepresenting that modification was allowed when **the Hon'ble Tribunal, in its order dated 10.02.2021, only directed as follows:**

> ***"The COC is at liberty to negotiate with the existing Resolution Applicant, the Suspended Management and accept the one which is commercially viable, technically feasible based upon the ground realities by a majority with a view to achieving maximization of value of assets, promotion of entrepreneurship, availability of credit and balancing the interest of all the stakeholders."***

Subsequently the Hon'ble NCLAT on 18.05.2021 also directed as follows:

> ***"After hearing Learned Counsel of the Parties we are of the view that the Resolution Plan submitted by the Promoters of the Company and the Resolution Plans submitted by the Appellant be sent to CoC for consideration."***

It can therefore be ascertained that Respondent No.4 had never been allowed to modify their already submitted Plan, that too prior to negotiation with the COC. This was however, with malafide intention, circumvented by the Respondents in violation of the Code and orders of the Hon'ble NCLT and Hon'ble NCLAT.

10.8 **Further, the source of funds intended to acquire the assets of the CD under the plan submitted by Respondent No. 4 was not given till after the 15th COC Meeting, d**espite an inquiry raised in the 15th COC meeting by the GM of Respondent No. 1. It was stated by Respondent No. 2, and later included in the Minutes of the 15th COC Meeting, that the details of Respondent No. 4's source of funds would be shared in a separate email post the meeting only with select COC members. **The suppression of source of funds raises questions about the eligibility of Respondent No. 4, the promoters, as well as their disclosed and undisclosed investors under Section 29(A) of the Code. Further, the non- disclosure of the source of funds makes the plan non-compliant and materially irregular, a fact overlooked by Respondent No. 2 in his Eligibility Certificate and Code of Compliance Report. This non-compliant plan was then approved by the COC led by Respondent No. 1 in violation of the principles of the Code.**

10.9 **The promoters of Respondent No. 4, Mr. Sunil Kumar Agarwalla and Mr. Harsh Gupta are also the promoters of Chandrabali Commercial India Private Limited (CCIPL). Damayanti Tea Industries is a unit of CCIPL, sharing the same office address at Junction Floor, RKB Path, Dibrugarh, 786 001. Damayanti Tea Industries filed an application under section 7 of the Code in CP(IB) No. 05/GB/2021. It is submitted that in this application, Damayanti Tea Industries proposed Mr. Sandeep Khaitan (Respondent No.2) to be appointed as the Interim Resolution Professional. Respondent No. 2 did not disclose that he was the RP of the CD in the Form 2 filed by him giving consent for his approval as IRP of Damayanti Tea Industries, even though this**

was a direct conflict of interest between Respondent No. 4 as the Resolution Applicant and the CD. Damayanti Tea Industries also appointed Advocate Anand Verma (Respondent No. 3) as their advocate to represent their case in the same matter for which he attended several hearings in this Hon'ble Tribunal. **It is submitted that Respondent No. 3 was nominated and appointed by Respondent No.2, in collusion with Respondent No.1, to be his legal counsel in matters of the CD. This was done on 14.08.2020, prior to the first Resolution Plan of PLBB being approved by the COC led by Respondent No.1 on 05.09.2020. Respondent No. 3 was thereafter privy to all confidential matters of the CD and participated in all COC meetings, including those in which the Resolution Plans were discussed.** This connection between Damayanti Tea and CCIPL and has even been stated in the **Hon'ble Tribunal's order dated 23.08.2021 in CP(IB)No.05 of 2021 where the Section 7 application of Damayanti Tea Industries was rejected. It is submitted that Respondent No 3 represented the Promoter of the Respondent No.4 on several dates after his appointment as legal counsel for Respondent No. 2. All these are evidence of the entire takeover plan conspired by Respondent Nos 1, 2 & 4 aided by Respondents 3 & 5.** Reference is drawn to ANNEXURE A-17, (Pages 126 — 155) of the rejoinder in IA 43 of 2021 to the copy of the judgment dated 23.08.2021 in CP(IB) 05/2021.

10.10 **It is evident that the terms of the First Plan of Respondent No. 4 were tweaked on 22.05.2021, after the MSME promoter's plan was submitted, to allow Respondent No. 4 to improve its earlier plan in collusion with Respondent Nos. 2 and 3 such that Respondent No. 4 would then be awarded higher points in the Evaluation Matrix vis-à-vis the Petitioner. This would make the task of approval easier for the COC with the Respondent No. 1 as the majority shareholder.**

10.11 The COC, 87.76% of which was controlled by Respondent No. 1, exclusively allowed this without taking into confidence the other FCs as the COC Members and accepted Respondent No. 4's plan since it envisioned payment of an amount to Respondent No. 1 which was much higher than what has been claimed by the Petitioner to be due to Respondent No.1. All of this was possible only with the active involvement of **Respondent No. 3, who was the common advocate between the Respondent No.2 on behalf of the CD, and the promoters of Respondent No. 4,** a fact unknown to the COC outside of Respondent No.1.

10.12 **The promoter of Respondent No. 4, Mr. Harsh Gupta, is a director of Baahu Panels Pvt. Ltd (BPPL), a company incorporated only on 25.05.2021 with a paid-up capital of Rs. 10.00 lakh**. It is important to note that BPPL was incorporated on the same day as the 15th COC meeting of the CD **and was intended to fund the acquisition of the CD by Respondent No. 4.** Besides Harsh Gupta, the directors of BPPL are **Mr. Rajesh Mittal and Mr. Sanidhya Mittal (appointed directors since 04.08.2021) who are the promoters and directors of Greenply Industries ("Greenply"), the largest competitor of the CD. Additionally, Manoj Tulsian, the MD and CEO of Greenply, also became a director of BPPL on 04.08.2021. The address of BPPL is the same address of Greenply's Corporate Office at Madhgul Lounge, 23 Chetla Road Kolkata-700027. It is an interesting fact that, in a press note dated 04.08.2021, Greenply announced its foray into the MDF business and acquisition of BPPL**. (Reference is drawn to Greenply's press note dated 04.08.2021, the company master data of BPPL, the director master data of Mr. Harsh Gupta, Mr. Manoj Tulsian and Mr. Rajesh Mittal collectively enclosed as ANNEXURE - A18, (Pages 156 — 160) of the rejoinder in IA 43 of 2021.)

10.13 **Reference is also drawn to the minutes of the 6th and 7th COC meetings where Respondent No. 2 stated that he was in touch with "potential players in the industry" because of which he restarted the Resolution Plan process despite one being midway and pending. This was approved by Respondent No. 1 as the major**

COC member of the CD and the process of allowing Respondent No. 4 to become a Resolution Applicant, was initiated by them in concert to allow Greenply to ultimately and clandestinely acquire the assets of the CD. Only this conduit process of acquisition by the competitor of the CD through the Respondent No.4 could fetch the Respondent No. 1 higher money recovery as the CD's Resolution was never a matter of any concern to them.

10.14 In the aforesaid circumstances, it is prayed that Respondent No. 4 be declared as ineligible to be a Resolution Applicant and their Resolution Plan approved of by the COC led by Respondent No. 1 be rejected. In the interest of justice. Necessary steps may also be taken against them and the other Respondents for intentionally violating the provisions of the Code and causing immense hardship, losses and damage to the CD.

11. On the other hand, **Respondent No. 4 has submitted that:**

11.1 PLBB Products Private Ltd, a company incorporated under the Companies Act, 2013, having its registered office at 3rd Floor, Junction Mall, R.K.B. Path, Dibrugarh, Assam-786001, India Mr. Harsh Gupta, a Director of PLBB Products Private Ltd, is the Authorized Signatory of the Respondent No. 4(PLBB) in the instant Interim Application filed by the aforementioned Petitioner.

11.2 The instant Application filed by the Petitioner contains baseless allegations and misconceived apprehensions directed against the answering Respondent herein i.e. PLBB who is a bona fide Successful Resolution Applicant in terms of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as "IBC"). The instant Application suffers from grave omission and/or ignorance and/or incorrect appreciation of material facts as well as applicable law.

11.3 The answering Respondent i.e. PLBB further submits at the outset that it can only comment/reply with regard to averment/allegation/aspersion in the instant Application that directly relate to it in its capacity as a bona fide, successful resolution applicant for the Corporate Debtor. PLBB cannot answer the facts/alleged actions in the instant Application pertaining to the actions/conduct of any financial creditor and/or any officer or legal representative of any financial creditor and/or any independent professional/advocate and/or any advocate appointed by any Respondent and/or the Resolution Professional beyond the limited sphere of submission, negotiation and approval of its own expression of interest and/or resolution plan. PLBB being a successful resolution applicant was not involved in any manner in the initiation of corporate insolvency resolution proceedings in respect of the Corporate Debtor under section 7 of the IBC before this Hon'ble Tribunal, or in the conduct. of the corporate insolvency resolution process (hereinafter referred to as "CIRP") itself beyond submission, negotiation and approval of its own resolution plan in course of pertinent Meetings of the CoC wherein it had severely limited scope of participation with no voting rights.

11.4 The instant application filed by and/or on behalf of the Petitioner/unsuccessful Resolution Applicant under section 60(5) of the IBC is not maintainable and is liable to be dismissed for the following reasons:

11.5 A resolution plan declared successful by the pertinent Committee of Creditors after due consideration of its feasibility and viability and submitted thereafter by the Resolution Professional to this Hon'ble Tribunal, under section 30 of the IBC, is already pending approval by the Hon'ble Adjudicating Authority under section 31 of the IBC.

i. That it is settled law as settled by the Hon'ble Supreme Court of India in paragraphs 75 — 81 of its judgment dated October 4, 2018, in ***Arcelormittal India Private Limited vs. Satish Kumar Gupta & Ors.*** **[Civil Appeal Nos. 9402-9405 of 2018]**. It is not legally tenable for an unsuccessful resolution applicant to maintain a challenge to a decision of the CoC at the stage where the CoC has denied the requisite approval under section 30(4) of the IBC.

ii. It is settled law as settled by the aforesaid judgment of the Hon'ble Supreme Court dated October 4, 2018, in paragraph 81 thereof that section 60(5) of the IBC does not invest this Hon'ble Tribunal with the jurisdiction to interfere at the behest of an applicant challenging the determination of the CoC approving the Resolution Plan submitted by PLBB.

iii. The instant Application filed by the Petitioner before this Hon'ble Adjudicating Authority is further not maintainable since none of the allegations and/or grounds and/or submissions made therein makes out any prima facie and/or substantive case of any specific violation of any requirement referred to in section 30(2) of the IBC by the resolution plan submitted by the successful resolution applicant i.e. PLBB per se.

iv. The resolution plan submitted by PLBB is currently pending approval under section 31 of the IBC by this Hon'ble Tribunal upon being submitted by the RP for approval under section 30 of the IBC. Section 31 of the IBC states that this Hon'ble Tribunal is only required to establish its satisfaction whether the resolution plan submitted by PLBB, as approved by the CoC under section 30(4) of the IBC, meets the requirements of section 30 (2) of the IBC whereupon it shall by order approve the successful resolution plan.

v. This instant application is essentially seeking to challenge the decision of the CoC to deny approval to the resolution plan submitted by the Petitioner and accord approval to the Resolution Plan submitted by PLBB under section 30(4) of the IBC but an Application seeking reliefs that include the disqualification of PLBB/Respondent No.4 as a Resolution Applicant in the instant matter is liable to be dismissed in limine/at the threshold.

vi. In any case, establishing strict procedural as well as substantive compliance with any applicable law governing a purported right claimed by a third party to access documents in any criminal or civil proceeding involving other parties before a court/Tribunal is a pre- requisite for such a third party relying on documents, or copies thereof, which would not be accessible to it except as a consequence of a breach of confidentiality and/or trusteeship obligation borne by any person or institution in respect of such documents in her/its possession.

vii. Therefore, the instant Application filed by the Petitioner with unclean hands is further liable to be dismissed at the threshold.

11.6 The Resolution plan submitted by PLBB was initially approved by the CoC for the first time with around 90% of the voting share therein cast in its favour during the pertinent e- voting in terms of the agenda of the 12th Meeting of the CoC of the Corporate of the Corporate Debtor.

11.7 PLBB has only submitted an updated resolution plan to the RP in May 2021. PLBB has submitted the updated version of its aforesaid resolution plan wherein it had only revised the payable quantum of the CIRP costs to align the same with the prolongation of the CIRP till date which was not foreseen at the time when COC had accorded its initial approval to the resolution plan submitted by PLBB in course of the e-voting in pursuance of the aforesaid 12th Meeting of the COC in November, 2020.

11.8 Respondent no. 4 further submits that PLBB denies and disputes **that there exists any Collusion or Conflict of Interest between the Respondent No. 1 (SASF), Respondent No. 2 the Resolution Professional (Sandeep Khaitan), Respondent No. 4 the Resolution Applicant (PLBB Products Private Limited) and the Respondent No. 3 Anand Verma Advocate,** as alleged or at all and puts the Petitioner to strict and detailed proof of the same. PLBB strictly denies and disputes the bald allegation of the Petitioner/ Applicant in paragraph 6.4.5 of the instant Application that the RP and Respondent No. 3 had a ***beneficial interest and a relationship*** with itself, as alleged or at all, and puts the Petitioner/ Applicant to strict and detailed proof of the same. PLBB states that it is evident that the purported copies of ***consent letter of the RP, Vakalatnama filed by the Respondent No.3*** constituting pages 102-104 of the instant Applicant and being constituents of Annexure – A5 thereof are documents that have been illegally and/ or improperly accessed by the Petitioner/ Applicant as they are prima facie copies of documents that have been submitted to this Hon'ble Tribunal in course of a completely different proceeding/Company Petition before it in relation to which the Petitioner/Applicant is a third party. The Petitioner has approached this Hon'ble Tribunal with unclean hands for which its instant Application is liable to be dismissed at the threshold, as already explained hereinabove. The Petitioner has not established in its Application its right under any substantive law and/ or its due compliance with any procedural law that has permitted it access to such documents before placing purported reliance on the same in its own Application. Moreover, the contents of Annexure A5 to the instant Application filed by the Petitioner/ Applicant do not make out any case of collusion or substantively prove any beneficial interest and a relationship between itself, the RP and the Respondent No. 3, as baldly alleged or at all. PLBB states that it already highlighted the fact that it was a Special Purpose Company/ Special Purpose Vehicle under process of incorporation at the time of submission of its Expression of Interest(EOI), in respect of the instant CIRP, in its EoI itself. The invitation of Expression of Interest issued by the RP himself had permitted a proposed Special Purpose Vehicle company to submit an EoI as long as the identifying documents and relevant net worth details of the promoters of such an SPC/ SPV in the process of being incorporated are provided along with the EoI. In this connection the Expressing of Interest submitted by the promoters / directors of PLBB duly highlighting the contemporaneous status of its incorporation process as well as the eligibility criterial for submission of EoI is annexed hereto and marked as "Annexure R-6". It is pertinent to mention that the document occurring at pages 129-131 of the instant Application filed by the Petitioner/ Applicant itself makes it plain and evident that a "SPV in the process of being formed" is eligible to submit an EoI and be a prospective resolution applicant.

11.9 PLBB strictly denies and disputes that it was a beneficiary of any alleged breach of confidentiality or violation of the sanctity of the instant CIRP by any of the other respondents herein, as alleges or at all. PLBB strictly denies and disputes that it was the recipient of any undue favour by any of the other Respondents herein, as alleged or at all. and further denies that it as a party to any alleged collusion between the any combination of any of the Respondents herein. PLBB strictly denies and disputes that bald allegation of the Petitioner that it was allowed to modify its Resolution Plan with any object of improving on the Resolution Plan submitted by the Petitioner or its own earlier resolution plan, as alleged or at all. PLBB strictly denies and disputes that there exists any "collusion" between itself and any of the other Respondent or any combination thereof, as alleged or at all.

11.10 PLBB further states and submits that the frivolous nature of the instant Application by the Petitioner and the bald, farcical nature of the allegations levelled therein are made further plain and evident by the fact that the Petitioner has not disclosed in the instant Application any step taken by him to institute a specific grievance/ complaint under the pertinent regulations before the Insolvency and Bankruptcy Board of India against the RP for any breach of confidentiality obligations in respect of a submitted resolution plan or any collusion between him and any of the other Respondents herein or any.

11.11 The plan of the Petitioner/application promoter has failed to find favour with the CoC. Therefore, the commercial merits of the Resolution Plan submitted by PLBB and pending for approval before this Hon'ble Tribunal cannot be challenged/ adjudicated before / by this Hon'ble Tribunal at the instance of the Petitioner/ Applicant. The litany of allegations of collusion and illegalities constructed by the

Petitioner in the instant Application against PLBB is a product of afterthought motivated by an evident desire to scuttle the instant CIRP and/ or prevent the crystallization of the slippage of the control of the promoter group over the Corporate Debtor by hook or by crook.

11.12 Therein prematurely, solely on the basic of misdirected apprehension. PLBB states that the Petitioner/ Applicant has sought to mislead this Hon'ble Tribunal in Paragraph 6.4.15(e) by placing purported reliance on stray.

11.13 The Petitioner/ Applicant has only sought to do indirectly in the instant Application what he cannot do directly by tweaking his prayer for setting aside the successful i.e. CoC approved resolution plan submitted by.

11.14 The instant Application is solely a product of dilatory tactics employed by the Petitioner to browbeat PLBB into abandoning its resolution plan and stall the successful culmination of the instant CIRP.

12. The Petitioner has further submitted in detail the collusion and conflict of interest between Respondent No. 5 and other Respondents:

12.1 **Respondent No. 5 is an advocate representing Respondent No. 1 (SASF), the financial creditor, in CP(IB) 09/GB/2019 as also admitted by him in his Reply/Rejoinder/Written Notes. He has also represented the Resolution Professional (Respondent No. 2) before the Hon'ble NCLAT in CA(AT)(INS) 932 of 2019 Piyush Periwal vs Stressed Assets Stabilization Fund (SASF). Reference is drawn to order sheets dated 05.08.2020, 18.08.2020, 27.08.2020, 08.09.2020 and 14.09.2020** marked as ANNEXURE — Al of the rejoinder in IA 43 of 2021 dated 04.10.2021, wherein the name of Respondent No. 5, Mr. Praful Jindal, has appeared along with the name of Respondent No. 2 and his ARP, Mr. Ashok Tibrewala.

12.2 In the hearing in the appeal CA(AT)(INS) 932 of 2019 — Piyush Periwal vs Stressed Assets Stabilization Fund (SASF), Respondent No. 5, on the instructions of the Respondent No. 1 recorded his appearance as being on behalf of Respondent No. 2 and he shared the virtual court link with Respondent No. 2 and appeared with him in these **hearings on five days.**

12.3 In this connection, petitioner refers to the standard operating procedure (SOP) of the Hon'ble NCLAT for hearing of cases through virtual mode [Cisco WebEx Meeting Platform]. A copy of the same is annexed herewith and marked as — S1, which states as follows:

> *"1. The Invitation Link for appearance and viewing, as the case may be, will be sent by the Registry to the given mobile no (s1/e-mail id(s) by email/WhatsApp around half-an-hour before the scheduled hearing. Parties may also note that each of the links sent to any device is required to be unique and hence, parties may not share or forward such links to any other person or device nor shall they enable others to join the hearing through video conference.*
>
> *3. Upon clicking the "Join" button, the party would be prompted to enter the display name wherein the party is required to write his/her name with designation by prefixing item no. (of the cause list j in the space given i.e., ITEM NO. 1 — Gajendra Singh - Appellant OR ITEM NO. 1 — Gaurav Rawat - Respondent OR ITEM NO. 1 — Chetan Rawat PARTY-IN-PERSON, as the case may be, and thereafter the party is required to click on the "JOIN" button."*

12.4 Respondent No. 5, despite specific warning in the said SOP that "Parties may also note that each of the links sent to any device is required to be unique and hence, **parties may not share or forward such link(s) to any other person or device nor shall they enable others to join the hearing through video conferenc**e", shared his link with and facilitated the involvement of Respondent No. 2, by representing himself as the advocate of Respondent No. 2 in the matter before Hon'ble NCLAT. This was done entirely in violation of the law and the procedure as laid down by the Hon'ble Appellate Tribunal. The Respondent No. 5's contention that this was done inadvertently **and by an error in the system of the Hon'ble NCLAT does not hold good since this was repeated in 5(five) hearings as mentioned above.** It is obvious that the Respondent No.1 gave instructions to their advocate, Respondent No. 5, in collusion with the Respondent No.2 to allow them to appear together in the said matter which was of grave importance as it was with regards to the **finality of admission of Respondent No.1's petition u/s 7 of the Code. This matter was ultimately decided by the Hon'ble NCLAT on 24.11.2020**.

12.5 The said act of the Respondent No. 5 of providing the link to and allowing the Respondent No 2 to appear with the Respondent No.1 is in violation of his professional conduct and proves the nexus between Respondent No. 2 and Respondent No. 1 to prejudice the Hon'ble Appellate Tribunal against the Petitioner. **This is in direct conflict of the Code of Professional Ethics of Lawyers**. It also throws light on how the matter has been proceeded in collusion in the CIR Proceedings by the Respondent No.2 with the Respondent No.1, who was the majority member in control of the COC of the CD.

12.6 **Respondent No 2 with the approval of Respondent No. 1 had appointed a legal counsel Advocate Shri Anand Varma from 14.08.2020 to represent the Respondent No 2 for the CD**, for which he was being paid a monthly retainership fee. Under such circumstances, there was no necessity for the Respondent No. 5 to appear on behalf of Respondent No 2 in the subsequent hearings **on 18.08.2020, 27.08.2020, 08.09.2020 and 14.09.2020** unless the Respondent Nos 1 and 2 intended to collude and jointly appear before the Hon'ble NCLAT. It is pertinent to mention that the Respondent No.4 had very recently been given a back door entry by the Respondent No.2 to become a Resolution Applicant (PRA) on 27.07.2020. Thereafter these hearings on the afore mentioned dates were crucial for all the Respondents since the order of **admission of the Section 7 Application had yet to attain finality. I**t was therefore important for them to collude and pool their resources jointly in these legal proceedings in order to achieve their individual objectives

12.7 The Respondent No. 5 should have exercised his professional wisdom and not allowed Respondent Nos 1 and 2 to collude by appearing for both of them as this act is in contravention to the transparency and objectives of the Code. This is also one of the many acts which prove the collusion of the Respondent Nos 1 & 2 in this matter since the very beginning.

12.8 It is therefore prayed that the Hon'ble Tribunal may kindly consider these facts in the light of the serious collusive acts of the Respondents done in blatant violation of the Code and pass orders as may be necessary in the interest of justice.

13. On the other hand, **Respondent No. 5 has submitted that**:

13.1 The allegations raised by the Applicant in the instant Application against the Respondent No. 5 are completely baseless. frivolous and untenable and it is noteworthy that no prayer/ relief against the Respondent No. 5 in the Application has been sought by the Applicant. It is submitted that the Respondent No. 5 has never represented the Resolution Professional as alleged by the Applicant and the appearance of the Respondent No. **5 has been erroneously marked for the Resolution Professional in few Orders passed in Company Appeal No. 932/2019 before the Hon'ble NCLAT.** It is noteworthy that barring the few Orders, as placed on record by the Applicant, no other document(s) which might substantiate the alleged claim of the Applicant qua collusion/ fraud amongst the deponent herein, the Resolution Professional and SASF (Financial Creditor).

13.2 It is submitted that Respondent No. 5 is junior of Mr. Sidhartha Barua and in his capacity as a junior lawyer was assisting Mr. Sidhartha Barua and Mr. Ritin Rai, Senior Counsel and was present at Mr. Rai's office in all the aforesaid hearings and did not hold any independent brief for SASF, hence the question of holding an independent brief for the Resolution Professional does not arise.

13.3 For an advocate to represent a client/party before any court/ tribunal and/or judicial forum, a legal authorization/ Vakalatnama is the requisite legal document which duly authorizes an advocate to represent such client/ party and such legal authorization/ Vakalatnama duly executed by the client/ party in favour the advocate is to be filed before the concerned court/ tribunal or judicial forum.

However, the applicant and his legal counsels have failed to appreciate such basic legal nuances and have not placed on record any such document/ authority letter/ Vakalatnama whereby the Respondent No. 5 was representing the Resolution Professional in said proceedings.

13.4 As confirmed by Mr. Rai and Mr. Barua that I was assisting them in the matter for SASF as Mr. Barua's junior and I can humbly reiterate and emphasize that at no point of time did I represent the RP or act as his counsel. However, again it is my humble submission that if the allegation of the Applicant is believed to be true (which is not true at all) that the Answering Respondent No. 5 represented the Resolution Professional in the subject company appeal and is now representing the Financial Creditor, it does not tantamount to fraud or collusion amongst the concerned parties. I have never represented the RP in the appeal and one cannot arrive at the conclusion of collusion, and it does not give the Applicant herein the right to drag the name of the deponent in such frivolous and malicious application.

13.5 The name/appearance of the Respondent No. 5 was erroneously recorded in few Order, which is nothing but result of human error and more particularly introduction of virtual hearing system on account of COVID-19 pandemic. In the premises, it is submitted that erroneous recording of name of the Respondent No. 5 in few orders and mere assumption of the Applicant that Respondent No. 5 herein is acting in collusion with the Resolution Professional and SASF, should not be a basis for this Learned Adjudicating Authority to proceed further and / or take any action against the Respondent No. 5 and other concerned Respondent. It is also noteworthy that in many instances, once an appearance has been wrongly recorded such wrong appearances also get carried on to other appearances, which has happened in this matter.

<u>**O R D E R**</u>

14. Heard the Ld. Counsels for the parties and perused the averments made in the application, replies, rejoinders and written submissions filed by the Parties. During the period of CIRP, 23 (twenty-three) IAs in the matter have been filed under different Sections of the IBC. We have already disposed of 11(eleven) IAs earlier and another 11(eleven) IAs filed in the matter are disposed of today along with this IA. Having gone through the relevant documents, affidavits submitted and submissions made by both the sides before this bench and after carefully considering all the relevant issues, we observe the following:

14.1 The position of the Corporate Debtor M/s National Plywood Limited (NPIL, the "CD") before the Commencement of CIRP on 26.08.2019:

i. **The CD, an MSME Unit, was established in 1951 and incorporated in 1973. It has Units at Margherita in Assam and Hosur in Tamilnadu and is in the business of manufacturing plywood, block-boards, flush doors, laminates and other allied products.**

ii. Pursuant to the Court Order on forest conservation, which suspended operations in wood-based industries in the north-east, the CD was adversely affected and operations in its units were suspended. The account of the CD turned to be NPA on 01.05.2000 and was referred to the BIFR in 2003.

iii. **CD in BIFR from 2003-2016:** Under the aegis of BIFR, secured lenders including Stress Assets Stabilization Fund (SASF) were repaid by 2016 and No Dues Certificates (NDCs) were issued. Since then, the CD had no institutional/secured lender. Funds thereafter have been reportedly brought in through the promoter group, associates and well-wishers of the CD. **Due to the upward growth of the CD after coming out from under the BIFR, the CD was re-listed on the BSE in 2018 after 15 years of suspension**. Balance Sheet shows that the investors, including NBFCs, HNI investors, and public shareholders have invested funds in equity capital.

iv. **The reported performance of the CD from 2017-2019 (in Rs. Lakhs)**

Year	Turnover	Profit after Tax
2016-2017	4870.86	23.07
2017-2018	4436.72	43.59
2018-2019	4114.07	71.97

v. Liabilities of the CD were reduced during 2017-2019 and Net Worth of the CD improved by 3284.42 lakhs from FY 2017-FY 2019. With the capital infusion and financial support, **the CD survived the rigors of financial sickness under BIFR, revived its operations and generated profits from 2016-2019.**

vi. **Hence, before the commencement of CIRP on 26.08.2019, the CD was not facing any financial crisis and but it was a healthy, profit-making going concern with rising revenues.**

14.2 Commencement of the CIRP on 26.08.2019 in the C.P (IB)/09/GB/2019 under Section 7 of IBC and the present status of the CIRP:

i. IDBI Bank (Lender) had given a loan of **Rs. 3.20 crores** (Rs. 3.07 crores being the disbursed amount) to M**/s National Boards Limited (Principal Borrower, or "PB")** for that loan **the CD here M/s National Plywood Limited** had given the Corporate Guarantee. Due to the failure of the PB to repay the loan within the stipulated time, the loan was recalled, and the **Corporate Guarantee was invoked on 03.12.2001.** The lender IDBI then filed an application in the DRT, Guwahati against the PB to recover their dues but **did not make the CD a party to the proceedings there.**

ii. At this stage, the said loan was transferred by the Lender IDBI to the SASF on 30.09.2004. **SASF is a Special Purpose**

Vehicle (SPV) Trust, constitutes by the Government of India for acquiring 'stressed' and 'non-performing assets' of IDBI Bank.

iii. Recovery Certificate was issued by the DRT on **05.01.2005** for amount of **Rs. 5.43 crores** against the PB and two personal guarantors. Thereafter the PB executed a Negotiated Settlement (NS) with SASF for amount of **Rs. 2.158 crores** on **30.04.2005**. The PB repaid Rs. 0.9224 crores. against this NS and the rest amount of **Rs. 1.23 crores were not paid** for which the FC had attached land assets of the PB. CD here had not been made a party to the Recovery Certificate, Negotiated Settlement or any other proceeding in relation to the loan given to the PB. SASF had also initiated parallel proceedings with the CD with respect to another loan, for which it was also the Operating Agency (OA) in the CD's proceedings in the BIFR. SASF had also issued a No Dues Certificate to the CD on 15.07.2016.

iv. **After a gap of 18 years from the invocation of guarantee, SASF, FC had filed the application under Section 7 of IBC in the year 2019 before this Bench for total dues, as on 1.12.2018, of Rs. 133,54,94,330.00 against the CD as the Corporate Guarantor for the loan disbursed amount of Rs. 3,07,71,127.00 by the IDBI to the Principal Borrower NBL.** The CD had not taken loan from the FC and only extended Corporate Guarantee to the extent of Rs. 3.07 Crores during 1997.

v. The Financial Creditor has stated in its application filed under Section 7 that the default amount is Rs. 133,54,94,330.00 (Rupees One Hundred Thirty-Three Crores Fifty-Four Lakhs Ninety-Four Thousand Three Hundred Thirty only) which is detailed below:

Sl. No.	**Particulars**	**Amount (In Crores)**

1.	**Principal amount i.e. total amount disbursed to the Principal Borrower**	**3.08**
2.	**Interest on Principal Amount**	**10.35**
3.	**Further Interest on Interest**	**91.32**
4.	**Liquidated Damages on Interest Amount**	**25.84**
5.	**Liquidated Damages on Principal Amount**	**2.61**
6.	**Further Interest, Liquidated Damages**	**0.35**
	Total	**133.55**

vi. The said application has been admitted by this Tribunal and the CIRP started on **26.08.2019**. **SASF voting share in the CoC is 87.76%.** The order of admission of the Application by this Bench was challenged; the matter went up to the Hon'ble Supreme Court and the order of admission matter was clear after the same was remanded back to Hon'ble NCLAT and **Hon'ble NCLAT passed the order on 24.11.2020 upholding the order of admission of this Bench**. **CoC has been constituted; SASF has reduced its claim amount from Rs 133.35 crores to Rs 16.12 crores but has voting share of 87.76%. in CoC; R2 appointed as IRP and thereafter as RP**. During the process of CIRP, **23 IAs have been filed under various sections of IBC by the CoC, RP, Promotor of the CD, FCs, OCs and Resolution Applicant**. FIR has been filed by the RP for transfer of certain amount by the Promotor and the said matter had gone up to the Hon'ble Supreme Court also.

vii. **The Unit, running well before the CIRP, is now crumbled, production ceased from 07.07.2020 and layoff declared on 28.01.2021. This has happened for the Corporate Guarantee given by the CD for a loan of Rs 3.07 crores availed by the Principal Borrower from IDBI in 1997.**

14.3 The Present application on hand I.A (IBC)/43/2021 in C.P(IB)/09/GB/2019 and prayers made therein:

i. **This application is filed under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 alleging the conflict of interests between the Respondent No. 1 (SASF), Respondent No. 2, the Resolution Professional (Sandeep Khaitan), Respondent No. 4 the Resolution Applicant (PLBB Products Pvt. Ltd.) and the Respondent No.3, Mr. Anand Verma, Advocate representing both the Resolution Professional and the Resolution Applicant. Respondent No. 5, Mr. Praful Jindal, Advocate of Respondent No. 1- SASF has also represented the Respondent No.2- the Resolution Professional before the Hon'ble NCLAT in the appeal preferred by the Petitioner.**

ii. **Petitioner submits that this application is filed because of the conspiracy hatched by the Respondents Nos 1 to 5 to facilitate a hostile takeover of the CD, by its competitor and has sought the following reliefs:**

   a. **An order be made removing the respondent no. 2 as the Resolution Professional in the matter; setting aside all acts of the RP in which the RP had been instrumental, as unfair, biased, motivated and lacking in transparency.;** removing the respondent no. 3 in the matter and disqualifying the respondent no. 4 as a Resolution Applicant in this matter.

15. Submissions by the Petitioner in respect of the FC-R1:

15.1 Inflated Claim Amount: The R1 has filed the IBC application under section 7 against the Petitioner as a Corporate Guarantor, after 18 years claiming Rs. 133.34 crores against the dues from the Principal Borrower of Rs. 2.15 crores and hence the amount claimed is highly inflated for which the Application under Section 7 has been admitted. Though the Respondent No. 1 has changed the claim amount to Rs. 16.12 crores but with this claim amount,

the R1 is having 87.76% voting share in CoC and gets all matters approved what it desires.

i. The submission of the R1 that their officers are deputed on a temporary basis from IDBI Bank and hence, the account of the Corporate Debtor has been handled by various officers during the course of the years. Hence, the outstanding amounts in any loan account are part of the institutional records and there is no discretion on any of the officers to put an outstanding amount at their discretion.

ii. **It is found from the records submitted by the parties that the Original Lender had disbursed only Rs. 3.08 Crores to the Principal Borrower out of the sanctioned loan amount of Rs. 3.20 Crores in 1997 The R1 has filed claim amount of Rs. 133.34 crores in the Application which is 43 times of the loan amount for a period of 21 years This calculation is unheard of when Base Rate, MCLR Capping interest rate are in operation in the Country. Although R1 has reduced its claim from Rs 133.34 crores to Rs 16.12 crores during the process of CIRP but the left over amount of the Negotiated Settlement took place in 2005 is Rs 1.23 crores.**

iii. **The submission of the R1 does not hold good. The guarantor's liability cannot exceed that of the Principal Borrower. This is not a Recovery Forum. IA no 27/2021 filed by the Petitioner in this respect has been remanded to the new RP today to look afresh the prayer made in the IA in reference to the amount claimed by the R1.**

15.2 Submission of the Petitioner that Respondent No. 1 approved of M/s PLBB Products Private Limited (Respondent No.4) as a Resolution Applicant of the CD in the second roll-out of EOI's despite Respondent No.4 being ineligible to file a Resolution Plan on several fronts, such as the fact that Respondent No.4 was not an entity at the time of submission of EOI's on 12.07.2020 and was only incorporated on

20.07.2020. The Petitioner further submits that R1 has allowed the R2 to take so many decisions, which are not permitted under the IBC, for its own interest including the decision of the initiation of the second EOI, not publishing the Form G in widely circulated newspapers, filing of false FIR, allowing modification in Resolution Plan after the submission for approval, filing of applications for change in Trade mark of the CD during CIRP Period etc.

15.3 As per the records available from both the sides, the R1 has not acted as per the provision of the IBC as the CoC Member having voting share of 87.76%. They have mostly concentrated on the point of Commercial Wisdom but have never restrained the R2 from taking so many unwarranted decisions which have resulted into the collapse of a 48 years MSME Running unit, after survival under BIFR, for a guarantee amount of Rs. 3.20 crores given by it in 1997 for PB.

16. Submissions by the Petitioner in respect of the RP -R 2:

16.1 The invitation for the second rollout of EOI was in collusion to allow a backdoor entry to Respondent No.4.

i. **The second roll-out of the Resolution Plan process was initiated by the Respondent Nos. 1 and 2 despite the original process pending with two successful submissions of EOIs. The first Form G inviting EOIs was published in November 2019 in widely circulated newspapers Whereas, the Form G of the second EOI was rolled out by the Respondent No.2 on 27.06.2020 only published in one local newspaper chain in Assam, The Assam Rising and its sister publication Dainandin Barta, having a reported circulation of 28,000 copies.**

ii. **R2 submits that the reason for publication of 2nd EOI was to facilitate value optimization; availability of potential players to have more resolution applicants and there is no case of collusion.**

iii. **As per the records made available, the second rollout of EOI was published in one local newspaper chain in Assam only when the CD is having Registered Office, Corporate Office and Units in Assam and Tamil Nadu. Accordingly, the first Form G inviting EOIs was published in November 2019 in widely circulated, newspapers in Assam, West Bengal and Tamil Nadu, including Aajkaal, Amar Assam, Financial Express and North East Times with a collective circulation of over 5,00,000 copies to attract more Resolution Plan as per the provisions of IBC. The R2 could not clarify or submit the reason for not publishing in widely circulated News papers as required. When the second EOI was not published in widely circulated papers, one of the main objectives of the IBC for maximization of value of assets is defeated by the action of the R2. The submission of the R2 is contrary to his own action.**

iv. **Hence the contention of the Petitioner that the invitation for the second rollout of EOI was in collusion to allow a backdoor entry to the Respondent No.4 is not ruled out.**

v. **An inclusion of SPVs and SPCs in the Eligibility Criteria for filing EOIs was only done in the second roll-out of invitations for EOIs and not in the first. The entire second roll-out, with this new inclusion, was done purely to allow PLBB Products Pvt Ltd (PLBB), Respondent No.4 (R4) to file a resolution plan for the CD. Respondent No.4, at the time of filing the EOI, was not even an entity, not an SPV, SPC or Consortium, and neither Respondent No.4 nor its promoters had any prior experience in the industry in which the CD operates. All norms of propriety were violated, and rules bent by the Respondent No. 2 to allow the Respondent No.4 to file their EOI as an entity which had not even come into existence. Even the Articles and Memorandum of Association of the Respondent No.4 (a**

non-entity at the time of submission of EOI) does not include the SPV/SPC criteria. Norms were blatantly flouted by the Respondent Nos 1 to 3 in collusion to camouflage the deviation permitted by them to allow the Respondent No.4 to become a successful Resolution Applicant.

vi. **Records made available to us confirm that the Respondent No.4 was not an entity at the time of submission of EOI's on 12.07.2020 and it was only incorporated on 20.07.2020.**

16.2 Filing of a false FIR, filing of a baseless application against the Petitioner; freezing of the Petitioner's personal bank accounts without any court order/direction/approval.

i. **It is found from the records, documents submitted that on 18.04.2020, NPIL paid Rs. 32,50,000.00 (Rupees Thirty-Two Lakhs Fifty Thousand Only) to a regular supplier of goods, the JSVM Plywood industries via online Net Banking but R2 made a complaint on 27/04/2021 with Margherita P. S, for the aforesaid transaction He termed the said transaction as Cyber fraud and embezzlement of funds. The same was registered as Margherita P. S. FIR No. No 0112 of 2020 dated 28.04.2020 under section 406/419/420/34 of IPC read with section 66 C and 66 D of I.T Act, 2000 with P.S. case No. 0112/2020 .Accordingly the Bank accounts including personal accounts were frozen. That being aggrieved with such an arbitrary act, an application under Section 482 of Code of Criminal Procedure was filed being Crl. Pet No. 454/2020 and IA (Cri)/453/2020 in Crl. Pet No. 454/2020, whereby Hon'ble High Court was pleased to allow the interim relief. That the Respondent 2 preferred a SLP(Cri) No. 1549 of 2021 against the order dated 04-02-2021 passed by the Hon'ble High Court, Guwahati on 22.04.2021 and the matter was decided by the Hon'ble Supreme Court. Rs. 32.50 Lakhs was refunded to the CD account immediately and Hon'ble Supreme Court has made**

it clear that its judgement will not stand in the way of the Respondent no. 1 therein- JSVM pursuing its claim with regards to its entitlement to a sum of Rs. 32.50 Lakhs and any other sum from the Corporate Debtor or any other person in the appropriate forum and in accordance with law. The Petitioner here submits that they paid the said amount to the supplier to keep the industry in operation during COVID period. Moreover, the appeal made against the order of admission was yet to reach finality by that time.

ii. **It is found that the FIR has been filed by the RP on his own when there are sufficient provisions under the Section 74 of IBC are available to address the same issue i.e., refund of Rs 32.50 lacs to the CD account when the CD or its Officer violates the provisions of Section 14 of IBC during the moratorium period. Even application under Section 19 filed by the R2 before this Bench was pending for disposal.**

iii. **It is also found from the records and affidavits filed from the both sides that one the main reasons for closure of the CD is due to the FIR and pursuant to the filing of Criminal case, supply of raw materials were stopped, accounts of the major suppliers and personal accounts were frozen The prime duty of the RP is to see that the CD is in operation during the CIRP but in this case, the Industry is closed and the R2 has spent his time and the funds of CoC from April 2020 onwards in dealing with the criminal matters from the police Station to the Highest court of the Country for recovery of Rs 32.50 lacs. The RP could not clarify the reason for filing FIR on his own without taking up this matter of transfer of Rs 32.50 lacs with this Bench under Sec 74 of IBC. Ultimately, the unwarranted FIR filed by the RP has defeated the objective of the IBC for promoting entrepreneurship and availability of credit.**

iv. **The contention of the Petitioner here that this FIR has been filed to ensure that the Unit is closed and the same is taken over by a Competitor is not ruled out.**

16.3 Conflict of interest with R3 not disclosed by R2:

i. **Advocate Anand Verma (Respondent No. 3), having represented Damayanti Tea Industries, Section 7 application (CP(IB)No. 05/GB/2021), a unit of Chandrabali Commercial India Pvt. Ltd., promoter of which is also the promoter of Respondent No. 4, was nominated by Respondent No. 2 to be his legal representative in matters related to the CD and this was approved of by Respondent No. 1 outside of a COC meeting. Respondent No. 3 was appointed from 14.08.2020, shortly after Respondent No.4 was accepted as a PRA of the CD on 17.07.2020. This conflict of interest was never disclosed to the COC, and the Respondent No. 3 participated in COC meetings of the CD, being privy to confidential information including the Resolution Plan of the Petitioner, nuances of which was then evidently shared with the promoters of Respondent No. 4 based on which they modified their plan prior to any negotiation with the COC.**

ii. **The R2 denies this allegation and submits that there is no conflict of interest in nominating R3 as his counsel.**

iii. **The records submitted by the Registry (page no 185 of the Application) before us reveal that R3 was the Advocate for the application of Damayanti Tea Industries, filed under Section 7 (CP (IB) No. 05/GB/2021), and he has appeared in the matter from the beginning till the disposal of the Application on 23/08/2021.**

16.4 R 2 prejudiced to R4:

i. **Respondent No. 2 also consented to act as an IRP in Section 7 application (CP (IB) No. 05/GB/2021) by the same Damayanti Tea Industries vs. Bochapathar Tea Estate Pvt.**

Ltd., managed by the promoter of Respondent No 4. Respondent No. 3 was also the advocate for the promoter of Respondent No.4 in the same application. This is evidence of a relationship between Respondent Nos. 2, 3 and 4 outside of the matter of the CD, which further proves that Respondent No. 2 is prejudiced in favour of Respondent No. 4.

ii. **RP submits that he has no relationship with either Respondent No. 4 or Damayanti Tea Industries which could be termed as collusive: Reliance on the consent letter rendered by the RP in Damayanti Tea Industries v. Bochapathar Tea Estate Pvt. Ltd., i.e. an unrelated matter is not a proof of collusion or conflict of interest.**

iii. **It is found from the records submitted by the Registry that the RP here (R2) has given consent on 11/12/2020 (page no 21&22 of the Application filed by the Damayanti Tea) to work as IRP during the period of CIRP itself.**

16.5 New Trademark Applications filed during CIRP:

i. **The Respondent No. 2 filed two new trademark applications for the CD's brands with a new logo and product line that were similar to that of Respondent No. 4. He also attempted in his applications to transfer the address of ownership of the brand to that of his own office in Guwahati instead of the CD's office. These new applications were made in July 2021 just after the COC led by Respondent No. 1 had approved the Resolution Plan of Respondent No. 4. Respondent No. 2 had not taken the approval of the COC nor from the Adjudicating Authority for these new applications and withdrew them once the matter was brought to the notice of this Hon'ble Tribunal in IA 47/2021 by your petitioner.**

ii. **The replies of the R2 that the CD has been functioning without trademark and it has been done for the benefit of**

the CD do not hold merit. RP could not clarify for what purpose these applications were filed during the CIRP and moreover when the CD is closed. Action of the RP is not as per the IBC and the contention the Petitioner that he has filed new trademark applications for the CD's brands with a new logo and product line that were similar to that of Respondent No. 4. is found to be convincing.

17. Submission by the Petitioner in respect of R 3 Advocate: R3 is common Advocate for RP and RA

17.1 The promoters of Respondent No. 4, Mr. Sunil Kumar Agarwalla and Mr. Harsh Gupta, are also the promoters of Chandrabali Commercial India Private Limited (CCIPL). Damayanti Tea Industries is a unit of CCIPL, sharing the same office address at Junction Floor, RKB Path, Dibrugarh, 786 001. Damayanti Tea Industries filed an application under section 7 of the Code in CP(IB) No. 05/GB/2021. It is submitted that in this application, Damayanti Tea Industries proposed Mr. Sandeep Khaitan (Respondent No.2) to be appointed as the Interim Resolution Professional. Respondent No. 2 did not disclose that he was the RP of the CD in the Form 2 filed by him giving consent for his approval as IRP of Damayanti Tea Industries, even though this was a direct conflict of interest between Respondent No. 4 as the Resolution Applicant and the CD. Damayanti Tea Industries also appointed Advocate Anand Verma (Respondent No. 3) as their advocate to represent their case in the same matter for which he attended several hearings in this Hon'ble Tribunal. It is submitted that Respondent No. 3 was nominated and appointed by Respondent No.2, to be his legal counsel in matters of the CD. The Respondent No. 3, based in New Delhi, was nominated by Respondent No. 2 to be his legal representative for the CD even though Respondent No. 2 is based in Guwahati and the CD's Corporate and Registered office are in Kolkata and Assam

respectively. Respondent No. 3 was proposed to be appointed on a monthly retainership basis to be paid by the CD. This was done on 14.08.2020, prior to the first Resolution Plan of PLBB being approved by the COC led by Respondent No.1 on 05.09.2020. Respondent No. 3 was thereafter privy to all confidential matters of the CD and participated in all COC meetings, including those in which the Resolution Plans were discussed. This connection between Damayanti Tea and CCIPL and has even been stated in the Hon'ble Tribunal's order dated 23.08.2021 in CP (IB) No. 05 of 2021 where the Section 7 application of Damayanti Tea Industries was rejected. It is submitted that Respondent No 3 represented the Promoter of the Respondent No.4 on several dates after his appointment as legal counsel for Respondent No. 2. All these are evidence of the entire takeover plan conspired by Respondent Nos 1, 2 & 4 aided by Respondents 3 & 5. All of this was possible only with the active involvement of Respondent No. 3, who was the common advocate between the Respondent No. 2 on behalf of the CD, and the promoters of Respondent No. 4, a fact unknown to the COC.

17.2 R 3 submits that It is preposterous to suggest that there exists any beneficial relationship/ interest between Respondent No. 3 and 4. If the allegations of the Applicant are taken at face value, then it would mean that no lawyer should take assignments against or for any of the litigants that he/ she has represented in the previous matter. In any event Respondent No. 3 was never privy to any confidential information relating to the CD. It is also submitted that there has been no leakage of any confidential information as alleged by the Applicant. No case of conflict of interest has been made out with the law firm Fox & Mandal. The legal opinion in question was taken from a reputed tier 1 law firm (not from an individual lawyer). Thus, the signatory of the legal opinion being a director in a purported competitor of the CD is inconsequential and irrelevant. A tier 1 law firm will have

hundreds of clients; one cannot assume that a conflict of interest will surely arise due to one person in the whole firm being a director of a purported competitor.

17.3 It is a fact that R3 is the common Advocate for RP and RA ie R2 and R4 which is evident from the records and papers submitted by the Registry before us. It is found that R3 was the Advocate for the case filed under Section 7 by the Damayanti Tea Industries, a unit of CCIPL and he was appearing for the said matter till the disposal of the Application on 23/08/2021. The R3 has become the Advocate for both during the period of CIRP. Confidentiality matters in Insolvency proceedings and undertaking the assignments by an Advocate from both the sides during the CIRP under IBC is not justified.

18. Submission in respect of R4, the Resolution Applicant. The Petitioner has further submitted in detail the collusion and conflict of interest between Respondent No. 4 and other Respondents:

18.1 RA was not an entity while EOI submitted. Respondent No.4, at the time of filing the EOI, was not even an entity, not an SPV, SPC or Consortium. Neither the Respondent No.4 nor its promoters had any prior experience in the industry in which the CD operates. It is evident that false statements were submitted by the promoters of the Respondent No.4 in collusion with the Respondent No. 2 to mislead the COC and vitiate the process as laid down in the Code. Even the Articles and Memorandum of Association of the Respondent No.4 (a non-entity at the time of submission of EOI) does not include the SPV/SPC criteria. False and wrongful undertakings have been submitted by them in violation to the provisions under Section 36A of the Code. Further, the source of funds intended to acquire the assets of the CD under the plan submitted by Respondent No. 4 was not given till after the 15th COC Meeting.

18.2 After the first Resolution Plan of Respondent No.4 was approved of by the COC led by Respondent No.1, Mr. Sunil Kumar Agarwalla, and Mr. Harsh Gupta, the promoters of Respondent No.4, visited the CD's unit on 09.12.2020 in Margherita (Assam), met the factory manager and stated their intent to reduce the number of employees and to release the senior staff after their acquisition of the CD. Subsequently, a layoff in the CD's unit was declared by Respondent No.2 on 28.01.2021. This was followed by Respondent No. 2 stopping urgent payments (wages, salaries, rent, electricity, statutory dues etc.) of the CD as if its resolution/acquisition was already completed

18.3 The promoters of Respondent No. 4, Mr. Sunil Kumar Agarwalla and Mr. Harsh Gupta, are also the promoters of Chandrabali Commercial India Private Limited (CCIPL). Damayanti Tea Industries is a unit of CCIPL, sharing the same office address at Junction Floor, RKB Path, Dibrugarh, 786 001. Damayanti Tea Industries filed an application under section 7 of the Code in CP(IB) No. 05/GB/2021. In in this application, Damayanti Tea Industries proposed Mr. Sandeep Khaitan (Respondent No.2) to be appointed as the Interim Resolution Professional. Respondent No. 2 did not disclose that he was the RP of the CD in the Form 2 filed by him giving consent for his approval as IRP of Damayanti Tea Industries, even though this was a direct conflict of interest between Respondent No. 4 as the Resolution Applicant and the CD. Damayanti Tea Industries also appointed Advocate Anand Verma (Respondent No. 3) as their advocate to represent their case in the same matter for which he attended several hearings in this before the Hon'ble Tribunal. Respondent No. 3 was nominated and appointed by Respondent No.2, in collusion with Respondent No.1, to be his legal counsel in matters of the CD. This was done on 14.08.2020, prior to the first Resolution Plan of PLBB being approved by the COC led by Respondent No.1 on 05.09.2020. Respondent No.3 was thereafter privy to all

confidential matters of the CD and participated in all COC meetings, including those in which the Resolution Plans were discussed.

18.4 The promoter of Respondent No. 4, Mr. Harsh Gupta, is a director of Baahu Panels Pvt Ltd (BPPL), a company incorporated only on 25.05.2021 with a paid-up capital of Rs. 10.00 lakh. BPPL was incorporated on the same day as the 15th COC meeting of the CD and was intended to fund the acquisition of the CD by Respondent No. 4. Besides Harsh Gupta, the directors of BPPL are Mr. Rajesh Mittal and Mr. Sanidhya Mittal (appointed directors since 04.08.2021) who are the promoters and directors of Greenply Industries ("Greenply"), the largest competitor of the CD. Additionally, Manoj Tulsian, the MD and CEO of Greenply, also became a director of BPPL on 04.08.2021. The address of BPPL is the same address of Greenply's Corporate Office at Madhgul Lounge, 23 Chetla Road Kolkata-700027.

18.5 RA submits that the instant Application filed by the Petitioner contains baseless allegations and misconceived apprehensions directed against the answering Respondent herein i.e. PLBB who is a bona fide Successful Resolution Applicant in terms of the Insolvency and Bankruptcy Code, 2016, PLBB further submits at the outset that it can only comment/reply with regard to averment/allegation/aspersion in the instant Application that directly relate to it in its capacity as a bona fide, successful resolution applicant for the Corporate Debtor. PLBB cannot answer the facts/alleged actions in the instant Application pertaining to the actions/conduct of any financial creditor and/or any officer or legal representative of any financial creditor and/or any independent professional/advocate and/or any advocate appointed by any Respondent and/or the Resolution Professional beyond the limited sphere of submission, negotiation and approval of its own expression of interest and/or resolution plan.

18.6 PLBB strictly denied and disputed the bald allegation of the Petitioner/ Applicant that the RP and Respondent No. 3 had a beneficial interest and a relationship with itself, PLBB states that the purported copies of consent letter of the RP, Vakalatnama filed by the Respondent No. 3 constituting pages 102-104 of the instant Applicant and being constituents thereof are documents that have been illegally and/ or improperly accessed by the Petitioner/ Applicant as they are prima facie copies of documents that have been submitted to this.

18.7 PLBB strictly denied and disputed that it was a beneficiary of any alleged breach of confidentiality or violation of the sanctity of the instant CIRP by any of the other respondents herein.

18.8 The resolution plan submitted by PLBB is currently pending approval under section 31 of the IBC by this Hon'ble Tribunal upon being submitted by the RP for approval under section 30 of the IBC. Section 31 of the IBC states that this Hon'ble Tribunal is only required to establish its satisfaction whether the resolution plan submitted by PLBB, as approved by the CoC under section 30(4) of the IBC, meets the requirements of section 30 (2) of the IBC whereupon it shall by order approve the successful resolution plan. However, it is clear from the documents submitted by both parties that the Respondent No.4, at the time of filing the EOI, was not even an entity, not an SPV, SPC or Consortium. R3, who is the Advocate for the RP for the CD is also the Advocate for R4 in the matter of Damayanti Tea Industries which is a unit of CCIPL. Moreover, R4 has also given the assignment to the RP to work as an IRP. Hence, the violation of the sanctity of the instant CIRP is not ruled out.

19. Submission by the Petitioner in respect of R5: The collusion and conflict of interest between Respondent No. 5 and other Respondents:

19.1 Respondent No. 5 is an advocate representing Respondent No. 1 (SASF), the financial creditor, in CP(IB) 09/GB/2019 as also

admitted by him in his Reply/Rejoinder/Written Notes. He has also represented the Resolution Professional (Respondent No. 2) before the Hon'ble NCLAT in CA(AT)(INS) 932 of 2019 Piyush Periwal vs. Stressed Assets Stabilization Fund (SASF) on 05.08.2020, 18.08.2020, 27.08.2020, 08.09.2020 and 14.09.2020 The name of Respondent No. 5, Mr. Praful Jindal, have appeared along with the name of Respondent No. 2 and his ARP, Mr. Ashok Tibrewala. In the hearing in the appeal CA(AT)(INS) 932 of 2019 — Piyush Periwal vs. Stressed Assets Stabilization Fund (SASF), Respondent No. 5, on the instructions of the Respondent No. 1 recorded his appearance as being on behalf of Respondent No. 2 and he shared the virtual court link with Respondent No. 2 and appeared with him in these hearings on five days. In this connection, the petitioner refers to the standard operating procedure (SOP) of the Hon'ble NCLAT for hearing of cases through virtual mode [Cisco WebEx Meeting Platform]. Respondent No. 5, despite specific warning in the said SOP that *"Parties may also note that each of the links sent to any device is required to be unique and hence, parties may not share or forward such link(s) to any other person or device nor shall they enable others to join the hearing through video conference"*, shared his link with and facilitated the involvement of Respondent No. 2, by representing himself as the advocate of Respondent No. 2 in the matter before Hon'ble NCLAT. This was done entirely in violation of the law and the procedure as laid down by the Hon'ble Appellate Tribunal. It is obvious that the Respondent No. 1 gave instructions to its advocate, Respondent No. 5, in collusion with the Respondent No.2 to allow them to appear together in the said matter which was of grave importance as it was with regards to the finality of admission of Respondent No.1's petition u/s 7 of the Code. This matter was ultimately decided by the Hon'ble NCLAT on 24.11.2020. The said act of the Respondent No. 5 of providing the link to and allowing the Respondent No 2 to appear with the

Respondent No.1 is in violation of his professional conduct and proves the nexus between Respondent No. 2 and Respondent No. 1 to prejudice the Hon'ble Appellate Tribunal against the Petitioner. This is in direct conflict of the Code of Professional Ethics of Lawyers. It also throws light on how the matter has been proceeded in collusion in the CIR Proceedings by the Respondent No.2.

19.2 Respondent No 2 with the approval of Respondent No. 1 had appointed a legal counsel Advocate Shri Anand Varma from 14.08.2020 to represent the Respondent No 2 for the CD, for which he was being paid a monthly retainership fee. Under such circumstances, there was no necessity for the Respondent No. 5 to appear on behalf of Respondent No 2 in the subsequent hearings on 18.08.2020, 27.08.2020, 08.09.2020 and 14.09.2020 The Respondent No.4 had been given a back door entry by the Respondent No.2 to become a Resolution Applicant (PRA) on 27.07.2020. Thereafter these hearings on the afore mentioned dates were crucial for all the Respondents since the order of admission of the Section 7 Application had yet to attain finality. It was therefore important for them to collude and pool their resources jointly in these legal proceedings in order to achieve their individual objectives.

19.3 R5 submits that the allegations raised by the Applicant in the instant Application against him are completely baseless. frivolous and untenable He has never represented the Resolution Professional as alleged by the Applicant and his appearances have been erroneously marked for the Resolution Professional in few Orders passed in Company Appeal No. 932/2019 before the Hon'ble NCLAT. Barring the few Orders, as placed on record by the Applicant, no other document(s) have been placed which might substantiate the alleged claim of the Applicant qua collusion/ fraud amongst the deponents herein, the Resolution Professional and SASF (Financial Creditor).

19.4 He submits that he is a junior of Mr. Sidhartha Barua and in his capacity as a junior lawyer he was assisting Mr. Sidhartha Barua and Mr. Ritin Rai, Senior Counsel and was present at Mr. Rai's office in all the aforesaid hearings and did not hold any independent brief for SASF, hence the question of holding an independent brief for the Resolution Professional does not arise. As confirmed by Mr. Rai and Mr. Barua that he was assisting them in the matter for SASF as Mr. Barua's junior and he can humbly reiterate and emphasize that at no point of time did he represent the RP or act as his counsel. He has never represented the RP in the appeal and one cannot arrive at the conclusion of collusion, and it does not give the Applicant herein the right to drag the name of the deponent in such frivolous and malicious application.

19.5 R5 further submits that the name/appearance of the Respondent No. 5 was erroneously recorded in few Orders, which is nothing but result of human error and more particularly introduction of virtual hearing system on account of COVID-19 pandemic. In the premises, it is submitted that erroneous recording of name of the Respondent No. 5 in few orders and mere assumption of the Applicant that Respondent No. 5 herein is acting in collusion with the Resolution Professional and SASF, should not be a basis for this Learned Adjudicating Authority to proceed further and / or take any action against the Respondent No. 5 and other concerned Respondent. In many instances, once an appearance has been wrongly recorded such wrong appearances also get carried on to other appearances, which has happened in this matter.

19.6 The Respondent No. 5's contention that this was done inadvertently and by an error in the system of the Hon'ble NCLAT does not hold good since his appearance was not once or twice but was repeated in 5(five) hearings The Respondent No. 5 should have exercised his professional wisdom and otherwise his action

may be in contravention to the transparency and objectives of the Code.

20. **<u>Decision:</u> Lack of transparency, Conflict of interests, Non Compliances of provisions of IBC, Termination of CIRP from the Second EOI stage and replacement of the present RP with a new RP to start EOI afresh.**

20.1 The success of the corporate insolvency resolution depends strictly in terms of provisions of the I&B Code and Regulations made thereunder**. In this case the process is tainted from the stage of Second EOI publishing in one local newspaper chain in Assam instead of publishing in widely circulated newspapers published at the places of Registered Office, Corporate Office and major Units of the CD, allowing a Resolution Applicant to file EOI when the Entity was not in existence and modifications in the Resolution Plan after the same had been submitted before the AA for approval. The RP has not performed his duties in a fair and transparent manner as required under the CODE He himself has offered his services to the promoters of the other company of RA when the Resolution Plan of the RA is under process for approval. The RP has filed FIR/Criminal case, instead of taking up the matter before the AA under Section 74 of IBC for redressal of the issue, which had gone up to the Hon'ble Supreme Court, for one payment of Rs 32.50 lacs made by the Suspended Management to the Supplier of Raw materials to the CD during the Covid Period to sustain production of the Unit, though the CD was under moratorium. The unwarranted action of the RP in filing the FIR has resulted into the freezing of the accounts including the accounts of the Suppliers and closure of the production of a 48 years old the CD which was running well before the RP took over the charge on initiation of the CIRP. The RP had filed two new trademark applications for the CD's brands with a new logo on his**

own even during the process of CIRP when the production is closed from July 2020.

20.2 It is observed that the R1, R2, R3, R4 were entirely focusing on one point in their submissions, pleadings and arguments during the entire proceedings that the jurisdiction of the Hon'ble Adjudicating Authority is limited to the statutory provisions of the Code, which does not vest the Hon'ble Adjudicating Authority with any equity jurisdiction to entertain a challenge against a CoC approved resolution plan. We are well aware of the provisions of IBC and judgements of the Hon'ble Supreme Court in the matter but the fact is that the process of CIRP is tainted from the second roll-out of EOI, then the stages of Commercial wisdom of the CoC and the approval of the Resolution Plan by the CoC do not arise.

20.3 Hence, considering the points mentioned above including the observations made in the points no points no 14 to 20.2 We are of the considered view that the provisions of the I&B Code and Regulations made thereunder have not been complied from the stage of the second EoI. Transparency, Confidentiality and fairness have not been maintained. Conflicts of interests have been established.

20.4 In the interests of all stakeholders with transparency in the resolution process and in order to achieve the main objectives of the IBC, 2016 in a time bound manner for maximization of the value of assets and promotion of entrepreneurship, availability of credit and balancing the interest of the stakeholders the CIRP Process from the stage of Second EoI stands terminated and the present RP is replaced with the appointment of a new RP (not IRP) Mr. Amit Pareek, CS, [Reg. No. IBBI/IPA-002/IP-N00413/2017-2018/11205] from the IBBI panel allotted to this Bench to act from today. We are making it clear that the objectives of the IBC must not be defeated. No one shall be allowed to misuse the provisions of IBC/Regulations to push an old running 48 years old MSME Unit into the Forced Closure or

Liquidation or Hostile Takeover affecting the livelihood of hundreds of employees, workers, creditors, vendors, and dependents.

21. Directions to new the RP:

21.1 The RP is to file Assignment Declaration within three days of the order uploaded on the website and transact the proceedings with utmost dedication strictly in accordance with the provisions of the "Code", Rules and Regulations of IBC/IBBI. The RP is to start the process from the stage of invitation of EoI publishing in widely circulated, newspapers in Assam, West Bengal and Tamil Nadu.

21.2 The present RP is directed to handover all the documents / papers relating to the CD to the new RP within three days from the date this order is uploaded on the E-portal/website.

21.3 The RP shall take the required steps to ensure that the unit starts productions within 45 days and funds available in the CD account including the amount of Rs 32.50 lacs refunded to the CD account shall be used specially for bringing the unit into operation and production.

21.4 Since the amount transferred from the CD account has been returned, the RP need not persue the FIR/Case filed during the CIRP period.

21.5 The personnel of the CD, its Promotors or any other person associated with the management of the are directed to extend all assistance and cooperation to the new RP as may be required by him in managing the affairs and bringing back the unit into operation. There is no bar on the part of the RP to deal with the Suppliers and Vendors who were associating with the CD when the CD was in profit before the Commencement of the CIRP.

21.6 The RP shall not avail the services of the Professionals associated earlier during the CIRP period till the completion of the this CIRP.

21.7 The fee of the RP is fixed at Rs 1,50,000.00 plus tax and conveyances extra considering the status of the CD at present. If

the amount fixed here appears low or high for the CoC or the RP, they are free to negotiate and settle the matter at their end .RP must ensure that cost of CIRP does not increase.

21.8 The new RP is directed not to entertain any further matter, issues relating to the following IAs already been disposed of by this bench:

Sl. no	**Case No.**	**Section**	**Name of the parties**
1	IA No. 60 of 2020 in CP(IB)/09/GB/2019	Under Section 12 of IBC, 2016	Sandeep Khaitan Vs. National Plywood Industries Ltd (NPIL)
2	IA No. 89 of 2019 in CP (IB)/09/GB/2019	Under Section 60(5) of IBC, 2016	Mr. Piyush Periwal Vs. Stressed Assets Stabilization Fund (SASF) & Anr.
3	IA No. 05 of 2021 in CP (IB)/09/GB/2019	Under Section 60(5) of IBC, 2016	Mr. Piyush Periwal Vs. Stressed Assets Stabilization Fund (SASF) & Anr.
4	IA No. 13 of 2021 in CP (IB)/09/GB/2019	Under Section 60(5) of IBC, 2016	Sandeep Khaitan (RP) Vs. Regional Director, NER
5	IA No. 61 of 2020 in CP (IB)/09/GB/2019	Under Section 30(6) read with Section 60(5) of IBC, 2016	Sandeep Khaitan (RP) Vs. COC & Anr.
6	IA No. 39 of 2021 in CP (IB)/09/GB/2019	Under Section 65(5) of IBC, 2016	Sandeep Khaitan (RP) Vs. M/S JSVM Plywood Industries Ltd.
7	IA No. 32 of 2021 in CP (IB)/09/GB/2019	Under Rule 154 read with Rule 11 of NCLT rules 2016	Sandeep Khaitan (RP) Vs. Suspended Board of Directors (NPIL)
8	IA No. 46 of 2021 in CP (IB)/09/GB/2019	Under Section 60(5) of IBC, 2016	SASF Vs. Piyush Periwal and Sandeep Khaitan
9	IA No. 51 of 2020 in CP (IB)/09/GB/2019	Under Section 25 (j), 43,45,49 read with Section 44,48,66 of IBC, 2016	Sandeep Khaitan (RP) Vs. Piyush Periwal and Ors.

10	IA No. 37 of 2020 in CP (IB)/09/GB/2019	Under Section 19 read with Section 23 of IBC, 2016 read with Rules 11 and 15 of NCLT Rules, 2016	SASF Vs. NPIL
11	Cont. A/1/2021 in CP (IB)/09/GB/2019	Under Section 74 of IBC, 2016	Sandeep Khaitan (IRP) Vs. Piyush Periwal

21.9 The following IA's filed in CP (IB)/09/GB/2019 before this bench have been disposed of today separately:

i. **I.A. No. 14 of 2021** has been filed by the applicant, Dilip Construction Pvt. Ltd., under Section 60 (5) of IBC, 2016, against SASF and Sandeep Khaitan challenging the decision of the Respondent No. 2 to reclassify the applicant as an Operational Creditor from a Financial Creditor thereby barring the applicant from participating in the COC meeting.

ii. **I.A. No. 27 of 2021** has been filed under Section 65 & 75 read with Section 60(5) of IBC, 2016 by the Petitioner Shri Piyush Periwal against SASF & Ors asking for directions to the Resolution Professional (Respondent No. 5) to revise the claim of SASF (Respondent No. 1) from Rs. 16,12,23,210.00 to a sum not exceeding Rs. 1,23,65,000.00.

iii. **IA 30 of 2021** has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, by M/S JSVM Plywood Industries Ltd seeking a direction to the Respondent no. 1 to ratify all supply of goods to the CD during the CIRP period and also to ratify the total entitlement against such supply amounting to approx. Rs. 72.12 lakhs inclusive of the amount of Rs. 32.50 lakhs received by the Petitioner on 18.04.2020 against the supply of goods to CD to your petitioner. And on such ratification being made, the Respondent no. 1 may be further directed to pay the balance outstanding amount of Rs.

39.62 lakhs over and above the payment of Rs. 32.50 lakhs already received by the Petitioner on 18.04.2020 for supply of goods during the CIRP period.

iv. **I.A. No. 31 of 2021** has been filed by the Resolution Professional of National Plywood Industries Ltd. Under Section 30(6) read with Sections 31(1) and 60(5) of the Insolvency and Bankruptcy Code, 2016 for submission and approval of the Resolution Plan.

v. **IA No 34 of 2021** has been filed under Section 60(5) of IBC, 2016 by M/S JSVM Plywood Industries Ltd with a prayer to direct the RP to supply the copies of the Resolution Plan, compliance reports and evaluation matrix to the applicant.

vi. **I.A No. 35 of 2021** has been filed under Section 60(5) of IBC, 2016 by Mr. Piyush Periwal against Stressed Assets Stabilization Fund (SASF) & Ors. praying that the modified/amended Resolution Plan of the Respondent No. 7, PLBB Products Private Limited as purportedly approved at the 15th CoC meeting held on 28th may be set aside and Resolution Plan submitted by the Petitioner, an MSME Promoter being otherwise compliant and feasible be directed to be considered for approval.

vii. **I.A. No. 47 of 2021** has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, by the Petitioner Mr. Piyush Periwal, a MSME promoter, shareholder, and a member of the suspended Board of Directors of National Plywood Industries Limited (NPIL), for a wrongful act done in collusion by the respondents for filing 2 (two) new trademark applications of the brand name "NATIONAL" (LABEL) being application no. 5028185 in Class – 19 and application no. 5028186 in Class – 20, clandestinely without the knowledge of the suspended management and without prior permission taken from the Committee of Creditors of the CD.

viii. **I.A. No. 52 of 2021** has been filed by the FC, Indian Bank, Guwahati, with the prayer to admit the application, call for the records and after hearing the parties may be pleased to pass and order holding the rejection of the claim of the Applicant Bank (FC) as invalid, illegal, bad in law, ultra vires and direct the Respondent No. 1 to accept and join the claim of the Applicant Bank as one of the FC in the CIRP and place the Final Resolution Plan accordingly before the Adjudicating Authority for approval and or pass such other order/orders as the Adjudicating Authority may deem fit and proper

ix. **I.A. No. 54 of 2021** has been filed by the applicant herein viz. Employees State Insurance Corporation (ESIC), under Section 60 (5) of IBC, 2016 with the prayer to grant leave to the Applicant to submit its claim before the Resolution Professional and Pass an order of injunction restraining the Resolution Professional from convening any further meeting of the Committee of Creditors for the purpose of obtaining final approval of any Resolution Plan or placing before the Committee of Creditors any agenda for approval of Resolution Plan without being considered the claim of the applicant.

x. **I.A. No. 65 of 2021** has been filed by Assistant Commissioner (State Taxes), Tamilnadu, under sec 60(5) of the Insolvency and Bankruptcy Code, 2016 with the prayer to direct Respondent Liquidator of M/s National Plywood Industries Ltd to admit the total amount of Rs. 21,55,82,743.00 claimed filed by the Petitioner.

xi. **IA No. 13 of 2022** has been filed by the Sandeep Khaitan, RP of National Plywood Industries Limited, under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, with the prayer to permit the RP to utilize Rs. 32.50 Lakhs towards the functioning of the CD;

These IAs have been disposed of separately today. Both the Petitioner and the Respondent No. 1 are at the liberty to file any additional/relevant documents, if any, in support of their claims with the new RP within 10 days from the date, the order is uploaded on the e-portal/website. The RP is also given 7 days' time thereafter to examine and finalize their claims in accordance with Law, the provisions of Insolvency & Bankruptcy Code, 2016, and related Rules and Regulations. Since the time period for filing of claims has already been over long back, the RP is not to entertain any fresh claim application, except to examine the matters afresh relating to the I.A. No. 14,27,30, 52,54 and 65 of 2021. If it is found that there is a need to reconstitute the CoC, after finalization of the claims of the aforesaid IAs, the RP has to reconstitute the CoC within two days.

22. The action of the FC attracts the provisions of Section 75 of IBC for incorrect information about claim amount furnished in the Application filed before this Bench. However, considering the submissions of the FC and the lack of exposure on the part of the officials of the FC in filing the Application under Section 7 of IBC, we take a lenient view and the prayer made by the Petitioner to proceed in the matter is rejected.

23. Considering the submissions of R3 we take a lenient view and **prayer made by the Petitioner to proceed in the matter is rejected** However it is made clear that one must not lose the site of Code of Professional Ethics while dealings with the matters of Insolvency where time, confidentiality and balancing act matter.

24. The RP is **to refund the earnest money received from the RA** with interest if any, accrued therein within seven days from today.

25. **Submission of the Respondent No. 5 is accepted considering** the system difficulties faced in complying the guidelines of COVID Protocols while giving attendance in a court proceeding. **We take a lenient view and the matter is not proceeded.**

26. RP has to complete the CIRP in time and a progress report with the developments relating to functioning of the CD is to be filed within 45 days.

27. The present IA is disposed of with the above observations and directions.

28. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps. Urgent Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities

Sd/-

(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority

Sd/-

(Rohit Kapoor)
Member (Judicial)
& Adjudicating Authority