

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. NO. 2359/2022

IN

Company Petition No. (IB)-1744/(ND)/2019

IN THE MATTER OF:

Syndicate Bank

**... Applicant/
Financial Creditor**

Versus

Bulland Buildtech Pvt. Ltd.

**... Respondent/
Corporate Debtor**

AND IN THE MATTER OF IA. NO. 2359/2022:

1. Priceline Infra LLP

LLPIN: AAF-2944
102, South Ex, Plaza 2,
Masjid Moth, Delhi-110049

... Applicant No.1

2. Mr. Ajay Gupta

Partner
7th Avenue, JDR Farm,
Jonapur Village,
New Delhi-110047

... Applicant No. 2

3. Mr. Vijay Kumar Gupta

Partner
7th Avenue, JDR Farm,
Jonapur Village,
New Delhi-110047

... Applicant No. 3

VERSUS

1. Mr. Debashis Nanda

(Resolution Professional of
Bulland Buildtech Private Limited
CS-14, Ansal Plaza,
Vaishali, Ghaziabad-201020

... Respondent No. 1

2. Devendra Umrao

Authorised Representative
B-43 A, First Floor, Kalkaji,
New Delhi, Pin Code-110019

... Respondent No. 2

3. Saviour Builders Private Limited

Successful Resolution Applicant
F-122A & 122B, 1st Floor,
Vardhman Tower, Community Center
Preet Vihar Delhi-110092

... Respondent No. 3

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

Order Delivered on: 31.10.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

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

PRESENT:

For the Applicant

: Adv. Deep Bisht in IA-2359/2022

For the RP

: Adv. Sumant Batra, Adv. Ruchi Goyal, Mr.
Debashis Nanda, RP in person, PCS Aradhana
Singh, Adv. Adya Singh

ORDER

PER: SH. ASHOK KUMAR BHARDWAJ, MEMBER (J)

IA-2359/2022

The captioned application has been preferred by Priceline Infra (LLP) and its partners, namely, Ajay Gupta and Vijay Kumar Gupta, who had expressed their interest in response to the invitation for Expression of Interest published by the RP in Form G of the Schedule I, as per the provisions of Regulation 36(A) of IBBI (Insolvency Resolution for Corporate Persons)

Regulations, 2016, but remained unsuccessful. The prayer made in the application reads thus: -

- a) *“To declare the resolution plan approved by the CoC as null and void;*
- b) *To pass an order setting aside the action taken by the Respondent while evaluating the Resolution Plan including approval of Resolution plan of M/s Saviour Builders Pvt. Ltd. by CoC members and directing him to re initiate the Resolution Plan Evaluation process in compliance of RFRP;*
- c) *To debarred the Respondent No.3 from submitting Resolution Plan under Section 29A of the Code;*
- d) *Exclude the time period from 21.03.2022 (date of approval of resolution plan by CoC) till filing of Resolution Plan for approval in the Hon’ble Tribunal from the period of Corporate Insolvency Resolution Process;*
- e) *Refer the conduct of Resolution Professional to IBBI for initiating the disciplinary proceeding against him; and*
- f) *Pass any other order(s), which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”*

2. The salient contentions espoused on behalf of the Applicant are: -

- i. When as per Form G, the last date for receiving the Resolution Plan was 11.02.2022, the Respondent No.1 accepted the plans of Resolution Applicants namely, M/s Saviour Builders Private Limited and M/s Sawaria Seth Infratech Pvt. Ltd., on 12.02.2022, thus the terms of Form G are violated;
- ii. By accepting the Resolution Plan of the Resolution Applicants after the last date for submission of the Resolution Plan, the Respondent No.1 had acted in a biased and unlawful manner;

- iii. The Resolution Applicants, other than the Applicants never submitted the plan in electronic form, thus violated the condition for submission of Resolution Plan, in terms of which the Plan was to be submitted in an electronic form by enclosing a password protected PDF File (which shall include the Resolution Plan along with necessary documents);
- iv. The RP failed to evaluate the Resolution Plans in accordance with the Bid-Evaluation Criteria, as approved by the members of CoC. Could the Bid-Evaluation Matrix and the scores assigned to different plans be provided to the PRAs, they could negotiate and re-negotiate to improve their plan. Having not done the exercise of assessing the plans qualitatively and quantitatively, the RP violated Clause 10(f) of RFRP and Regulation 39(2) and 39(3) of IBBI (CIRP) Regulations, 2016;
- v. When the Applicants were directed to negotiate with the CoC members at the point of time, the Plan had not been even circulated to them, thus the negotiation could not have been termed as fair and transparent.
- vi. The Plan was put to voting in clear violation of Clause 10(f) of RFRP, as before doing the exercise of voting, the scores with reference to Bid-Evaluation Matrix and Financial Bid were not declared.
- vii. The RFRP was never circulated to the homebuyers, which deprived the homebuyers to know about the process regarding Insolvency Resolution Process for Corporate Person.

- viii. Erstwhile, Director/Shareholder qua Bulland Group viz. Mr. Ramkesh Basist and Director/Shareholder qua Saviour Group (Successful Resolution Applicant) namely, Mr. Yash Pal Singh Dhama are also the Directors in Bulland Bar and Restaurants Private Limited which is one of the group companies of the Corporate Debtor, thus the SRA and CD are related parties.
- ix. In order to propose a feasible and viable plan, the Applicants requested the Respondent to share the financial statements, loan agreement and bank statement qua the CD but the Respondent nixed the request of the Applicants stating that the documents sought by them were confidential in nature.
- x. The RP/Respondent admitted the claims in excess of the debt.
- xi. The RP is hand in glove with the erstwhile management and is misusing his position in conducting the CIRP.

3. Opposing the application, the Respondent filed reply dated 10.09.2022. In the reply filed by him, the Respondent/RP submitted that pursuant to the initiation of Corporate Insolvency Resolution Process (CIRP) vide order dated 22.03.2021, the RP published the notice dated 24.12.2021, inviting Expression of Interest to submit Resolution Plan in accordance with Regulation 36A(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the Expression of Interest was received from six Prospective Resolution Applicants (PRA) including the Applicants.

4. In the reply filed by it, the RP/Respondent has admitted that the Applicants submitted a soft copy of the Resolution Plan to RP on 11.02.2022

and the other two PRAs submitted their Resolution Plan through speed post. Nevertheless, the RP has tried to explain that it was provided in Form G that the Resolution Plan could be submitted also through speed post. It is also admitted by the RP that the Resolution Plan of other two PRAs was received by RP only on 12.02.2022. He has tried to justify the delay on the ground that the date 10.02.2022 could be declared as a public holiday in Uttar Pradesh, due to the State Assembly Election, thus the other two PRAs could dispatch their plan by speed post only on 11.02.2022. In the reply filed by him, the RP has also submitted that the SRA had sent the postal receipt acknowledgment to show the proper dispatch of the Resolution Plan to the RP. According to him, the postal receipt was sent to him through e-mail.

5. As has been averred in para 5 of the reply filed by the RP, all the three Resolution Plans contained in sealed envelopes were placed before the CoC in its 8th meeting held on 14.02.2022 and the CoC noted the delay in receiving the Plan from two Resolution Applicants and in the interest of maximization of value of asset of Corporate Debtor through most number of competing Resolution Plans, the CoC decided to relax the timeline and open the sealed envelopes containing all the three Resolution Plans.

6. It has also been espoused by the RP in the reply filed by him that the Expression of Interest was received from six PRAs including the Applicants. According to the reply, though the Applicants submitted its EOI but the same was not supported by EMD and when the last date for submission of EOI was 07.01.2022, the Applicants submitted the same on 10.01.2022. The CoC relaxed the timeline for submission of EMD by the Applicants, in its 8th

meeting held on 14.02.2022. In sum and substance, the RP has tried to explain that since the object and intent of the CoC is to maximise the value of the assets of CD and time bound Insolvency Resolution Process, in its Commercial Wisdom, the CoC could entertain the EOI submitted by the Applicants after the last date and similarly it also entertained the Resolution Plan sent by the other two PRAs, just with a day's delay. To buttress the plea, the RP could refer to the terms of RFRP, which provided that the Resolution Professional on approval of CoC could extend the date for submission of Resolution Plan and such extension would not be construed as the modification of RFRP and shall be an independent decision. To meet the plea espoused by the Applicants regarding the mode for submission of the plan, the RP has explained that in Form G (invitation to EOI, the mode for submission of Resolution Plan was through e-mail or speed post. In 8th CoC meeting, the RP apprised the CoC about the mode and date of submission of EOI/Resolution Plan and on their approval only, all the plans were opened in the presence of all the three PRAs.

7. In para 8 of the reply, the RP has averred that on 24.02.2022, all the PRAs including the Applicants were invited to meet the members of the CoC and discuss their plans. All the three Applicants were given the opportunity to revise their plans. The meetings of homebuyers were also arranged with PRAs, on 01.03.2022, 02.03.2022, and 03.03.2022. The revised plans received by the Respondent on 05.03.2022 were opened in the CoC meeting held on 08.03.2022, in the presence of the Applicants. The plans were put to voting from 16.03.2022 to 21.03.2022, after circulation of the revised plans

of all the three PRAs to the CoC members. The Resolution Plan of SRA was approved by the CoC with 94.37% voting share. The Applicants had signed a declaration, wherein they expressed their satisfaction in respect of transparency with respect to the Resolution Plan.

8. It is the case of the RP that in terms of Regulation 39(1A)(a) of IBBI (CIRP) Regulations, 2016, the Resolution Plan can be revised only once and the Applicants herein were given such opportunity. Nevertheless, the RP has admitted that instead of disclosing the scores to all the PRAs to have better competition, the CoC in partial modification of terms of RFRP decided to put all the plans for voting. However, the RP has tried to justify the process by taking the plea of Commercial Wisdom of CoC. To buttress the plea, he relied upon the judgment of the Hon'ble Supreme Court in **Vallal RCK v. Siva Industries and Holdings Limited** dated 03.06.2022 in Civil Appeal Nos. 1811-1812 of 2022.

9. The RP has denied the plea of the SRA being a related party. For this purpose, the RP has referred to the definition of the related party given in Section 5(24) of the Code. In para 'h' of the reply, the Respondent No.1 specifically stated that Mr. Yash Pal Sigh Dhama was not the director of Bulland Bar and Restaurants Private Limited, at the time of the invitation for Expression of Interest.

10. We have heard the counsels for the parties and perused the record. As far as the plea regarding the receipt of the plan, submitted by the two PRAs, other than the Applicants is concerned, apparently, the delay was because of

declaration of 10.02.2022 as holiday, on account of assembly election in Uttar Pradesh. Such justification given by the RP regarding the delay of one day in receipt of the plans submitted by the PRAs other than the Applicants is quite plausible. Besides, it was not unreasonable on the part of CoC to consider all the three plans, with the thought to have competitive bids to maximize the assets of the CD. The CoC could take such decisions in exercise of its Commercial Wisdom. The Commercial Wisdom does not mean only the wisdom to judge as to whether a particular transaction or deal is favourable and beneficial to creditors/stakeholders or not. Looking for the better option/offer/plan and to have more options/plans for consideration, to approve the most beneficial/favourable one is also exercise of commercial decision only. It is not so that the CoC exercised its Commercial Wisdom only to consider the plans received from two other PRAs. It also did so, when the Applicants had not submitted EMD before the last date for submission of the EOI. The EOI was to be submitted by 07.01.2022, while the Applicants could furnish EMD only on 10.01.2022. In its 8th meeting held on 14.02.2022, the CoC relaxed the timeline fixed for submission of EMD to consider the EOI of the Applicants also. Further, as can be seen from Regulation 36B(6) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, the Resolution Professional may with the approval of the committee extend the timeline for submission of Resolution Plan. Thus, when in terms of the Regulations, the CoC is competent and entitled to extend the timeline for submission of Resolution Plan, it committed no infirmity in relaxing the timeline for two PRAs for the purpose, for a day only. Additionally, as can be seen from para 5 of the reply filed by the RP, the RFRP categorically provided

that the Resolution Professional could extend the date of submission of Resolution Plan with the approval of CoC. It is not the case of the Applicants that the timeline was relaxed selectively, for two PRAs only and not for anyone else. Clause V of RFRP reveals that the Resolution Plan could be submitted by 17:00 hours IST of 18.02.2022. The timelines regarding IRP mentioned in para 3 of RFRP reads thus:

“3. Schedule of Insolvency Resolution Process along with Corresponding Timelines and Manner of Correspondence

S.No.	Event Description	Date
1.	<i>Release of Advertisement</i>	<i>20.12.2021</i>
2.	<i>Last date to submit the Expression of Interest</i>	<i>04.01.2022</i>
3.	<i>Release of RFRP</i>	<i>19.01.2022</i>
4.	<i>Resolution Plan Submission Date</i>	<i>18.02.2022</i>
5.	<i>Declaration of the Successful Resolution Applicant</i>	<i>After approval by CoC</i>
6.	<i>Receipt of Performance Bank Guarantee from RA ad Issuance of Letter of Intent (“LOI”) by the RP or CoC</i>	<i>Letter of intent shall be issued within two days of approval of plan and PBG to be submitted within seven days of issuance of letter of intent.</i>
7.	<i>Acceptance of LoI from Successful Resolution Applicant</i>	<i>Within 7 days of Issuance of LOI</i>
8.	<i>Submission of final application to Hon’ble NCLT For Approval</i>	<i>As soon as approved by the COC and LOI accepted/PBG provided by the successful RA</i>
9.	<i>Approval of Hon’ble NCLT regarding the Resolution Plan of Successful Resolution Applicant</i>	<i>As and when passed by the Hon’ble Adjudicating Authority</i>

In the wake, we do not find any force in the contention advanced on behalf of the Applicants that the consideration of the plans received just a day after the scheduled date is a ground sufficient to reject the application for approval of Resolution Plan. Ergo, the plea is nixed.

11. It is not so that the CoC could consider the plans received after due date only qua two PRAs and not qua any other PRAs. Rather, it could consider the EOI of the Applicants, even when they could furnish the EMD only after the scheduled date. Thus, there is no force in the contention of bias put forth on behalf of the Applicants. The contention is rejected.

12. As far as the plea of non-submission of the Plan through e-mail is concerned, as can be seen from Clause 17 of Form G (Invitation for Expression of Interest), the Resolution Plan could be submitted through e-mail/speed post. A copy of Form G is available on record as Annexure-R2 to the reply filed on behalf of the RP. In the wake, the plea of non-submission of the plan by the two RPs in a prescribed manner is found baseless and is rejected.

13. It is also the contention put forth on behalf of the Applicants that in the absence of availability of Bid Evaluation Criteria/Matrix with them, they could not negotiate/re-negotiate with CoC qua their plan. The Applicants have also espoused that the scores assigned to the Plans were not provided to the members of CoC, before voting for the Plans by them, thus it could not be possible for them to assess/judge the merits of the plans and the approval of the plan by CoC was not in transparent/fair manner. To buttress the plea, the Applicants alleged violation of Regulation 39(2) and (3) of IBBI (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016. In this regard, we can see from the reply filed on behalf of the RP that the CoC met on 24.02.2022 and discussed all the three plans received by it, with respective PRAs. All the three PRAs were given opportunity to revise their plans, based on discussions. The meetings of PRAs with homebuyers were also arranged by the RP. The meetings could take place on 01.03.2022, 02.03.2022 and 03.03.2022. After the meetings and discussions, the PRAs were given opportunity to submit revised plans by 05.03.2022. The Applicants were also given opportunity to submit the revised plan. Revised plans were opened in CoC meeting held on 08.03.2022. The Applicants were present in the meeting. All the three plans were put to voting again. The voting could take place between 16.03.2022 to 21.03.2022, after circulation of revised Resolution Plan of all the three PRAs to the CoC members. The Resolution Plan of SRA was approved by the CoC by voting share of 94.37%. The Applicants also signed a declaration clearly expressing their satisfaction with the transparency in consideration and approval of the Resolution Plan. The declaration given by them, enclosed as Annexure R-5 to the reply reads thus:

DECLARATION

We have witnessed the opening of resolution plan, submitted by all three Prospective Resolution Applicant/s namely Priceline Infra LLP, Sawaria Seth Infratech Private Limited and Saviour Builders Private Limited, and have no objection of whatsoever nature in respect of transparency in the matter.

As a token of authentication, the CoC members namely Dr. Manish Kumar - representative for Canara Bank (Secured FC), Mr. Devendra Umrao (AR for Creditors in Class - Home Buyers) and Mr. Vishal (Unsecured FC), have signed on each and every page forming part of Resolution Plan in presence of each/all the Resolution Applicant/s.

For Canara Bank:

(1) Dr. Manish Kumar

(2) _____

For Creditors in Class:

(1) AR - Devendra Umrao

For Unsecured Creditors:

(1) Vishal

For Priceline Infra LLP

(1) [Signature] 02/03/2022

(2) [Signature] 02/03/22

For Sawaria Seth Private Limited

(1) Vishal 02/03/2022

For Saviour Builders Private Ltd.

(1) [Signature] 02/03/22

ATTENDANCE REGISTER												
In reference to Regulation 24 of the IBB (Insolvency Resolution Process for Corporate Persons) Regulations, 2016												
Adjourned Ninth Meeting of the Committee of Creditors (CoC) of Bulland Buildtech Private Limited (Under CIRP)												
Date: 08/03/2022		Day: Monday		Time: 04:15 P.M.		Venue: CS-14, Floor C, Ansal Plaza Mall, Vaishali, Ghaziabad, Uttar Pradesh- 201010						
S.No	Representing Whom	Name of the Participant	Designation	Voting Share	Contact Info (Phone and Email id)	Attendance (Physical/Audio Visual (AV)/Video Conferencing (VC))	Whether attending in the capacity of a Member of the CoC or any other Participant	Location of Participation (in case of AV/VC)	Received the Agenda & all the relevant Material for the Meeting	In case of AV/VC, no one other than him access to the proceeding of the meeting at the location of that person	Signature (Commencement of Meeting) (Not required if attending through AV/VC)	Signature (Conclusion of Meeting) (Not required if attending through AV/VC)
1	Priceline Infra	Santosh Kumar	Sr. Manager		9711913160	Physical					Santosh Kumar	
2	Priceline Infra	Sr. Mahesh Chand	Sr. Manager		979721760	Physical					Mahesh Chand	
3	Corporate Bank	Dr. Manish Kumar	AGM		920191117	Physical					Manish Kumar	
4	Corporate Bank	Susham Gupta	Manager (Law)		9086185869	Physical					Susham Gupta	
5	RC members	Vishal Chaurani	Home Buyer		9650598214	Physical					Vishal Chaurani	
6	Deventra Unnati											
7	AR of PC in a class	Deventra Unnati	AR		9810045874	Physical					Deventra Unnati	
8	Corporate Bank	Vaishali	Sr. Accountant		7911816103	Physical					Vaishali	
9	SAVIOUR	HIMANSHU GUPTA	DIRECTOR		9891449653	PHYSICAL					Himanishu Gupta	
10												
11												
12												
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14												
15												
16												

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PRICELINE INFRA LLP

Corp. Add: 504, DLF City Court, MG Road, Sikanderpur, Gurgaon Haryana-122001

Authority Letter

Date: 07.03.2022

To

Mr. Debashis Nanda
RP in the matter of Bulland Buildtech Pvt Ltd
IBBI Reg No.. No. IBBI/IPA-OD3/IP-N00040/2017-18/10316
Address: CS-14, Ansal Plaza, Vaishali, Ghaziabad, 201010

Sub: Authorisation to attend the Adjourned Ninth Meeting of the CoC in the matter of Bulland Buildtech Private Limited

Dear Sir,

We have received your email dated 07.03.2022 for a physical meeting scheduled to be held on Tuesday, 08.03.2022 at 4.15 P.M at the office of Resolution Professional Situated at CS-14, Ansal Plaza, Vaishali, Ghaziabad, 201010. In this regard, I, Vijay Kumar Gupta, Designated partner of Priceline Infra LLP, Prospective Resolution Applicant (PRA) in the matter of Bulland Buildtech Private Limited, do hereby authorize Mr. Mahesh Chand and Mr. Santosh Kumar Tiwari, to attend the Adjourned Ninth Meeting of the CoC at scheduled time and venue.

Signature of Mr. Mahesh Chand and Mr. Santosh Kumar Tiwari is attested here below:

Mr. Mahesh Chand

Mr. Santosh Kumar Tiwari

For Priceline Infra LLP

Vijay Kumar Gupta
Designated partner
OPIN: 00570335
Address: JDR Farm, 7th Avenue
Bandh Road, Jonapur, Delhi 110047

Reg Add: 102, South Ex Plaza 2, Masjid Moth, South Delhi - 110049
Email Id: Accounts@coronaprojects.in, Phone No: 0124-4053322

14. Could the Applicants have any issue regarding non-availability of the Evaluation Matrix or non-consideration of the plans as per the Matrix evolved by the CoC, they could have raised the plea during the discussion qua their plan. Instead of raising any such objection, the Applicants gave a declaration, expressing their satisfaction regarding the process followed in consideration and approval of the Prospective Resolution Plans. We can also see from clause IV(a) of the RFRP that the PRAs could write to RP to seek clarification pertaining to submission of Resolution Plans, the Corporate Debtor and the Information Memorandum. It can also be seen from the RFRP that the Bid Evaluation Matrix was published along with the RFRP and was available to all the PRAs. Once the Applicants had an opportunity to peruse the BEM and discuss the plan with members of CoC and homebuyers, they cannot allege lack of transparency in the process. Even otherwise also, after having participated in the process of consideration of Resolution Plans without raising any question, the Applicants are estopped from challenging the process on being found unsuccessful. In **Tajvir Singh Sodhi & Ors. vs. State of Jammu and Kashmir & Ors.**, (Civil Appeal Nos. 2164-2172 of 2023) Hon'ble Supreme Court reiterated the settled position of law that the candidates who participated in the selection process without protest cannot challenge the process subsequently. The relevant excerpt of the judgment reads thus: -

“Having participated in the selection process without any demur or protest, the writ petitioners cannot challenge the same as being tainted with mala fides, merely because they were unsuccessful.”

15. As far as the issue of circulation of RFRP to homebuyers is concerned, in terms of the provision of Regulation 36B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the RFRP needs to be issued to the Prospective Resolution Applicant(s) included in the provisional list and the PRAs who contested the decision of the RP against its non-inclusion in the provisional list. There is no provision to issue RFRP to the homebuyers. Nevertheless, the PRAs were made to discuss their Resolution Plans with the homebuyers. There is no force in the plea that the non-issuance of RFRP to homebuyers vitiated the plan of SRA. The plea is rejected.

16. The next ground raised in the application is that the SRA i.e., Saviour Group is not eligible to submit the Resolution Plan, as it is a party related to CD. To espouse the plea, the Applicants have canvassed that Mr. Ramkesh Basist, erstwhile Director/Shareholder qua CD is Director/Shareholder qua Bulland Bar and Restaurant Private Limited, in which Mr. Yash Pal Singh Dhama currently Directors qua SRA is also Director, and Bulland Bar and Restaurants Private Limited is one of the group companies of the CD. The plea raised by the Applicants is denied by the RP. In para (i) of the para-wise reply, the RP reproduced Section 5(24) of IBC to bring home the plea that the SRA was not ineligible to submit the Resolution Plan qua the CD. According to the RP, Mr. Yash Pal Singh Dhama was not the Director of CD and Bulland Bar and Restaurant Private Limited at the time of publication of EOI. It is not denied by the RP that at the time of submission of the Resolution Plan, Mr. Ramkesh Basist was the Director qua the Bulland Bar and Restaurant Private Limited. Thus, we proceed to examine the argument on the premise, as to

whether the Saviour Group having Mr. Yash Pal Singh Dhama, as its Director is disqualified to be SRA qua the CD. To decide the issue, it may be relevant to decipher the provisions of Section 29A of IBC, 2016. Section 29A of the IBC, 2016 provides that a person shall not be eligible to submit a Resolution Plan if such person or any other person acting jointly or in concert with such person: - (a) is an undischarged insolvent; (b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949; (c) at the time of submission of Resolution Plan has an account or an account of a Corporate Debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force and at least a period of one year had lapsed from the date of such classification till the date of commencement of the CIRP of the Corporate Debtor; (d) has been convicted for any offence punishable with imprisonment-(i) for two years or more under any Act specified under the Twelfth Schedule or; (ii) for seven years or more under any law for the time being in force; (e) is disqualified to act as Director under the Companies Act, 2013; (f) is prohibited by the Securities and Board Exchange of India from trading in securities or accessing the securities market; (g) has been a promoter or in the management or control of a Corporate Debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority; (h) has executed a

guarantee in favour of a creditor in respect of a Corporate Debtor against which an application for Insolvency Resolution made by such creditor has been admitted under IBC, 2016 and such guarantee has been invoked by the creditor and remains unpaid in full or part; (i) subject to any disability corresponding to above (mentioned in clauses (a) to (h)) under any law in a jurisdiction outside India or; (j) has a connected person not eligible under clauses (a) to (i) (ibid).

17. Clause (j) of Section 29A of IBC, provides that a person not eligible to submit a Resolution Plan, in terms of the provisions of clauses (a) to (i) of Section 29A (ibid) should be connected to SRA. The Explanation I to clause (j) (ibid) defines the connected person, which means: - (i) any person who is the promoter or in the management or control of the resolution applicant; (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii).

18. The Clause (j) of Section 29A used the expression 'connected person' and not the 'related party'. The term related party is used in sub-clause (iii) of clause (j) of Section 29A and first proviso to said clause. It says that nothing in clause (iii) of Explanation I shall apply to a Resolution Applicant where such Applicant is a financial entity and is not a 'related party' of the Corporate Debtor. The 'related party' does not include the financial entity. In the wake, we need to see whether Mr. Yash Pal Singh Dhama being the Director of Saviour Group becomes ineligible to be SRA merely because he is also a

Director in a group company of the CD. Thus, we need to check the contention raised on behalf of the Applicants, with reference to the proposition, “whether an SRA can be treated ineligible to submit the Resolution Plan, if its Director is also Director in one of the group companies of the CD in which one of the former Director of the CD is also Director. Sub-clause (iii) (ibid) provides that the companies, holding, subsidiary and associate qua the Resolution Applicant is disqualified to be SRA, if they are connected with the person not eligible to submit the Resolution Plan, being disqualified in terms of clause (a) to (i) of Section 29A. In the present case, there is no such plea espoused by the Applicants that there is any such company which is covered by clause (a) to (i) (ibid) and is holding, subsidiary or associate to the Saviour Group (before giving a final view, we need to examine whether the Bulland Bar and Restaurant Private Limited is an “Associate Company” in terms of Section 2 (6) of Companies Act, 2013).

19. Similarly, we are unable to gather anything from Section 29A (c) of IBC, 2016 that merely because the Director of SRA is the Director in one of the group companies of the CD, it would be disqualified to submit the Resolution Plan. In terms of clause (c) (ibid), either the account of SRA should be classified as NPA or the account of a Corporate Debtor under the management and control of SRA or of a Corporate Person of whom the SRA is a promoter is classified as non-performing asset. There is no such situation involved in the present case. Now, the issue arises for consideration is whether any person who is the promoter or in the management and control of the Resolution Applicant has a ‘related party’ which is covered by clause (c) of

Section 29A (ibid). As far as Mr. Ramkesh Basist is concerned, he ceased to be the Director of CD w.e.f. 30.11.2018 i.e., one year prior to admission of CD to CIRP. Though he is the Director of Bulland Bar and Restaurant Private Limited, but it is not the case of the Applicants that Bulland Bar and Restaurant Private Limited is having an account, declared as NPA. It is not so that Mr. Ramkesh Basist is having any control or management qua the CD either at this stage or even during the period of one year prior to the commencement of CIRP. Though, Mr. Yash Pal Singh Dhama is the Director in Bulland Bar and Restaurant Private Limited, but the said company is not having an account, declared as NPA.

20. Section 5(24) of IBC, talks of 'related parties'. Thus, we need to check, whether anyone related to SRA is covered by Section 29A (c) of the IBC, 2016. The only names to be discussed in this regard are Mr. Ramkesh Basist and Mr. Yash Pal Singh Dhama. Neither of them is a Director or partner of CD or a relative of a Director or partner of CD, they are neither key managerial personnel of the CD nor are they relative of key managerial personnel of the CD. Nevertheless, a doubt is bound to arise that when the Bulland Bar and Restaurant Private Limited is a group company of the CD, the CD may have some command or control qua it, but the said company is not the SRA in the present case. It is not the case of the Applicants that the SRA herein acts on the advice of a Director, Partner, or Manager of the CD. The Applicants are unable to establish any such relationship between Mr. Yash Pal Singh Dhama and Mr. Ramkesh Basist with SRA, which can be covered by the definition of related party given in Section 5(24) of IBC, 2016. Indubitably, Yash Pal Singh

Dhama was Director qua SRA only till 25.10.2014 and Ramkesh Basist was never the Director qua SRA.

Nevertheless, we would be examining the impact of the son of Mr. Yash Pal Singh Dhama being Director qua SRA, while examining the application for approval of the Resolution Plan. We would be constrained to do so, in the wake of the provisions of Section 5(24)(h) and (i) read with Section 5(24A) of the IBC, 2016.

21. As far as the plea regarding non-sharing of the financial statement, loan agreement, and bank statement qua the CD with the Applicants is concerned, apparently in terms of the provisions of Regulation 36B of the IBBI (CIRP) Regulations, 2016, the Applicants were issued the Information Memorandum, which contains all the information referred to by the Applicants. Regulation 36(2) of IBBI (CIRP) Regulations, 2016 which provides the contents of IM reads thus: -

“ 36. Information memorandum

.....

(2) *[The information memorandum shall highlight the key selling propositions and contain all relevant information which serves as a comprehensive document conveying significant information about the corporate debtor including its operations, financial statements, to the prospective resolution applicant and shall contain the following details of the corporate debtor-] -*

(a) *[assets and liabilities [including contingent liabilities] with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values.*

Explanation: 'Description' includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, [geographical coordinates of fixed assets] and any other relevant details.]

- (b) the latest annual financial statements;*
- (c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;*
- (d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;*
- (e) particulars of a debt due from or to the corporate debtor with respect to related parties;*
- (f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;*
- (g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;*
- (h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;*
- (i) the number of workers and employees and liabilities of the corporate debtor towards them;*

- (j) *[company overview including snapshot of business performance, key contracts, key investment highlights and other factors which bring out the value as a going concern over and above the assets of the corporate debtor such as brought forward losses in the income tax returns, input credit of GST, key employees, key customers, supply chain linkages, utility connections and other pre-existing facilities*
- (k) *Details of business evolution, industry overview and key growth drivers in case of a corporate debtor having book value of total assets exceeding one hundred crores rupees as per the last available financial statements]*
- (l) *other information, which the resolution professional deems relevant to the committee.”*

22. The application also contains the allegation that the CD represented by RP is hand in gloves with ex-management and the RP has admitted the claims in excess of the debt. The Applicants herein being unsuccessful SRA has no locus standi to raise such issues. If and when the issues are raised by anyone concerned, the same would be examined.

23. It is made clear that the present order is only with reference to the present application under consideration and would not be construed as an order of approval of the Resolution plan. The application for approval of the plan would be examined on its own merits. Any other application espousing objection qua the plan would also be examined de hors the view taken in the present order. The Applicants as also Respondent i.e., RP are directed to file an affidavit indicating therein the relationship between CD and Bulland Bar and Restaurant Private Limited, the breakup of shareholding qua Bulland

Bar, the nature of control of CD over Bulland Bar as also the relationship between Bulland Bar and Restaurant Private Limited with SRA. The affidavit shall also disclose the shareholding of Bulland Bar and Restaurant Private Limited or its Directors qua SRA and state specifically whether Bulland Bar and Restaurant Private Limited is an “Associate Company” of the CD in terms of Section 2(6) of Companies Act, 2013. In this context, RP shall also bring the latest available Form MGT-7 filed by the CD with MCA on record. The affidavit should be filed in the IA-1449/2022 within two weeks.

The IA stands disposed of.

**Sd/-
(L. N. GUPTA)
MEMBER (T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**