THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 4432/2021

IN

Company Petition No. (IB) – 1374 (ND) /2019

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 for seeking appropriate directions

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

M/s. Corporation Bank

…. FINANCIAL CREDITOR

VERSUS

M/s. Hydric Farms Inputs Ltd.

….. CORPORATE DEBTOR

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

MR. MUKESH GUPTA

Resolution Professional for Rohtas Projects Limited

…Applicant

VERSUS

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1.M/S HYDRIC FARM INPUTS LTD. Through Resolution Professional Mr. Aditya Agarwal

... Respondent No. 1

2.ICICI BANK LIMITED

...Respondent No. 2

Order Pronounced on: 09.06.2022

Coram:

Shri. P.S.N Prasad, Member (Judicial)

Shri. Rahul Bhatnagar, Member (Technical)

ORDER

Per: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

1. The present Application is being filed by Resolution Professional for Rohtas Projects Limited as appointed by Hon'ble National Company Law Tribunal, New Delhi Bench — III, New Delhi under Section 60(5) of the I&B Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 for seeking the following reliefs:

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- Allow the present application and intervention of the Applicant in the application being I.A 4955/2020 filed by Respondent No. 1 seeking liquidation of Corporate Debtor which is pending before this Hon'ble Adjudicating Authority;

- Direct the Respondents to maintain *status quo* with the respect to ***Unit No. 401 to 418 & Unit No. 509 to 518*** of project "***Matrix* TechnoSquare**" till the pendency of I.A. 4680 of 2020 in C.P. (IB) No.1022(ND) of 2018 titled as ***"Gautam Mullick & Ors. V. Rohtas Projects Limited"*** before Hon'ble NCLT, New Delhi Bench — III;

- Pass such other or further order / order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.

2. Brief facts of the case as averred in the Application are as follows:

i. That this Adjudicating Authority vide its order dated 20.11.2019 admitted the captioned i.e., Company Petition (IB)-1374(ND) of 2019 filed on behalf of the Financial

Creditor i.e. Corporation Bank against the Corporate Debtor being M/s Hydric Farms Inputs Ltd. for initiating the Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency and Bankruptcy Code, 2016 and appointed Mr. Aditya Agarwal as the Interim Resolution Professional who is currently the Resolution Professional.

ii. That pursuant to the public announcement by the Resolution Professional of the Corporate Debtor, M/s ICICI Bank Limited filed its claims as a Financial Creditor with Mr. Aditya Agarwal. The claim filed was as per the loan agreement dated 10.03.2013 between the Corporate Debtor and M/s ICICI Bank Limited for the following properties: -

1. Unit No. 401 to 418	Matrix Techno Square, Plot No 40, Pocket – Knowledge Park — 1, Greater Noida
2. Unit No. 509 to 518	Matrix Techno Square, Plot No. 40, Pocket Knowledge Park — 1, Greater Noida

iii. That the RP of the Corporate Debtor M/s Hydric Farms Inputs Limited claims that the absolute title of the above-mentioned units belongs to the Corporate Debtor i.e. M/s

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Hydric Farms Inputs Limited and the same has been mortgaged by the Corporate Debtor to M/s ICICI Bank Ltd for a Loan.

iv. That the Respondent No. 1 being the Resolution Professional of M/s Hydric Farm Inputs limited has filed an Application being LA. 4955 of 2021 for seeking Liquidation of the Corporate Debtor which is pending adjudication before this Adjudicating Authority.

v. That the Applicant is the Resolution Professional of the company M/s Rohtas Projects Ltd which is also undergoing the Corporate Insolvency Resolution Process vide order dated 30.09.2019 and the Applicant herein is the Resolution Professional of M/s Rohtas Projects Ltd as appointed by the Hon'ble National Company Law Tribunal, New Delhi Bench — III vide its order dated 15.10.2019.

vi. That sub-section (1) of section 25 casts a duty upon the Resolution Professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor. For this purpose, clause (j) of sub-section (2) of section 25 casts a duty upon the

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Resolution Professional to file an application for avoidance of transactions, if any, before the Adjudicating Authority in accordance with Chapter III of the Code.

vii. That in view of the duty cast upon the Applicant by the Code, whilst examining the financials of the Rohtas Projects Limited, the Applicant has observed that certain business transactions of Rohtas Projects Limited have been carried out for fraudulent purpose and with an intent to defraud the creditors of Rohtas Projects Limited.

viii. That Rohtas Projects Limited has a project named Matrix Techno Square situated at Plot No. 40, Pocket Sector Knowledge Park— I, Greater Noida which contains certain units in the form of office spaces. That upon examining the financials of Rohtas Projects Limited, the Applicant, it came to the knowledge that transactions with respect to the above-mentioned project being Matrix Techno Square situated at Plot No. 40, Pocket —1, Sector Knowledge Park — 1, Greater Noida wherein, Rohtas Projects Limited through its Ex-directors made subsequent sales from ground floor to fifth floor after allotment to the original allottees and by creating

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forged Board Resolution of one Kapareva Development Pvt Ltd and transferring/selling the same units to themselves or to their related entity(ies) which was not only wrongful trading but the same was also a fraudulent business.

ix. That on 12.02.2014, a Tripartite Sub-Lease Deed was executed between Greater Noida Industrial Development Authority, Kapareva Development Pvt Ltd and Hydric Farm Inputs Limited (Corporate Debtor) herein whereby, an amount of consideration is stated to have been paid by the. Corporate Debtor to Kapareva Development Pvt Ltd being one time lease rent in respect of the property i.e Super Area of 1753.07 sqm on Unit No 401 to 418 on fourth floor in the project Matrix Techno Square**.**

x. That on 12.02.2014, a Tripartite Sub-Lease Deed was executed between Greater Noida Industrial Development Authority, Kapareva Development Pvt Ltd and Hydric Farm Inputs Limited (Corporate Debtor) herein whereby, an amount of consideration is stated to have been paid by the. Corporate Debtor to Kapareva Development Pvt Ltd being one time lease rent in respect of the property i.e Super Area of

964.42 sqm on Unit No 509 to 518 on fifth floor in the project Matrix Techno Square.

xi. That in view of the aforesaid agreement, the Corporate Debtor being Hydric Farm Inputs Limited sought permission from Greater Noida Industrial Development Authority to allegedly mortgage the Unit No. 401 to 418, 4th floor in favour of Respondent No. 2 being ICICI Bank Limited which was allowed by sanction letter dated 13.02.2014. The Corporate Debtor being Hydric Farm Inputs Limited sought permission from Greater Noida Industrial Development Authority to allegedly mortgage the Unit No. 509 to 418, 5th floor in favour of Respondent No. 2 being ICICI Bank Limited which was allowed by sanction letter dated 13.02.2014.

xii. That the Applicant received a representation from the original allottees/customers owners of the aforementioned properties i.e. the Units in Rohtas Matrix Techno Square wherein, the owners have represented the fraud played by the Ex-directors of the Rohtas Projects Limited, Mr Deepak Rastogi and M/s Hydric Farm Inputs Limited.

xiii. That upon examining the records and the documents submitted by the allottees, it became crystal clear that the Ex-directors of Rohtas Projects Limited (who are also the Ex-director of Corporate Debtor herein) along with Mr. Deepak Rastogi & Hydric Farm Inputs Limited in order to defraud the creditors i.e., the allotees to whom originally the units were allotted, have collected the money in Rohtas Projects and subsequently transferred and mortgaged the said units to themselves.

xiv. That in view of the aforesaid, the Applicant being the Resolution Professional for Rohtas Projects Limited filed an Application being I.A. 4680 of 2020 under Section 66 of the I&B Code, 2016 for seeking avoidance of above said transactions and the same is pending adjudication before the Hon'ble NCLT, Bench- III.

xv. That the Applicant being the Resolution Professional of Rohtas Projects Limited is casted with the duty to make every endeavour to protect and preserve the value of the property of the Corporate Debtor i.e. Rohtas Projects Limited in terms of Section 20(1) of the Code and therefore, the

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Applicant has approached this Hon'ble Adjudicating Authority seeking protection and preservation of the assets of Rohtas Projects Limited being the units of project Matrix Techno Square.

xvi. That the Ex- Directors of Corporate Debtor Hydric Farm Inputs Limited & Rohtas Projects Limited are common and the aforesaid transaction has been carried out by the Ex-directors/promoters to defraud the creditors of Rohtas Projects Limited including the real estate allottees.

xvii. The said project Matrix Techno Square will only survive if the avoidance is allowed by the Hon'ble NCLT, New Delhi Bench — III which belongs to Rohtas Projects Limited.

xviii. That in the event the Corporate Debtor herein being Hydric Farm Inputs Limited goes into Liquidation then in terms of Section 36 of the Code, the Liquidator is cast upon a duty to form a liquidation estate. The Respondent No. 1 is claiming to be the absolute owner of the said units in question i.e. Unit No. 401 to 418 & Unit No. 508 to 518 and the same has also been stated by the Respondent No. 1 in its reply filed before

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the Hon'ble NCLT New Delhi Bench — III in I.A. 4680 of 2020.

xix. That the said question as to the absolute ownership of the units of the project of Rohtas Projects Limited is subject to the outcome of I.A. 4680 of 2020. It is pertinent to mention herein that in the event the I.A. 4680 of 2020 is allowed, the said units would then be part of the pool of assets of Rohtas Projects Limited.

3. The Resolution Professional for Respondent No. 1 has filed reply on behalf of Respondent No. 1 stating as follows:

i. That the Resolution Professional of the Corporate Debtor conducted the Fifth Committee of Creditors ("COC") Meeting on 16.09.2020, wherein the issue of liquidation of the Corporate Debtor was taken up and deliberated upon by the COC. The COC passed a resolution for liquidation of the Corporate Debtor and appointment of the Resolution Professional as the liquidator of the Corporate Debtor. Consequently, the IA 4955 of 2021 was filed by the Resolution Professional **(RP)** of Corporate Debtor under section 33(1) and 34 (3) of the Code for passing an order

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requiring Corporate Debtor to be liquidated in the manner as laid under the Code. The instant intervention application was filed by the Applicant for seeking intervention in the aforesaid application for liquidation.

ii. That the present application has been filed only to harass the Corporate Debtor and prolong the time-bound CIRP and liquidation proceedings of the Corporate Debtor herein.

iii. That the intervention Application is at the outset illegal and infructuous, because of the fact the Applicant has no locus to intervene in the application for the liquidation of the Corporate Debtor.

iv. That the liquidation of the Corporate Debtor is time-bound statutory proceeding to be initiated under section 33 of the Code, which stipulates for passing an order requiring the Corporate Debtor to be liquidated on the expiry of the CIRP or when the RP intimate to the Adjudicating Authority that CoC has approved by not less than sixty-six per cent of the voting share to liquidate the Corporate Debtor.

v. That there cannot be any intervention into the commercial wisdom of the COC and it has been given paramount status, for ensuring completion of the insolvency processes within the timelines prescribed by the Code.

vi. That the Applicant had already claimed its legal remedy to secure its alleged interest, in the Unit No. 401 to Unit No. 418 and Unit No. 509 to Unit No. 518 (hereinafter referred to as "**Units")** at Matrix TechnoSquare, Plot No. 40, Pocket-1, Sector Knowledge Park-1, Greater Noida., by initiating judicial proceeding against the Corporate Debtor by filing an interim application, IA 4680 of 2020 in C.P. NO. (IB)-1022(ND) of 2018. IA 4680 of 2020 is sub judice before Bench-III of this Hon'ble Tribunal and the pleadings in the said interim application are completed.

vii. That the Applicant's ground to intervene is that as it seeks to maintain the status quo on the Units. The Applicant cannot seek such remedy in the application filed for liquidation of the Corporate Debtor after Applicant failed to pray for any such status quo order in its own application under Section 66 of the Code.

viii. That the two registered sub-lease deeds, dated 12.02.2014 and allotment letters issued to the Corporate Debtor clearly shows that the Corporate Debtor has a valid title over the Units.

ix. That as per the extracts of the minutes of the meeting dated 14.09.2006, the board of directors of Kapareva Development Private Limited (i.e. leasee under the sub-lease deed for the Units) have authorized the Applicant to execute deeds of lease or any type of transfer of deeds in respect of the project with the prospective purchasers/buyers and also to receive the advance, premium, payments and sale considerations etc.

x. That the Corporate Debtor had paid valid consideration to the herein Applicant for the Units and the ledger accounts Of the Corporate Debtor corroborate the same. The ledger accounts show that Corporate Debtor had paid a total amount of Rs.5,30,55,000/-(Rupees Five Crore Thirty

Lakhs and Fifty-Five Thousand) for unit no. 401 to 418 and Rs.3,23,55,000/- (Rupees Three Crore Twenty-Three Lakhs and Fifty Thousand Rupees) for Unit No, 509 to Unit No. 518, at Matrix Techno Square, Plot No. 40, Pocket-1, Sector Knowledge Park-1, Greater Noida.

xi. That the registered sub-lease for the Units are valid and cannot be challenged by the Applicant or any of the allottee of units at Matrix Techno Square. Unless the two registered sub lease deeds are declared void by any competent civil court in a civil suit, the Corporate Debtor have clear and marketable title over the Purchased Units.

xii. That the Applicant has not shown any valuation document and/or the record of similar property transactions to show that the registered sub-lease deeds are not normal commercial transactions on the day it was executed or whether the sub-lease deeds were not transacted on an arms-length basis.

xiii. That the Units are owned by the Corporate Debtor and not by the suspended Board of Directors and the Corporate Debtor is a separate legal entity therefore the Corporate Debtor cannot be made liable for any fraud played by the suspended Board of Directors to defraud creditors of the Applicant. The Applicant may pursue a separate legal remedy against the suspended board of directors but the Applicant has no locus to make any claim over the assets of the Corporate Debtor after receiving full consideration for the Units.

xiv. That Units are included in the pool of assets in the CIRP of the Corporate Debtor and its financial creditors and operational creditors have the first right over those assets for timely satisfaction of their claims, hence, the instant Application is without any merit and Applicant has no right over the Units, more so when the Corporate Debtor has made the payment to the Applicant for the sale of the Unit.

xv. That the Applicant has failed to establish that there has been any fraudulent intention of the Corporate Debtor to defraud creditors of the Applicant since the complete payment was already made by the Corporate Debtor to the Applicant.

xvi. That as per the ledger account of the Corporate Debtor, the Corporate Debtor had paid the Applicant a total amount of Rs. 5,30,55,000J -(Rupees Five Crore Thirty Lakhs and Fifty-Five Thousand) for unit no. 401 to 418 and Rs.3,23,55,000/- (Rupees Three Crore Twenty-Three Lakhs and Fifty Thousand Rupees) for Unit No. 509 to Unit No. 518, at Matrix Techno Square, Plot No. 40, Pocket-1, Sector Knowledge Park-1, Greater Noida.

4. The counsel for Respondent No. 2 has filed reply on behalf of Respondent No. 2 stating as follows:

i. That Respondent No. 1 / Corporate Debtor approached the answering respondent for availing finance facilities of Rs. 1,00,000,000 under Loan Against Property Scheme against the mortgage of "Plot No. 40, 4TH Floor, Unit No. 401 to 418, Sector Knowledge Park - 1, Greater Noida - 201301" and "Plot No. 40, 5TH Floor, Unit No. 509 to 518, Sector Knowledge

Park-1, Greater Noida -201301 which was approved by the answering respondent vide offer letter dated 30.01.2014.

ii. That the Housing Development Finance Corporation Limited (HDFC Limited) on the basis of request letter dated 31.01.2014 issued by M/s Rohtas Projects Limited issued its No Objection Certificate dated 31.01.2014 in favour of the answering respondent for granting the aforesaid loan to Respondent No. 1 / Corporate Debtor against the security of aforesaid properties. Accordingly, HDFC Limited released its lien on the said properties and permitted the same to be mortgaged with the answering respondent. M/ s Kapareva Development Private Limited had entered into an agreement with M/ s Rohtas Projects Limited for the development and construction on the aforesaid plot.

iii. That subsequently the answering respondent disbursed the loan of Rs. 9,98,00,000 (Rs. 9,83,00,000 paid to M/s Hydric Farms Inputs Limited and Rs. 1,50,000 paid to ICICI Lombard GIC Limited) on 31.01.2014 in

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favour of Respondent No. 1 / Corporate Debtor in accordance with the terms and conditions of the loan agreement. Mr. Paresh Rashtogi, Mr. Pankaj Rastogi, Mr. Piyush Rastogi and Mr. Deepak Rastogi were the personal guarantors in respect of loan availed by Respondent No. 1 / Corporate Debtor from the answering respondent. Respondent No. 1 / Corporate Debtor and M/s Rohtas Projects Limited are having common directors. The personal guarantors of the Answering Respondent in respect of loan availed by Respondent No. 1 / Corporate Debtor were the directors of both the companies i.e. Corporate Debtor and M/ s Rohtas Projects Limited.

iv. That the original Tripartite lease deeds dated 12.02.2014 were deposited by Respondent No. 1 / Corporate Debtor with the answering respondent Ltd for creation of equitable mortgage of aforesaid properties with the answering respondent as security towards the repayment of loan availed from the answering respondent. The Greater Noida

Industrial Development Authority vide its letters dated 13.02.2014 granted permission to Respondent No. 1 / Corporate Debtor to mortgage the aforesaid properties with the answering respondent.

v. That after availing the aforesaid facility by way of Loan Against Property, the borrowers failed to repay the loan as per schedule and failed to adhere to the financial discipline and acted contrary to the terms and conditions governing the aforesaid Facility Agreement. The Borrowers have been constantly defaulting in repayment of the contractual dues / charges and interest, despite repeated reminders, requests and demands and several opportunities granted to the Borrowers, they have failed to regularize their account and also failed to make payment of the outstanding amount due and payable by the Borrowers.

vi. That in view of the repeated and continuous breach of the terms and conditions of the aforesaid agreements and in particular non-payment of the loan

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and interest, which remained outstanding for over a period of 90 days, the aforesaid loan account of the Respondent No. 1 / Corporate Debtor was classified by the answering respondent as a non performing asset (NPA) on 28.02.2018 in accordance with the relevant regulations and guidelines issued by the Reserve Bank of India from time to time.

vii. That the answering respondent filed an application under Section 14 of the SARFAESI Act, 2002 before the Ld. District Magistrate, Gautam Buddh Nagar for appointment of Court Receiver to take the physical possession of the property. The Ld DM was pleased to appoint a Court Receiver to take physical possession of the mortgaged properties and hand over the same to the answering respondent.

viii. That before ICICI Bank Ltd could take actual physical possession of the mortgaged properties, the Hon'ble National Company Law Tribunal, Bench - VI, New Delhi vide its order dated 20.11.2019 in C.P No. IB-1374/ ND/2019 titled as "Corporation Bank

Limited V/ s M/ s Hydric Farm Inputs Limited" was pleased to commence the Corporate Insolvency Resolution Process against M/ s Hydric Farm Inputs Limited (Respondent No. 1 / Corporate Debtor) and appointed the Interim Resolution Professional. The Hon'ble Tribunal was further pleased to declare Moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016. The IRP after his appointment made the public announcement in Form A calling upon the creditors of M/ s Hydric Farm Inputs Limited (Respondent No. 1 / Corporate Debtor) to submit their claims.

ix. That the answering respondent filed its claim in Form C claiming therein an amount of Rs. 11,05,68,552.52 (Eleven Crore Five Lakh Sixty-Eight Thousand Five Hundred Fifty Two Rupees and Fifty Two Paisa Only) due as on 20.11.2019 along with interest of 24% per annum till realization as Secured Financial Creditor. The IRP admitted the claim of Rs. 11,05,68,552.52 of the answering respondent under

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the category of Secured Financial Creditor in respect of mortgaged properties bearing Plot No. 40, 4TH Floor, Unit No. 401 to 418, Sector Knowledge Park-1, Greater Noida - 201301" and "Plot No. 40, 5TH Floor, Unit No. 509 to 518, Sector Knowledge Park - 1, Greater Noida - 201301. The CIRP proceedings of M/s Hydric Farm Inputs Limited are still continuing.

x. That subsequently Mr. Mukesh Gupta, Resolution Professional of M/s Rohtas Projects Limited filed an Interlocutory Application bearing I.A No. 4680/2020 under Section 66 R/w Section 25(2) of the Insolvency and Bankruptcy Code, 2016 in C.P No. IB - 1022/2018 titled as "Mr Gautam Mullick 8, Ors Vs. M/s Rohtas Projects Limited" before the Hon'ble National Company Tribunal, Bench - III, New Delhi thereby, seeking, inter-alia, following reliefs: "Declaring the transactions made by M/s Rohtas Projects Limited to Mr Paresh Rostogi, Mr Pankaj Rostogi, Mr Piyush Rastogi, Mr Deepak Rastogi and M/s Hydric Farm Inputs Limited by virtue of Tripartite Sub Lease Deeds in respect of unites on various floors of Rohtas Matrix Techno Square, Plot

No. 40, Pocket - I Sector Knowledge Park - I, Greater Noida as the Transactions under Section 66 of the Code and declare the transactions/Tripartite sub-lease deeds as null and void and accordingly reverse the effect of the said transactions, thereby resulting in the said units being vested in the Corporate Debtor FOR the maximisation of Interests of the Original allottees. It is submitted that the prayer as prayed for in the said application (I.A No. 4680/2020) filed by Mr. Mukesh Gupta is not maintainable at the face of it.

xi. That subsequently the answering respondent being a necessary and proper party in the I.A. No. 4680/ 2020 filed an intervention application bearing No. - IVN P-4/2021 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking its impleadment and intervention in I.A. No. 4680/ 2020 and to participate in the proceedings of the I.A. No. 4680/2020 and adduce its arguments before the Hon'ble National Company Law Tribunal, Bench - III, New Delhi to which the Resolution Professional i.e. Mr. Mukesh Gupta has filed his reply before the Hon'ble National

Company Law Tribunal, Bench - III, New Delhi and the same is pending adjudication.

xii. That the present application is not maintainable and the same is liable to be dismissed. The applicant has travelled beyond the provisions of the law and has filed the present application with the malafide to delay the proceedings pending before this Hon'ble Court and under the provisions of the Insolvency and Bankruptcy Code, 2016 with respect to the Corporate Debtor i.e. M/s Hydric Farm Inputs Ltd.

xiii. That it is denied that the Board Resolutions of M/s Kapareva Development Private Limited are forged. It is submitted that the units which are mortgaged with ICICI bank Ltd were sold in a genuine transactions and two registered sub-lease deeds both dated 12.02.2014 were executed by the registered lease holder M/ s Kapareva Development Private Limited in favour of the Corporate Debtor and the same has been confirmed by the Greater Noida Industrial Development Authority. Further the Greater Noida Industrial Development Authority vide its

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letters dated 13.02.2014 granted permission to Respondent No. 1 / Corporate Debtor to mortgage the aforesaid properties with the answering respondent. Hence, the said units are legally mortgage with the answering respondent.

5. The Applicant has filed his rejoinder to the reply filed by Respondent No. 1 & 2 stating as follows:

i. That the Applicant being the Resolution Professional of Rohtas Projects Limited is casted with a duty to make every endeavour to protect and preserve the value of the property of the Corporate Debtor i.e. Rohtas Projects Limited in terms of Section 20(1) of the Code and therefore, the Applicant has approached this Hon'ble Adjudicating Authority seeking protection and preservation of assets of Rohtas Projects Limited being the units of project Matrix Techno Square.

ii. That the Ex-directors of the Corporate Debtor herein i.e. Hydric Farms Inputs Limited & Rohtas Projects Limited are common and the transaction with respect to the units of project **Matrix Techno Square** has been carried out by the

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Ex-directors/promoters to defraud the creditors of Rohtas Projects Limited including the real estate allottees.

iii. That fraudulent trading has been committed by the common Ex-directors of the Corporate Debtor herein being Hydric Farms Inputs Limited and Corporate Debtor being Rohtas Projects Limited.

iv. That in terms of Section 36 of the Code, the Liquidator is casted upon a duty to form a liquidation estate. It is further pertinent to mention herein that the Respondent No. I is claiming to be the absolute owner of the said units in question i.e. Unit No. 401 to 418 & Unit No. 508 to 518 and the same has also been stated by the Respondent No. 1 in its reply filed before the Hon'ble NCLT, New Delhi Bench — III in I.A. 4680 of 2020. Therefore, the rights of the allottees of the project matrix techno square will be prejudiced and it is therefore, imperative that status quo be maintained till the disposal of I.A. 4680 of 2020.

v. That alleged leasehold rights cannot take nature of ownership and hence, the case of Respondent No. 1 that he has absolute title is baseless, false, and vehemently denied by Applicant.

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vi. That fraud is evident from the fact that no entry of sale consideration of tripartite sub-lease deed for Rs. 5,30,55,000/- with respect to units 401-418 and sale consideration of tripartite sub-lease deed for Rs. 3,23,55,000/- with respect to units 509 518 are bogus and the same do not reflect in the books of Kapareva Development Pvt Ltd.

vii. That that no document has been placed on record to show that the unit which are in question form part of the pool of assets in Corporate Insolvency Resolution Process of Respondent No. 1. It is submitted that in terms of Section 18(1)(f) of Code, Resolution Professional is required to take possession of only those assets over which Corporate Debtor has ownership rights, it is submitted that assuming that Respondent No 1 has leasehold rights, still the Respondent No 1 cannot retain possession of the same.

viii. The Applicant herein sought clarifications from Kapareva and Kapareva vide its email dated 15.09.2020 has categorically mentioned that no board resolution has been passed in favour of any person authorizing to executed sale

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deed in favor of Respondent No. 1 and further no consideration has been received by Kapareva as mentioned in the alleged sub-lease agreements.

ix. That the Applicant preferred IA No. 4680 of 2020 wherein Respondent No. 1 has been arrayed as Respondent No. 7, it is submitted that the Applicant is challenging the validity of sub-lease deeds executed in favour of Respondent No. 1 and therefore, the subsequent mortgage to the Respondent No. 2 becomes bad in law.

x. That rights created by Respondent No. 1 over Unit No. 401 to 418 to 509 and 518 are immaterial if the Hon' ble NCLT, New Delhi Bench III concludes that Tripartite Sub Lease Deeds are null and void.

xi. That status quo be maintained with respect to the above-mentioned units as the Respondent No. 1 is claiming absolute title over the same and the same being subject matter of an avoidance Application which ultimately decide the ownership of the said units.

6. We have gone through the documents filed by the parties and heard the arguments made by the Counsels. The present

Application was filed by the Resolution Professional for Rohtas Projects Limited as appointed by National Company Law Tribunal, New Delhi Bench — III, New Delhi under Section 60(5) of the I&B Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 for seeking intervention of the Applicant in the application being I.A 4955/2020 filed by Respondent No. 1 seeking liquidation of Corporate Debtor which is pending before this Adjudicating Authority. The concern of the Applicant is that if Corporate Debtor herein being Hydric Farm Inputs Limited goes into Liquidation then in terms of Section 36 of the Code, the Liquidator is cast upon a duty to form a liquidation estate and the Respondent No. 1 is claiming to be the absolute owner of the units in question i.e. Unit No. 401 to 418 & Unit No. 508 to 518 and the same has also been stated by the Respondent No. 1 in its reply filed before the NCLT New Delhi Bench — III in I.A. 4680 of 2020. The Applicant's contention is that upon examining the financials of Rohtas Projects Limited, the Applicant came to know of the transactions with respect to the above-mentioned units in project being Matrix Techno Square situated at Plot No. 40, Pocket —1, Sector

Knowledge Park — 1, Greater Noida wherein, Rohtas Projects Limited through its Ex-directors made subsequent sales from ground floor to fifth floor after allotment to the original allottees and by creating forged Board Resolution of one Kapareva Development Pvt Ltd and transferring/selling the same units to themselves or to their related entities in a wrongful and fraudulent manner to defraud its creditors. That the said question as to the absolute ownership of the units of the project of Rohtas Projects Limited is subject to the outcome of I.A. 4680 of 2020 and that in the event the I.A. 4680 of 2020 is allowed, the said units would then be part of the pool of assets of Rohtas Projects Limited.

7. As per the ledger account of the Corporate Debtor, the Corporate Debtor has paid a total amount of Rs. 5,30,55,000/- (Rupees Five Crore Thirty Lakhs and Fifty-Five Thousand) for Unit No. 401 to 418 and Rs.3,23,55,000/- (Rupees Three Crore Twenty-Three Lakhs and Fifty Thousand Rupees) for Unit No. 509 to Unit No. 518, at Matrix Techno Square, Plot No. 40, Pocket-1, Sector Knowledge Park-1, Greater Noida. The Applicant has failed to establish as to how such transaction was to defraud the creditors. Two registered sub-lease deeds both dated 12.02.2014 were executed by the registered lease holder M/ s Kapareva Development Private Limited in favour of the Corporate Debtor and the same had been confirmed by the Greater Noida Industrial Development Authority. Further, the units were mortgaged with Respondent No. 2 in terms of the loan agreement dated 31.01.2014 in favour of Respondent No. 1 / Corporate Debtor in lieu of which a loan of Rs. 9,98,00,000 was disbured to Respodent No. 1. The loan agreement was executed on the basis of No Objection Certificate dated 31.01.2014 in favour of the Respondent for granting the aforesaid loan to Respondent No. 1 / Corporate Debtor against the security of aforesaid properties by Housing Development Finance Corporation Limited (HDFC Limited) on the basis of request letter dated 31.01.2014 issued by M/s Rohtas Projects Limited. Accordingly, HDFC Limited released its lien on the said properties and permitted the same to be mortgaged with the Respondent No. 2. The Greater Noida Industrial Development Authority had also; vide its letters dated 13.02.2014 granted permission to Respondent No. 1 / Corporate Debtor to mortgage the aforesaid properties with

Respondent No. 2. Hence, the said units are duly mortgaged with Respondent No. 2. Further, the Applicant has failed to establish that the Board Resolution Kapareva Development Pvt Ltd in favour of Respondent No. 1 is forged.

8. The Corporate Debtor is a separate legal entity and the Applicant has no locus to make any claim over the assets of the Corporate Debtor after receiving full consideration for the Units.

9. The liquidation of the Corporate Debtor is time-bound statutory proceeding to be initiated under Section 33 of the Code, which stipulates for passing an order requiring the Corporate Debtor to be liquidated on the expiry of the CIRP or when the RP intimates to the Adjudicating Authority that CoC has approved by not less than sixty-six per cent of the voting share to liquidate the Corporate Debtor. The Applicant has no locus to intervene in the application for the liquidation of the Corporate Debtor.

10. In light of the above discussion, IA/4432/2021 is dismissed.

Let a copy of order be served to parties.

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(RAHUL BHATNAGAR)
Member (Technical)

(P.S.N. PRASAD)
Member (Judicial)

THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 4955/2020

IN

Company Petition No. (IB) – 1374 (ND) /2019

Under Section 33(1) and 34(3) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the corporate debtor & issuance of directions

In the matter of:

M/s. Corporation Bank

.... FINANCIAL CREDITOR

VERSUS

M/s. Hydric Farms Inputs Ltd.

..... CORPORATE DEBTOR

In the matter of:

Mr. Aditya Agarwal

.... Applicant (RP)

Order Pronounced on: 09.06.2022

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CORAM:

SHRI.P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

For the Applicant: Mr Aniruddh Singh

ORDER

PER- RAHUL BHATNAGAR , MEMBER (TECHNICAL)

1. This is an application filed by the Resolution Professional, under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of Corporate Debtor, M/s. Hydric Farms Inputs Ltd.

2. The facts in brief are that one of the Financial Creditors, M/s. Corporation Bank had filed an application under Section 7 of the Code, bearing number IB- 1374/(ND)/2019, for initiation of

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Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor. The said application was admitted by this Tribunal on 20.11.2019, thereby initiating CIRP against the Corporate Debtor and therein, appointed Mr. Aditya Agarwal as the Interim Resolution Professional (IRP).

3. Thereafter, the IRP had issued a public announcement in Form-A, which was published in Business Standard NCR & Lucknow edition on 04.12.2019, calling on the creditors to submit their claims along with proofs.

4. That the IRP had sent two emails dated 03.12.2019 and 05.12.2019 to the suspended board of the Corporate Debtor asking the financial information and also contacted Mr. Deepak Rastogi, Ex-Director of Corporate Debtor but to no avail. The IRP also visited the principal office of the Corporate Debtor on 03.12.2019 but the suspended board of directors were not present at the principal office and only the accountant of the Corporate Debtor was present at the premises. Further, the

Registered Office of the Corporate Debtor at New Delhi was not operating and there was no business activity happening at the registered office. The IRP is required to collect basic information of the Corporate Debtor which was not readily available with the Financial Creditor. Therefore, the IRP gathered information from public domain including the RoC.

5. The IRP constituted Committee of Creditors ("COC") based on unverified claims received till last date of submission on 16.12.2019, and a report certifying constitution of COC dated 23.12.2019 was submitted as per Regulation 17(1) of the CIRP Regulations along with the list of creditors vide diary no. 0710102001122020.

6. In the first meeting of the CoC on 30.12.2019, the IRP Mr Aditya Agarwal was appointed as the RP of the Corporate Debtor.

7. The Resolution Professional conducted the Second COC meeting on 24.01.2020 wherein interalia the following issues were discussed:

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- Fixation of Fees / Appointment and confirmation of valuers for valuation of different class of assets of the Corporate Debtor;

- Discussion and deliberation on the Information Memorandum;

- Discussion on Expression of Interest (EoI) and Form – G;

- Interim Budget and Mode of Financing of CIRP;

- Appointment and confirmation of Charted Accountant for finalization of Corporate Debtor's books of accounts and assisting the Resolution Professional in discharging his duties.

The Resolution Profession informed the COC about the updated list of creditors since Axis Bank, ICICI Bank and IFCI Ltd has also filed their claims as a Financial Creditor to the Corporate Debtor, Further, Daruka Fertilizers had also filed their claims as an Operational Creditor which was yet to be verified in

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absence of complete financial records of the Corporate Debtor.

8. The Resolution Professional had also placed before the COC the terms and conditions of the Expression of Interest for the assets of the Corporate Debtor. The COC had further discussed on the Form G to be published for the EOI and decided that the minimum net worth for eligibility criteria for submission of the EOI would be kept at Rs. 8.00 Crores.

9. The COC considered all the aforementioned agendas and agreed on appointment of valuers for valuation of the class of assets of the Corporate Debtor as well as Charted Accountant. The valuers for Land Building submitted their valuation report and the average fair value of land and buildings is Rs. 14,29,47,638/- (Rupees Fourteen Crore Twenty Nine Lakh Forty Seven Thousand Six Hundred Thirty Eight) and the average liquidation value of assets have been determined to be Rs. 11,09,11,047/- (Rupees Eleven Crores Nine Lakh Eleven

Thousand Forty Seven).

10. The Resolution Professional conducted the Third CoC Meeting on 13.03.2020, wherein the following issues were discussed:

- Appointment of valuer to value the intangible asset, including "Khushali Brand" of the Corporate Debtor:
- Ratification of appointment of two Valuers:
- Ratification of appointment of professional Chartered Accountant and team.

11. The CoC further ratified and confirmed the appointment of two consultants for each class of assets, namely Mr. Mukesh Kumar Sharma, Agra, Mr. Abhisek Ahuja, New Delhi/ Kanpur (Land & Building), Mr. Suresh Kumar Sonthalia, Lucknow, Mr. Abhisek Ahuja, New Delhi/Kanpur (Plant & Machinery), Mr. Navin Khandelwal, Indore and Mr. Rajeev Lochan, New Delhi for each class of assets (Land & Building, Plant& Machinery and Financial Assets) of the Corporate Debtor. Further, the CoC ratified and confirmed the appointment

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of Mr. Rakesh Kumar Agrawal, to assist the Resolution Professional in finalization of Books of Accounts as well as discharging of the Resolution Professional's IBC/ other duties.

12. The Resolution Professional informed the CoC that no Resolution Applicant had filed for the EOI. The CoC was of the opinion that, if need arose in due course, the Re-issuance of EoI may be considered. However, no response for the EoI was received by the Resolution Professional.

13. The CoC further discussed the ongoing non-cooperation of the ex- management of the Corporate Debtor, including that the ex-management had not provided financial books and audited annual accounts for Financial Year 2018-19, including PF Login ID-password. The Resolution Professional placed e-mail dated 30.01.2020 before the CoC, which had been received from the Auditor of the Company conveying that no books of accounts had been received by the Auditor from the ex-management of the Corporate

Debtor. The CoC requested the RP to send last final mail to the Corporate Debtor demanding that the Corporate Debtor shall provide information in 7 days, failing which the RP shall file a non-cooperation application u/s 19(2) of the IBC Code, 2016 with the Adjudicating Authority.

14. No documents were received by the RP from the ex-management till the date of filing of this application.

15. The Resolution Professional conducted the Fourth CoC Meeting on 13.08.2020, wherein the following issues were discussed:

- Re-issuance of EOI;
- Non-cooperation of Ex-management;
- Fixing fees for valuer for Land & Building and Plant & Machinery;
- Fixing fees of security agency;
- Liquidation of the Corporate Debtor

16. The Resolution Professional informed the CoC that a Section 19 (2) application has been filed before this Hon'ble Tribunal against the ex-management for non-cooperation and the same is pending for adjudication. The Applicant has stated that the directors/managers/officers of the Corporate Debtor were not extending assistance and cooperation to the Applicant which was imperative for the Applicant to manage the affairs of the Corporate Debtor and verification of claims of the creditors.

17. The Resolution Professional further informed the CoC that the Mr. Abhisekh Ahuja, Valuer appointed both for Land & Building and Plant & Machinery has resigned and conveyed his inability to complete the assignment in July, 2020. Therefore, the Resolution Professional had to immediately appoint the Valuers for the aforesaid assets of the Corporate Debtor. However, the CoC rejected the remuneration of the valuers. The COC also rejected the remuneration fixed for the Security Agency appointed for the security of the assets of the Corporate Debtor. The CoC also rejected the remuneration/ fees fixed for the valuer appointed to give a valuation report on the "Khushali" brand of the Corporate Debtor.

18. The CoC deliberated on the liquidation of the Corporate Debtor and the same was approved by the 80.80% of the CoC members and 19.20 % did not vote. The ex-management is still in default of providing the relevant financial documents necessary for proceeding with the CIRP process. It was further submitted that the time limit of 180 days to complete the CIRP expired on 25.08.2020 (excluding the lockdown period from 23.03.2020 to 31.06.2020). In absence of the audited financials of the company the claims of creditors cannot be approved/ verified by the Applicant.

19. The Resolution Professional, after the hearing before this Hon'ble Tribunal in the Section 19 (2) application on 07.09.2020, in which the Registry was directed to issue notices to all the ex-directors of the Corporate Debtor, issued a notice for Fifth COC meeting on 10.09.2020 along with the agenda for the meeting to all the COC members and on 14.09.2020 to the Ex-management of the company for the COC meeting to be conducted on 16.09.2020 at 3A/ 105 Azad Nagar, Kanpur - 208002 at 3:30 pm.

20. The Resolution Professional conducted the Fifth CoC Meeting on 16.09.2020, wherein the issues regarding reissue of EOI and Liquidation of the Corporate Debtor was discussed and deliberated upon by the COC. The CoC passed a resolution for liquidation of the Corporate Debtor and appointment of the Resolution Professional as the Liquidator of the Corporate Debtor.

21. The Applicant has submitted that the financials have still not been updated and provided to him. Further, the financial status of the Corporate Debtor till the last updated financial as on 31.03.2018 shows that the Corporate Debtor has incurred a loss of Rs. 16,24,54,853. In view of the financials and loss of the Corporate Debtor, the COC recommended liquidation of the Corporate Debtor.

22. The COC has also not made complete payments to the Resolution Professional. Till date the total amount pending for the services rendered by the RP and approved CIRP cost is Rs. 22,46,668(Rupees Twenty Two Lakh Forty Six Thousand Six Hundred Sixty Eight Only).

23. Section 33 (2) of the IBC Code, 2016 provides that, "*Where the Resolution Professional, at any time during the Corporate Insolvency Resolution Process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the Corporate Debtor, the Adjudicating Authority* ***shall*** *pass a liquidation order.*"

24. The CoC was of the opinion that the Corporate Debtor may be liquidated in light of the fact that the Corporate Debtor's net worth is in negative and there is no scope of revival of the Corporate Debtor. Therefore, this tribunal sees no merit in interfering with the commercial wisdom of the CoC.

25. In light of the above, the application is allowed by ordering liquidation of the corporate debtor, namely M/s. Hydric Farms Inputs Ltd with following directions:

a. That *Mr. Aditya Agarwal,* the Resolution Professional of the Corporate Debtor, is relieved from the present assignment as Resolution Professional.

b. That *Mr. Aditya Agarwal*, holding Registration No. *IBBI/IPA-001/IP-P000529/2017-18/10954*, is appointed as the Liquidator in terms of Section 32(1) of the Code;

c. Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;

d. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

e. This order shall be deemed to be notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

f. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.

g. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.

h. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

i. The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

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j. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps;

k. The CoC is directed to pay the remuneration and expenses of the Applicant including that of professional advisors subject to the provisions of IBC Code, 2016 and CIRP Regulations, 2016.

l. I.A. 4432 (ND)/2021 filed in IB- 1374 (ND)/2019 is disposed of in terms of the aforesaid terms.

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(RAHUL BHATNAGAR) **(P.S.N. PRASAD)**

MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**