NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
SPECIAL BENCH-II

IA. 2544/ND/2021 and IA. 1837/ND/2021
IN
Company Petition No. (IB)-1045 (ND)/2020

IN THE MATTER OF:

M/s Rhydburg Pharmaceuticals Ltd. **...Applicant**

Versus

M/s. Sanyog Healthcare Limited
...Respondent/Corporate Debtor

IN THE MATTER OF IA 1837/ND/2021:

Mr. Manohar Lal Vij
Interim Resolution Professional,
AVM Resolution Professionals
LLP 8/28, 3rd Floor, W.E.A.,
Abdul Aziz Road, Karol Bagh,
New Delhi – 110005 **...Applicant/ IRP**

AND

IN THE MATTER OF IA 2544/ND/2021:

M/s. HDFC Bank Ltd.
First Floor, Tower A,
Plot Number 31, Najafgarh Road
Industrial Area, Shivaji Marg,
Moti Nagar, Delhi - 110015 **...Applicant/ Objector**

Versus

Mr. Manohar Lal Vij
Interim Resolution Professional,
AVM Resolution Professionals
LLP 8/28, 3rd Floor, W.E.A.,
Abdul Aziz Road, Karol Bagh,
New Delhi – 110005 **...Respondent/ IRP**

Order Delivered on : 04.03.2022

SECTION: Section 21(6A)(b) read with Section 60(2) and Sec. 60(5) of IBC, 2016

CORAM :

SH. BHASKARA PANTULA MOHAN, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENTS:

For the Applicant	:	Adv. Mohd Nazim Khan along with Hritik
For the Respondents	:	Adv. Abhishek Devgan and Adv. Vishal Hirawat for RP

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present IA No. 1837 of 2021 is filed by Mr. Manohar Lal Vij, IRP (**hereinafter referred to as Applicant of IA No. 1837 of 2021**) under Section 21(6A)(b) read with Section 60(2) of the Insolvency and Bankruptcy Code, 2016 (**hereinafter referred to as Code)**, Regulation 16A(2) of the IBBI (Resolution Process for Corporate Persons) - Regulations, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016 to appoint Authorized Representative for the Class of Creditors. The IRP/Applicant has made the following prayers in the IA :

> "a) *allow the present Application and appoint Mr. Anil Tayal (IBBI/PA-001/IP-P01118/2018-2019/11818) as the Authorized Representative for class of creditors in terms of provisions of the Code and direct the Authorized Representative to act in accordance with provisions and Regulations under the Code and;*
>
> b) *Pass such other or further orders as may be deemed fit and proper in the facts and circumstances of the case..."*

2. That the IA No. 2544 of 2021 has been preferred by the HDFC Bank (**hereinafter referred to as Applicant of IA No. 2544 of 2021**) under Section 60(5) of IBC, 2016 against the IRP. The HDFC Bank/Applicant has made the following prayers against IRP in the IA :

> *"a) set aside the decision of the Respondent to create the distinct class of the Financial Creditor consisting Banks and NBFCs; or in the alternative*
> *b) Direct the Respondent not to include the Applicant Bank under the "Class of unsecured Financial Creditors including NBFCs" for part of its claim;*
> *c) Direct the Respondent to consider the entire Claim of Rs. 54,33,878.34/- filed by the Applicant Bank in Form C;*
> *d) Pass such other further orders and directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case..."*

3. Since both the Applications (IAs) have connected prayer, therefore, both the IA's are being adjudicated through this common order.

4. To put succinctly, the facts of the case are that the Operational Creditor, M/s. Rhydburg Pharmaceuticals Ltd. had filed an Application bearing No. IB-1045 (ND) 2019 under Section 9 of IBC, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s. Sanyog Healthcare Limited. The said application was admitted vide order dated 12.03.2021 passed by this Adjudicating Authority.

5. It is stated by the IRP/Applicant in IA 1837/2021 that the Applicant, after getting notified as IRP of the Corporate Debtor, has taken all necessary steps as warranted in the Code and rules and regulations framed thereunder.

6. It is submitted by the IRP that on the basis of the examination of books of account and information received from the Corporate Debtor, the Applicant has determined that many creditors of the Corporate Debtor fall in a class of financial creditors as "Unsecured Financial Creditors including unsecured NBFCs" as defined under Regulation 21(1)(aa) of CIRP Regulations, 2016.

7. It is further submitted by the IRP/Applicant that Public Announcement for inviting claims from the creditors in the prescribed 'Form A' was published by the Applicant on March 15, 2021 in two newspapers namely, Jansatta (Hindi) and Financial Express (English) and on March 16, 2021 in three newspapers namely, Times of India (Chandigarh Edition) Amar Ujala (Hindi, Jammu Edition) and Divya Himachal (Hindi, Himachal Edition), which included the names of three Insolvency Professionals (IPs) eligible to be appointed as IP under Regulation 3 of the Insolvency and Bankruptcy Board of India (CIRP) Regulations, 2016 to act as an Authorised Representative of the Class of Creditors after obtaining their consent.

8. It is averred by the Applicant IRP that :

> "5. *That the Applicant vide email dated March 16, 2021 intimated the majority of financial creditors including financial creditors belonging to a class about the commencement of CIRP and requested them to file their claim on or before 26.03.2021. Accordingly the class of creditors i.e.. 'unsecured financial creditors including unsecured NBFCs submitted their claims in Form CA',*

however it is pertinent to mention that as on 26.03.2021 i.e. the last date of receipt of claim by the creditors, claims from only two creditors belonging to the class was received. One of the financial creditor, Muthoot Fincorp Lid who filed its claim as secured financial creditor in Form C was considered an unsecured financial creditor by the IRP and was requested to file revised claim in Form CA' Le, financial creditors belonging to a class mentioning the name of the Authorised Representative but the same was not received...."

9. It is further added by the RP that in terms of Regulation 16A(1) of the CIRP Regulations, 2016, the RP was required to select an Insolvency Professional, who is the choice of the highest number of financial creditors in the class. Accordingly, voting share/choice received by each proposed Authorised Representative is reproduced below :

Sl. No.	**Name of Insolvency Professionals**	**No. of Choice/Voting Shares**	**% of Votes**
1.	Mr. Anurag Nirbhaya	0	0
2.	Mr. Anil Tayal	2	100
3.	Ms. Sujata Garg	0	0
	Total	**2**	**100**

As per the result of the voting it is stated by the RP that Mr. Anil Tayal (IBBI/PA-001/IP-P01118/2018-2019/11818) with highest number of voting share i.e., 100% was elected as the Authorised Representative of the class of creditors.

10. It is further added by the RP that the elected Insolvency Professional Mr. Anil Tayal (IBBI/PA-001/IP-P01118/2018-2019/11818) has given his consent to act as Authorised Representative on behalf of

'unsecured financial creditors including unsecured NBFCs' class of creditors in prescribed 'Form AB'. Hence, the RP/Applicant has prayed for appointment of Mr. Anil Tayal as the Authorised Representative of Financial Creditor in a Class.

11. The facts of the second application i.e., IA-255/2021, in a nutshell, are that the Applicant/ HDFC Bank has provided loan facilities to the Corporate Debtor to the tune of Rs. 65,20,000/-, out of which Rs.60,00.000/- is disbursed under the loan account no. 65696604 and Rs.5,20,000/- under the loan account no. 52311024. It has been stated that the loan Account no. 52311024 is secured by a hypothecated vehicle being TATA XENON YODHA BS IV having Engine No: 4SPCR1OFSY620712 Chassis No. MAT464602HSF 06995, Registration No: JK02 BX4973.

12. It is further stated by the Applicant/HDFC Bank that as per Clause 12 of the loan agreement under the loan account no. 65696604, the Applicant Bank is deemed to have, hold and continue to have first charge on the above hypothecated vehicle on which security has been created in respect of the loan account no. 52311024. It is added that above security is extended to the loan account no. 65696604 irrespective of the fact whether any amount is outstanding or not under the loan account no. 52311024. Therefore, the above hypothecated vehicle is a security for the loan account no. 65696604 as well.

13. It is added that the Applicant Bank, upon being apprised about the initiation of the CIRP of the CD, had filed its claim (in Form C) on

06.04.2021 for a sum of Rs.54,33,878.34/- before the IRP, which was again filed in the revised format on 29.04.2021 as per directions of the IRP.

14. It is further stated by the Applicant that the IRP vide email dated 01.05.2021 had raised certain queries, which were duly answered vide email dated 07.05.2021. That on 08.05.2021, the IRP again wrote another email to the Applicant Bank and informed that he has verified the claim submitted by the Applicant Bank. The Applicant Bank submits that the IRP has whimsically bifurcated the claim of the Applicant Bank into two categories (i.e., 'unsecured' under the loan account no. 65696604 and 'secured' under the loan account no. 52311024) and directed the Applicant to submit its unsecured Claim in Form CA. The contents of the email dated 08.05.2021, as given by the applicant on page 5 of its application, are reproduced below :

> *"On verification of your claim submitted against Sanyog Healthcare Limited, we submit our observations as follows:-*
>
> ***"Loan Account No. 52311024**: You are being provisionally admitted as a secured financial creditor of Sanyog Healthcare for an amount of Rs 1,24,565/-*
>
> ***Loan Account No.65696604**:- On the basis of books of accounts and information provided by you, there seems to be no security interest/charge created on any of the assets of the Corporate Debtor. However if there is any security interest created, kindly substantiate the same with requisite documents, if not then you are requested to submit your claim as an unsecured financial creditor (in a class) in Form CA (https://ibbi.gov.in/home/downloads) along with supporting documents. You are also requested to choose an authorised representative from the Insolvency Professionals details of whom are provided at https://www.avmresolution.com/authorised-representative/."*

15. It is added by the Applicant Bank that it has raised objections and disputed the wrongful classification of the Applicant Bank by the IRP into the category of "Class of unsecured Creditors including NBFCs", when the Applicant Bank is not only having exposure to both secured and unsecured debt but has also security of the above referred vehicle under both the loan accounts by virtue of Clause No. 12 of the Agreement.

16. It is submitted that the Authorized Representative (AR) of the Applicant Bank had raised objection during the 2nd CoC Meeting held on 18.05.2021, wherein the IRP informed the AR that he has noted the objection and has included all the unsecured financial creditors in the class itself. The IRP opined that there is no explicit provision in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, permitting inclusion of a member of class of financial creditors as direct member of the CoC but still he would look into HDFC Bank's request considering all applicable provisions of IBC 2016 read with IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016.

17. It is further added by the Applicant Bank that on 21.05.2021, the IRP informed the Authorized Representative of the Applicant Bank that he is not convinced about the objections raised by the Applicant Bank and will proceed by treating its loan account number 65696604 under the class created by him for 'unsecured creditors' and the loan account no. 52311024 as 'secured creditor'. That the Applicant was further told that to make any representation as regards to account no. 65696604, the Bank is to be represented by an AR to be appointed by this Tribunal and

for the loan account no. 52311024, it can make a direct representation in the CoC.

18. That the Applicant Bank has further submitted that Regulation 8A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was additionally amended on 04.07.2018. The contents of Regulation 8A are reproduced below :

> ***"8A. Claims by creditors in a class***
>
> *(1) A person claiming to be a creditor in a class shall submit claim with proof to the interim resolution professional in electronic form in Form CA of the Schedule.*
>
> *(2) The existence of debt due to a creditor in a class may be proved on the basis of-*
>
> > *(a) the records available with an information utility, if any; or*
> >
> > *(b) other relevant documents, including any (i) agreement for sale; (ii) letter of allotment; (iii) receipt of pay made; or (iv) such other document, evidencing existence of debt.*
>
> *(3) A creditor in a class may indicate its choice of an insolvency professional, from amongst the three choices provided by the interim resolution professional in the public announcement, to act as its authorised representative."*

19. It is further submitted by the Applicant Bank that the IRP/ Respondent has created the class for the unsecured financial creditors, on the assumption based on the books of accounts of the CD that there are around 25 unsecured financial creditors. It is added by the Applicant Bank that the class of financial creditors can be created for the Homebuyers only and, the Applicant Bank's claim cannot be bifurcated into two categories as, prima facie, it is absurd that under the account no. 52311024, the Applicant Bank will represent directly, and for the

account no. 65696604, the Applicant Bank will be represented through an AR appointed by the Hon'ble Tribunal.

20. That the Applicant Bank has further placed on record the IBBI Circular No IBBI/CIRP/015/2018 dated 13.07.2018, which clarifies that Section 21(6A) of IBC, 2016 was intended to secure representation for creditors belonging to a class, who are otherwise not represented in the CoC. The scanned copy of the same is reproduced below:

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi-110001

CIRCULAR

No. IBBI/CIRP/015/2018 — 13th July, 2018

To
All Registered Insolvency Professionals
All Recognised Insolvency Professional Entities
All Registered Insolvency Professional Agencies
(By mail to registered email addresses and on website of the IBBI)

Dear Madam / Sir,

Sub: Appointment of Authorised Representative for Classes of Creditors under section 21 (6A) (b) of the Insolvency and Bankruptcy Code, 2016

Section 21 (6A) (b) of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 16A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations) provide that where the corporate debtor has at least ten financial creditors in a class, the interim resolution professional shall offer a choice of three insolvency professionals and a creditor in the class may indicate its choice of an insolvency professional, from amongst the three, to act as its authorised representative. The insolvency professional, who is the choice of the highest number of creditors in the class, is appointed as the authorised representative of the creditors of the respective class. The authorised representative collects voting instructions from the respective class of creditors, attends the meetings of the committee of creditors (CoC) and casts vote in respect of the said class in accordance with the instructions he receives from the creditors.

2. Section 21 (6A) (b) of the Code read with regulation 16A of the Regulations provide for a simplified mechanism of representation of financial creditors through authorised representatives, as detailed in Para 1 above, and are, therefore, matters of procedure. It is necessary that an ongoing corporate insolvency resolution process, where creditors belonging to a class are otherwise not represented in the CoC, uses this simplified mechanism, irrespective of the stage of the process. The resolution professional, who exercises the powers and performs the duties as vested or conferred on the interim resolution professional under section 23 (2) of the Code, shall facilitate representation through authorised representative(s).

3. It is, accordingly, clarified that wherever the approval of resolution plan under regulation 39 (3) of the Regulations is at least 15 days away, the resolution professional shall expeditiously obtain, by electronic means, the choice of the insolvency professional from creditors in a class to act as the authorised representative of the class and proceed further in the manner as specified in regulation 16A of the Regulations.

4. This Circular is issued in exercise of powers under section 196 (1) (aa) of the Insolvency and Bankruptcy Code, 2016, in consultation with the Ministry of Corporate Affairs.

Yours faithfully,
-Sd-
(Ranjeeta Dubey)
General Manager
Email: ranjeta@ibbi.gov.in

21. In view of above factual and legal scenario, the Applicant Bank submits that the classification of the Applicant Bank under the category of "Class of unsecured Financial Creditors including NBFCs" has been done inappropriately by the Respondent. The Respondent has failed to

consider that any group/class should ordinarily be formed taking into deliberation the homogeneous nature, commonality of interest and the compromise offered to them. It is submitted that when people with heterogeneous interest are combined in a class, it is natural and obvious that the majority having common interest may takeover and the interest of the minority would get affected. In the present case, since the Applicant Bank having both secured and unsecured exposure with lien, does not have similar/identical interest as that of Financial Creditors in Class of unsecured, therefore, the said decision of the Respondent is erroneous and liable to be set aside.

22. Per contra, it is submitted by the RP/Respondent that in the present case after examination of the books of account and information received from the Corporate Debtor, the IRP determined that many creditors of the Corporate Debtor fall in a class of financial creditors as "unsecured financial creditors including unsecured NBFCs" as defined under Regulation 2(1)(aa) of CIRP Regulations, 2016. Thereafter, a public announcement in Form A was published on 15.03.2021 and 16.03.2021 in various newspapers pursuant to the Regulation 6 of the IBBI.

23. It is added by the RP/Respondent that on the basis of the claims received by the class of creditors and after considering the choice of all the creditors in a class, the Respondent selected Mr. Anil Tayal, an Insolvency Professional, as the Authorised Representative and filed an Application bearing IA 1837/2021 for the appointment of the Authorised Representative on 03.04.2021.

24. It is further added by the RP/Respondent that the HDFC Bank vide email dated 29.04.2021 filed its claim as a secured financial creditor in Form C of the CIRP Regulations with respect to the Loan Account No. 52311024 for an amount of Rs.1,24,565/- and Loan Account No. 65696604 for an amount of Rs.53,09,313/- respectively. The IRP vide email dated 01.05.2021 shared his observations on the submitted claim and sought clarifications and supporting documents including the charge documents as registered with the ministry of Corporate Affairs on the loan account No. 52311024 and 65696604 from the Applicant Bank.

25. It is added by the RP/Respondent that subsequently, the Applicant Bank vide e-mail dated 07.05.2021 provided the clarification on the Loan account No. 52311024. However, the Applicant Bank failed to provide any document corroborating the creation of charge on any of the assets of Corporate Debtor for the loan account No. 65696604. The Respondent, therefore, vide e-mail dated 08.05.2021 provisionally admitted the claim of the Applicant as a secured financial creditor for the loan account No. 52311024 and once again requested the Applicant to substantiate its claim as a 'secured financial creditor' by submitting the documents creating charge on any of the assets for the loan account No. 65696604.

26. It is submitted by the RP/Respondent that the Applicant till date has not provided any documents, whatsoever in order to substantiate its claim as a 'secured financial creditor' for the loan account No. 65696604.

27. It is added by the RP/Respondent that the creation of charge over the aforementioned hypothecated vehicle for the loan account No.

52311024 will not be extended to the Loan Account No. 65696604 as the creation of security interest on the aforementioned asset under the loan unit no. 52311024 does not ipso fact create/extend to any other loan account i.e., Loan Account No. 65696604 in the instant case.

28. It is stated by the RP that it is wrong to interpret that Regulation 8A is only applicable to the homebuyers and that the homebuyers would only be the members of class of creditors. It is added that had this been the intent of the lawmakers, the IBBI would have restricted the definition of class of creditors to only homebuyers. However, as per Regulation 2(1)(aa) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the class of creditors is defined as follows:

> ***"2. Definitions.***
>
> *(1) In these Regulations, unless the context otherwise requires-*
>
> > *(a) "applicant" means the person(s) filing an application under sections 7, 9 or 10, as the case may be;*
> >
> > *(aa) "class of creditors" means a class with at least ten financial creditors under clause (b) of sub-section (6A) of section 21 and the expression, "creditors in a class" shall be construed accordingly.]"*

29. After hearing submissions of both the parties and perusing the pleadings and written submissions placed by the parties on record, this Bench observes that there are two issues, which need consideration:

> *"a) Whether the Resolution Professional has rightly classified the claim of the HDFC Bank as an 'Unsecured Financial Creditor' for the of Loan Account No* 65696604;
>
> *b) Whether the Resolution Professional has rightly created the 'Class Of Creditors for "Unsecured Financial Creditors*

including NBFCs" and whether an Authorized Representative in the instant case can be appointed in terms of Section 21(6A)(b) of IBC, 2016."

30. In order to adjudicate the issue at Sl. (a), it is worthwhile to refer to Clause 12 of the loan agreement of the loan account no. 65696604. The contents of the same are reproduced below :

12. Notwithstanding anything to the contrary in this document or any other document/arrangement: (i) in respect of all and any of Borrower's present and future liabilities to the Bank, its affiliates, group entities, associate entities, parent, subsidiaries, any of their branches (collectively "Relevant Entities"), whether under this document or under any other obligation/loan/facilities/borrowings/document, whether such liabilities are/be crystallised, actual or contingent, primary or collateral or several or jointly with others, whether in same currency or different currencies, whether as principal debtor and/or as guarantor and/or otherwise howsoever (collectively "Liabilities"), each of the Bank and the Relevant Entities shall in addition to any general lien or similar right to which any of them as bankers may be entitled by law, practice, custom or otherwise, have a specific and special lien on all the Borrower's present and future stocks, shares, securities, property, book debts, all moneys in all accounts whether current, savings, overdraft, fixed or other deposits, held with or in custody, legal or constructive, with the Bank and/or any Relevant Entities, now or in future, whether in same or different capacity of the Borrower, and whether severally or jointly with others, whether for any banking relationship, safe custody, collection, or otherwise, whether in same currency or different currencies; and (ii) separately, each of the Bank and the Relevant Entities shall have the specific and express right to, without notice to and without consent of the Borrower, set-off, transfer, sell, realize, adjust, appropriate all such amounts in all accounts (whether prematurely or upon maturity as per the Bank's discretion), securities, amounts and property as aforesaid for the purpose of realizing or against any of dues in respect of any of the Liabilities whether ear-marked for any particular Liability or not, combine or consolidate all or any of accounts of the Borrower and set-off any monies, whether of same type or nature or not and whether held in same capacity or not including upon happening of any of the events of default mentioned in any of the documents pertaining to the respective Liabilities or upon any default in payment of any part of any of the Liabilities. (iii) The Bank and the Relevant Entities shall be deemed to have and hold and continue to have first charge (without requirement of any further act, deed or writing in this regard) on any assets including any deposit on which security has been/will be created in respect of any of the Liabilities, as security also for any of the other Liabilities and all the rights and powers vested in the Bank in terms of any security or charge created for any of the Liabilities shall be available to the Bank and/or the Relevant Entities also in respect of such other Liabilities, irrespective of the fact whether the said Liabilities is at any time are outstanding, repaid or satisfied or not and even after the said Liabilities or part thereof have/ has been repaid or prepaid. Such security shall extend to other Liabilities irrespective of the fact whether any event of default in relation to such other Liabilities has occurred or not or whether any amount thereunder is outstanding or not including in cases where repayment of the Liabilities for which security was created has been done.

31. From the above, it can be inferred that the HDFC Bank has relied upon the Clause 12(iii)of the loan agreement (supra) in support of its contentions :

"iii) The Bank and the Relevant Entities shall be deemed to have and hold and continue to have first charge (without requirement of any further act, deed and writing in this regard) on any assets including any deposit on which security has been will be created in respect of any of the Liabilities, as security also for any of the other Liabilities and all the rights and powers vested in the Bank in terms of any security or charge created for any of the Liabilities shall be available to the Bank and/or the Relevant Entities also in respect of such other Liabilities, irrespective of the fact whether the said Liabilities is at any time are outstanding, repaid or satisfied or not and even after the said Liabilities or part thereof have/has been repaid or prepaid. Such security shall extend to other Liabilities irrespective of the fact whether any event of default in relation to such other Liabilities has occurred or not or whether any amount there under is outstanding or not including in cases where repayment of the Liabilities for which security was created has been done..."

32. That it is observed that other than the Clause 12 of Agreement, the Applicant HDFC Bank failed to produce any document, which could depict that any security interest was created in favour of the Bank for the Loan Account No. 65696604. It is further observed that the Bank has already taken the benefit of the hypothecated vehicle for the loan account no. 52311024 to get the status of the Secured Financial Creditor.

33. That in our considered view, just because one vehicle has been hypothecated under Account No. 52311024 against the loan amount of Rs.5,20,000/-, that does not mean that all the other accounts, where there is no specific security interest has been created, shall become secured loan by virtue of the same hypothecated vehicle. Hence, in our considered view, without creation of any valid security interest under the Loan Account No. 65696604, the Applicant Bank cannot get the status of the Secured Financial Creditor.

34. We, therefore, agree with the submissions of RP that the creation of security interest on the vehicle under the loan no. 52311024 does not *ipso fact* create/extend to the Loan Account No. 65696604. Therefore, we do not find any illegality in the act of RP in classifying the HDFC Bank as an unsecured Financial Creditor for the claim arising out of the Loan Account No. 65696604. Hence, the issue at Sl. (a) is decided accordingly.

35. As regards to the creation of class of Unsecured Financial Creditor, it is worthwhile visiting Section 21(6A)(b) of IBC, 2016, contents of which are reproduced below :

> ***21.Committee of creditors***. –
> *(1) ......*
> *(2) .....*
> *(3) .....*
> *(4) .....*
> *(5) .....*
> *(6) .....*
> ***(6A)Where a financial debt—***
> *(a) ......*
> *(b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;*

36. From the contents of Section 21(6A)(b) of IBC, 2016, it is observed that the aforesaid Section is applicable only when the debt is owed to a class of creditors exceeding the number as may be specified. That the no. of creditors are specified under Regulation 2(1)(aa) of Insolvency And

Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The contents of same are reproduced below:

> *(aa) "class of creditors" means a class with at least ten financial creditors under clause (b) of sub-section (6A) of section 21 and the expression, "creditors in a class" shall be construed accordingly.*

37. That from the conjunct reading of Section 21(6A)(b) of IBC, 2016 and Regulation 2(1)(aa) of Insolvency And Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, it is observed that when the Financial Debt is owed to at least ten financial creditors, the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative, who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors.

38. That the IRP has provided the following list of Financial Creditor in a class, which is reproduced overleaf :

SANYOG HEALTHCARE LIMITED (UNDER CIRP) (CIN: U24232DL1999PLC098564)			
SELECTION OF AUTHORISED REPRESENTATIVE			
S. No.	**Name of Proposed Authorised Representative**	**Total Number**	**Choice %**
1	**Mr. Anurag Nirbhaya (IBBI/IPA-001/IP-P00870/2017-2018/11468)**	**0**	**0**
2	**Mr. Anil Tayal (IBBI/IPA-001/IP-P0118/2018-2019/11818)**	**2**	**100%**
3	**Ms. Sujata Garg (IBBI/IPA-001/IP-P01024/2017-2018/11674)**	**0**	**0**
	Total Member	**2**	**100%**
S. No.	**Name of Financial Creditor in class**	**Email Id**	**Choice Made**
1.	**Oxyzo Financial Services Private Limited**	**yash.tyagi@ofbusiness.in**	**Mr. Anil Tayal**
2.	**Muthoot Fincorp Limited**	**Muthoot@muthoot.com, moses.wf@muthoot.com**	**-**
3.	**Capfloat Financial Services Private limited**	**ashutosh.shandilya@capitalfloat.com, supreeth.p@capfloat.com, prashanth.manjunath@capfloat.com**	**Mr. Anil Tayal**

39. That from the above list of Financial Creditors in a class, it is observed that there are only 03 Financial Creditors for which the IRP has created the 'class'. In the averments made in Para 2 of its Written Submissions dated 27.11.2021 filed in IA-2544/2021, it is stated by the IRP that on the assumptions based on books of accounts of the CD, there are around 25 unsecured financial creditors. However, in actual, only0 3 claims have been received by the IRP as Unsecured Financial Creditors, other than of HDFC Bank.

40. Hence, from the material facts placed on record, it is evident that the minimum criteria of atleast 10 Financial Creditors in terms of Regulation 2(1)(aa) (supra) has not been achieved. Therefore, the provision of Section 21(6A)(b) is not attracted.

41. Hence, the requirement of appointing any Authorised Representative of Unsecured Financial Creditor is not fulfilled. The issue (b) is decided accordingly.

42. Hence, in sequel to the above, IA-1837/2021 filed by the IRP is dismissed and IA-2544/2021 filed by HDFC Bank is partially allowed in respect of prayer (a) only.

-Sd-

(L. N. Gupta)
Member (T)

-Sd-

(Bhaskara Pantula Mohan)
Member (J)