NATIONAL COMPANY LAW TRIBUNAL,
CHANDIGARH BENCH, CHANDIGARH.

I. **CA Nos.114/2018**
IN
CP (IB) No.42/Chd/Hry/2017

Under Sections 30 (6), 31 & 60(5) of the Insolvency & Bankruptcy, Code, 2016 read with regulation 39 (4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

In the matter of:

Corporation Bank. ….Petitioner-Financial Creditor.

Versus.

Amtek Auto Limited. ….Respondent-Corporate debtor.

And

In the matter of:

Mr.Dinkar T.Venkatasubramanian,
Resolution Professional. ….Applicant.

Versus.

Liberty House Group PTE Ltd. & Ors. ….Respondents.

II. **CA Nos.112/2018**
IN
CP (IB) No.42/Chd/Hry/2017

Under Sections 60(5) of the Insolvency & Bankruptcy, Code, 2016 read with Sections 12 & 31 of the Code read with regulation 39 of IBBI (CIRP) Regulations, 2016.

In the matter of:

Mr.Dinkar T.Venkatasubramanian,
Resolution Professional. ….Applicant.

Versus.

Liberty House Group PTE Ltd. ….Respondent.

III. **CA Nos.140/2018**
IN
CP (IB) No.42/Chd/Hry/2017

Under Sections 60(5) (a) and (c) read with Section 31 of the Insolvency & Bankruptcy, Code, 2016.

In the matter of:

DECCAN VALUE INVESTORS LP & Anr. ….Applicants.

Versus.

DINKAR TIRUVANNADAPURAM VENKATASUBRAMANIAN
& Anr.

….Respondents.

Order delivered on 25.07.2018.

Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)

For Resolution Professional:	Mr.Sanjay Bhatt, Advocate
For Liberty House Group:	1) Mr.Anand Chhibbar, Senior Advocate 2) Mr.Gaurav Mankotia, Advocate 3) Mr.Prateek Kumar, Advocate 4) Ms.Sneha Janakiraman, Advocate
For Deccan Value Investors: (CA No.140/2018)	1) Mr.Gyanedra Kumar, Advocate 2) Ms.Shikha Tandon, Advocate 3) Mr.Amandeep Singh, Advocate
For Committee of Creditors:	1) Ms.Misha, Advocate Mr.Nitin Kaushal, Advocate

Per: R.P.Nagrath, Member (Judicial):

ORDER

All these applications are taken up together for disposal as the matter in these applications relates to the approval or rejection of the resolution plan, which was accepted by the committee of creditors with the requisite voting share.

2. **CA No.114 of 2018** is being referred to as the first application **CA No.112 of 2018** as second application **and CA No.140 of 2018** as the third application, wherever required in this common order.

3. An application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (for short to be referred here-in-after as the 'Code') bearing CP (IB) No.42/Chd/Hry/2017 filed by the Corporation Bank against the corporate debtor M/s Amtek Auto Limited was admitted by this Tribunal on 24.07.2017 declaring the moratorium in terms of Section 14 (1) of the Code and the Interim Resolution Professional (IRP) was appointed on 27.07.2017, who was later on confirmed as the Resolution Professional by the Committee of Creditors (COC). The Applicant in the first and second application is the Resolution Professional.

4. The initial period of 180 days as provided in sub-section (1) of Section 12 of the Code for completion of the insolvency resolution process was expiring on 19.01.2018 and on the basis of decision of the COC, the period for completion of insolvency resolution process was extended by 90 days vide order dated 17.01.2018 passed in CA No.08/2018 in terms of sub-section (3) of Section 12 of the Code.

5. Few miscellaneous applications were filed during pendency of the petition by some of the financial creditors/Banks challenging the decision of the resolution professional in not accepting the claim filed with the resolution professional on the basis of invocation of the bank guarantee/ indemnity / surety and the letters of comfort furnished by the corporate debtor for extending the loan facilities to certain subsidiaries of the corporate debtor. Those are in CA Nos.61/2018, 77/2018, 177/2018, 178/2018 & 72/2018 which are being disposed of by a common detail order separately. It is, however, admitted proposition that the adjudication of those applications would not have any impact on the approval of the resolution plan as the dispute in those applications is only insignificant percentage of the voting share of the COC. There are certain more allegations made in CA No.77 of 2018 to attack validity of the plan which have also been discussed in the separate order being passed on these applications.

6. In the first application it is stated that as per Section 29 of the Code and Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for brevity the Regulations), the Applicant namely; the resolution professional prepared the Information Memorandum (IM), which was provided to the members of the COC after obtaining undertaking from them to maintain confidentiality of the information. The IM was updated from time to time. Copy of IM on the date when COC approved the Resolution Plan of Liberty House Group PTE Ltd. (LHG) which is the first respondent in the instant application, was filed with the progress report to this Tribunal in terms of Section 30 (4) of the Code.

7. As per Section 25 (2) (h) of the Code, the applicant invited prospective lenders, investors and other persons to submit Expression of Interest (EOI) to put forward Resolution Plan. The advertisement was published in two newspapers i.e. Economic Times and Navbharat Times on 31.08.2017. Last date for submission of EOI was 11.09.2017.

8. It is stated that 27 potential investors submitted their interest. In the meeting of committee of creditors held on 06.10.2017, Grant Thornton India Private Limited, SBI Capital Markets Ltd. and IDBI Capital Markets & Securities Limited were appointed as the process advisors to assist the applicant in evaluating the Resolution Plans. The non-disclosure agreements were executed with potential investors and virtual data room (VDR) was created to make information about the corporate debtor available with the potential resolution applicants. The access for submission of Non Binding Offer (NBO) was provided to potential bidders and NBO received from six bidders, who were asked to submit NBO to the next phase as decided by the committee of creditors on 22.11.2017.

9. After the Code was amended by promulgation of Ordinance on 23.11.2017 in the provisions of the Code, providing eligibility criteria for various categories of persons by inserting Section 29A, the potential investors were asked to make the requisite disclosures and declarations about their eligibility to submit the Resolution Plan. The potential investors submitted the disclosures and access to data room was opened. In view of the amendment in Section 25 (2) (h) of the Code, the process of inviting Resolution Plans from potential resolution applicants was finalised by the Resolution Professional and submitted to the COC in

the meeting held on 06.12.2017 in consultation with legal advisors of COC, the Applicant and process advisors. The COC approved the process note containing terms and conditions for consideration and selection of Resolution Plans. The COC approved the resolution plan evaluation criteria in the meeting held on 18.12.2017 which was informed to the resolution applicants.

10. The binding resolution plans were, however, received from only two applicants, namely; Liberty House Group PTE Ltd. (LHG) and Deccan Value Investors LP (DVI). The other four resolution applicants neither submitted the resolution plan nor the bid bond guarantee. Thereafter in the meeting held by the committee of creditors, these resolution applicants were invited to submit the improved resolution plans. Scores on the basis of the bid evaluation matrix were given to both the resolution plans. LHG submitted revised resolution plan by email dated 20.02.2018, which was not acceptable to the COC and both the applicants were granted final opportunity to submit the improved resolution plans.

11. On this, the sealed covers containing the revised/improved resolution plans were opened on 06.03.2018 and on the basis of the evaluation criteria, LHG emerged as the preferred bidder in the meeting held on 06.03.2018. After various rounds of negotiations, the LHG submitted the final plan on 26.03.2018 which was forwarded to all the members of the committee of creditors for their views. This plan was submitted before the meeting of committee of creditors held on 02.04.2018 for consideration in terms of Section 30 (3) of the Code which was deliberated upon. Since all the members were not present in this meeting

of the committee of creditors, it was decided to seek the vote on the following matters by electronic means:

> *"To approve the Resolution Plan*
> *The Resolution Professional presented the resolution plan of Liberty House Group Pte Ltd ('LHG') to the Committee of Creditors (CoC) in accordance with section 30 (3) of the Insolvency and Bankruptcy Code, 2016 ("Code") read with regulation 39 (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"), for consideration/approval of the CoC.*
> *The CoC deliberated/considered the resolution plan of Liberty House Group Pte Ltd. in the meeting dated April 2, 2018 and decided that the Resolution Professional seek the vote of the members of the CoC for approval of the said resolution plan in accordance with section 30 (4) of the Code read with regulation 39 (3) of the CIRP Regulations, 2016, by electronic voting.*
> *Further clarifications were received from LHG's legal counsel via email dated April 3, 2018 based on negotiation with CoC's legal counsel.*
> *Accordingly, this vote is conducted to approve the Resolution Plan submitted by Liberty House Group Pte Ltd. on March 26, 2018 along with the clarification mail received from LHG's counsel on April 3, 2018."*

Copy of the list of the voting items circulated for voting is at Annexure A-6.

12. LHG made certain modifications in the resolution plan by email dated 03.04.2018 by way of addendum to the resolution plan. The

plan was put to voting by electronic means from 04.04.2018 (2.00 pm) to 05.04.2018 (1.59 pm).

13. The plan was approved by the committee of creditors with 93.89% of the voting share in favour of the plan. Three of the financial creditors namely Indian Overseas Bank, Oriental Bank of Commerce and Honda of the UK Manufacturing Limited total aggregating 5.05% voting share cast their dissenting vote. 28 financial creditors aggregating 1.06% abstained from voting. Later on MSRTC Contributory Provident Fund and MSRTC Gratuity Fund aggregating 0.31% of voting share by their email dated 06.04.2018 expressed approval to this plan. In this way, the plan was approved by 94.20% of the voting share of the financial creditors. The email dated 06.04.2018 received from MSRTC Contributory Provident Fund and MSRTC Gratuity Fund is at Annexure A-7 (Colly). Copy of the minutes of the meeting along with the voting summary is at Annexure A-8. The list of financial creditors of the corporate debtor with their admitted claims and voting share has also been annexed at Annexure A-9.

14. The resolution professional has made a detailed reference in his application to the compliances made in Section 30 (2) of the Code. It is also stated that the resolution plan as approved by the committee of creditors' meets with the requirement of regulations 38 (1), 38 (1A), 38 (2) and 38 (3) (i) of the Regulations, details of which are given in the application by the resolution professional.

15. It is further stated that in terms of regulation 39 (4) of the Regulations, the resolution professional has filed a certificate at Annexure A-10 in terms of Section 30 (6) of the Code certifying that (a) the contents

of the resolution plan meet all the requirements of the Code and the Regulations and (b) the resolution plan has been approved by the committee of creditors.

16. The instant application is said to have been filed before the expiry of the period of 270 days in completion of the resolution process. That period was expiring on 20.04.2018 and the instant application dated 15.04.2018 was filed in this Tribunal on 16.04.2018. It is also stated that the letter of intent and escrow agreement between the CoC and the resolution applicant was under negotiation and as soon as the same is provided to the applicant by the CoC, the resolution professional shall issue the same to the resolution applicant.

17. Soon thereafter on 19.04.2018 by diary No.1221, dated 19.04.2018, the resolution professional filed CA No.112/2018 under Section 60 (5) read with Sections 12 and 31 of the Code and Regulation 39 of the Regulations stating therein that the resolution professional had filed an application in this Tribunal for approval of the plan on 16.04.2018, but a report appeared in The Economic Times newspaper on 17.04.2018 that the resolution professional in case ABG Shipyard Limited, a company undergoing corporate insolvency resolution process has declared Liberty House Group (LHG) ineligible under Section 29A of the Code. The said media report is at Annexure A-1. The perusal of the news item Annexure A-1 shows that LHG was the debtor of Expert Marketing Bank of India (EXIM Bank).

18. It is alleged in this application that EXIM Bank was also a member of the COC but had not raised an issue at any stage challenging

the eligibility of the LHG. It rather voted in favour of the resolution plan. It is further stated that the Applicant without any further delay vide email dated 17.04.2018 sent at 7.56 am requested the EXIM Bank to provide the necessary details on urgent basis. The resolution professional also sent email at 9.18 am to LHG as to how, it was found ineligible under Section 29 A of the Code in the said case. Copy of the email is at Annexure A-3. EXIM Bank replied by email at 11.10 a.m. on 17.04.2018 (Annexure A-4) that though there was **no principal outstanding**, the accounts of the subsidiaries of the corporate debtor are non-performing for a period of more than one year on account of **non-payment of the interest** by the borrower companies. The exposure was not guaranteed either by the LHG or Sanjeev Gupta. However, the default of the group companies subsists with the EXIM Bank as no payment as on date has been received from the borrower companies. The EXIM Bank further stated in the email that they came to know about this default during CIRP proceedings in ABG Shipyard case.

19. The resolution professional immediately informed the main lenders of the corporate debtor and requested for urgent meeting proposed to be held at 10.30 am on 18.04.2018.

20. However, LHG also sent its response stating that this group is not ineligible and will send the detailed reply. A detailed letter dated 18.04.2018 was received from LHG in which it was stated that there is a long standing dispute before the English High Court in respect of the amount claimed by the EXIM Bank from certain companies, where a formal 'Pre Action Protocol' has been initiated and completed in accordance with

English Law. It was further contended that the Exim Bank has not classified all the subsidiaries NPA in accordance with the guidelines of RBI issued under the Banking Regulation Act, as required under Section 29 A (c) of the Code. The Exim Bank has also not shown any relation and connection with the companies in default with the resolution applicant.

21. It is further stated that LHG had earlier submitted a declaration dated 12.02.2018 under Section 29A of the Code to the resolution professional before the approval of the resolution plan. Copy of that declaration is at Annexure A-6. LHG also provided disclosure statement dated 05.03.2018 under regulation 38 (3) of the Regulations and that disclosure statement is at Annexure A-7.

22. In order to show the bona fides and due diligence, the resolution professional has alleged that both the resolution applicants namely LHG and DVI are global companies. To get their credentials and declarations furnished by them under Section 29A of the Code independently verified, the resolution professional engaged Pricewaterhouse Coopers Private Limited (for brevity 'PwC') an international firm to carry out due diligence of both the resolution applicants. The engagement letter dated 17.02.2018 read with addendums dated 05.03.2018 and 12.03.2018 issued by PwC did not raise any doubt about the eligibility of both LHG and DVI under Section 29A of the Code. Copy of the report of PWC is at Annexure A-9 (Colly).

23. It is thus prayed that since the issue of Liberty's apparent disqualification and ineligibility has cropped up when the CIRP period is coming to end on 20.04.2018, prayer has also been made to exclude the

period from 06.03.2018 to 16.04.2018 from the period of completion of CIRP process. So, the aforesaid development is sought to be brought to the notice of the Adjudicating Authority for seeking suitable directions. One of the prayers made in the application is that if this Tribunal deems it appropriate, permit the resolution professional to decide on the eligibility of the resolution applicant in a time bound manner and to place its decision before the Adjudicating Authority and in the meanwhile to permit DVI to resubmit the resolution plan and hold negotiation with the resolution professional or the committee of creditors.

24. In reply to CA No.112/2018, LHG the Resolution Applicant has averred that no adverse measures can be taken against it as a result of certain accounts of group companies being classified as NPA, without affording opportunity to address on the issue and cure the defect allegedly causing the ineligibility. It is further alleged that the resolution professional has stated that Exim Bank by email dated 17.04.2018 informed that three group companies of the respondent LHG Group being LITL 6 Limited, LITL 7 Limited and LITL 18 Limited (collectively 'LITL Companies') are in default with Exim Bank for failing to pay certain amount of interest on the loan facilities extended by Exim Bank. It was admitted in the said mail that there was no principal sum outstanding and that the exposure of Exim Bank was neither guaranteed by LHG nor Mr.Sanjeev Gupta.

25. It is averred that the statement of objects and reasons of the Code is to maximise the asset value of the corporate debtor. In fact the other bidder/resolution applicant namely, DVI had already withdrawn its

bid and therefore no longer eligible to be participating in the CIRP process of the corporate debtor.

26. LHG was for the first time notified regarding certain loan accounts of LITL Companies having been purportedly classified as NPA in accordance with the guidelines of RBI, for which the LHG group relied upon the contents of letter dated 18.04.2018 at Annexure R-1 sent to the resolution professional. The detailed facts have been mentioned in the email dated 18.04.2018 as at Annexure R-1 and it is stated that LITL companies were informed about the overdue balance interest payments, aggregating to ₹18.3 crores of the Exim Bank only in April, 2016. Subsequent to April, 2016, there have been several correspondences between the Exim Bank and the aforesaid companies, wherein the amount was being disputed. The claim, therefore, made by the Exim Bank against those three companies was subject matter of long standing dispute before the English High Court where a “Pre Action Protocol” has already been forwarded. LITL companies have also received letters from Exim Bank to make the payment in relation to the alleged default amount on 02.02.2016, 08.04.2016, 18.09.2016, 30.01.2017, 13.02.2017 and 22.08.2017. The fact that such a protocol was initiated is in itself enough to indicate that there is a dispute between the LITL companies and the Exim Bank and therefore, no amount was payable under the facility agreements.

27. It was further stated in this email that classification of overdue interest payment was directly attributable to Exim Bank for not invoking the Expert Performance Bank Guarantees (EPBGs) knowing very well the genesis and fundamentals of the entire transaction. The

classification of the accounts as NPA by Exim Bank and thereafter alleging ineligibility under Section 29A is simply an attempt to coerce the resolution applicant and / or companies to clear the alleged default amount. Even in the letter of Exim Bank, it has nowhere been stated that the accounts of these three companies were classified as NPA in accordance with the guidelines of Reserve Bank of India under the Banking Regulation Act, 1949.

28. It is, however, highlighted that without prejudice to the fact that LITL companies have disputed the dues, the same having been paid by the LITL companies to Exim Bank on 23.04.2018 and in this regard the Exim Bank has issued the no due certificate in respect of all the three companies separately as at Annexure R-2 (Colly). Therefore, in any case, there is no subsisting disqualification of the resolution applicant.

29. The resolution applicant, however, has also challenged the decision of ABG Shipyard RP holding the resolution applicant to be ineligible in the said case by making IA No.139 of 2018 in CP (IB) 53/7/NCLT/AHM/2017 and the Ahmedabad Bench of NCLT vide order dated 08.05.2018 has observed that the issue of disqualification in the said case being under challenge and sub judice, would have no bearing and / or impact on the other CIRP processes wherein the resolution applicant is participating. Copy of order of NCLT Bench, Allahabad Bench is at Annexure R-3. The emphasis has been laid on the fact that the resolution applicant was not having knowledge of notice regarding the account of LITL companies having purportedly classified as NPA by Exim Bank in accordance with the guidelines of Reserve Bank of India. Exim Bank has

not even indicated how LITL companies are connected persons under Section 29 (A) (J) of the Code.

30. With regard to the disclosure and declaration made by the resolution applicant (LHG), it is stated that only key operating entities were disclosed. There are even no guidelines in place for resolution applicants regarding scope and extent of disclosures required to be made. It is also stated that the respondent is company of substantial financial and reputational standing incorporated in Singapore with a paid up capital of USD 32,55,61,301. The respondent is wholly owned subsidiary of Liberty Holding Global Pte Ltd., which is also a company incorporated under the laws of Singapore. The consolidated turnover of respondent is more than USD 6.7 billion. The resolution applicant never declined any further information/clarification sought by the resolution professional in connection with the resolution plan. The prayer was made thus to dismiss the application filed with the resolution professional and to approve the resolution plan.

31. The entire committee of creditors has filed its own reply by diary No.1911 of 30.05.2018. The COC confirms and accepts the contents of the application filed by the resolution professional for approval of the resolution plan.

32. It is further stated that post approval of the resolution plan by the committee of creditors, a letter of intent was required to be signed between the resolution applicant and the resolution professional. The details of the conditions to be mentioned in the letter of intent as approved by the committee of creditors have been stated in this response and draft

of the letter has been issued to the resolution applicant by the resolution professional. At the end, it is submitted that the resolution professional has also filed CA No.112 of 2018 for determination by this Tribunal about the eligibility of the resolution applicant to furnish the resolution plan and till the said application is adjudicated upon, the approval of the resolution plan may be kept in abeyance.

33. **CA No.140 of 2018** has been filed by DVI as applicant No.1 and DVI PE (Mauritius) Limited as applicant No.2. It is stated that applicant No.2 is a company incorporated under the laws of the Republic of Mauritius as a private company and applicant No.1 (DVI) is manager and holder of 100% management shares of applicant No.2.

34. This application was filed on 23.04.2018 under Section 60 (5) (a) and (c) read with Section 31 of the Code. It is averred that the applicant submitted EOI as a prospective resolution applicant and participated in the process in good faith and with complete confidence as set out in the Information Memorandum and adhered to all the terms of the process memorandum including the timelines prescribed therein.

35. In the course of the process, the resolution professional informed the applicant that DVI (the applicant herein) and LHG were found eligible in terms of the Code for submitting resolution plans. The plans submitted by the applicant were discussed and it revised the same from time to time and finally submitted the plan on 05.03.2018. It was informed to the applicant by the resolution professional on or about 06.03.2018 that the resolution plan proposed by the LHG has been given higher scores based on the evaluation criteria and therefore, the committee of creditors

would consider only the other prospective plan of LHG. In view of the aforesaid information supplied by the resolution professional, the applicant withdrew its plan on or about 06.03.2018.

36. The applicant has now come to know from the news reports that LHG has been found ineligible to bid under Section 29A of the Code in respect of the another company undergoing corporate insolvency resolution process i.e. ABG Shipyard Limited. This was on account of non-payment of the dues owed to Exim Bank by connected persons of LHG. It is further stated that in case LHG has been found ineligible in respect of one corporate debtor, the same disqualification would be attached for another corporate debtor i.e. M/s Amtek Auto.

37. It is further alleged that LHG has not disclosed the factum of its ineligibility in the resolution plan thereby indulging in material concealment of fact to mislead the resolution professional and the committee of creditors.

38. In view of the aforesaid facts, the applicant would have been the only bidder and entitled to be placed back in the same position and would have been the only eligible proposed resolution applicant whose plan was required to be considered by the resolution professional and the committee of creditors. It is thus prayed that in case the opportunity is granted to the applicant, it shall expeditiously and without delay file a new resolution plan.

39. It is, therefore, prayed that the decision of the committee of creditors approving the plan of LHG may be set aside and to extend the time limit in respect of the resolution process under Section 12 of the Code

for a further period of 50 days and to permit the applicant by itself or together with any other entity to submit a fresh resolution plan, which may be considered by the committee of creditors.

40. The applicant i.e. DVI filed additional affidavit by diary No.1899, dated 30.05.2018 with regard to regulation 38 (3) of the Regulations, which makes it mandatory for the resolution applicant to provide details of all the connected persons which is necessary to enable the committee of creditors to assess the credibility of such applicant and other connected persons to take prudent decision while considering the resolution plan for its approval. In the declaration submitted in the instant case by the LHG, there was concealment of three companies namely LITL 6 Limited, LITL 7 Limited and LITL 18 Limited from the list of connected persons.

41. We have heard the learned counsel for resolution professional, learned senior counsel for resolution applicant, learned counsel representing the committee of creditors and also on the application filed by the DVI and have carefully perused the records. Written arguments have also been submitted.

42. The crucial issue requiring determination is about eligibility of LHG to submit the resolution plan. This is in relation to the outstanding dues of all the three connected entities of the Resolution Applicant namely; LITL 6, LITL 7 and LITL 18, who were granted the term loans respectively by the Exim Bank which is also a Financial Creditor and member of committee of creditors in this case. LHG admittedly holds 49% of the shares in these three entities, which is sufficient to say that these three

entities are the connected persons with the Resolution Applicant. However, Exim Bank in the communication Annexure A-4 dated 17.04.2018 sent the response to the Resolution Professional that rest of 51% of the shareholding is held by Sanjeev Gupta, who is the person in the Management of LHG being its director as mentioned at page 43 of CA No.112 of 2018.

43. It would be relevant to refer to clauses (c) and (j) of Section 29A of the Code which lays down the persons not eligible to submit a resolution plan and these provisions are as under:

> *"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*
>
> *xxxx xxxx xxxx*
>
> *(c) 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 (10 of 1949) and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor;*
>
> *Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan.*

(j) has a connected person not eligible under clauses (a) to (i).

Explanation to Section 29A (j) says that the expression connected person means:

(i) Any person who is the promoter or in the management or control of the resolution applicant; or

(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; or

*(iii) The holding company, subsidiary company, **associate** company or related party of a person referred to in clauses (i) and (ii):*

44. Sub clause (iii) of the Explanation would be relevant the term connected person includes holding company, subsidiary company, associated company or a related party of a person referred to in clauses (i) and (ii) of the Explanation. The learned counsel for DVI refers to the definition of term associate company as given in sub-section (6) of Section 2 of the Companies Act, 2013 as meaning a company in which the other company which is under consideration has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. Explanation to this Section clarifies the expression significant influence as meaning control of at least twenty per cent of total share capital, or control of or participation in business decision under an agreement.

45. In view of the above, it was not much in dispute during the course of arguments that the aforesaid three entities i.e. LITL 6, LITL 7 and LITL 18 are covered within the mischief of the term 'connected person' as provided in clause (j) of Section 29A of the Code and thus, LHG could not be eligible to be the Resolution Applicant until the amount of default in respect of its connected entities was cleared.

46. The learned counsel for DVI vehemently contended that the LHG whose resolution plan was approved, did not furnish the details of these three entities while submitting the declaration and undertaking with the Resolution Professional on 12.02.2018. This undertaking is at Annexure A-6 of CA No.112 of 2018. The details of this Resolution Applicant furnished with the undertaking are at Annexure A-7 with this application and it has provided the details of various holding companies, subsidiary and associate companies (numbering 22), related parties of LHG and related parties of the persons in the management of the Resolution Applicant (numbering 17) apart from the other general disclosures, but failed to disclose entities whose accounts were declared NPAs for more than one year as per requirement of clause (c) of Section 29A of the Code.

47. A similar matter arose before the Division Bench of NCLT, Ahemdabad in **"Numetal Limited Vs. Mr.Satish Kumar Gupta and Ors" IA 98 of 2018 in CP (IB) No.40/7/NCLT/AHM/2017, decided on 19.04.2018** alongwith other connected **IAs**. The Ahemdabad Bench of NCLT held that if the Resolution Applicant is/are found ineligible under Section 29A (c) of the Code, the COC must allow such period not exceeding 30 days to make payment of overdue amount in accordance with the

provisions. It was further held that the COC did not follow the prescribed procedure in Section 29A (c) read with proviso to Section 30 (3) and (4) of the Code to afford reasonable opportunity by making payment of overdue amount in order to remove such ineligibility of the Resolution Applicant as prescribed under Section 29A (c) and to make good the disability.

48. Learned counsel for DVI, however, submitted that sub-section (4) of Section 30 of the Code under which the NCLT Bench Ahemdabad took the view in fact applies only to those cases where the resolution plan was submitted by the resolution applicant before the amendment brought in the provision w.e.f. 23.11.2017, but not to those whose plans are submitted subsequently. We find that even in Numetal Limited case (supra), the Resolution Plans were received on 12.02.2018 i.e. after coming into force of the Amendment.

49. Despite all these submissions and discussion, we proceed to consider the effect of the aforesaid non-disclosure by the Resolution Applicant.

50. The Resolution Applicant has declared/disclosed the list of connected persons (i) who are promoters or in control of the Resolution Applicant; (ii) persons in the management of the company Resolution Applicant; (iii) the persons who will be promoters or in control of business of the corporate debtor during implementation of the plan; (iv) proposed management of the corporate debtor during the implementation of the plan; and the other information with regard to the list of holding companies, subsidiary companies etc., as already observed. Effort has been made to provide the minute details of various such persons or associates. The non-

disclosures of the three entities i.e. LITL-6, LITL-7 and LITL-18 may be due to the large group of companies.

51. In order to put sanctity to the process of the resolution, the Resolution Professional sought the report from one of the big four internationally known PwC to furnish due diligence report. PwC has gone into details as to the credential of the Resolution Applicant. The aforesaid consultancy concern PwC observed that they have provided the shareholding and directorship details of the targets based on the information available from the website and also press media source. It is further observed that PwC has relied upon the information generated from the database which are licensed from third party and does not assume any responsibility in respect of inaccuracies, omissions or errors, which may subsequently be discovered in information detail in the database. The procedure of PwC does not involve in verifying this information with Target Entity and Target Individuals.

52. The learned counsel for DVI referred to Regulation 38 (3) of the Regulations to contend that it is mandatory for the Resolution Applicant to furnish the details of the connected persons to enable the Committee to assess the credibility of such applicant and other connected persons to take a prudent decision while considering resolution plan for its approval. Explanation (ii) to Regulation 38 (3) of the Regulations defines the expression connected persons as meaning-

> *a) persons who are promoters or in the management or control of the resolution applicant;*

b) persons who will be promoters or in management or control of the business the corporate debtor during the implementation of the resolution plan;

c) ***holding company, subsidiary company, associate company and related party of the persons referred to in items (a) and (b).***

53. We are therefore, unable to agree with the contention of learned Senior Counsel for the Resolution Applicant that the corporate debtor is required to furnish the information with regard to the key entities only. We are, however, of the view that in the peculiar facts and circumstances of the case, the Adjudicating Authority should take a broad view with regard to the details of the declarations made by the corporate debtor for achieving the real objective of the Code for maximising the assets of the companies. It would be seen that there are 95 Financial Creditors of the Corporate Debtor and Exim Bank, which is mentioned at serial No.22 of the list of Financial Creditors Annexure A-8 attached with CA No.114 of 2018 has assented to the plan. Despite its large number of Financial Creditors, there is no other associate company or connected person of the Corporate Debtor in default, except the three entities being financial debtors qua Exim Bank. Admittedly Exim Bank participated in the meetings of the COC and remained associated with the resolution plan. Exim Bank never pointed out to the COC that the connected persons of resolution applicant defaulted for any amount to make them ineligible and had this fact been brought to the notice by Exim Bank to the COC, the Resolution Applicant could be asked to pay the amount within the permissible period. The plan

was approved by the CoC in the first week of April, 2018 and the permissible period of 270 days to complete the resolution process was expiring on 20.04.2018 and still there was about 15 days time left.

54. In reply to the email sent by Resolution Professional to the Exim Bank, it is stated by the Exim Bank in the email Annexure A-4 dated 17.04.2018 attached with CA No.112 of 2018 that there was an amount of USD 2,793,859.96 as on 31.03.2018 due to Exim Bank from the aforesaid three entities and that the accounts of these concerns were declared NPA on particular dates, which fall more than one year before the resolution plan was submitted. It is, however, clarified that the default was only in respect of the **interest payment** to the Exim Bank. It was further clarified that LHG had not furnished the guarantee for payment of the amount of loan in respect of these associate companies. It has also been stated in this reply that there was **no principal outstanding** in the account of the aforesaid associate companies.

55. Further the Exim Bank vide letter dated 23.04.2018 Annexure R-2 (Colly) attached to the reply filed by LHG to CA No.112 of 2018 has confirmed that the outstanding dues along with the interest thereon and other charges have been fully repaid as on 23.04.2018 by LITL 6, LITL 7 and LITL 18 and there is no outstanding due payable by any of these three entities.

56. Otherwise the Resolution Applicant had sent a response to the Resolution Professional to the query raised by the Resolution Professional in view of the news published in the newspaper. In the said reply dated 18.04.2018 Annexure R-1 with reply to CA No.112 of 2018, LHG

has stated that the facilities granted to LITL entities were part of larger loan syndication transaction by Essar Steel India Limited ("ESIL") aggregating to USD 1.25 billion. Various companies including the entities in question entered into Advance Payment and Supply Agreements (APSA) for supply of certain iron and steel products by ESIL to them. The APSA provided for payment of an advance to ESIL against export of such goods. ESIL's Banks ("EPBG Banks") in India issued Export Performance Bank Guarantees in accordance with the terms of APSA and the RBI approval. Therefore, the amount of EPBGs was sufficient to discharge the outstanding payment obligation owed to Exim under the Facility Agreement as on the date of invocation, which seems to have not been invoked. If Exim Bank have been diligent, it would have received the amount under the EPBGs. Thereafter the factum of the amount having been deposited with Exim Bank by the three entities has not been disputed by the learned counsel for the Committee of Creditors.

57. In view of the deposit of the amount of approximately ₹18 crores having been paid soon on receipt of the notice and that the plan was approved by the COC in which Exim Bank participated, the non-disclosure of this information in the declaration filed by the resolution applicant should not be considered as an impediment to the approval of Scheme accepted by the requisite majority of the financial creditors constituting Committee of Creditors.

58. Learned counsel for DVI referred to the judgment of Hon'ble Supreme Court in **"Devendra Kumar Versus State of Uttaranchal and Others" (2013) 9 Supreme Court Cases 363** wherein

the Hon'ble Supreme Court held that if the information sought for by the employer is not disclosed would amount to suppression of material information and in that event, the service was liable to be terminated. That was a case of challenge to the termination of services of the appellant who was appointed as a constable in the police department. The applicant before the Hon'ble Supreme Court was asked to submit an affidavit giving certain information particularly whether he had ever been involved in a criminal case. He gave the affidavit stating that he has never been involved in any criminal case. Pursuant to the verification of antecedents, it was found that he was in fact involved in a criminal case, though it was ultimately contended that the FIR was cancelled. The Hon'ble Supreme Court held that the criminal case against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. The facts before the Hon'ble Supreme Court are therefore clearly distinguishable as the issue arose out of a service matter.

59. In the present case, while the resolution plan is still under consideration before this Tribunal that the associate entities of the Resolution Applicant are found to have defaulted in making payment of the amount of **interest** and not the **principal** and that too stands already paid.

60. The other case cited by the learned counsel is of Hon'ble Allahabad High Court reported in **"Arunachalam Muthu Vs. State Bank of India" 2010 (4) AWC 3289 (LB).** In that case, it was observed that the deed of assignment dated 16.01.2006 was obtained by Kotak Mahindra Bank, claiming that it is an Asset Reconstruction Company (India) Limited and that the agreement is executed for assigning the debt as per the

provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), 2002, whereas it was admitted that Kotak Mahindra Bank was neither a securitisation company nor asset reconstruction company and therefore, the agreement was found to be the result of fraud.

61. The fact of the matter in the present case is that there are huge number of the associate companies or the connected persons of LHG though there is non-disclosure of these three entities, who have defaulted in making payment of the overdue interest and not the principal, which stood paid and the instant case cannot be equated with the judgments relied upon by the learned counsel for DVI.

62. Learned counsel for DVI in application bearing CANo.140 of 2018 also referred to the judgment of Hon'ble Supreme Court in **"Meghmala and Others Versus G.Narasimha Reddy and others" (2010) 8 Supreme Court Cases 383,** wherein it was held that the fraud is an intrinsic, collateral act and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage.

63. The question basically is whether this was a deliberate act on the part of the Resolution Applicant to conceal the particulars of all the three entities in order to avoid the liability of payment of ₹18 crores towards interest as compared to the amount offered in the plan submitted by the Resolution Applicant.

64. The learned counsel for the parties submitted that the total amount of debt in respect of the Corporate Debtor was ₹12,603 crores and the liquidation value of its assets has been determined at ₹4,119 crores. In the resolution plan approved by the COC, the Resolution Applicant offered affront consideration (cash) for financial creditors and interim resolution professional costs to the tune of ₹3225 crores and fresh infusion for stabilizing and improving operations to the tune of ₹500 crores and the total resolution amount is ₹4,025 crores. The total potential recovery by the Financial Creditors has been calculated at ₹4,404 crores.

65. Admittedly DVI was quite short of the proposals of the Resolution Applicant and on the basis of the evaluation matrix as held in the meeting of the COC on 06.03.2018, the Resolution Applicant was considered as the preferred bidder. In view of the above, DVI withdrew its bid and it also withdrew the minimum amount, which was deposited for being eligible to submit the resolution plan.

66. The final resolution plan was submitted by the Resolution Applicant on 26.03.2018 and COC discussed and examined feasibly and viability in the meeting held on 02.04.2018 and it was approved in the meeting dated 04.04.2018 by 94.20% of voting share. The Resolution Applicant was declared as the successful bidder in the meeting held on 05.04.2018.

67. Keeping in view the total amount of the debt of corporate debtor, the amount of resolution plan and very large number of the related and connected entities, the non-disclosure of the three entities for whom

the amount in default in payment of interest to the tune of ₹18 crores would not be significant, especially when it has been paid.

68. Now we would examine whether the resolution plan complies with the provisions of the Code and Regulations framed thereunder. Section 31 (1) of the Code says that if the Adjudicating Authority is satisfied, the resolution plan as approved by the COC under sub-section (4) of Section 30 meets the requirements as referred to in sub-section (2) of Section 30, the Adjudicating Authority shall approve the resolution plan.

69. Sub-section (2) of Section 30 of the Code reads as under:-

"The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan-

(a) Provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

(b) Provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;

(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) Conforms to such other requirements as may be specified by the Board."

70. Regulation 39 of the Regulations deal with the approval of the resolution plan. Under regulation 39 (4) of the Regulations, the Resolution Professional has to submit the resolution plan duly approved by the COC to the Adjudicating Authority with the certificate that

> *(a) the contents of the resolution plan meet all the requirement of the Code and the Regulations; and*
> *(b) the resolution plan has been approved by the committee*.

71. The Resolution Professional has given the necessary certificate, which is at Annexure A-10 with CA No.114 of 2018. It is certified that the resolution plan meets the requirements of the Code and Regulations and that the plan has been duly approved by the COC with 94.20% of the voting share in favour of the resolution plan. It is further certified that the resolution plan provides for insolvency resolution process costs being paid in priority to any other creditors of the Corporate Debtor in the manner set forth in paragraph 4 of Part IV (Financial Proposal of the Resolution Applicant) and Schedule 4 (Implementation Provisions) of the Resolution Plan. It is further certified that the liquidation value outstanding to Operational Creditors is NIL and accordingly no payment under Regulation 38 (1) (b) of the CIRP Regulations is required or contemplated under the resolution plan. However, to protect the interest of the stake holders, the Resolution Applicant has proposed certain payments to be made to all the Operational Creditors in the manner set forth in paragraph

7 of Part IV (Financial Proposal of the Resolution Applicant) of the resolution plan.

72. In this regard, the resolution plan states that all the statutory dues and claims in relation thereto shall be fully and finally settled by making payment of the statutory dues settlement amount, which is to the tune of ₹11.5 crores, details of which are given in para 7.11 of Part 4 of the plan.

73. With regard to the other Operational Creditors, the plan stipulates that such portion of the verified amount as may be determined by the Resolution Applicant subject to aggregate cap of ₹50 crores shall be paid to the Operational Creditors in full and final settlement of the claims of all the creditors.

74. It is further certified that the resolution plan provides for continuation of the Corporate Debtor, its business and affairs as a going concern.

75. Further the implementation provisions of the plan are mentioned in schedule 4 of the resolution plan, which provides that the Resolution Applicant and Resolution Professional shall jointly supervise the implementation of the plan until the closing date. The mechanism for supervision of the payment to the stakeholders of the Corporate Debtor after the closing date shall be in the manner provided in the resolution plan, which has been approved by the overwhelming majority of the COC. The insolvency resolution professional shall act on the instructions of the Monitoring Committee comprising of (a) a representative or an advisor of the Committee of Creditors (b) a representative of the Resolution Applicant

appointed in accordance with paragraph 5.1.6 and that of the Insolvency Professional.

76. The resolution plan further provides for the payment of the insolvency resolution process costs in priority to any other creditors. It further provides that the dissenting secured financial creditors shall be paid amounts as set out in Part IV of the plan (Financial Proposal of the Resolution Applicant).

77. It is further certified that the resolution plan shall contribute to the associates and the Government by contributing significant direct and indirect employment and income generation opportunities in the region.

78. The implementation of the resolution plan would be subject to the Competition Commission of India (CCI) approval. It has been safeguarded in the resolution plan that Mr.Dinkar Tiruvannadapuram Venkatasubramanian, shall be appointed as the Insolvency Professional of the Corporate Debtor in order to supervise, manage and control all the business and operations of the Corporate Debtor from the date of approval of the resolution plan till closing date in accordance with the terms of the resolution plan.

79. One of the contention raised by the learned senior counsel for ICICI Bank in CA No.77 of 2018 that the applicant Bank was forced to give assent to the resolution plan otherwise assent would have lead to the nil payment to the applicant bank in case of approval of the plan. This contention cannot be accepted as there are as many as 95 financial creditors being members of the COC and the voting share of ICICI Bank is only 1.108%. The claim made by ICICI Bank was ₹166.66 crores whereas

the Resolution Professional accepted the claim to the tune of ₹139.66 crores. So, even acceptance of the rest of the amount of claim to the tune of ₹27 crores would not bring any change in the voting pattern, the total amount of financial debt being ₹12,604.60 crores as is evident from the document Annexure A-8 attached with CA No.114 of 2018.The resolution professional has also filed the compliance certificate under regulation 39 (4) of the Regulations by diary No.2159, dated 13.06.2018.

80. In view of the above discussion, we allow CA No.114 of 2018 and the resolution plan submitted by LHG Pte Limited is found to be in conformity with sub-section (2) of Section 30 of the Code and the same is approved with the modification that the timelines given in the resolution plan shall stand extended during the period, CA No.114 of 2018 remained pending i.e. from 16.04.2018 upto the date of decision of the application.

81. In view of the aforesaid, the application bearing CA No.112 of 2018 which has been filed by the resolution professional for seeking clarification from this Tribunal stands disposed of as the non-disclosures of the associate companies by the Resolution Applicant in this case, has not been found to be fatal to the validity of the resolution plan and its implementation. As such, CA No.140 of 2018 filed by DVI and its associate also stands dismissed.

82. It is further directed that the resolution plan so approved shall be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. With the approval of the resolution plan, the moratorium order passed by this Tribunal under Section 14 of the Code shall cease to have effect. The Resolution Professional is directed to forward all the record relating to the conduct of the corporate insolvency

resolution process and the resolution plan to the IBBI to be recorded on its database.

Copy of this order be supplied to counsel for all the parties.

Pronounced in open Court.

Sd/-
(Pradeep R.Sethi)
Member (Technical)

Sd/-
(Justice R.P.Nagrath)
Member (Judicial)

July 25, 2018.
Ashwani