

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

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PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 03.06.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.66/2019 in CP(IB) No.41/7/HDB/2017
NAME OF THE COMPANY	Deccan Chronicle Holdings Limited
NAME OF THE PETITIONER(S)	Canara Bank
NAME OF THE RESPONDENT(S)	Deccan Chronicle Holdings Limited
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
T. Nagender Counsel for Canara Bank	Adv	9849147482	T. Nagender
Deepak Phalkechurjee Senior Counsel	Deputy Senior Counsel	9849022903	Deepak Phalkechurjee

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Poojitha Babbarpalli for Durga Bose Gandhem	Adv	9908481168	Poojitha
A. VENKATESH, M. PRAMOD, C. TULASIKRISHNA for (IDBI Bank)	ADV FOR FCRPLN/IA/ 66/19	9849765392	C-5 Kishan Banerjee
RISHAV BANERJEE, SHOUNAK MITRA, T S SANJAN for GST	ADV ADV Resolution Applicant.	9160021435	

ORDER

Orders passed in IA No.66/2019, vide separate orders.

Member(Judl)

Pavani

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD**

IA No. 66 of 2019

In

CP (IB). No.41/7/HDB/2017

U/s 30 (6) and 31 of IBC, 2016

R/w Regulation 39(4) of IBBI (IRCP) Regulations, 2016

Ms. Mamta Binani
Deccan Chronicle Holdings Limited
36, Sarojini Devi Road
Secunderabad – 500003

...Applicant /
Resolution Professional

In the matter of:

Canara Bank
Prime Corporate Branch
TSR Complex, 2nd Floor
1-7-1, S.P. Road
Secunderabad – 500003

... Financial Creditor/
Petitioner

Versus

Deccan Chronicle Holdings Limited
36, Sarojini Devi Road
Secunderabad - 500003

Date of order: 03.06.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)



Parties / Counsels present:

For the Applicant: Ms. Mamta Binani, Resolution professional (in person)

For Resolution Applicant: Shri Rishav Banerjee, Advocate

For FCRPL Shri A. Venkatesh, Shri Pramod M and Shri C. Tulsi Krishna, Advocates

Per: Shri Ratakonda Murali, Member (Judicial)-Author


Heard on: 25.01.2019, 29.01.2019, 19.02.2019, 28.02.2019, 13.03.2019, 01.04.2019, 08.03.2019, 16.04.2019 & 29.04.2019

ORDER

BRIEF OF THE CASE

1. Under consideration is the Application filed by the Resolution Professional in the matter of Deccan Chronicle Holdings Limited (DCHL) which is under the Corporate Insolvency Resolution Process (CIRP). This Application is filed under Sections 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as IBC, 2016) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred as CIRP Regulations, 2016) for seeking approval of the Resolution Plan, submitted by SREI Multiple Asset Investments Trust-Vision India Fund dated 11th December, 2018 (the Resolution Applicant) duly approved by the Committee of Creditors.

AVERMENTS MADE IN THE APPLICATION IN BRIEF:

- 2.1 This Tribunal vide order 19.07.2017 admitted the Petition filed under Section 7 of the Code and initiated Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, against Deccan Chronicle Holdings Limited (hereinafter referred to as 'DCHL' or 'Corporate Debtor'). Further vide said order, Mr. Karuchola Koteswara Rao was appointed as the Interim Resolution Professional (hereinafter referred to as IRP/RP) under the provisions of the IBC, 2016 and subsequently appointed the Applicant as Resolution Professional vide order dated 08.02.2018.
- 2.2 This Tribunal extended CIRP period by 90 days beyond 180 days from 15.01.2018 based on the application moved by Resolution Professional. Thus, the CIRP period of the Corporate Debtor ended on 14.04.2018.
- 2.3 Thereafter, This Tribunal also allowed IA 69 of 2018 on 26.03.2018, by excluding period of 87 days from 21.08.2017 to 16.11.2017 from the total CIRP period as prescribed under Section 12 of the IBC, 2016 and CIRP period of the Corporate Debtor ended on 10.07.2018. Subsequently, by virtue of the Order of the Hon'ble National Company Law Appellate Tribunal dated 20.07.2018 bearing Appeal (AT) (INS) No. 316 and 317 of 2017, period from 11.12.2017 till 20.07.2018 (i.e.7 months, 8 days) was excluded from the CIRP Period.
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Accordingly, the CIRP period of the Corporate Debtor ended on **15.02.2019**.

2.4 That pursuant to initiation of resolution process, the IRP issued a public announcement and invited claims from the creditors of the Corporate Debtor. On receiving such claims, the IRP collated the same and constituted a Committee of Creditors.

2.5 That the Applicant / Resolution Professional filed the List of Creditors, which was updated from time to time owing to further verifications. The List of Creditors was lastly updated on 19.11.2018. The latest position of the Financial Creditors as per the aforementioned list, reflecting the amount of claim, percentage of exposure in terms of share in Committee of Creditors i.e. voting share is mentioned hereunder:-

Sr. No.	Name of the Financial Creditor	Amount of Claim admitted (in INR)	Percentage share in Committee of Creditors/in Voting
1.	Andhra Bank	3,742,273,435	4.57%
2.	Axis Bank	8,081,364,102	9.88%
3.	Canara Bank	8,271,348,319	10.11%
4.	Central Bank of India	1,061,068,746	1.30%
5.	Corporation Bank	1,922,801,475	2.35%
6.	Ganga Properties Pvt Ltd	9,243,015	0.01%

7.	Hamilton & Co. Limited	36,972,055	0.05%
8.	HDFC Bank	957,720,076	1.17%
9.	Housing Development Finance Corporation Ltd	835,232,877	1.02%
10.	ICICI Bank	9,542,619,075	11.66%
11.	ICICI Securities Limited	720,500,000	0.88%
12.	IDBI Bank	5,490,819,434	6.71%
13.	IDFC Bank	1,979,545,586	2.42%
14.	IFCI Limited	339,906,631	0.42%
15.	India Bulls Housing Finance Limited	1,658,096,289	2.03%
16.	Indian Overseas Bank	1,500,480,808	1.83%
17.	Jay Shree Tea & Industries Limited	94,595,890	0.12%
18.	Karur Vysya Bank Limited	765,811,177	0.94%
19.	Karvy financial Services Limited	976,125,457	1.19%
20.	Kotak Mahindra Bank	1,835,817,779	2.24%
21.	L& T Finance Limited	480,101,706	0.59%
22.	Life Insurance Corporation of India	4,647,339,462	5.68%

23.	Pegasus Asset Reconstruction Pvt Ltd	2,469,096,892	3.02%
24.	Photon Infotech Pvt. Ltd.	93,452,711	0.11%
25.	Religare Finvest Limited	1,424,401,462	1.74%
26.	Suhani Trading and Investment Consultants Private Limited	3,200,265,453	3.91%
27.	SBI Pension Funds Private Limited (Central Govt. Scheme)	170,920,548	0.21%
28.	SBI Pension Funds Private Limited (State Govt. Scheme)	170,920,548	0.21%
29.	SREI Infrastructure Finance Limited	2,969,373,143	3.63%
30.	Softlink Merchants Private Limited	9,118,220	0.01%
31.	State Bank of India	906,745,682	1.11%
32.	Tata Capital Financial Services Limited	1,827,162,573	2.23%
33.	The Jammu & Kashmir Bank Limited	842,289,000	1.03%
34.	Unilazer Ventures Private Limited	364,438,487	0.45%

35.	UV Asset Reconstruction Co. Limited	11,932,096,653	14.59%
36.	V Shankar	457,763,839	0.56%
37.	Vidhi Sales Private Limited	18,629,726	0.02%
	TOTAL	81,806,458,331	100%

2.6 That Expression of Interest (EoI) was published in the All India Edition of Business Standard dated 08.02.2018 for a wide spread coverage with the last date for receipt of the EoI's being 15.02.2018 (06:00 p.m.). Thereafter, the Applicant as per the instructions of the Committee of Creditors ("CoC") extended the date of receiving the EoI to 17.04.2018. 11 participants submitted the EoI's out of which, only 2 Resolution Applicants finally remained in the forefront, namely:


a) Arm Infra & Utilities Private Limited

b) SREI Multiple asset Investment Trust-Vision India Fund.


2.7 It is averred, the CoC in its 15th meeting decided that the Resolution Plan received from Arm Infra & Utilities Private Limited be dropped from discussion and consideration of the CoC.

2.8 That the Resolution Plan submitted by SREI Multiple Asset Investment Trust- Vision India Fund was deliberated upon in the 20th meeting of the CoC held on 10.12.2018 and placed the same for consideration. It is averred, the COC directed the Resolution Applicant/ SREI Multiple Asset

Investment Trust-Vision India Fund to reconsider some points and submit the revised Resolution Plan for reconsideration by 11.12.2018. Post receipt of the revised Resolution Plan dated 11.12.2018, the same was circulated to the CoC for its approval and consideration by way of e-voting alongwith the minutes of the 20th Meeting of CoC.

- 2.9 The Resolution Plan of SREI Multiple Asset Investment Trust-Vision India Fund was voted with **81.39%** voting percentage. The Resolution Plan as received from SREI Multiple Asset Investment Trust Vision India Fund dated 11.12.2018 was approved as per the provisions of Section 30(4) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 2.10 It is further averred by Resolution Professional that the Resolution Plan as submitted by SREI Multiple Asset Investment Trust Vision India Fund was examined by her and found to be in compliance with the mandatory provision of Section 30(2) of the IBC and the relevant Regulations. Certificate from Resolution Professional is marked as **ANNEXURE 'E'** along with an affidavit under Section 29A provided by the Successful Resolution Applicant.
- 2.11 That the Resolution Applicant i.e., SREI Multiple Asset Investment Trust-Vision India Fund was identified as the Successful Resolution Applicant and the Final Resolution Plan dated 11.12.2018 was identified as a 'Successful Resolution Plan'. The Resolution Professional issued Letter
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of Intent dated 01.01.2019 to the Resolution Applicant on the instructions CoC.

- 2.12 It is also averred, the Successful Resolution Applicant successfully furnished an unconditional and irrevocable Performance Bank Guarantee (bearing No.077019IGPER0001) of Rs.15.00 Crores (Rupees Fifteen Crores Only) dated 02.01.2019, from a scheduled commercial bank in favour of Canara Bank with respect to the implementation of the Successful Resolution Plan ("Performance Bank Guarantee/PBG") and the said PBG is valid up to 30.06.2019.
- 2.13 That on examination of the Performance Bank Guarantee dated 02.01.2019 by the Applicant / Resolution Professional she observed that though the PBG was issued for the mandated period of 6 months, the Bankers of the Successful Resolution Applicant expressed its inability to issue the same with no drop date. In order to ease this, an 'Undertaking' was sought from the Successful Resolution Applicant which would bind it to provide a renewed PBG as per the terms of the RFRP which would be valid for such further period as desired by Canara Bank in its sole discretion. The 'Undertaking' dated 10.01.2018 was provided by the Successful Resolution Applicant as per the format approved by the CoC legal counsel on 10.01.2018 which is enclosed and marked as **ANNEXURE 'H'**. Further Applicant also stated that as an added precaution for the CoC, the Successful Resolution Applicant furnished a PBG for a period of 3 more months, valid up to 30.09.2019 instead of validity
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up to 30.06.2019 vide an Amendment dated 10.01.2019 to the existing PBG No.077019IGPER0001 dated 02.01.2019 on 10.01.2019.

- 2.14 Thus, the Applicant / Resolution Professional urged the Tribunal to approve the Resolution Plan of SREI Multiple Asset Investment Trust- Vision India Fund under Section 31 (1) of IBC, as approved by the Committee of Creditors under Section 30(4) of the IBC which is also in terms of the requirements of Section 30(2) of the IBC read with Regulations 37 and 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016, with 81.39% voting.


OBJECTIONS / REPLY FILED BY M/S FUTURE CORPORATE RESOURCES PRIVATE LIMITED IN BRIEF:-

- 3.1 It is contended CoC opened the Resolution Plan in its 10th Meeting held on 14.05.2018 and in the 12th CoC Meeting the Resolution Plan submitted by SREI-SMAIT was declared as highest bidder. Since, Resolution Plans submitted by other two Resolution Applicants i.e. Bennett Coleman & Company Ltd and Arm Infra & Utilities Pvt Limited failed to submit plan as per RFRP, they were pulled out from the bidding process and SMAIT became the sole bidder of DCHL and further decreased the Resolution amount offered to FCRPL from Rs. 7.87 crores as per plan dated 12.03.2018 to Rs.3.70 crores in the present plan submitted to the Tribunal for approval.
- 3.2 It is contended, FCRPL was declared as Secured Creditor vide orders passed in IA No.224 of 2018 on 17.07.2018. The Resolution Plan when put to vote on 11th July 2018 received


only 55.08% of vote and subsequently the same was rejected by CoC.

- 3.3 It is the case of FCRPL that Future Corporate Holdings Limited (FCHL) provided loans to Deccan Chronicle Entities viz, DC Loan of Rs.120.00 crores which was assigned to PIL Industries Limited and APL loan of Rs. 50.00 crores to Aviotech Pvt Limited (APL Loan) which was assigned to Future Corporate Resources Limited (FCRL) on 03.08.2012. To secure the same, promoters of DCHL executed a Non-Disposal Undertaking (NDU) together with Power of Attorney in respect of 11,28,51,000 equity shares of DCHL comprising of 54% of shareholding in the Company and also executed Memorandum of Entry mortgaging 13 properties of DCHL and personal properties of three promoters in favour of FCHL. PIL Industries Ltd and FCRL filed suites before Bombay High Court which passed an order dated 24.08.2012 restraining these Companies from creating any transfer, sale or Encumbrance etc to any third party in respect of 11,28,51,000 equity shares and properties mortgaged in favour of any third party. Further, vide order dated 16.04.2013, Hon'ble High Court passed an order for appointment of Receiver and formal attachment of total 16 properties both DCHL and APL.
- 3.4 It is averred, FCRL and PIL Industries Limited were amalgamated into Suhani Trading and Investment Consultants Private Limited vide orders passed in CP No.756 of 2017 dated 18.10.2017 by NCLT Mumbai Bench, as such the debts of DCHL and APL vests with Suhani Trading and




- Investment Consultants which subsequently changed its name to Future Corporate Resources Pvt Limited (FCRPL)
- 3.5 It is the case of FCRPL that DCHL agreed to stand guarantee for the loan advanced to APL and FCRL and raised this point in 1st CoC meeting and also sent an email with regard to the treatment of the said security since the creditors already filed suit for recovery of the amount. Further, FCRPL averred it voted in favour of the Plan so as to preserve DCHL as a going concern.
- 3.6. It is alleged the Resolution Plan filed by Resolution Applicant sought to relieve DCHL of the guarantor to the loan issued in the name of APL as per clause 11.28 of the Resolution Plan . The Clause 11.28 of the Resolution Plan seeks waiver of all Corporate Guarantee given by DCHL for the loans of other entities like APL. Despite raising concerns by FCRPL, the request was not considered for removal of the said clause.
- 3.7. It is contended, despite FCRPL holding charge over immovable properties that are subject matter of suits for recovery before Hon'ble Bombay High Court and further orders of attachment and formal possession through a Court Receiver, it is alleged the claim of FCRPL was not considered as Secured Creditor and further alleged there is no variance in the proportion of settlement offered to FCRPL.
- 3.8. It is also alleged that para 11.28 of the Resolution Plan is arbitrary and illegal in terms of consideration of the rights of the holders of the secured debt. It is also alleged that despite orders passed by this Tribunal on 17.07.2018 to
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declare FCRPL as secured creditor, the proportion of its receivable as per Resolution Plan did not change and that it would receive a sum of Rs. 3.70 crores as against the admitted claim of Rs. 325.00 crores and no explanation is given for differential treatment between the secured creditors.

- 3.9. It is also alleged that from Schedule 5A filed along with the Resolution Plan, FCRPL is not shown as Secured Creditor for FC Category B which is against the order passed by this Tribunal on 17.07.2018.
- 3.10 It is contended, the Resolution Plan seeks to obliterate the security for the loan provided by FCHL to APL to the tune of Rs. 50 crores which is now merged with FCRPL. Further it is stated to have lost the right to enforce the loan by proceedings against the secured assets offered by DCHL as a Corporate Guarantee for the loan advanced to APL.
- 3.11 Thus, FCRPL urged this Tribunal to direct the Resolution Applicant to amend clause 11.28 of the Resolution Plan and related clauses with regard to waiver of guarantees and securities given by DCHL for the loans taken by its subsidiary Company and to provide a detailed list of properties being transferred to it by virtue of Resolution Plan and seek no objection certificate from CoC members concerned who are having a charge or claim on those particular properties. Further it sought directions to Resolution Applicant to note the status of the FCRPL as secured creditor as already held by this Tribunal.
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**REJOINDER FILED BY APPLICANT / RESOLUTION
PROFESSIONAL TO THE REPLY / OBJECTIONS
FILED BY M/S FCRPL**

- 4.1 The Applicant / Resolution Professional denies the allegations and contentions made against her by FCRPL and further stated that Resolution Professional is unable to offer her comments to the commercial aspects of the Resolution Plan including the purported treatment of claim/ loan of FCRPL and further stated that commercial decision and matters relating thereto is purely within the domain of CoC, which approved the plan with 81.39% majority and that FCRPL also voted in favour of the Resolution Plan.
- 4.2 The Applicant / Resolution Professional relied on paras 58, 59 and 61 of Writ Petition (Civil) No.99 of 2018 of Hon'ble Apex Court in the matter of Swiss Ribbons Pvt Ltd & Anr Vs Union of India & Ors and held that ***Resolution Professional is only a facilitator of Resolution Process, whose administrative functions are overseen by the CoC and the Adjudicating Authority.***
- 4.3 The Resolution Professional further relied on para 77 of Hon'ble Apex Court in Civil Appeal Nos. 9402-9405 of 2018 in the matter of Arcelormittal India Private Limited V/s Satish Kumar Gupta & ORs dated 4.10.2018 which held that ***Resolution Professional is not required to take any decision but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before CoC who may or may not approve it and that Resolution Professional has to confirm that a Resolution Plan does not contravene any of the provisions of the law including Section 29A of the Code and contend that Section 30(2) (e) does not***
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empower the Resolution Professional to decide whether the resolution plan does or does not contravene the provisions of law.

- 4.4 The Resolution Professional further relied on Paras 41 & 44 of the Judgement of Hon'ble Apex Court in Civil Appeal Nos. 10673 of 2018 in the matter of K. Sashidhar V/s Indian Overseas Bank & ORs dated 05.02.2019 which held that ***Section 30 (4) is coupled with a duty to exercise power with utmost care, caution and reason, keeping in mind the legislative intend and the spirit of the Code. Fullest attempt should be made to revive the Corporate Debtor and not to mechanically shove them to the brink of Liquidation Process, which has inevitable impact on larger public interests and the stake holders in particular, including workers associated with the Company. Further is has held that the Resolution Professional is not required to express his opinion on matters within the domain of the financial creditors, to approve or reject the resolution plan.***


- 4.5 To the contentions raised by FCRPL with regard to not treating it as Financial Creditor, despite holding charge over the immovable properties that are already subject matter of suits for recovery before the Hon'ble Bombay High Court, the Applicant avers that she is acting as a facilitator to the process and the Resolution Professional does not have any adjudicatory power and is only a facilitator to the Resolution Process and that failure to produce any registration certificate in respect of Security claimed over the assets of the Corporate Debtor, the Resolution Professional is unable to consider FCRPL as a secured creditor but only as unsecured creditor.

- 4.6 The Resolution Professional further contends that basing on the orders passed by this Tribunal on 17.07.2018 in IA 224 of 2018, she made requisite changes in the List of Creditors.
- 4.7. The Resolution Professional urged this Tribunal to direct FCRPL to withdraw its comments/submission/observations against the Resolution Professional and amend the counter affidavit and sought directions to implead FCRPL in IA No.66/2019 in view of directions sought by FCRPL.

FINDINGS

5. I have heard the Counsel for Resolution Applicant and also the Resolution Professional. Counsel for Resolution Applicant filed written submissions. This Application is filed under Section 30 (6) of Insolvency & Bankruptcy Code, 2016 (herein after referred to as "CODE") for approval of the Resolution Plan dated 11.12.2018. The Resolution Plan is shown as Annexure-B (colly) at page nos. 47-101 of the Application.
6. The Resolution Plan was approved by CoC with a voting percentage of 81.39%. The Minutes of the 20th CoC meeting held on 10.12.2018 is shown as Annexure-A at page nos. 26-46. Thus Resolution Plan was approved by majority of creditors having percentage of voting share of 81.39%. The copy of voting percentage on the date of meeting of CoC held on 10.12.2018 is shown as Annexure-C at page No. 102. The copy of summary of decisions taken through e-voting is shown as Annexure-D which is in pursuance to Regulation 26 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is marked as Annexure-D shown at page No.s 103 & 104 of the Application.
7. The Resolution Professional has given certificate which is marked as Annexure-E at page Nos 105-106. In this certificate, the
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Resolution Professional certified that the Resolution Plan was approved by the CoC and it provides for:-

- (a) The payment of the Insolvency Resolution Process costs in priority to the repayment of other debts of the Corporate Debtor.
 - (b) Payment of the debts of Operational Creditors in priority to any financial creditor, which shall not be less than the amount to be paid to the Operational Creditors, in the event of liquidation of Corporate Debtor under Section 53 of the Code.
 - (c) The Resolution Professional also certified the Resolution Plan provides for the management of affairs of the Corporate Debtor.
 - (d) The Resolution Plan provides implementation and its supervision.
 - (e) The Resolution Plan prima facie does not contravene any of the provisions of the law for the time being in force and the Resolution Applicant has undertaken that the Resolution Plan is not in contravention of any of the provisions of the law for the time being in force. The prayers, reliefs, waivers and concessions etc sought for are subject to the approval of the Adjudicating Authority.
 - (f) The Resolution Plan contains an affidavit stating that Resolution Applicant is eligible under Section 29A of the Code.
 - (g) The Resolution Plan includes a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the Corporate Debtor.
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- (h) The Resolution Plan provides for (i) its term and implementation schedule (b) the management and control of the business of the Corporate Debtor during its term; and (c) Adequate means for supervising its implementation.
 - (i) The Resolution Plan contains details of the Resolution Applicant and other connected persons to enable the Committee of Creditors to assess the credibility of such Applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval.
- 8. The Resolution Professional filed copy of the Performance Bank Guarantee dated 02.01.2019 shown as Annexure-G at page Nos. 113-115. I have seen the performance bank guarantee (copy) which is for Rs. 15 crores. The Resolution Professional also filed undertaking given by Resolution Applicant dated 10.01.2019 shown as Annexure-H at page No. 116-118. She also filed copy of amendment of the performance bank guarantee dated 10.01.2019 shown as Annexure-I at page Nos. 119-120.
- 9. The contention of the Learned Counsel for Resolution Applicant that this Tribunal to approve the Resolution Plan granting certain reliefs as stated in Clause 11.1 to 11.30. The Learned Counsel would contend the CoC with 81.39% of voting share approved the Resolution Plan submitted by the Resolution Applicant SREI Multiple Asset Investment Trust Vision India Fund (herein after referred to as **SMAIT**). The Counsel would contend that Resolution Applicant has endeavored to maximize the value of the assets of Corporate Debtor. The Resolution Plan takes care of the interest of the stakeholders concerned which includes Financial Creditors, Operational Creditors as well as workmen and

employees of Corporate Debtor and a provision is made for payment of CIRP costs. Counsel would contend that Plan complies all the requirements laid down under Section 30 R/w 31 of IBC, 2016 as well as CIRP Regulations 2016. The counsel would contend Resolution Applicant sought certain exemptions and / or waivers in the Resolution Plan which essentially required for effective implementation of the Resolution Plan. The counsel contended, the waivers and / or exemptions prayed are not only essential for effective implementation of the Resolution Plan but also to protect the interest of the stakeholders including workmen and employees. The exemptions and waivers sought for are intended for effective implementation of the Resolution Plan and without which the Resolution Plan cannot be implemented / executed.

10. The Counsel contended, the Corporate Debtor is utilizing the brands / trademarks from the inception of the business and that Corporate Debtor to use the same for the purpose of its business, without which the business cannot be continued. Thus, Resolution Applicant prayed the Company to use the same brands / trademarks to continue its business. The waivers / exemptions are generally being granted by the Adjudicating Authority while approving the Resolution Plan in exercising its inherent powers. In this connection Learned Counsel for Resolution Applicant relied on the following decisions:-

- (1) Hon'ble NCLT Bench, Chandigarh dated 15.06.2018 in the matter of ***State Bank of India v MOR Farms Private Limited*** which ***approved waiver of un-crystallized tax / statutory dues for periods previous to approval of Resolution Plan that may arise in future (i.e. post***

approval of the Resolution Plan). The Resolution Applicant also relied on the


- (2) Hon'ble NCLT Mumbai Bench order dated 16.04.2019 in the matter of STATE BANK OF INDIA v CALYX CHEMICALS & PHARMACEUTICALS LIMITED and relied on para 12 of the order:-

"Regarding the exemptions sought, the Government liabilities and statutory dues, it is worth to observe that the same should be restricted to those government liabilities which are ascertained and crystallized as on the date when the CIRP commenced. Further, on commencement of CIRP, due to pronouncement of moratorium if any tax is levied, the same can be considered for waiver as held in the decision of NCLT, Chandigarh Bench, in the case of "State Bank of India v MOR Farms Pvt Ltd" dated 15.06.2018... wherein waiver is granted in respect of tax dues.

- (3) Hon'ble NCLT Chennai Bench order dated 11.03.2019 in the matter of UNION BANK OF INDIA v STAR AGRO MARINE EXPORTS PRIVATE LIMITED

Para 9: ***whether the claim of operational creditors like the Income Tax Department, Sales Tax Department or any other statutory authority's dues can be waived off under the provisions of I & B Code, 2016 and the Regulations made thereunder while approving "Resolution Plan"***


After referring to S.30 (2) (b) and S. 53 of IBC and keeping in sight Reg.37 of CIRP Regulations 2016, it held that statutory dues (which are by nature of



operational debts owed to operational creditors) can be entirely waived off if the assets of Corporate Debtor are not sufficient to meet out the value of the operations creditors in the event of liquidation of the CD u/s 53 IBC.

"Regulation 37 makes it clear that the Resolution Plan which cures or waives of any breach of the terms of any debt due to the Creditors is valid in the eye of law and can be approved by Adjudicating Authority provided the same is in compliance with Section 30 (2) of the IBC, 2016 and the Regulations thereunder".

So Learned Counsel contended if Resolution Applicant is burdened with all the criminal proceedings no revival of the Corporate Debtor can take place. It is clearly stated in Clause 3.7.2 of the Resolution Plan that Criminal proceedings against the existing promoters and / or shareholders and / or Directors and / or employees of the Corporate Debtor may be continued. Thus, the Counsel for Resolution Applicant wanted the Tribunal to approve the Resolution Plan subject to the reliefs sought for in Clause 11.1., 11.2, 11.3, 11.4, 11.6, 11.7, 11.8, 11.10, 11.11, 11.12, 11.16, 11.20, 11.21, 11.23, 11.25, 11.26 & 11.27. The Counsel contended prayers in 11.13, 11.17, 11.18, 11.19, 11.22, 11.24, 11.28, 11.29, 11.30 are concerning waiver of the past dues of the Corporate Debtor which are being settled by Resolution Applicant under the Resolution Plan. The counsel contended Clause 11.14 and 11.15 contained prayers which are not crystallized till date. The counsel contended provisions of IBC shall have over riding effect over all existing laws which are in conflict with IBC, 2016 as was observed by Hon'ble Apex Court



in Commissioner of Income Tax Vs Monnet Ispat & Energy. Thus, the Learned Counsel for Resolution Applicant prayed the Tribunal to approve the Resolution Plan subject to grant of the reliefs prayed.

11. The Resolution Professional filed this Application under Section 30, 31 of the IBC for approval of the Resolution Plan submitted by SMAIT. The Resolution Plan shall confirm to the requirements stated in 30 (2) of the Code. The Resolution Applicant is competent to file the Resolution Plan. The Resolution Professional has given certificate that Resolution Plan confirms to the requirements of Section 30 (2) of the IBC. The Resolution Plan is for revival of the Corporate Debtor Company. In the 20th meeting of CoC held on 10.12.2018 the Resolution Plan filed by SMAIT was taken up for consideration and e-voting window was kept open from 13.12.2018 to 21.12.2018. The Resolution Plan (originally dated 28.11.2018) submitted by SMAIT dated 11.12.2018 was approved by the CoC with 81.39% voting share. Annexure-C is the copy of voting percentage. Annexure-B (Colly) is the Resolution Plan filed by SMAIT dated 11.12.2018. The Plan to be approved by CoC with 66% voting share. However, the Plan has been approved by the members of CoC having 81.39% voting share. The certificate given by Resolution Professional is marked as Annexure-E along with Affidavit given under Section 29-A by the Resolution Applicant. The successful Resolution Applicant has also furnished Performance Bank Guarantee for 15 crores. A copy of PBG is shown as Annexure-G which is valid till 30.06.2019. However, the revised PBG was issued which is valid till 30.09.2019. The Resolution Applicant has given an undertaking for extension of PBG which is shown as Annexure-H. The total claims of Financial Creditors admitted by the Resolution



Professional is Rs.8,180.65 crores. The total claims due to the Operational creditors admitted by the Resolution Professional is Rs. 154.36 crores. The Resolution Professional has given undertaking to provide Rs. 408.06 crores. Rs. 350 crores is provided for Financial Creditors and Rs. 6 crores is provided to the Operational Creditors. The payment to the Financial Creditors consisted of cash component as well as asset component. The amount of Rs. 350 crores being provided to the Financial Creditors Category-A lenders. This amount is payable in three trenches. The Category-B lenders of Financial Creditors are permitted to sell the assets (non-core assets) and appropriate the amount realized thereon towards their debt. The CIRP costs including payment to workmen / employees is fully covered under the Plan.

12. The Resolution Applicant prayed certain waivers and exemptions detailed in Clause 11 of the Plan. So far as reorganization of Share Capital as stated in Clause 11.11 to 11.16 the same can be granted to the Resolution Applicant. In other words, Resolution Plan can be approved subject to the reliefs specifically claimed in Clause 11.11 to 11.16 of the Plan and 11.2 deals with passing of necessary orders / directions that Financial creditors Category-B lenders be authorized to deal with respective assets of Corporate Debtor over which they have exclusive charge including causing sale of the assets by Corporate Debtor and appropriate sale proceeds by Financial Creditors Category-B lenders as per Clause 2.2 of Resolution Plan. The plan can be approved by granting this relief.
13. The Resolution Applicant prayed exemption to pay stamp duty which may arise in implementation of the Plan including Stamp duty on transfer of immovable properties. It is open to the



Resolution Applicant to approach the appropriate authority seeking exemption and that appropriate authority to consider the waiver in favour of Resolution Applicant as per law.

14. The reliefs sought in Clause 11.4 is to direct the Financial Creditors to withdraw all the suits or arbitration or other proceedings filed against Corporate Debtor for recovery of their money in view of approval of the Resolution Plan. This relief can also be granted in favour of Resolution Applicant. The relief sought in Clause 11.5 among others to stop investigation by CBI or SFIO. This relief cannot be granted as it is against law. If any fraud is involved in the affairs of Corporate Debtor prior to commencement of CIRP, if any investigation is required, the same cannot be prohibited as the same is against law. However Resolution Applicant is not concerned with reference to any investigation prior to the commencement of CIRP.
15. The relief claimed in Clause 11.6 can also be granted. So far as relief sought in Clause 11.7 of the Plan which is dealing with passing an order that proceedings in CA 144 / CI / 2014 in CP No. 3/2014 is deemed to be abated. This relief cannot be granted while approving the Resolution Plan. It is open to the Resolution Applicant to move the concerned court and seek appropriate relief. The relief prayed in Clause 11.9 can be granted in favour of Resolution Applicant.
16. The Resolution Applicant has to obtain necessary approval if any required within one year as per Section 31 (4) of the Code. The Resolution Applicant further prayed for order / direction to use brand name of the Corporate Debtor. However, an Application was filed claiming exclusive right over the brand name / trademarks of the Corporate Debtor. Subject to the result of the said Application, the Resolution Applicant is entitled to use the

brand name / trademark of the Corporate Debtor as stated in Clause 11.12 of the Resolution Plan.

17. Regarding waiver / exemption of the claim in Clause 11.13, it is clear till date no claim is made before the Resolution Professional by the IT Department. The Resolution Applicant has nothing to do with the tax liability crystallized prior to commencement of CIRP. Regarding other tax waivers due to the Govt. authorities it is for the Resolution Applicant to approach the concerned authorities seeking waiver and the authorities concerned may consider the request. The Resolution Applicant is exempted from liability to pay tax arrears due by the Corporate Debtor prior to commencement of CIRP. The Resolution Applicant is seeking some more reliefs contained in Clause 11 apart from the reliefs discussed above. Wherever necessary relief can be dealt by any Govt. authority, the Resolution Applicant has to approach the concerned and seek waiver in pursuance of approval of the Plan. The Resolution Plan filed by Resolution Applicant is therefore can be approved subject to above reliefs.
18. M/s Future Corporate Resources Private Limited (FCRPL) filed counter to the Application filed by the Resolution Professional for approval of the Resolution Plan. The averments in the counter are already stated. Interestingly, FCRPL is a member of CoC which voted in favour of the Resolution Plan. Having voted in favour of the Resolution Plan, FCRPL is now asking the Tribunal to delete Clause 11.28 from the Resolution Plan and related clauses with regard to waiver of guarantees and securities given by DCHL for the loan taken by subsidiary Company Aviotech Pvt Limited. It is not open to FCRPL to ask for deletion of the Clause 11.28 from the Resolution Plan because it has voted in favour of the Resolution Plan. Without going into the



merits of the objections raised by FCRPL, the objection cannot be entertained on the simple ground, it has voted in favour of the Resolution Plan. Therefore, it is not open to FCRPL at this stage to direct the Resolution Applicant to delete Clause 11.28. Secondly, The Resolution Plan which is approved by members of CoC having voting share of 81.39% of which FCRPL is also one of the members of CoC. So objection raised by FCRPL cannot be considered and no reliefs can be granted as prayed by FCRPL.

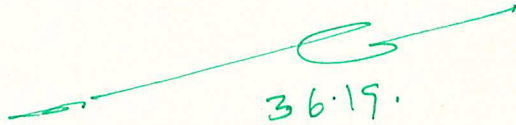
ORDER

19. Thus, Resolution Plan dated 11.12.2018 submitted by Resolution Applicant M/s SREI Multiple Asset Investment Trust Vision India Fund, which is approved by members of CoC having 81.39% voting share stands **approved** subject to reliefs referred to at paras 12, 13, 14, 15, 16 & 17 stated above as per Section 31 (1) of the Code. In other words I am satisfied with the Resolution Plan as approved by Committee of Creditors under Section 30 (4) of the Code and it meets the requirement as referred to in Section 30 (2) of IBC, 2016 and therefore the Resolution Plan stands **approved** and the same is binding on Corporate Debtor, its employees, Members, Creditors, Guarantors and stakeholders involved in the Resolution Plan.
20. The moratorium order passed under Section 14 shall cease to have effect from today.
21. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution



Process and the Resolution Plan to the Board to be recorded on its database.

22. The Resolution Applicant shall obtain necessary approval required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan or within such period as provided for in such law.


36.19.
(RATAKONDA MURALI)
MEMBER (JUDICIAL)

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