

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 03.01.2022 AT 10.30 AM

| TC/CP. Nos. | CA/IA No. | Section/ Rule | Name of Parties |
|--------------------------|--|------------------|--|
| TCP(IB) No.79/9/AMR/2019 | IA(IBC)/72/2021, IA No.59/2021, IA(IBC)/137/2021 | 9 of IBC | Docking and Engineering Co. (VSP) Pvt Ltd Vs Kei-Rsos Maritime Ltd |

Counsel for Petitioner(s):

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|------------------------|-------------|------------------------|-----------|
| | | | |
| | | | |

Counsel for Respondent(s):

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|------------------------|-------------|------------------------|-----------|
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| | | | |

ORDER

IA(IBC)/72/2021 is dismissed, vide separate orders.

IA No.59/2021 is allowed, vide separate orders.

IA(IBC)/137/2021:

None appears for the Applicant. Counsel for the Respondent is present. List the matter on 11.01.2022.

Howe
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

*** **

I.A.No. 59/2021
IN
TCP (IB) No. 79/9/AMR/2019
IN
[CP (IB)No.32/9/HDB/2019]

**Under Section 30(6) of Insolvency and Bankruptcy Act, 2016 Read
with Regulation 39(4) of Insolvency and Bankruptcy Board of
India (Insolvency Resolution for Corporate Persons) Regulations,
2016.**

**In the matter of
M/s. KEI-RSOS MARITIME LIMITED**

Between:

Mr.V.Mahesh,
Resolution Professional of
M/s.Kei-Rsos Maritime Limited
#12/22, 7th Main Road,
RA Puram, Chennai - 600028.

... Applicant/Resolution Professional

And

M/s.Divetech Marine Engineering Services Private Limited,
B5/123 Safdurjung Enclave,
New Delhi – 110029.

.....Respondent/Resolution Applicant

Date of pronouncement of Order: 03.01.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant/RP : Mr. Chandrasen Reddy, Senior
Advocate along with
Mr.Ch.Srinivasulu, Advocate

For Respondent : Mr.G.Sita Rama Rao, Advocate

Per:

Justice Telaprolu Rajani, Member Judicial

ORDER

1. The Resolution Professional (in short the RP) in respect of M/s. Kei-Rsos Maritime Limited (the Corporate Debtor) seeks approval of the Resolution Plan (in short the Plan) in this Application under Section 30(6) of Insolvency and Bankruptcy Act, 2016 Read with Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016.
2. The brief facts leading to the Application as under.
 - i) The Hon'ble Bench vide its order dated 28.08.2019 directed initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and appointed Mr. Anand Chandra Swain, as Interim Resolution Professional. The Committee of Creditors (CoC) in its meeting held on 11.12.2019, decided to appoint Mr. Anand Chandra Swain as Resolution Professional (RP) and the same is approved by this Hon'ble Bench vide its order dated 24.12.2019.
 - ii) The Applicant submits that the IRP executed certain duties of the Resolution Professional and got valued the assets of the Corporate Debtor through two registered valuers i.e., Protocol Valuers & Crest Capital. Further, the Resolution

Professional prepared Information Memorandum on 01.09.2020.

- iii) Subsequently, invitation of Expression of Interest (EoI) in Form-G under Regulation 36A(1) of the Regulations was invited by the Applicant. In response to invitation for EoI in Form-G, the RP received EoI from Resolution Applicants viz 1. Bluemine Marine Solutions Private Limited (as a Consortium with Heaven on Ocean Tourism Private Limited, Shanmuga Transport Private Limited and Mr.Pushparaj) and 2. Divetech Marine Engineering Services Private Limited.
- iv) The Prospective Resolution Applicants had submitted their Resolution Plans on 10.10.2020, but the same were incomplete due to pending of inspection of vessels and due diligence of the sites and vessels of the Corporate Debtor which are not operational. They requested the RP/CoC permission and time to inspect the vessels and other assets of the Corporate Debtor, conduct a proper due diligence and submit a comprehensive, viable, feasible and a detailed Revised Resolution Plan. After several request of the Resolution Applicants due to their travel schedule and some key members affected by Covid they gave the final Resolution Plan on 31.03.2021.
- v) In its 7th CoC meeting held on 13.10.2020 it instructed the RP to apply for extension of time by a period of another 90 days, due to the time loss caused by lockdown. Accordingly, the RP applied for extension of the CIRP period on

04.11.2020, subsequently the Adjudicating Authority passed orders on 23.12.2020 extending the CIRP period upto 05.02.2021. However, the COC discussed and deliberated on the Resolution Plans, invited the Resolution Applicants and emphasized the need to expedite the matters.

- vi) In its 11th CoC meeting held on 19.04.2021, detailed discussions of the plan were discussed and the Resolution Applicant namely Divetech Engineering was asked to clarify and submit enough proof from their Parent Company (Financial Sponsor) by way of Corporate Guarantee. The detailed EM with financial and technical matrix was deliberated.
- vii) In its 12th CoC meeting held on 09.05.2021 through virtual mode, both the Resolution Applicants were once again afforded an opportunity, individually to increase the commercial offer, explain and confirm with proof, source of funds, manner of settlement, plan for revival etc.,. Both the Resolution Applicants had increased their commercial offer from their original plan.
- viii) From 15.05.2021 & 16.05.2021, unfortunate event of CS IX Tug Vessel, completely getting wrecked by the Cyclone Tauktae occurred and the same was informed to the Resolution Applicants. In its 13th CoC meeting held on 17.05.2021, the Applicant and CoC, clearly informed the Resolution Applicants to resubmit their Resolution Plan by removing the Vessel or Asset CS-IX along with the OSR equipment from the Information Memorandum (IM) by the Resolution Professional and were given time till 26.05.2021.

- ix) In its 14th CoC meeting held on 31.05.2021, both the Resolution Applicants and their consultants participated and the plans were deliberated by removing the Asset CS IX from their Plan in detail. The settlement amount was reduced due to that and several other clarifications, explanations relating to the Plan were put to them. The Resolution Applicants sought two days' time to submit the same to the Applicant by mail, later by hardcopy duly signed. On 02.06.2021 the Resolution Applicants submitted the same and CoC was handed over all the relevant documents by the Applicant, vide email. The CoC concluded the meeting with voting time fixed for approving the plans up to 10.06.2021. Accordingly, on 10.06.2021, the CoC approved, by 100% voting, the Resolution Plan submitted by the Resolution Applicant Divetech Marine Engineering Services Private Limited with Divetech Marine Engineering Services LLC, Dubai acting as the Financial Sponsor.
- x) The Applicant/RP submitted the Compliance Certificate in Form-H under Regulation 39(4) of the Regulations showing the compliances of the Plan with mandatory requirements under the Code and Regulations and the Plan had been approved by the CoC. The Resolution Applicants have undertaken to provide the Performance Security of Rs.1.5Crores, out of which Rs.50 Lakhs in the form of EMD has already been received and to pay the remaining balance of Rs.1 Crore within one month of Approval of the Resolution Plan by CoC or within one month from the date of receipt of order passed by the NCLT, whichever is earlier.

xi) The following is the summary of the Plan/Restructuring Proposal:

a) The Plan offers an amount of Rs.17.05 Crores as detailed below:

| S. No. | Category of Claimants | Amount admitted Rs. | Amount proposed to be paid under the Plan (Rs.) |
|--------|--|------------------------|---|
| 1 | Secured Financial Creditors | 42,95,08,651.27 | 16,70,00,000 |
| 2 | Unsecured Financial Creditors | 25,42,87,246.00 | NIL |
| 3 | Operational Creditors | 5,26,85,479.28 | 10,00,000 |
| 4 | Operational Creditors – contingent liability | 3,82,25,213.00 | NIL |
| 5 | Employees (Roughly inclusive of PF & ESI) | 44,79,372.58 | 25,00,000 |
| | Total | 77,91,85,962.13 | 17,05,00,000 |

The timelines for the payment of the above mentioned debts of the Corporate Debtor are as follows:

| S. No. | Particulars | Terms and amount |
|--------|--|---|
| 1 | Payment towards CIRP Costs | The RP has not provided the estimated CIRP costs. The CIRP costs up to the date of approval of the Resolution Plan by the Hon'ble Adjudicating Authority shall be paid towards full and final payment of CIRP costs within 45 days of from the date of the order of the Adjudicating Authority. |
| 2 | Workmen dues & Employee dues | Rs.25 Lakhs within 45 days of from the date of the order of the Adjudicating Authority. |
| 3 | Operational Creditors other than workmen & Employees, including any Government Authority | Rs.10 Lakhs would be paid prior to FC but not before 45 days from the date of the order of the Adjudicating Authority. |

| | | |
|---|---------------------|--|
| 4 | Financial Creditors | Rs.6.2 Crores will be paid 45-60 days from the date of the order of the Adjudicating Authority. Another Rs.5.0 Crores will be paid within 90-120 days from the date of the order of the Adjudicating Authority. Final Rs.5.50 Crores shall be paid within 120-180 days from the date of the order of the Adjudicating Authority. |
|---|---------------------|--|

b) The RA is proposing to constitute Monitoring Committee consisting of Four (4) members for implementation of the Resolution Plan, as given below:-

- i. Mr.V.Mahesh, Resolution Professional, shall be the Chairman of the Monitoring Committee.
- ii. Mr.Ashok Kumar
- iii. Mr.Ashish Nanda
- iv. One representative from the Financial Creditors

xii) Hence this Application.

3. I have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application. The objections raised against the Plan, by the Unsuccessful Resolution Applicant i.e., I.A.72/2021 were considered in detail in the said I.A and are reflected in the order in the said I.A. The allegation against the RP was dismissed as unfounded. Hence, the only task remaining is to see whether the Plan approved by the CoC fulfils the regulations of 30(2) of IBC.

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4. Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such plan –
- a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;
 - b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-
 - i. the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
 - ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation - For the purpose of this section –

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal

proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and

(ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

- c) Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- d) The implementation and supervision of the resolution plan;
- e) Does not contravene any of the provisions of the law for the time being in force;
- f) Confirms to such other requirements as may be specified by the Board.

5. Section 30(4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.”

6. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the

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approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.

7. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
- c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
- d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
- e) The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code.

8. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through registered valuers and the Liquidation value is Rs.24,08,44,413/-and the Resolution Plan offers Rs.17.05 Crores.

9. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1-A), 38

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(1-B) 38(2) & 38(3) of the Regulations. The Plan also provides for keeping the Company as a going concern and operates in its normal course of business upon implementation of Resolution Plan. No objection has been filed by any other person in this regard.

10. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of the Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.
11. The Resolution Plan has been approved by the CoC meeting held on 10.06.2021 with 100% votes.
12. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in

Section 30(2) when the Resolution Plan does not conform to the stated requirements.

13. **In CoC of Essar Steel** (Civil Appeal No.8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).”

14. In view of the discussions and the law thus settled, the instant Resolution Plan is found to be meeting the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.

ORDER

- i. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to

- whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- ii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Andhra Pradesh for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
 - iii. The moratorium under Section 14 of the Code shall cease to have effect from this date.
 - iv. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
 - v. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
 - vi. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant.

Accordingly, I.A.No.59/2021 in TCP (IB) No.79/9/AMR/2019 is disposed of.

7/10/21
JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

**I.A.No.72 of 2021
IN
TCP (IB) No.72/9/AMR/2019
IN
CP (IB) No.32/9/HDB/2019**

**Under Section 60(5) Read with Rule 11 of National Company Law
Tribunal Rules, 2016**

In the matter of
M/s. KEI RSOS MARITIME LIMITED

BETWEEN:

M/s. Bluemine Marine Solutions Pvt Limited
Registered office at Survey No.594,
Near Forest Range Office,
Bathubasti, Port Blair,
Andaman & Nicobar Islands, AN-744105

.... Applicant/URA

AND

1. Mr.V.Mahesh,
Resolution Professional for M/s. Kei Rsos Maritime Limited,
#39/19, Aspen Court, 3rd Floor, R.A.Puram,
6th Main Road, Chennai – 600028,
Register office of Corporate Debtor at
D.No.70-17A/2/9B,
Sasikanth Nagar, Kakinada,
East Godavari, Andhra Pradesh – 533003
.... Respondent No.1/RP
2. Indian Bank
ARMB-II, Chennai,
... Respondent No.2/COC
3. M/s.Divetech Marine Engineering Services Pvt Ltd.
B-5/123, BM Safdarjung Enclave,
New Delhi, South Delhi -110029
.... Respondent No.3/
Successful Resolution Applicant

Orders pronounced on: 03.01.2022

Coram:

Justice Telaprolu Rajani, Member Judicial.

Parties/Counsels present:

For the Applicant/URA : Ms.Mano Ranjani, Advocate

For the Respondent No.1/RP : Mr. Chandrasen Reddy, Senior
Advocate along with
Mr.Ch.Srinivasulu, Advocate

For the Respondent No.2/CoC : Mr.G.P.Yash Vardhan, Advocate

For the Respondent No.3/SRA : Mr.G.Sita Rama Rao, Advocate

ORDER

1. This application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, by the Applicant i.e., M/s. Bluemine Marine Solutions Pvt Limited, seeking the Tribunal to reject the Divetech's Resolution Plan which is approved by the CoC, because of the conflict of interest and to disqualify M/s. Divetech as Resolution Applicant in view of the fact that in the immediate past its Vice President –Business Development has been appointed by the Resolution Professional (RP) as Marine Advisor w.e.f. 19.04.2021(as per filing made by RP with ICSI Institute of Insolvency Professionals), without due diligence about his association with the successful Resolution Applicant (SRA) and has other adverse credentials during his Naval working days (as per media reports on internet) which poses a conflict of interest and also to direct RP to accept the Plan submitted by the Applicant/URA.

2. The grounds on which the said reliefs are based are as follows:
- i. This Tribunal vide its order dated 28.09.2019 admitted the application for CIRP filed by M/s. Docking and Engineering Co (VSP) Private Limited, Visakhapatnam.
 - ii. The RP has issued an Expression of Interest (EoI) in Form-G dated 13.03.2020 with the last date for submission of Resolution Plan as 15.05.2020.
 - iii. The Applicant has confirmed a consortium of four members to meet the technical and financial qualifications prescribed by the RP and became eligible as Resolution Applicant.
 - iv. It is submitted the EoI to RP and complied with the specified procedural requirements, by providing a Demand Draft for Rs.5 Lakhs dated 20.07.2020 to the RP. Then the Applicant received a mail from the RP on 01.09.2020 inviting them to submit the Resolution Plan by 30.09.2020.
 - v. Pursuant to this, RP published the provisional list of Prospective RAs on 14.08.2020 and then the final list on 29.08.2020 with three names which includes the Applicant.
 - vi. RP then issued Request for Resolution Plan (RFRP), amongst other things, prescribing for a Bank Guarantee of Rs.50 Lakhs along with Resolution Plan specifying that within 7 business days from the date of approval of the Resolution Plan by the CoC, the Successful Resolution Applicant(s) shall provide a Performance Guarantee of

Rs.2,00,00,000/- and the Information Memorandum was shared to the Applicant by way of email on 01.09.2020.

vii. Applicant submitted its Resolution Plan on 10.10.2020 which was required to be modified as per observations made by the RP. Acknowledgment of submission of Resolution Plan dated 10.10.2020 is also given. On 15.10.2020 permission was sought by the Applicant to visit various site locations and the registered office of the Corporate Debtor to assess the status of its various assets and to carry out due diligence by Mr VN Ravi, one of the Directors of the Applicant. The permission was granted on 16.10.2020, for a period extended from 19.10.2020 to 25.10.2020. Mr VN Ravi visited various locations and discussed about the status of the various vessels, existing and future business opportunities and the potential of the Corporate Debtor with team members of the Corporate Debtor located at various sites. In the process, he collected some documents as shared by the employees and also took pictures of the sites. The Applicant, from this visit and also from their communications with RP understood that most of the contracts of the Corporate Debtor are terminating by the end of December, 2020 and no revenue is expected thereafter for the Corporate Debtor.

viii. On 23.12.2020, RP communicated to the Applicant stating that CIRP period was extended upto 05.02.2020 and advised the Applicant to submit the Resolution Plan complete in all respects by 31.12.2020. On 24.12.2020, along with a Bank Guarantee for Rs.50 Lakhs, the Resolution plan was submitted by the Applicant with an all-inclusive settlement

of Rs.12.65 Crores, with all cash balance accruing to Corporate Debtor as on effective date to the credit of the Secured Financial Creditor.

- ix. On 12.01.2021, a physical meeting of COC was conducted at the premises of the Sole & Secured Financial Creditor, namely the Indian bank, where the RP, COC and an employee of the Corporate Debtor by name Mr.Velu were present and the attendance was recorded. In that meeting few observations were made on the Resolution Plan submitted by the Applicant with an advice to amend the same and the Applicant duly complied and filed the amended Resolution Plan with the RP on 31.01.2021.
- x. RP informed the Applicant that, Resolution Plan dated 31.01.2021 was being considered and sought details about the funding ability of the Applicant to meet the Resolution Plan proposals. It was also stated by the RP that the COC wanted a Performance Bank Guarantee of Rs.5.00 Crores contrary to what was indicated in the RFRP. However, the Applicant offered to provide Performance Bank Guarantee of Rs.2.00 Crores as per RFRP.
- xi. On 22.04.2021, RP offered an opportunity for the Applicant to revise its Financial Bid by 24.04.2021 and indicated that the CIRP Cost is Rs.2 Crores. He also informed that the contract of Corporate Debtor got extended by 3 months from a customer, with a possible revenue till March, 2021 for the Corporate Debtor. Correspondingly, the Applicant submitted the Resolution plan dated 24.04.2021 to the RP, enhancing its Financial Bid to Rs.17.75 Crores towards all-inclusive

CIRP costs and Creditors' settlement, taking into consideration the Goodwill of the Corporate Debtor. However, in the revised offer, the receivables and deposits lien marked towards the Performance Bank Guarantee issued by the Applicant to the RP during the CIRP will be to the credit of the Corporate Debtor.

- xii. Further during the period from 15.05.2021 to 17.05.2021, the Cyclone Taukae formed in Arabian Sea caused extensive devastations along the Western Coast of India. The Applicant was made aware that one of the vessels of the Corporate Debtor, along with 9 employees of Corporate Debtor on board, drifted around 5 nautical miles away from the shore and was in distress. Being from the Marine industry and as one of Prospective Resolution Applicants, the Applicant offered its help to RP and his team to secure the employees of the Corporate Debtor who are facing life danger in the rough sea amidst cyclone. RP then gave the reference of Mr. Kul Bhushan Parashar, their advisor, to coordinate in the efforts. In that process, while coordinating with Naval and Port authorities the Applicant took reference of Mr. Kul Bhushan Parashar, as the advisor of the RP/Corporate Debtor and they expressed their surprise and shock stating his past adverse credentials during his naval working days. In the COC meeting held through web on 17.05.2021, Applicant was asked to be present and explain his Resolution Plan, and in that online web meeting, the Applicant observed that multiple people logged into the meeting room, presumably the other Prospective Resolution Applicant (PRA) also being present in the meeting.

However, after the Applicant's discussion, he was asked to log out without being given an opportunity to hear the version of the other participants. The Applicant raised its concern with the RP, who clarified that they were not in the meeting but were waiting in the Lobby.

xiii. On 17.05.2021, RP informed the Applicant that due to Cyclone at Arabian Sea, the vessel CS-IX, has suffered extensive damage and is to be considered as Not Available and that Oil Spill Response equipment from that vessel has been hired out for monthly rental of Rs.15 Lakhs and all personnel have been rescued. RP also informed that there are no more running contracts for the Corporate Debtor and in the light of these material developments, RP informed the Applicant to submit another final Resolution Plan by 21.05.2021.

xiv. On 21.05.2021, RP sent a mail to the applicant stating as "it is reiterated and confirmed that the vessel CS-IX along with their Diving and Oil Spill Response equipment as specified in the IM be not taken as part of the Assets of the Corporate Debtor, as we are not in a position to correctly assess the extent of damage, Insurance claim, salvage cost, and resultant issues. The Corporate Debtor shall bear and also take the insurance amounts, if any, claimed and received in respect of the said Vessel CS IX. Normal expenditure, which we would have incurred if the Vessel (CS IX) was in Safe Harbour, Shelter or Berthed, including Safe Manning cost, Security Charges, Fuel Cost, Engine room expenses, staff posted therein would all be part of CIRP cost. Accident related cost, like medical expenses, Coast Guard rescue

operations cost, by whatever name called, shall not be part of CIRP cost, but would be met out of the funds of the Corporate Debtor, by the RP and COC. I am giving all these details, to avoid, more questions and to enable you to present the revised Resolution Plan clearly and without any ambiguity, as the same would not be accepted."

- xv. It is alarming to receive contradictory mails wherein vide mail dated 17.05.2021, RP had informed the Applicant that Oil Spill Response equipment from that vessel has been hired out for monthly rental of Rs.15 Lakh and subsequently vide email dated 21.05.2021 contradicted the same by stating that the vessel CS-IX along with their Diving and Oil Spill Response equipment as specified in the IM be not taken as part of the assets of the Corporate Debtor.
- xvi. RP also advised the applicant to submit the final Resolution Plan by 25.05.2021 with intimation that COC meeting would be held on 26.05.2021. On the said date, the Applicant submitted his final Resolution Plan with an all-inclusive payment of Rs.17 Crores after considering the RP message's regarding the damage to the CS-IX Vessel. The Applicant also attached an in-principle approval letter of ICICI Bank for Rs.15 Crores along with Mr.Pushparaj's acceptance letter to join the Board of Bluemine Marine as a director.
- xvii. On 01.06.2021, as suggested by RP/COC, the Applicant again sent the final Resolution Plan with an undertaking, that a Bank Guarantee for Rs.1.50 Crores shall be given as against 2 Crores indicated in the RFRP.

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- xviii. The Applicant has submitted the Resolution Plans to carryout changes, modifications on six occasions based on the suggestions/feedback/date extensions and for revision of financial bids and the summary.
- xix. Finally on 11.06.2021, RP informed the Applicant that their Resolution Plan has been voted out by the COC and subsequently, he returned the Bid Bank Guarantee and deposit of Rs.50.00Lakhs to the Applicant. From the details of the ballot paper shared by the RP the Applicant understands that only M/s Divetech Marine Engineering Private Limited (Divetech) and the Applicant are the Prospective Resolution Applicants whose final Resolution plans were considered for voting by the COC.
- xx. Most of the meetings/ communications between RP and the Applicant occurred through Web mode/digital mode/emails due to current pandemic reasons, though on few occasions, physical meetings took place and documents were handed over physically to the RP office. It is most humbly submitted that the Applicant has certain apprehensions and concerns on the conduct of the CIRP, which are as follows:
- a. The CIRP has not been carried out in the spirit and intent of the Insolvency and Bankruptcy Code.
 - b. The Applicant has not received some of the requested information about Corporate Debtor from RP or his team to consider specifically in the Resolution Plan. Information on the Financials during the CIRP of the Corporate Debtor, which is a going concern, is not

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shared with the Applicant and thus, the Applicant had to submit the Resolution Plans with the limited information shared about the Corporate Debtor.

- c. That as per Section 24 of the Code, only the
- i. Members of COC / their Authorised Representatives
 - ii. Members of the suspended Board of Directors
 - iii. One representative of the Operational Creditors (if the amount of their aggregate dues is not less than 10% of the debt)
- May attend the COC meetings and those meetings of COC shall be conducted in such manner as may be specified. However, in one of the CoC meetings, Mr Velu, an employee of the Corporate Debtor was present, thereby compromising the confidentiality of the process.
- d. In one of the COC meetings, the Applicant was informed about Mr Kul Bhushan Parashar being appointed as Marine Advisor to the RP/CORPORATE DEBTOR w.e.f. 19.04.2021, which is surprising, particularly when the Corporate Debtor has a full-fledged team of CEO, CFO and a technical team working with them and more particularly when there are no running contracts for the Corporate Debtor.
- e. The Applicant, came to understand that Mr Kul Bhushan Parashar, who was appointed as the advisor to the RP/Corporate Debtor was closely associated with the successful RA - Divetech Marine Engineering

Services LLC [Divetech], wherein he served as its Vice President-Business Development as latest as 20.05.2020. It is submitted that when Applicant's representative, Mr.Ravi visited various sites of the Corporate Debtor during due diligence, a document was shared by one of the employees of the Corporate Debtor at Kakinada, which speaks about the association between Divetech and the Advisor to the RP/Corporate Debtor, particularly when the Corporate Debtor going through CIRP. Alarmingly, the RP has been a party in this email communication but subsequently in the disclosures made to the IPA, RP stated that the Marine Advisor, Mr Kul Bhushan Parashar, has no relationship with any prospective RAs.

- f. The Regulation 27(c) of CIRP Regulations prohibits the appointment of Registered Valuer who was associated with the Corporate Debtor as an auditor at any time during the period of five years preceding the Insolvency commencement date. While in the case on hand, there seems to be no such regulations governing the appointment of advisors/consultants prescribed clearly as on date. However, it is the belief that such spirit/intent in the Code holds good for any such appointment, particularly when such advisor was associated with other successful Resolution Applicant till as latest as May 2020 (as per document available) in whose favour the CoC has voted. It is the understanding of the Applicant that CoC has been misinformed or

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misguided with regards to complete facts in the CIRP Process.

- g. The Advisor appointed by the RP/Corporate Debtor does not have good credentials [as per media reports available on the Internet] as an ex-Naval officer. When the vessel CS-IX of the Corporate Debtor along with 9 employees of Corporate Debtor on board drifted around 5 nautical miles away from the shore and was in distress, the Applicant, being from Marine industry offered to help in securing the employees of the Corporate Debtor who are facing life danger in the rough sea amidst cyclone. In that process, while coordinating with Naval and Port authorities the Applicant took reference of Mr. Kul Bhushan Parashar, as the advisor of RP/Corporate Debtor and they expressed their surprise and shock stating his past adverse credentials during his naval working days. Then the Applicant found some media publications on the internet. Extract of the article is mentioned below:

"Raids were conducted in 20 offices and residences nationwide, Shan karan's friend and business partner, retired Commander Kulbhushan Parashar was arrested in April 2006 at the Indira Gandhi Airport in New Delhi. The large number of documents uncovered by the CBI resulted in many more arrests such as arms dealer and billionaire Abhishek Verma and Wing Commander S.L. Surve. Also arrested was Rajrani Jaiswal from Pune, who was apparently used by Kulbushan Parashar as a "honey trap".

"It appears that Shankaran and Parashar, both of whom had taken early retirement from the navy, had convinced their friends commander Vijendra

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Rana, commander Vinod Kumar Jha, and the then director of naval operations Captain Kashyap Kumar to enable the copying of classified information from the Navy War room in the South Block".

- h. Hence, the Applicant is of the opinion that
 - i. The Applicant's Resolution Plan details would have been shared with the successful Resolution Applicant, resulting in it submitting marginally better financial proposal to the RP and
 - ii. The decision to favour the successful Resolution Applicant has been made much earlier, but Applicant was kept engaged in the Resolution Process just to get a better value from the other favored Resolution Applicant, thereby causing time/energy/financial loss to the Applicant.
3. Respondent No.1 filed counter denying the averments of the Application and further contending that the Application is not maintainable, as the Applicant has promptly taken back his Expression of Interest (EoI) amount of Rs.5 Lakhs and the Bank Guarantee of Rs.50 Lakhs which were hand over to him on his request on 14.06.2021 itself. He is a 3rd party and outsider to the proceedings, hence, the Application has to be dismissed "In Limine" on the said ground alone.
4. The Resolution Plan submitted by the Applicant was voted against by the COC, and after careful consideration of the Plan, which was devoid of any clarity regarding source of funds for the settlement amount as specified in the Resolution Plan, no viability, no feasibility, no technical expertise, domain experience

and above all the trust worthiness of the Bluemine and its consortium including their Net Worth were not up to the mark. The Applicant, kept changing their stand, several times, regarding their source of funds. First it was his consortium Partner, Shanmuga Transport, then it was some Medical Surgeon at Hyderabad, then it was Net Worth of Mr.Pushparaj& Family, another consortium Partner, then Union Bank of India Loan Sanctioned and finally a non-financial commitment in principle term sheet from ICICI, which is highly conditional.

5. The Applicant during the COC Meetings praised the efforts of the Resolution Professional, and informed that they are dependent on him for suggestions in submitting the Resolution Plan, except the commercials. In fact, in one of the COC meeting held at the Office of the RP, the Applicant/Blue Marine, brought their team, of legal advisors, consultants and the RP's office team sat with them for few hours, while the COC and RP was sitting in another room. That being the case, the insinuations, allegations and motives attributed to the RP by the Applicant seems to be purely as an "After thought" and malicious, made with oblique motives.
6. The Applicant is put to strict proof of the email which was allegedly shared by one of the employees of the Corporate Debtor during the visit of Mr.V N Ravi and Mr.V.Prasanna, partner of the Applicant. They have, attended the COC meetings, and met the COC, and RP on several occasions after this so called sharing of the email, by an Employee of the Corporate Debtor. This was supposed to have happened in Oct or Nov 2020, why raise it now? All these are nothing but an attempt to subvert the entire process and on the contrary, there are clear evidences to show that the Applicant Mine, had colluded with the Senior Staff of the

Corporate Debtor in trying to get business of the Corporate Debtor diverted to them. There are several complaints from the staff.

7. The Applicant had not even whispered about any unfair, biased or unreasonable treatment to him by Respondent No.1 anytime during the number of COC Meetings, which were attended by its team.
8. The Respondents are obligated to look in to the credentials, credit record, net worth, certainty of the settlement amount as specified in the Resolution Plan, viability and feasibility of the Plan, its implementation and the persons behind it, before considering & Approving the Resolution Plan. The Applicant Resolution Plan is conditional upon CIRP cost being pegged at Rs.200 Lakhs which makes the plan amount as only Rs.15 Crores and not Rs.17 Crores as misleadingly, intentionally and wrongly claimed by the Applicant. If the CIRP costs goes more than Rs.200 Lakhs, say Rs.350 Lakhs or Rs.400 Lakhs as already confirmed by the RP in the COC Minutes, then that additional amount would get further reduced from the Plan amount and it could become Rs.13.50 Crores or Rs.13 Crores.
9. There is no need to take permission from a Resolution Applicant or his advisors to invite any individual to the COC for their views. The concerned employee, Mr.S.Velu, is the most experienced and Senior Officer of the Corporate Debtor, who has been instrumental in ensuring that the Corporate Debtor completed the contract with MRPL earning close to Rs. 16 Cr during CIRP. He has attended an earlier COC in March 2020, with CEO, CFO and one more junior person, Mr. S.Sivakumar. It

is in this COC meeting, the lack of domain knowledge of Mr.V.Prasanna (the Authorised Representative of the Applicant) stood exposed, as he claimed that CSIX is without "Class" and can't operate commercially, when it was generating revenue for the Corporate Debtor.

10. The Applicant and their consortium partners were given plenty of opportunities. They were in full praise of the RP, and in fact the statutory auditor of the Corporate Debtor who is also the Statutory Auditor of the one of the consortium partners has already stated that the Applicant has changed its stance regarding the source of funds, from time to time. The appointment of Technical Advisor to the RP, Respondent No.1 is purely for technical advice and support which the Corporate Debtor's operational management were not giving. Instead, misleading information as to the conditions of the vessel or tug or operational capability was given by them. Example, after CS IX has literally got totally damaged and in shambles, it is stated that it can be salvaged and once Resolution Applicant has shown interest in this vessel i.e., the Applicant herein, in the email to Respondent No.1 dated 24.05.2021. Adequate, precautions were taken, like NDA, no conflict of interest confirmation, from the Appointee and he was neither a shareholder nor a director except as a Freelance Consultant. His tenure was for a very short period of 30 days and payment was only Rs.50,000/- for his technical report. There is no shred of proof or evidence to show that he has compromised the Applicant Resolution Plan.

11. The Successful Resolution Applicant, submitted their Final Resolution Plan on 25.05.21 at around 3 pm, and the Applicant submitted his Resolution Plan at around 6 pm on the same day,

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which are evidenced by the Emails, they were communicated in the COC on the same day at 6.49 PM. All were done on the same day, hence there is no substance, in the allegation that his plan was used by the Successful Resolution Applicant to give their plan. Both the plans are vastly different, in substance, credibility, etc.,

12. The Applicant did not produce any evidence as to how their Resolution Plan is viable, feasible and met the expectations of the COC, especially regarding source of funds. The email produced by the Applicant, obtained clandestinely from the office of the Corporate Debtor dated 20.05.2020 is much before the Applicant submitting their EoI on 20.07.2020. It is clear that at that point of time, no one, even this Respondent or CoC or Corporate Debtor was aware of the name of the Applicant.
13. The Appointment of a Technical Advisor is the prerogative of the COC and RP has taken the approval of the COC for the same. The appointee is not barred from the Technical Advisor role either under IBC or under common law. The Applicant did not produce any evidence to show that his appointment has resulted in their Resolution Plan being rejected. The COC Minutes of 8th, 9th, 12th, 13th and 14th clearly demonstrate that RP and COC had given more than ample opportunity to the Applicant to justify their Resolution Plan. There are several emails acknowledging and praising the role of RP. The Plan submitted by the Applicant was conditional and had no clarity on source of funds. Hence was rejected. The unbiased fair equitable and fresh treatment of all the Prospective Resolution Applicants is clearly demonstrated by letter of comfort given to all the 3 original Resolution Applicants. Hence this application is to be dismissed as frivolous.

14. Respondent No.2 filed counter on behalf of the COC denying the averments of the Application and further submitting that the Resolution Plans of the Applicant and Respondent No.3 have been placed before Respondent No.2. After carefully considering the viability, feasibility, and other factors of the Applicant and Respondent No.3, in order to revive the Corporate Debtor, Respondent No.2 in its commercial wisdom has approved the Resolution Plan submitted by Respondent No.3. Pursuant to rejection of the Resolution Plan of the Applicant, the EoI amount and Bank Guarantee were returned on 14.06.2021.

15. Respondent No.2 is a Nationalized Bank, engaged in the business of providing financial assistance to companies. The Corporate Debtor has approached it for financial assistance which was provided by Respondent No.2. Later the account of the Corporate Debtor was classified as Non-Performing Asset (NPA) in the books of account of Respondent No.2. It has come to the knowledge of Respondent No.2 through a public notice issued by the IRP, that the Tribunal passed orders for commencement of Corporate Insolvency Resolution Process of the Corporate Debtor. In the public notice the IRP has called upon the Creditors to submit their claims. Accordingly Respondent No.2 submitted his claim. IRP was also replaced at the instance of Respondent No.2. Respondent No.1 published the provisional list of PRA's on 14.08.2020 consisting of M/s.Coastal Marine Constructions Private Limited, M/s.Blue Marine Solutions Pvt Ltd, the Applicant herein and M/s.Divetech Marine Engineering, who is Respondent No.3.

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16. Respondent No.1 in the meeting held on 14.08.2020, issued Request for Resolution Plan (RFRP) dated 12.08.202. Respondent No.1 appraised the members of CoC, that EOI has been received from all the above 3 companies.
17. In the meeting held on 13.10.2020, Respondent No.2 was informed by Respondent No.1 that he received Resolution Plans from the Applicant and Respondent No.3 on 10.10.2020 that they have sought time and permission to inspect the vessels and other assets of the Corporate Debtor and after conducting proper due diligence detailed Resolution Plan will be submitted if required, with modifications.
18. In the 8th CoC meeting held on 07.01.2021, Managing Director of the Applicant (URA), one Mr.M.Pushparaj, Director of the Shanmuga Transport Pvt Ltd were present. The Managing Director Mr.V.Prasanna was invited to present the Resolution Plan. He informed Respondent No.2 that the Corporate Debtor would be owned by M/s.Blue Mine Marine Solutions Private Limited as an when the Resolution Plan is approved. He also stated that his partner Mr.V.N.Ravi is an expert in this field. Mr.V.Prasanna informed that Applicant was incorporated by converting a sole proprietorship firm VNR Marine into a Private Limited Company. Respondent No.2 required Mr.V.Prasanna to provide proof of conversion clearly establishing the credentials and their claims for 20-odd year experience and exposure in marine field and for other documents. Respondent No.2 expressed their apprehensions about the source of funds mentioned in the Resolution Plan and mentioned that there was no visibility of source of funds in the Resolution Plan and that it was too generic

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with respect to the source. They requested the Applicant to establish clearly the source of funds in absolute terms with a clear sketch of the term of the plan, shareholding pattern, post resolution plan, participation of consortium members in the Resolution Plan, financial sponsor, if any, bank funding, as specified orally by the Applicant. Mr.V.Prasanna stated that the same will be provided, after changes, on or before 11.01.2021 to Respondent No.1. In the same meeting, Respondent No.2 approved the request of Respondent No.3 to submit modified Resolution Plan by 20.01.2021 as Respondent No.2 felt that Respondent No.3, which is experienced in the field of the Corporate Debtor, may be given a chance, subject to meeting the commercials and expedite the submission of the Resolution Plan.

19. In the 9th CoC meeting held on 12.01.2021, Respondent NO.2 noticed that Applicant did not give a clear picture about the source of funds. Respondent No.2 advised the Applicant to submit all the details along with the aforesaid details on or before 20.01.2021. The Applicant sought time till 31.01.2021 to submit the final Resolution Plan. Respondent No.2 agreed for the same and requested the Applicant to incorporate all the modifications as discussed and submit the revised Resolution Plan. In the said meeting, Respondent No.1 informed Respondent No.2 that, parent Company and financial sponsor of Respondent No.3 who is based at Dubai had also submitted the Resolution Plan but the same was not complete due to pending inspection of vessels and due diligence of the sites and vessels which are not operational. Therefore, due to these genuine and unforeseen difficulties, they have requested the permission and time to inspect the vessels and other assets of the Corporate Debtor.

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20. In the 10th CoC meeting held on 22.02.2021, the revised Resolution Plan submitted by the Applicant was discussed at length. It was inter-alia noted that requirements like submitting of a clear picture about the source of funds and the credentials with respect to experience in the field of mooring of Applicant were still not complied. The plan was not complete due to pending inspection of vessels and due diligence of the sites and vessels of the Corporate Debtor. Respondent No.3 requested time till end of January, 2021 to submit the final Resolution Plan. However due to unforeseen circumstances, like key personnel of Respondent No.3 being contacted with Corona Virus and consequent shutting down of office, it was unable to submit the Resolution Plan within the stipulated time. Respondent No.2 agreed to give time till 25.02.2021.

21. In the 11th CoC meeting held on 19.04.2021, Respondent No.1 placed the Resolution Plans of the Applicant and Respondent No.3 and the same were discussed.

22. In the 12th CoC meeting held on 09.05.2021, the Resolution Plans submitted by the Applicant and Respondent No.3 were discussed. It was noted by Respondent No.2 that, inspite of repeated requests, the in-principle sanction from the Public Sector bank (Union Bank of India), as promised by Director of the Applicant Mr.Prasanna several months back, has still not been provided by him. They informed that they have already initiated the process and submitted the documents requested by Union Bank of India including Rs.12 Crores collateral from Mr.Pushparaj. He confirmed that all the collateral security provided to the Bank is free of Encumbrances. Respondent No.2, however mentioned, all

they need is a term sheet duly signed by the Bank and a Sanction letter. Both are not placed before the CoC, though this has been discussed for a long time.

23. Respondent No.2 was of the opinion that the Applicant has very little track record and their ability to implement the Resolution Plan in a viable and feasible manner of Corporate Debtor is highly doubtful and also felt that the Balance Sheet and financials of the consortium partners, to the extent submitted, does not inspire any confidence. The Applicant seems to be solely dependent on borrowed or loan funds from PSU Banks which may or may not materialize in time, thus putting the entire RP in jeopardy.
24. As far as the Resolution Plan submitted by Respondent No.3, Respondent No.2 has considered after lot of deliberations and considering the unique and niche area of operation of Corporate Debtor and the assured infusement of funds with adequate credibility, Corporate Guarantee of the parent company, net-worth, financial strength and proven track record, have noted that Resolution Plan submitted by Respondent No.3 is best in the given circumstances.
25. In the 13th CoC meeting held on 17.05.2021, Respondent No.1 informed Respondent No.2 that as communicated earlier vide emails, messages and phone calls, CSIX TUG Vessel which was heading for safe berthing or shelter at Harbour, New Mangalore Port Trust, was forced to stay back for a few days, due to the crew testing positive for Covid and when it was about to enter safe shelter shortly, due to sudden and unexpected Cyclonic storm Tauktae and very rough Sea with waves raising about 5 metres

and more, the vessel got drifted in the High Seas and stuck in the rocks on 15.05.2021. Consequent to this incident, the CSIX along with its equipment's as of now, practically has no commercial value. The same was informed to the Resolution Applicants to exclude CSIX from their assets list including the diving equipment, accessories, etc., and they can revise their offer and submit revised resolution plan on or before 21.05.2021.

26. In the 14th CoC meeting held on 31.05.2021, the Resolution Plans submitted by the Applicant and Respondent No. 3 were discussed. The Applicant and Respondent No. 3 sought one or two days' time to submit revised Resolution Plan after making the suggested changes and time was given till 02.06.2021. The Resolution Plan submitted by Respondent No. 3 was approved by 100% voting share, on 10.06.2021.
27. As far as the allegations against appointment of Mr.Kul Bhushan Parashar are concerned, it was not known to CoC that Mr.Kul Bhushan Parashar belonged to Respondent No.3. He was brought in only to give technical assistance to Respondent No.1, as Respondent No.2 was informed that there was total non-cooperation from the CEO and his team. Respondent No.2 with a genuine intention to protect the assets of the Corporate Debtor and to ably assist Respondent No. 2 in the technical matters, approved appointment of Mr. Parashar. Further, Respondent No. 2 was informed by Respondent No. 1 that the services of the Mr. Parashar were availed only for one month.
28. Respondent No.1 informed that, precautions such as NDA, no conflict-of-Interest letter was obtained from Mr. Parashar before engaging him. The Applicant and Respondent No.3 submitted

their Resolution Plans on 10.10.2020 which were discussed by the CoC in the meeting held on 07.01.2021, 12.01.2021 & 22.02.2021 and Mr. Parashar was appointed as technical advisor of the Resolution Professional on 19.04.2021, which only goes to show that by the time Mr. Parashar was appointed, Resolution Plans were already submitted. Subsequent to appointment of Mr. Parashar, in CoC meetings were held on 17.05.2021 and 31.05.2021, but no objection was raised. This clearly shows that the Applicant being disgruntled that Resolution Plan submitted by it was rejected by the CoC, has come up with the allegations, as an afterthought. The Resolution Plan of Respondent No.3 was approved only as it was found to be viable and feasible. Hence the application is liable to be dismissed.

29. Rejoinder is filed by the Applicant to the counter of Respondent No.1 contending that the Applicant never made any request to return its EMD or the Bid Bond Bank Guarantee. It is submitted that the RP himself sent an email dated 11.06.2021 mentioning that the Bank Guarantee stands cancelled. When the Applicant, questioned about the rationale behind the rejection of his Resolution Plan, the Applicant was asked to personally visit the RP's office. During the visit, on 14.06.2021, the RP did not give any satisfactory explanation but handed over the cancelled Bank Guarantee and also transferred the EMD through NEFT on the same day, without the Applicant asking for it.

30. With regard to the appointment of Mr.Kul Bhushan Parashar the same contentions were repeated. With regard to the source of funds, it is contended that there is absolutely no confusion and the RP has approved the EoI and included the Applicant in the

finalised list of Prospective Resolution Applicants (PRAs), only after he being satisfied on Applicant's net worth. The net-worth certificate given by the Consortium of the 4 entities is of Rs.25.28 crores while the invite for EoI was Rs.25 crores.

31. The ICICI Bank has in principle agreed to provide a loan of Rs.15Crores, once the NCLT approves the resolution plan. It required a collateral to be provided, which would not be difficult for the Applicant having a net worth of more than Rs.25 Crores. The Applicants has secured loans from multiples banks and hence is confident of the funding of the Resolution Plan financial commitments.
32. They have sufficient technical expertise of Mr Ravi and Mr.Prasanna who are professionally qualified marine professionals. With regard to sources of funds, the RP on multiple occasions has been with a biased mind seeking the details of definite source of funds and the Applicant has on every occasion given a clear ability to meet the Resolution Plan obligations and offered to provide the Performance Bank Guarantee [PBG] of Rs.2 Crores, as per RFRP requirement. RP on one occasion sought PBG for Rs.5 crores as against Rs.2 Crores mentioned in the RFRP but eventually, RP/COG asked to provide the PBG for Rs.1.50 Crores at which no communication was received about the Source of Funds. A Corporate Guarantee of presumably of the 49% holding by a parent company, situated in Abu Dhabi, UAE has been provided for the Resolution Plan as could be known through the counsel of the Successful Resolution Applicant. Thus, while sanction of ICICI Bank Loan is not considered adequate by the RP/CoC, it is not clear how the Corporate Guarantee of the

Parent Company of Abu Dhabi is a satisfied source, where enforceability, would be difficult.

33. The Applicant got apprehensive about the conduct of the CIRP, after knowing about the credentials of Mr. Kul Bhushan Parashar, and after realizing that he was introduced as RP's advisor and after knowing that the vice president -Business Development of the Successful Resolution Applicant are one and the same. After the contradictive statements were made by RP with regards to the OSR equipment, having worth of Rs.3-4 crores, from the vessel CS IX on 17.05.2021, RP stated that the OSR equipment was given on hire to another company and is getting some minimum revenue of Rs.15Lakhs per month as Hire Charges and immediately on 21.05.2021 he stated that the OSR equipment in the vessel CS IX is to be considered as "Not Available". The Applicant started discussing the same with RP and on 17.05.2021 sent a mail to him seeking clarifications. The RP gave some explanation and the Applicant meekly replied that in good faith they will work on the Resolution Plan and submit the same on or before 21.05.2021. The RP did not provide any definite amount of the CIRP costs and financial operational details of the Corporate Debtor. The RP did not deny that Mr. Kul Bhushan Parashar was not associated with Successful Resolution Applicant.
34. Rejoinder was filed to the Counter filed by Respondent No.3 also with almost similar submissions.
35. Written submissions were made by the Counsel for the Applicant and Respondent Nos.1 & 2, reiterating the facts put forth in their

pleadings. The pleadings and written submissions raise the following points for consideration.

- I. Whether the appointment of Mr.Kul Bhushan Parashar has caused any prejudice to the URA and whether the RP had acted with bias.
 - II. Whether the Unsuccessful Resolution Applicant (URA) was not furnished the information sought for by him.
 - III. Whether any outsiders have participated in the CoC meetings.
 - IV. Whether the information pertaining to the damaged vehicle CSIX is misleading.
 - V. To what result.
- I. Whether the appointment of Mr.Kul Bhushan Parashar has caused any prejudice to the URA and whether the RP had acted with bias.**

The contention of the petitioner counsel is that Appointment of Mr Kul Bhushan Parashar as Advisor to RP amounts to Conflict of Interest, since he was the Vice President of the Successful Resolution Applicant earlier and since there was no due diligence on the profile of Mr Kul Bhushan Parashar who is an accused in 'Naval War room leak' case and still facing judicial proceedings. The Counsel for the Applicant relies on the judgment of the Hon'ble High Court, Delhi in a case between *Kulbhushan Parasher Vs. State* wherein considering the facts and allegations therein bail was rejected to Mr. Kulbhushan Parasher.

There is no denial of the above two stated facts by the Applicant's Counsel but the contention is that by the date of

the appointment of Mr Kul Bhushan Parashar as an Advisor to the RP he ceased working with the Successful Resolution Applicant. The Resolution plans were also submitted several times before his appointment. The criminal record of Mr. Kul Bhushan Parashar being an accused in Naval War Room leak does not have any bearing on the decisions taken by the RP and the CoC. There was an undertaking letter given by Mr Kul Bhushan Parashar that he is not in any way related to the Successful Resolution Applicant and there is no conflict of interest. The minutes of the CoC dated 19.04.2021 clearly explained the reason and rationale for appointment of the Technical Advisor. It is also contended by the Respondent's Counsel that the personal allegations on Mr Kul Bhushan Parashar are not relevant for the purpose of approval of the Resolution Plan. The fact also remains that the charges levelled against Mr Kul Bhushan Parashar are not yet proved. As rightly contended by the Respondent's Counsel, by the date of the appointment of Mr. Kul Bhushan Parashar, the submission of the resolution plans were in the final stages. The plans which were first submitted underwent several revisions with certain modifications. It is only the final Resolution Plans that are submitted after Mr Kul Bhushan Parashar was appointed as Advisor to the RP. Unless some prejudice is shown to have occurred to the Applicant, simply going by the fact that Mr Kul Bhushan Parashar was accused in a case, it cannot be said that the entire process of CIRP gets effected. It is the wisdom of the CoC that prevails. Whatever be the advices coming forth, if those advices do not serve the interest of the CoC, the same would not be approved by the CoC. Since CoC members are

the persons who get affected, the decisions taken by the CoC carry much weight. There are umpteen number of rulings to the said affect. Until it is shown that the entire process of CIRP is malafide, the Courts are advised not to interfere in the decisions of CoC which is done with their commercial wisdom. A Ruling reported in **2021 SCC Online NCLAT 122** rendered by the National Company Law Appellate Tribunal **between Next Orbit Ventures Fund vs. Print House (India) Pvt.Ltd.**, has considered and relied on the judgment of the Hon'ble Supreme Court in **Arcelor Mittal India Private Limited vs. Satish Kumar Gupta (2019) 2 SCC 1**, wherein it was observed that when there is a Resolution Applicant who can continue to run the Corporate Debtor as a going concern every effort must be made to try and see if this is possible. It is also observed that the Hon'ble Supreme Court has observed that paramount importance is to be given to the decision of CoC which is taken on the basis of the commercial wisdom which cannot be interfered with excepting under the limited scope as provided under Sections 30 & 31 of the IBC. That was a case where restructuring of the Corporate Debtor was done by change in technology, change in portfolio of goods and services produced or rendered by the Corporate Debtor. It was held that it can be done as long as the scope and objective of the Court is not hampered. The NCLAT has also relied on the judgment of the Hon'ble Supreme Court in **Kalpraj Dharamshi vs. Kotak Investment Advisors Ltd.**, reported in **2021 SCC OnLine SC 204** and held that the fact that there is no material irregularity in the exercise of powers by the Resolution Professional and approved Resolution Plan is not

in contravention of any law for the time being in force, there can be no irregularity or infirmity in the order approving the Resolution Plan.

The Counsel for the 2nd Respondent appearing for the CoC relied on certain judgments in support of the said ratio. In *K. Seshidhar Vs. Indian Overseas Bank & others* rendered by Supreme Court of India reported in *AIR2019 SC1329*, it was held that upon receipt of rejected Resolution Plan the Adjudicating Authority (NCLT) is not expected to do anything more, but it is obligated to initiate liquidation process under 33(1) of IBC. The legislature has not endowed the Adjudicating Authority with the jurisdiction or the Authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of rejection of the Resolution Plan by the resending Financial Creditors. It is also held that from the legislative history and background in which the IBC Code has been enacted it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting Companies. It also noted that in the earlier regime the Corporate Debtor could indefinitely continue to enjoy the protection given under Section 22 of Sick Industrial Companies Act, 1985 or under other such enactments which has now been for saken. Besides the commercial wisdom of CoC has been given paramount status without any judicial intervention for ensure the completion of the stated processes within the time lines prescribed by the Insolvency and Bankruptcy Code. It is also held that there is an intrinsic assumption that Financial Creditors are fully informed about the viability of the

Corporate Debtor and feasibility of the proposed Resolution Plan. It is also noted that they act on the basis of thorough examination of the Proposed Resolution Plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting as per voting shares, is a collective business decision. It was held that the legislature consciously has not provided any ground to challenge the commercial wisdom of the individual Financial Creditors or their collective decision before the Adjudicating Authority that is made non-justiciable. It was observed that the discretion of the Adjudicating Authority is circumscribed by Section 31 limited to scrutiny of the Resolution Plan. Even in that enquiry the grounds on which the Adjudicating Authority can reject the Resolution Plan is with reference to the matters specified in Section 30(2) and the Resolution Plan does not conform to the stated requirements.

Hence, as already observed by this Tribunal the interested parties are the members of CoC and anything which would be to the disadvantage of the Financial Creditors would not be accepted by the CoC. They would scrutinize each and every aspect. Simply because an Advisor appointed to the RP once worked with the Successful Resolution Applicant, the committee of Creditors would not be swayed away by the biased advices, if any, coming from such Advisor. That would be doubtful circumstance for them too. They were cautious about the said fact, which is why they took an undertaking that he does not have conflict of interest with Respondent No.3. Regulation 27(c) of CIRP

does not operate in the area of appointment of the Mr. Kulmbhushan Parasher and he is not an auditor of Corporate Debtor during 5 years period to insolvency commencement. The ultimate test that the Resolution Plan has to pass is laid down under Section 30(2). Section 30(2) requires the Adjudicating Authority to enquire and see whether the Resolution Plan provides (i). The payment of Insolvency Resolution Process costs in a specified manner in priority to the repayment of other debts of the Corporate Debtor; (ii) The repayment of debts of Operational Creditors in prescribed manner; (iii) the management of the affairs of the Corporate Debtor; (iv) the implementation and supervision of the Resolution Plan (v) does not contravene any of the provisions of the law for the time being in force (vi) confirms and such other requirements as may be specified by the Board. It is true that under Section 60(5) the Adjudicating Authority (NCLT) will have jurisdiction to entertain and dispose of any question of priorities or any question of law or facts arising out of or in relation to the Insolvency Resolution or liquidation proceedings for the Corporate Debtor or Corporate Person under IBC. It is by invoking Section 60(5) (c) that the Unsuccessful Resolution Applicant has come before this Tribunal by way of this Application. The limited scope in this Application is to see whether there was any bias shown in favour of the Successful Resolution Applicant. But in the light of the above discussion, it has to be kept in mind before rendering a finding on the bias, that the CoC members would not be influenced by either the Resolution Professional or the Resolution Applicants, while accepting the Resolution Plans.

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They would do so only if their interests are safeguarded. The ultimate idea of a Resolution Plan is to safeguard the interest of the creditors and to keep the Corporate Debtor as a going concern. The judgment of the Hon'ble Supreme Court of India reported in (2020) 8 SCC 531 between Committee of Creditors of *ESSAR Steel India Limited vs. Satish Kumar Gupta & others*, the judgment of Supreme Court of India reported in (2020) 11 SCC 467 between *Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Others* and the judgment of the Hon'ble Supreme Court of India reported in (2021) 166 SCL 237 (SC) between *Ghanashyam Mishra & Sons Private Limited vs Edelweiss Asset Reconstruction Company Limited and Others* are also on the same aspect and are in support of the ratio laid down in the first citation.

There is no denial of the fact that by the date of the appointment of Mr. Kul Bhushan Parashar the Resolution Plans underwent several revisions and it is only the final Resolution Plans that were submitted after his appointment. The reasons for approving the said plan are clearly mentioned by the CoC. The Correspondence between the URA and the RP and the CoC members would reflect that the source of funds of the URA was always doubted by the CoC. Though the URA contends that they have clear source of funds, the issue of the source of funds not being clear was there even prior to the appointment of Mr. Kul Bhushan Parashar as Advisor. Hence, ultimate rejection of Resolution Plan of the URA has to be considered as having been done on those doubtful grounds. Moreover, when an employee

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comes out of a Company, he usually comes out with a grievance and cannot be expected to have any vested interest in that Company. It cannot be assumed that an employee who once worked in a Company would be interested in promoting that Company forever. The assumption otherwise is more probable. Letter dated 12.04.2021 adduced to Mr.Prasashar, shows that his scope of work is limited to assess, confirm, the technical and operational viability and feasibility of Corporate Debtor with the vessels and tugs they have. It also mentions that Mr.Parashar as a Freelance Consultant, rendered service to Respondent No.3. He was called upon to disclose about his conflict of interest with Respondent No.3. A reply from Mr.Parashar on 13.04.2021 clarifies that he is not associated with Respondent No.3 in any manner and that he does not have any conflict of interest. When it is not in dispute that he is a freelance consultant, his working with Respondent No.3 as such, cannot be assumed as creating any interest in Respondent No.3. In conclusion it is held that the appointment of Mr. Kul Bhushan Parashar did not have any effect on the decision of CoC.

The resolution plan of the URA is for Rs.1700 Lakhs towards creditor settlement while that of SRA is Rs.1705 Lakhs. The contention is that it is possible only because of the advisor to RP is the authorised representative of RP. The contention of the Respondent Counsel is that the evaluation matrix in terms of financial and technical parameters were totally in favour of SRA as opposed to the URA. It is also evident from the documents submitted by both sides that the

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final modified and completed Resolution Plan which was placed before COC for approval was first given by SRA on 25.05.2021 by way of email at 4.17 Pm and the Resolution Plan of URA was submitted on the said date at 5.48 PM through email and the said emails were immediately shared by the RP to the COC within an hour. The fact that in the CoC meeting dated 17.05.2021 and 31.05.2021 held after the appointment of Mr.Parashar, Mr.V.Prasanna present on behalf of URA did not raise any objection on his appointment.

The Counsel for the Applicant also passed on few judgments support his contentions with regard to the bias of the RP. But none of the judgments are similar to the facts of the case on hand. The first judgment is rendered by the NCLAT, Principal Bench, New Delhi in a case between Jayanta Banerjee vs. Shashi Agarwal & Another. In the said case, the IRP assigned the voting share to a creditor without verification and admission of a claim, which is not pleaded in this case. The other judgment is rendered by the same Bench in a case between Dwarakadhish Sakhar Karhana Ltd vs. Pankaj Joshi & Another. The facts of the said case are that DSKL who was one of the Resolution Applicants did not submit its EOI within the prescribed time and the plan was rejected by the COC in the first instance. Later emails were exchanged between the RP and DSKL. Time was extended by the RP for submission of the EoI by DSKL in violation of the Regulation 36-A (6) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the RP placed the issue before the COC and the

COC accepted the plan. In the background of those facts, NCLT, New Delhi Bench came to a conclusion that the RP influenced the COC and hence set aside the plan submitted by the DSKL, which is absolutely not the case, in the case on the hand. The other judgment is rendered by the NCLT, Ahmedabad Bench in the matter between Committee of Creditors (COC) vs. M/s.Torque Automotive Private Limited and Parag Seth. The purport of the said judgment is that the judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2) (e), as the provisions of the Code are also provisions of law for the time being in force. There is absolutely no quarrel with the said proposition and this Tribunal has appreciated the facts with the above ratio well in mind.

Hence the allegation that the plans approval with little margin in the plan of SRA is due to the influence of the Advisor to the RP does not find support. So also that the RP has acted with bias.

II. Whether the Unsuccessful Resolution Applicant (URA) was not furnished the information sought for by him.

The second contention was that information with regard to the financials of the Corporate Debtor is not provided to the URA. It is contended that the financial details till the period up to 31.03.2018 alone are provided and not up to

31.03.2019 as stated by the RP. It is contended that the Corporate Debtor being a going concern till 31.03.2021, the operations alter the financials and receivables/current assets status during the CIRP period. It is also contended that it is generally the practice among the Resolution Professional to keep a data room information about the Corporate Debtor during CIRP to all Resolution Applicants and same was not practiced in this case. In answer to the said contention the Counsel for the RP submits that the information memorandum contains audited financials of the Corporate Debtor as on 31.03.2019 wherein the reserves and surplus, which is nothing but receivables of Corporate Debtor and other current assets in the form of performance guarantee given by the Corporate Debtor to their clients as per tender conditions is mentioned. It is also stated that the same has been subsequently received (in terms of receivables and operational/current liabilities is duly settled). It is not denied that PBG of the Corporate Debtor, are in respect of Vedantha with whom the running contract upto 31.03.2021 to an extent of Rs.2.25 Crores is yet to be received an MRPL Rs.1.25Crores yet to be received, retention money is withheld by MRPL due to non- submission of HR related information by CEO and HR head from 2016 to 2019 which was to an extent of Rs.2.25 Crores. Out of the above Rs.2.25 Crores have been received from MRPL due to enormous and sustained efforts of the RP and is deposited in the bank accounts of the Corporate Debtor. Other two Performance Guarantees will be released by respective claims on completion of formalities as per tender conditions. The said amounts are classified as current assets of the Corporate

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Debtor and are required to be deposited for any further participation in tenders which is the main business of the Corporate Debtor. It is contended that the above facts are completely known to the URA and were explained to him in detail in COC meetings held on 07.01.2021 and 12.01.2021 in the presence of their consultants.

The Corporate Debtor's auditor was also stated to have been present. He is the auditor of one of the consortium partners of URA undisputedly. The correspondence between the parties would clearly show that the representatives of the URA have participated in the COC meetings and the doubts expressed by representatives like Mr. Prasanna and others were clarified by the RP as and when called upon. Even after the rejection of the Resolution Plan when the details pertaining to the rejection were sought for by the URA, he was permitted to meet the RP personally for clarification of the doubts. Though it is contended by the URA that during the personal meeting no clarification came forth, the said contention seems to be baseless, evidently, opportunities to clarify their doubts were given and are evidenced by the mails and by the admission that they went for personal hearing. The contention that the information as sought for is not furnished to the URA absolutely, does not have any basis.

III. Whether any outsiders have participated in the CoC meetings.

The counsel for the URA contends that the confidentiality of the Resolution Plan details was not

maintained. Some of the meetings were held virtually, from the pleadings of the URA it can be understood that the contentions are based on assumptions when a mail was addressed with regard to participation of the outsiders in the zoom meeting, a clarification was given by the RP that those members were present in the lobby and they were not participated in the meeting. Hence the said doubt based on the assumption does not have any supporting evidence and stands marginalised.

The email of the URA dated 17.05.2021 makes it clear that an explanation to the doubt expressed by the URA that outsiders were seen in the web meeting was clarified and it is stated therein that the URA is not aware of such a feature in the web meeting and hence he raised queries seeking clarifications and that as multiple people logged into the meeting room, as a participant he did not have idea if they were in the lobby or actually part of the meeting. It is also stated that since, then, the RP has clarified on the same and provided some information they shall in good faith work on their Resolution Plan and attempt to submit it. Hence it is more than clear that the URA was satisfied with the explanation given on the query pertaining to multiple people logging into the meeting room. It also shows that the RP has been responding well to the queries raised by the URA.

IV. Whether the information pertaining to the damaged vehicle CSIX is misleading.

It is contended by the Respondents that CSIX value was in the Information Memorandum prior to 14.05.2021

and it was part of the first valuation report. After cyclone the said vessels was washed away in the ocean and one OSR equipment of one of the vessel was retrieved by the on-board staff. The second valuation report was without CSIX value. For the reasons stated, CSIX was included in the Information Memorandum after cyclone Taukte. The email dated 17.05.2021 mentions about both the facts i.e., to consider the equipment on board as not available and to accordingly submit a revised commercial offer and that the OSR equipment was on hire to another Company and the Corporate Debtor is getting revenue of around Rs.15 Lakhs per month. It is specifically stated that the said information is being shared on the specific request made by the URA then and in the COC as well. The mail also reflects that equal opportunity was given to the SRA and URA. It is stated that both the Resolution Applicant were given same chance and being local person, the URA had advantage of meeting the RP, their office team and COC members several times, at least on two to three occasions apart from COC meetings. Their advisors and consultants were allowed to sit in his office and his team shared inputs on regulatory and statutory matters only on the specific request of the URA several times to help him as he and his team are very new to the preparation of Resolution Plan and its contents as per IBC. Hence there does not seem to be any conflicting information given on the vessel CSIX. These facts are reflected in the mails given by the Applicant. There seems to be no misinformation given to the Applicant with respect to the vessel. It is only based on the changes, that proposals

were being made to the URA and also SRA. The Bank Guarantee and EOI amount was taken back ungrudgingly.

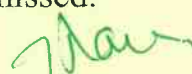
The Counsel for the URA also contends that the RP has mysteriously told the Applicant to remove the OSR equipment from the asset list of Information Memorandum on the pretext that the extent of damage caused to it cannot be assessed after cyclone Taukte while equipment is actually safe and hired out for a rent of Rs.15 Lakhs per month to M/s.Under Water. In answer to the said contention, the Counsel appearing for the RP submits that the OSR equipment is on hire for a reasonable value, as the equipment is in function since 2006, and its performance life is 10 years which is of no use to the Corporate Debtor due to lack of business. The RP can take over all the assets during the CIRP process and can take action for the best interest of the Corporate Debtor as per the IBC without prior approval from the COC. It can also be noted that no query in that regard was raised later by the URA. Resolution Plan was submitted without any regard to the above raised query. The information regarding hiring of OSR equipment is given on the specific request of URA as reflected in the mail dated 17.05.2021. 17th May mail given by RP clarified on both the OSR equipment and multiple people logging into the web meeting. But the reply by URA expressed opinion only on the web meeting but not on OSR equipment. While sharing information on OSR, URA was asked to treat the vessel and its equipment as "Not available". URA was called upon to give resolution plan based on the said information. No further doubts were raised on the said aspect. However, as

contended, RP can take over all the assets during CIRP and can take action in the best interest of the Corporate Debtor.

Giving of ample opportunity to get information about the Corporate Debtor is evident from the averments of the application itself wherein it is stated that Mr. Ravi, on behalf of the Applicant, was permitted to visit various locations of the Corporate Debtor and to gather information. He was also permitted to collect documents. Several opportunities to revise the plan were given. The Auditor of Corporate Debtor and one of the Consortium members of the Applicant is the same. In the light of all the above factors, the allegation that information is not shared is found to be completely devoid of any basis.

V. To what result.

In view of the discussion on points I to IV, the Application is dismissed. Accordingly, I.A.No.72/2021 in TCP (IB) No.79/9/AMR/2019 is dismissed.



**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

Swamy Naidu