(2022) 12 NCLT CK 0003

In the National Company Law Tribunal

Case No : ?IA(I.B.C) No. 255 Of 2021

Deepak Thukral APPELLANT

Vs

Rameshwar Parsad Khanna & Others RESPONDENT

Date of Decision : 01-12-2022

Acts Referred:

Companies Act, 2013 — Section 326
Insolvency and Bankruptcy Code, 2016 — Section 5(13), 14, 18, 18(f)(i), 25(1), 30(2)(b), 30(2)(e), 36(4)(a)(iii), 36(4)(b)(ii), 43, 45, 47, 48, 49, 52, 53, 53(1), 53(1)(a), 60(5), 66, 238
Employees' Provident Funds & Miscellaneous Provisions Act, 1952 — Section 7A, 7Q, 11, 14B
Central Goods and Services Tax Act, 2017 — Section 16(4), 40, 148??Central Goods and Services Tax (CGST) Rules, 2017 — Rule 36(4)
Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations 2016 — Regulation 27, 35(3)(a), 38(1), 38(1) (a)

Citation : (2022) 12 NCLT CK 0003

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Manish Jain, Shekhar Raj Sharma, Divya Sharma, Savar Mahajan, Swati Saluja, Rakesh Gupta, Rakshit Gupta, Nahush Jain, Sourabh Goel, Ashish Chaudhary, Abhinav Sood, Anmol Sood, Baldev Singh Badhran, Krishan Vrind Jain,Yogesh Putney, Yatin Chadha, Swarnendu Chatterjee, Deepakshi Garg, Yashwardhan Singh

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

I. The following applications, IA Nos. 45/2020, 46/2020,CA Nos. 353/2019 and 597/2019, relating to claims filed by workmen and employees are taken up together, being interconnected and interrelated:

IA No. 45/2020

1. The present application is filed by Adarsh Audyogik Karmchari Sangh Through its president Mr. Suresh Kumar Malik (hereinafter referred to as 'Applicant'), against Deepak Thukral, Resolution Professional (hereinafter referred to as 'Respondent No. 1'), the Micro Turners (hereinafter referred to as ' Respondent No. 2') under Section 60(5) of IBC.

2. The applicant has prayed to set aside the Resolution Plan Dated 07.03.2019 as being opposed to the settled law of the Land or, in the alternative, send it back to the Committee of Creditors for reconsideration as per the law laid down by the Hon'ble Supreme Court in Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta [2019 SCC onLine SC 1478].

3. The application challenges the resolution plan on the grounds that the resolution plan does not provide for the payment of the debt of the workmen and employees in accordance with Section 53 of the Code. It is submitted that the payment of the debt of the operational creditor should not be less than the amount that would be paid to such creditor in the event of liquidation under Section 53. The payment for Provident Fund dues is @ 54.42% and Gratuity dues of employees and workmen @ 31.3% and 31.15%, respectively. It is stated that the resolution plan as approved by the COC does not satisfy the test under Section 30(2)(b) read with Regulations 38(1) of IBBI (Insolvency Process for Corporate Persons) Regulations 2016.

IA No. 46/2020

4. The present application is filed by Mr Sumit- Being authorised representative of 169 Workmen/Employees of Plant-II and Plant-III of corporate debtor (hereinafter referred to as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred to as 'Respondent No. 1'); the Micro Turners (hereinafter referred as 'Respondent No. 2') under Section 60(5) of IBC.

5. The applicant has prayed to set aside the Resolution Plan Dated 07.03.2019 as being opposed to the settled law of the Land or, in the alternative, send it back to the Committee of Creditors for reconsideration as per the law laid down by the Hon'ble Supreme Court in Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta [2019 SCC onLine SC 1478].

6. The application challenges the resolution plan on the grounds that the resolution plan does not provide for the payment of the debt of the workmen and employees in accordance with Section 53 of the Code. It is submitted that the payment of the debt of the operational creditor should not be less than the amount that would be paid to such creditor in the event of liquidation under Section 53. The payment for Provident Fund dues is @ 54.42% and Gratuity dues of employees and workmen @ 31.3% and 31.15%, respectively. It is stated that the resolution plan as approved by the COC does not satisfy the test under Section 30(2)(b) read with Regulations 38(1) of IBBI(Insolvency Process for Corporate Persons) Regulations 2016.

CA No. 353/2019

7. This is an application filed by Satish Kumar Dalal and others being authorized representatives of ex-employees of Plant-II (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent No. 1), the Committee of Creditors (hereinafter referred as 'Respondent No. 2') and the Micro Turners (hereinafter referred as 'Respondent No. 3'); under Section 60(5) of IBC.

8. The applicant has prayed to include the claim of the employee in full in terms of Form-D and to include the amount of PF/ EPF/ ESI/ GPF and leave encashment due to the employees in their claims. It is further prayed to direct respondent No. 3 to deposit TDS to the concerned department as deducted and direct respondent No. 2 to consider the Resolution Plan again.

CA Nos. 597/2019

9. This is an application filed by Satish Kumar Dalal and others being authorized representatives of ex-employees of Plant-II (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent No. 1), the Committee of Creditors (hereinafter referred as 'Respondent No. 2') and the Micro Turners (hereinafter referred as 'Respondent No. 3'); under Section 60(5) of IBC.

10. The applicant has prayed to include the claim of the applicant in full in terms of Form-E filed by workmen and in Form-D filed by other employees of the Corporate Debtor and to include the amount of PF/ EPF/ PPF/ GPF due to the workmen in their claims. It is further prayed to direct respondent No. 3 to deposit TDS to the concerned department as deducted.

11. The grounds for seeking relief, as prayed are that the dues of the applicant towards Provident Fund and ESI should never be included in their claims as these dues cannot become part of liquidation estate.

12. We have heard the learned counsels from both sides and have also gone through the records carefully.

13. The major issues in these applications relate to

1. Payment of debt to workmen and employees in the Resolution Plan; and

2. Payment of dues on account of PF and gratuity to them in the Resolution Plan.

14. With regard to the first issue dealing with the dues of the workmen and the Employees, the relevant provision in Section 53(1) of the IBC is extracted below for the sake of clarity:

"53. (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely:—

(a) xxxxx

(b) the following debts which shall rank equally between and among the following:—

(i) workmen’s dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in Section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) xxxx” (Emphasis Supplied)

15. We further refer to the decision of the Hon’ble NCLAT in the case of Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia RP of Jet Airways (India) Ltd. & Ors.; Company Appeal (AT) (Insolvency) Nos. 752, 643, 792, 801, 915 of 2021, 361, 771 & 987 of 2022 Dated 21.10.2022, where the following questions were framed for consideration:

I. Whether the workmen and employees are entitled to receive the payment of provident fund, gratuity and other retirement benefits in full since they are not part of the liquidation estate under Section 36 (4) (b) (ii) of the Code?

II. Whether the workmen and employees are entitled to receive their dues from the corporate debtor as per the provisions of the Code i.e. the minimum liquidation value envisaged under Section 30 (2) (b) by referring to the waterfall mechanism provided under Section 53(1) of the Code?

III.Whether the Resolution Plan approved by the Adjudicating Authority violates the provisions of Section 30(2)(b) of the Code since it does not provide the minimum amount to the workmen/ employees as contemplated under Section 30(2)(b)?

16. In the said case, the Hon’ble NCLAT has referred to the decisions of the following cases:

? State Bank of India vs. Moser Baer Karamchari Union & Anr. [2020] ibclaw.in 206 NCLAT.

? Tourism Finance Corporation of India Ltd. vs. Rainbow Papers Ltd. & Ors. (2019) ibclaw.in. 463 NCLAT.

? Mr. Savan Godiwala, the liquidator of Lanco Infratech Limited vs. Apalla Siva Kumar [2020] ibclaw.in 191 NCLAT.

? Regional Provident Fund Commissioner, Employees Provident Fund Organization vs. Vandana Garg (2021) ibclaw.in 231 NCLAT.

? Sikander Singh Jamuwal vs. Vinay Talwar & Ors. (2022) ibclaw.in 221 NCLAT.

? Nitin Gupta vs. Applied Electro-Magnetics Pvt. Ltd. & Ors. (2022) ibclaw.in 225 NCLAT.

17. After a detailed discussion regarding the computation of workmen's dues and their payment of PF and Gratuity dues, the Hon'ble NCLAT has observed that "we find ourself bound to follow the three-member bench judgment in Tourism Finance Corporation of India Ltd. vs. Rainbow Papers Ltd. where the direction was issued to the Successful Resolution Applicant to release full provident fund and interest thereof in terms the Employees Provident Funds and Miscellaneous Provision Act, 1952, which judgment has also received approval by the Hon'ble Supreme Court".

18. The Hon'ble NCLAT makes a reference to Section 36 (4) of the Code which is extracted below :

"36. xxxx

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:—

(a) assets owned by a third party which are in possession of the corporate debtor, including—

(i) assets held in trust for any third party; (ii) bailment contracts;

(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;

xxxx"

19. In its order, the Hon'ble NCLAT holds:

"Although Section 36, Subsection (4)(a)(iii) of the Code applies to liquidation, but the purpose and object for which the above provisions were enacted also find reflections in Section 18 of the Code. Section 18 enumerates the duties of IRP". (p73-74).

20. If a Corporate Debtor maintains a fund for payment of provident fund, gratuity fund and other retirement benefits to its workers and employees, that shall be an asset, but IRP is required to take control and custody of the assets over which the Corporate Debtor has ownership rights by virtue of Section 18(f)(i). When we look into the Explanation to Section 18, the assets comprising of provident funds, gratuity funds or a pension fund and belonging to be maintained by the corporate debtor are assets on which employees and workmen have rights, although assets are in possession and control of the Corporate Debtor. The above-mentioned assets, thus, are not to be taken control by IRP, after the initiation of CIRP. Hence, the said funds, i.e., provident fund, pension fund and gratuity fund maintained by the Corporate Debtor, have to be utilized fully for payment of provident fund, pension fund and gratuity fund of the workmen and

employees and thus, these assets cannot be included in the Information Memorandum as the assets of the Corporate Debtor while inviting the Resolution Plan. (p76)

21. The Hon’ble NCLAT has further observed that :

“When no provident fund, gratuity fund and fund for leave encashment is maintained by the Corporate Debtor, obviously, such claim which have been filed before Resolution Professional and admitted by Resolution Professional have to be satisfied as per the provisions of the Code, and as per Section 30, sub-section (2) read with Section 53(1) of the Code. The present is not a case where the Resolution Professional has in Information Memorandum entered provident fund, gratuity fund or other funds or retirement benefits maintained by the Corporate Debtor, so as to be part of the resolution process. (p79)”

(Emphasis Supplied)

As observed above, in the admitted claim of workmen provident fund, gratuity and leave encashment were included, and payment proposed in the plan partly satisfy above dues also. The workmen are entitled to full payment of provident fund and gratuity, hence, the balance of the above dues are to be paid by the Successful Resolution Applicant to satisfy statutory obligations. Non-payment of full provident fund and gratuity shall lead to violation of Section 30(2)(e), hence, to save the plan, the above payments have to be made.”(p80)

22. With regard to question (III) framed, the Hon’ble NCLAT further observed:

“The Resolution Plan clearly contains an undertaking of the Resolution Applicant that liquidation value due to Operational Creditors, i.e., employees and workmen shall be paid. When liquidation value has been estimated by Resolution Professional in Form-H as Rs.113 crores for workmen and employees, we fail to see the reason for allocating only Rs.52 crores towards dues of workmen. Hence, the workmen are entitled to at least Rs.113 crores, which is their minimum liquidation value estimated by Resolution Professional. The above fact clearly mandates direction to be issued to Resolution Applicant to pay at least Rs.113 crores towards workmen dues as per their entitlement under Section 30, sub-section (2) (b) read with Section 53(1) of the Code.

NCLAT held that we, thus, arrive at a conclusion that had there not been an undertaking as contained in paragraph 6.4.2 (c) for payment of liquidation value, allocation of Rs.52 crores only was in clear violation of Section 30, sub-section (2),sub-clause (b), but in view of the undertaking by the Resolution Applicant, we do not find any necessity of interfering with the Resolution Plan except issuing a direction for payment of Rs.113 crores, which is a minimum liquidation value of workmen dues”.(87-88)

23. Keeping in view the aforementioned observation of the Hon’ble National Company Law Appellate Tribunal, this bench further clarifies that:

i. In case separate funds for provident fund, pension and gratuity are maintained by the corporate debtor, the SRA will release full provident fund, interest, pension and gratuity and other dues of workmen or employees thereof, in terms of the provisions of the relevant acts;

ii. If no such fund is maintained, the provident fund, pension, gratuity and leave encashment dues which are filed before the Resolution Professional and admitted by him, have to be paid as per Section 30 (2) read with Section 53 (1) of the Code.

iii. As regards the payment of the debt to workmen and employees, the Resolution Professional is directed to make payment as per their entitlement under Section 30, sub-section (2) (b) read with Section 53(1) of the Code.

24. As regards the prayer for depositing the TDS with the Income Tax Department already deducted from the Workmen/Employees, the Resolution Professional is directed to deposit these amounts within 30 days of this order with the Income Tax Department as the same do not belong to the Corporate Debtor and has been unlawfully retained by the Corporate Debtor in contravention of the provisions of the Income Tax Act, 1961.

25. In view of the aforementioned discussions, IA Nos. 45/2020, 46/2020, CA Nos. 353/2019 and 597/2019 are allowed with the above directions and disposed of, accordingly.

II. CA No. 570/2020 and CA No. 605/2019, both are filed by EPFO, being interconnected, they are taken up together:

CA Nos. 570/2020

26. This is an application filed by Employees Provident Fund Organisation (EPF) (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent) under Section 60(5) of IBC.

27. The applicant has prayed to issue necessary directions for payment of the total Provident Fund amount in terms of the judgment of the Hon'ble Supreme Court in "Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. & Ors". 28. The grounds as stated in the application are that Employees Provident & Misc. Provisions Act 1952 has an overriding effect. The dues of EPF and MP Act, 1952 have precedence over all other dues as held in the case of "Alchemist Asset Reconstruction Co. Ltd. and Moser Baer Indian Ltd."

CA No. 605/2019

29. The present application is filed by Employees Provident Fund Organisation (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent'), under Section 7A of EPF & MP Act, 1952 read with Section 60(5) of IBC.

30. The applicant has prayed to issue necessary directions to RP so as to enable

EPFO to proceed with finalizing of assessment of dues by passing orders under Section 7A of EPF & MP Act, 1952 and further make recoveries accordingly.

31. The grounds as stated in the application are that EPF and MP Act has an overriding effect on other laws and the dues under EPF and MP Act have precedence over all other dues, including those under "Liquidation Estate" as held in the case of "Alchemist Asset Reconstruction Co. Ltd. and Moser Baer Indian Ltd".

32. The respondent has filed its reply by Diary No.4861 Dated 17.09.2019 and the applicant filed its rejoinder by Diary No.5903 Dated 24.10.2019. The applicant has filed its written submissions by Diary No. 01436/2 Dated 12.08.2022. And respondent filed its written submissions by Diary No. 01436/3 Dated 30.08.2022 The applicant has filed its additional affidavit by Diary No.1397 Dated 19.02.2020.

33. We have heard the learned counsels from both sides and have also gone through the records carefully.

34. In this connection, reliance is placed on the decision passed by the Hon'ble Apex Court in the case of Maharashtra State Co-operative Bank Ltd. vs. The Assistant Provident Fund Commissioner (2009)10 SCC 123 wherein it has been held that :

"47. Section 11 gives statutory priority to the amount due from the employer vis-à-vis all other debts. Clause (a) of Sub-section (1) of Section 11 is applicable to cases where an employer is adjudicated insolvent or, being a company, an order of its winding up is made. In that situation, the amount due from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under Section 14B, accumulations required to be transferred under Section 15(2) or any other charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme. Clause (b) is applicable to cases where the amount is due from the employer in relation to the exempted establishment in respect of any contribution to the provident fund or any insurance fund in so far it relates to exempted employees under the rules of provident fund or any insurance fund, any contribution payable by him towards the Pension Fund under Section 17(6), damages recoverable under Section 14B or any charges payable by him to the appropriate Government under the Act or under any of the conditions specified in Section 17. This Sub-section then lays down that such amount shall be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up. Sub-section (2) lays down that any amount due from the employer, whether in respect of the employees' contribution deducted from the wages of the employee or the employer's contribution, shall be deemed to be the first charge on the assets of the establishment, and shall be paid in priority to all other debts. xxxxx"

(Emphasis Supplied)

35. We further refer to the following observation of the Hon’ble NCLAT in the case of Jet Aircraft Maintenance Engineers Welfare Association (Supra) on the the claim of Regional Provident Fund Commissioner verified underSection 14B of Employees' Provident Funds & Miscellaneous Provisions Act 1952:

“In the appeal filed by the Regional Provident Fund Commissioner, it has been pleaded that the claim was filed by the Appellant for an amount of Rs.24,40,65,594/- towards damages under Section 14B of Employees' Provident Funds & Miscellaneous Provisions Act 1952, as per the order dated 17.10.2018. It is further mentioned that interest under Section 7Q was also levied of Rs.12,85,92,763/-, which amount was paid by the establishment. The amount which was claimed by the Appellant was fully admitted by the Resolution Professional. The Appellant has filed his claim in Form B. The Appellant’s claim was not in the nature of workmen's dues. The claim was also with regard to damages imposed under Section 14B of the 1952 Act. The Appellant was treated as an Operational Creditor by the Resolution Professional, hence, the Appellant was allocated a fixed amount of Rs.15,000/- which was allocated to all OperationalCreditors except the workmen. (p117)

Challenge to the Resolution Plan by the Appellant is on the ground that Section 11 of the 1952 Act requires priority over all other dues and further Section 36(4)(a)(iii)excludes provident fund dues from the liquidation estate of the Corporate Debtor. We have already dealt with provisions of Section 36(4)(a)(iii) in the foregoing paras of this judgment. Now, we need to look into Section 11 of the 1952 Act. Section 11 of the 1952 Act provides for the priority of payment of contributions over other debts. (p118)

The priority for payment of debt under Section 11 of the 1952 Act has to be looked into in view of the mechanism which is specifically provided under Section 53(1) of the Code. We have already dealt with the provision of Section 36(4)(a)(iii) of the Code and held that provident fund dues are not subject to distribution under Section 53(1) of the Code. The issue is fully covered by a three-member bench judgment of this Tribunal in“Tourism Finance Corporation of India Ltd. vs. Rainbow Papers Ltd. & Ors. (Supra)”

In view of the foregoing discussion, we hold that provident fund dues were entitled to be paid in full. In view of the judgment of the Supreme Court in “Maharashtra State Cooperative Bank Limited vs. Assistant Provident Fund Commissioner & Others,” the claim of the Appellant was to be satisfied in full, otherwise, breach of the provision of Section 30(2)(e) would have occurred. We, thus, are inclined to issue direction to the Successful Resolution Applicant to make payment of the admitted claim of the Appellant towards provident fund dues to save the plan from invalidity.” (p119)

36. In view of the aforementioned discussions, we hold that the claims of the EPF Authorities are to be satisfied in full failing which there will be a breach of

Section 30(2)(e) of the code. The Resolution Professional is to consider the matter afresh and get it decided forthwith.

37. In the result, CA Nos. 570/2019 and 605/2019 are allowed with the above directions and disposed of, accordingly.

III. Applications bearing No. CA Nos. 329/2019 to 338/2019, filed by unsecured creditors, seeking the same relief against the same respondent, being interrelated, are taken up together. In all the above applications, the applicants have prayed to declare the proposed resolution plan which is approved by CoC as void and is not in consonance with the provisions of IBC.

CA No. 329/2019

38. The present application is filed by Rameshwar Dayal Jain and Sons (HUF) (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent'), under Section 60(5) of IBC.

CA No. 330/2019

39. The present application is filed by RCL industries and Technologies Limited, (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent'); under Section 60(5) of IBC.

CA No. 331/2019

40. The present application is filed by Bonlon Private Limited, (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent), under Section 60(5) of IBC.

CA No. 332/2019

41. The present application is filed by Yogender Kumar Jain, (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent); under Section 60(5) of IBC.

CA No. 333/2019

42. The present application is filed by Arun Kumar Jain, (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent); under Section 60(5) of IBC.

CA No. 334/2019

43. The present application is filed by Vaishno Wire Private Limited (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent'); under Section 60(5) of IBC.

CA No. 335/2019

44. The present application is filed by Rameshwar Dayal Jain, (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional

(hereinafter referred as 'Respondent'); under Section 60(5) of IBC.

CA No. 336/2019

45. The present application is filed by Yogender Kumar Jain & Sons (HUF) of RD Jain, (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent); under Section 60(5) of IBC.

CA No. 337/2019

46. The present application is filed by Arun Kumar Jain and Sons (HUF), (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent); under Section 60(5) of IBC.

CA No. 338/2019

47. The present application is filed by Bonlon Steels Private Limited, (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent'); under Section 60(5) of IBC.

48. The grounds for challenging the resolution plan as stated in the application is that the applicants are not included in the CoC and they attended the meeting of CoC for the first time on the 11th meeting of the CoC in which a copy of the resolution plan was provided. The Resolution Plan as approved by the CoC seeks the extinguishment of all liabilities of claims of any other nature related to unsecured financial dues. The resolution applicant has not provided any amount for such creditors under the proposed plan and the liquidation value due to them is NIL as per the waterfall mechanism defined under Section 53. The plan is contrary to the provisions of Section 30(2)(b) & (e) read with Section 53 of the Code.

49. In the reply filed to these applications, the learned counsel for the Resolution Professional has clarified that prior to the 11th meeting, there were discussions between the applicants and respondents to clarify whether the applicant would be considered the related party of the corporate debtor for further clarity on the matter, this issue was referred for the legal opinion from M/s. Chandhok and Mahajan, Advocates and Solicitors and after obtaining their opinion that the applicant are not a related party, the latter were invited to the 11th meeting of the COC. It is further stated by the learned counsel for the Resolution Professional that the applicants attended the 11th meeting of the COC held on 02.04.2019 and sought time to review the plan, in response to which two days time were given to the applicants as the CIRP was expiring on 14.04.2019.

50. Keeping in view the fact that the applicants were given a very short time to consider the provisions of the Plan and in the interest of justice, the resolution professional is directed to give the applicants a further time of 15 days to review the provisions of the said plan and come up with their objection(s), if any, for the consideration of the COC.

51. In view of the above, CA No. 328/2019, 329/2019, 330/2019, 331/2019,

332/2019, 333/2019, 334/2019, 335/2019, 336/2019, 337/2019, 338/2019 are disposed of with the aforesaid directions.

IV. The applications CA Nos. 130/2019 and 441/2019 and 797/202019 being interrelated, are taken up together.

CA No. 130/2019

52. The present application is filed by the Central Goods and Service Tax Department (CGST) against (hereinafter referred to as 'Applicant') against Resolution Professional of M/s Lakshmi Precision Screws Limited (hereinafter referred to as 'Respondents') under Section 60(5) of IBC.

53. The applicant has prayed to recall/review the Order Dated 26.11.2018, which is passed in an application filed by RP for issuance of directions to the applicant to issue a new GST number. In the order Dated 26.11.2018, the applicants were allowed to file regular returns in accordance with the provisions of the GST Act and in physical form and to pay taxes collected by IRP. The liberty prayed to be given to the RP and GST Department to initiate appropriate proceedings against the defaulter of the previous amount.

54. The grounds as stated in the application are that there is no provision under the GST Act to file returns in physical form and due to this reason the buyer of the corporate debtor is not able to claim the input tax credit on the purchase made by them. Due to non-claiming the input tax credit, the entire chain is getting interrupted and further complicates the issue. Therefore, it is prayed to recall/review the order Dated 26.11.2018.

CA No. 441/2019

55. The present application is filed by the Central Goods and Service Tax Department (CGST) (hereinafter referred as 'Applicant') against Resolution Professional of M/s Lakshmi Precision Screws Limited (hereinafter referred as 'Respondents') under Section 60(5) of IBC.

56. The applicant has prayed to seek directions for the clearance of liability of GST of the pre-CIRP period by utilizing input tax credit and making payment of the remaining amount. It is also stated by the applicant that this application is filed for bringing on record additional facts in CA No. 130/2019.

CA No. 797/2019

57. The present application is filed by Universal Precision Screws (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent No. 1') and the Central Goods & Services Tax Division (hereinafter referred as 'Respondent No. 2')

58. It is prayed by the applicant to restrain the GST Department from taking any legal action against the applicant and to restrain the GST Department from charging any delayed interest liability for the non-payment of demanded account

in terms of its notice Dated 25.04.2019.

59. The facts briefly stated in the application are that the applicant has placed various orders for the manufacturing of goods during the CIRP period of the corporate debtor during the period from August 2018 to May 2019. The applicant has made the full and final payment to the corporate debtor against its invoices which are inclusive of GST. The applicant has claimed the total Input Tax Credit against the said invoices which he has paid to the corporate debtor. However, it came to the notice of the applicant that the RP has not deposited the said GST amount claimed by the applicant with the GST Department. The applicant wrote an e-mail Dated 14.05.2019 to RP inquiring about the non-submission of the GST amount by the corporate debtor and by e-mail Dated 14.05.2019, the RP replied that he has filed GSTR-1 returns for the months till February 2019.

60. In this application, the details of the period for non-filing of GSTR-1 and GSTR-38 are mentioned. It is also stated that the new GST Number for the same premises under the same PAN cannot be initiated/granted; the input credit to the buyers shall be admissible only when the seller has discharged its GST liabilities by filing appropriate returns. The total GST liabilities for the pre-CIRP period i.e. for M/s LPS Plant-I and M/s. LPS Plant-II is stated to be Rs. 20.45 Cr. (approx) as per GSTR-1M returns filed by the party/figures supplied by the party. It is further stated that as per the provision of the GST Act, GST tax liabilities for the pre-CIRP period need to be discharged first by way of utilizing admissible ITC and making balance payment through the cash ledger; thereafter, GST tax liabilities of the CIRP period can be discharged and ITC can be claimed by buyers.

61. We have heard the learned counsels from both sides and have also gone through the records carefully.

62. All these forgoing applications, the issues emerging for discussion are as follows:

1) Whether the Resolution Professional is liable to file returns of the pre-CIRP period, and make payments for outstanding GST for the pre-CIRP period and make payments for outstanding GST for the pre-CIRP period;

2) Whether a new registration can be granted by GST Department to the RP/ corporate debtor after the initiation of the CIRP period;

3) Procedure for availing ITC by persons availing supplies from the corporate debtor.

63. In this context, the parties are directed to refer to the notification No. 11/2020-Central Tax, Dated 21.03.2020, issued by the Government prescribing special procedure under Section 148 of the Central Goods and Services Tax Act, 2017 (CGST Act) for the corporate debtor undergoing CIRP under the provisions of IBC and the management of whose affairs are being undertaken by IRP/RP.

64. As per the notifications/circulars issued by the CGST Department notification

No. 11/2020- Central Tax, Dated 21.03.2020, the corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union Territory where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP. Further, in cases where the IRP/RP has been appointed prior to the issuance of notification No. 11/2020-Central Tax, Dated 21.03.2020, he shall take registration within thirty days of issuance of the said notification, with effect from the date of his appointment as IRP/RP. [Circular No. 134/04/2020-GST].

65. A reference is also made to Circular No. 134/04/2020-GST Dated 23.03.2020, which clarifies that

Is IRP/RP liable to file returns of pre-CIRP period?

No. In accordance with the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements for period after the Insolvency Commencement Date. Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.

66. In any case, under the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements for the period after the Insolvency Commencement date. Circular No. 134/04/2020-GST also clarifies that "the IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period. The IRP/RP is required to ensure that the first return is filed under Section 40 of the CGST Act, for the period beginning the date on which it became liable to take registration till the date on which registration has been granted".

67. The GST Department, therefore, is directed to give full benefit of these circulars and instructions issued by their department to the RP/Corporate Debtor and to ensure that the corporate debtor is allowed to comply with the GST laws and is not penalized for the non-filing of GST return and non-payment of GST dues pertaining to the pre-CIRP period. As regards the prayer for recall of the order in IA No. 130/2019, we clarify that the objective behind the said order of this Bench was to enable the corporate debtor to file the GST returns and to make the corporate debtor GST compliant. To that effect, we direct the GST Department to find a way to enable the corporate debtor to file the GST returns within the scope of the technology used by their department during the CIRP period. As this is a recurrent issue, if required, this issue may be escalated to their highest authorities to make their portal complaint with the filing of GST returns of the corporate debtor on a new entity after initiation of CIRP. In this connection, we refer to the decision of a co-ordinate Bench in the case of T.R. Ravichandran, RP for Kiran Global Chem Limited Vs. The Asst. Commissioner (ST) Kilpauk Assessment Circle & 12 Ors; MA/1298/2019 in IBA/130/2019 Dated 05.12.2019, wherein it was held by

"it appears that any company once it has gone into CIRP, if at all the Corporate Debtor is to be run as a going concern, it can be obligated to pay the taxes from the date of initiation of CIRP. As to the dues of the pre-admission period, the creditors, including Tax authorities, are entitled to make a claim against the Corporate Debtor as mentioned in the Insolvency and Bankruptcy Code.

In view thereof, if the Corporate Debtor's GST Portal is blocked, it is difficult to the Corporate Debtor to generate bills falling within the ambit of GST and pay the taxes for the post-admission period.

Since law is clear that Tax authorities fall within the ambit of the Operational Creditor, as to the pre-admission claims are concerned, they are at liberty to make their claims before the Resolution Professional instead of insisting upon the Resolution Professional to pay the pre-admission dues before accepting the tax liabilities arising during the CIRP period.

As to provisions of GST Act, since Section 238 of the Insolvency and Bankruptcy Code having categorically mentioned that IBC will have over riding effect on all other laws which are in contravention to the provisions of the IBC, R1 cannot raise an objection saying since no provision has been made in GST or in its software to accept such accounts, the business happening in the market after initiation of CIRP through debtor company will come to stand still and in such situation no company under CIRP can function as a going concern"

(Emphasis Supplied)

68. As regards the prayer regarding availing the ITC credits, a reference is made to the following extracts from Circular No. 134/04/2020-GST Dated 23.03.2020 :

How to avail ITC for invoices issued to the erstwhile registered person in case the IRP/RP has been appointed before issuance of notification No. 11/2020- Central Tax, dated 21.03.2020 and no return has been filed by the IRP during CIRP?

The special procedure issued under section 148 of the CGST Act has provided the manner of availment of ITC while furnishing the first

return under section 40.

The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since appointment as IRP/RP and during the CIRP period but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except t he provisions of sub-section (4) of section 16 of the CGST A ct and sub-rule (4) of rule 36 of the CGST Rules.

In terms of the special procedure under section 148 of the

CGST Act issued vide notification No.11/2020- Central Tax, dated 21.03.2020.

This exception is made only for the first return filed under section 40 of the CGST Act.

How to avail ITC for invoices by persons who are availing supplies from the corporate debtors undergoing CIRP, in case where the IRP/RP was appointed before the issuance of the notification No. 11/2020 - Central Tax, dated 21.03.2020?

Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or 30 days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the p rovisions of sub-rule (4) of rule 36 of the CGST Rules.

69. In view of the clear instructions issued in the relevant Circular/Notifications laying down procedures for allotment of new GST registration and filing of the return, etc., this issue becomes irrelevant.

70. Thus, the CGST Department is directed to follow the instructions in the Circular/Notifications issued by the Department, including those discussed above, regarding allotment of new GST registration, filing of return and regarding utilisation of Input Tax Credit. The RP is directed to move the necessary application, if required, under the relevant provisions of the CGST Act, 2017 before the CGST Department. The CGST Department, is, however, at liberty to file their claims with respect to the pre-CIRP dues before the Resolution Professional who is directed to consider the same in the context of the decision of the Hon’ble Supreme Court in the case of State Tax Officer (1) Vs. Rainbow Papers Ltd. [Civil Appeal No. 1661 of 2020 Dated 06.09.2022]. The admitted claims be paid as per the waterfall mechanism under Section 53 (1) of the Code.

71. In view of the aforementioned discussions, CA Nos. 130/2019, 441/2019 and 797/202019 are disposed of with the above observations/directions.

V. All the following applications are taken up individually as the issues and facts are different in each application.

CA No. 244/2019

72. The present application is filed by Resolution Professional of M/s Lakshmi Precision Screws Limited (hereinafter referred as ‘Applicant’) against Uttar Haryana Bijli Vitaran Nigam (hereinafter referred as ‘Respondent No. 1/Electricity Department’); the Central Goods and Service Tax Department (CGST) (hereinafter referred as ‘Respondent No. 2’) and Employees Provident Fund Organization (hereinafter referred as ‘Respondent No. 3/EPFO’) under Section 60(5) of IBC.

73. The applicant has prayed to consider the amount due and unpaid in respect of

i) PF Department amounting to Rs. 73,42,423/- for the period from November

2018 to February 2019;

ii) GST Department amounting to Rs. 97,59,368/- for the period from August 2019 to March 2019; total outstanding due is Rs. 25,00,000/-;

iii) The Electricity Department amounting to Rs. 25,15,484/-

74. In the present case, the CIRP was initiated on 18.07.2018. The amount due and unpaid in respect of the PF Department, GST Department and Electricity Department pertaining to the CIRP period.

75. These expenses are to be treated as per the provisions of Section 5 (13) of the IBC, 2016, which is quoted below for the sake of clarification:

Section 5 (13) "Insolvency Resolution Process costs" means-

a) The amount of any interim finance and the costs incurred in raising such finance;

b) The fees payable to any person acting as a resolution professional;

c) Any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;

d) Any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and

e) Any other costs as may be specified by the Board;

76. In order to enable the corporate debtor to survive as a going concern, the IBC has provided for a moratorium under Section 14 of the Code which inter alia provides:

"14. xxxxxx

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period".

77. It is also noted that one of the respondents i.e., Electricity Department did not appear in the judicial proceedings of the present application. The department is specifically directed not to terminate/interrupt electricity connection till the completion of the CIRP without permission of this Authority.

78. In the context of the above, we hold that amounts pertaining to the post-CIRP period should be treated as a part of the CIRP cost and would be payable to the recipients in priority as per the waterfall mechanism in the Resolution Plan. For pre CIRP period, the authorities i.e. PF, Electricity and GST Department are free to file their claims before the Resolution Professional and the same be allowed as per the waterfall mechanism under Section 53 of the Code. In the meanwhile, no coercive measure would be taken by any of these authorities to recover their dues.

79. In view of the aforementioned discussions, CA No 244/2019 is allowed with aforesaid directions and disposed of, accordingly.

CA No. 328/2019

80. This is an application filed by Adarsh Udyogic Karamchari Sangh the workmen of Plant-I (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent'); under Section 60(5) of IBC.

81. The applicant has prayed to include the claim of the respondent in full in terms of Form-E filed by workmen and in Form-D filed by other employees of the Corporate Debtor and to include the amount of PF/ EPF/ PPF/ GPF due to the workmen in their claims.

82. The brief facts as stated in the application are that the employees of the corporate debtor including the retired employees have sent their claims to the Resolution Professional and the major part of workmen's claim has been rejected by the Resolution Professional. The Hon'ble Presiding Officer, Industrial Tribunal-cum Labour Court, Rohtak has passed an Interim Award Dated 13.03.2018. As recorded in our daily order Dated 28.10.2022, it has been stated that Resolution Professional has admitted an amount of Rs. 6,67,00000,/- as an Industrial Award in favour of the workmen. We note that a letter Dated 18.03.2019 has also been issued by the applicant to the respondent stating that there is a due of over Rs. 15 Crores (Approx.) which has been pending and there is no stay order from any Court. It is also submitted that the workmen's be paid their dues from February-March 2018.

83. Reply has been filed by RP by Diary No. 3239 Dated 05.07.2019 stating that an amount of Rs. 8.91 Crores (Approx.) is disputed in respect of payment of benefits as per settlement Dated 28.12.2022 between the applicant and the corporate debtor. The Industrial Award Dated 13.03.2018 has also been challenged prior to the commencement of CIRP before the Hon'ble Punjab and Haryana High Court. An amount of Rs. 1.43 Crores (approx) has not been verified from the books of accounts of the corporate debtor. The respondent has cited the order of Ramakant Suryanath Pandev vs. CS Prakash K Pandya in the matter of Milestone Real Estate Fund V. Choubey Realties (P.) Ltd; [MA 1453/2018 & IA 76/2018 in CP No. 870/IBC/NCLT/MB/MAH/2017 Dated 05.02.2019], wherein it has been held that Resolution Profesional duty is limited to verifying claims that have been received by him.

84. The applicant has filed written submissions by Diary No. 01429/2 Dated 30.08.2022, citing a judgement of Hon'ble Tripura High Court in Sh. Shubhankar Bhowmik vs. UOI [WP(C) (PIL) No. 04/2022 Dated 14.03.2022], wherein the Hon'ble Court in Para 12 held that unless the decree had been set aside, the claims of decree holder must be admitted in full by the Resolution Professional during the pendency of CIRP. It is stated that this judgment was subsequently upheld by the Hon'ble Supreme Court.

85. The respondent has filed written submissions by diary No. 01429/01 Dated 30.08.2022, inter-alia citing a judgment of Hon'ble Supreme Court in Sunil Kumar Jain vs. Sundaresh Bhatt & Ors, 2022 SCC OnLine SC 467, wherein it is held that the wages/salaries of those workmen/employees who actually worked during CIRP period when the Resolution Professional managed the operations of the corporate debtor as a going concern, shall be paid treating it and/or considering it as part of CIRP costs and the same shall be payable in full first as per Section 53 (1) (a) of the Insolvency Bankruptcy Code.

86. In this context, a reference is made to the decision of the Hon'ble Allahabad High Court in the case of LML Ltd. Vs. State of U.P. and 2 Others (2022) ibclaw.in 21 HC, wherein the plea for the remission of the back wages for reason of "impossible burden on the employer" was not acceded to and the Liquidator was directed to assess the claims of the workmen after taking into account the impugned award of the Industrial Tribunal. Further, the proceeds from the sale of the liquidated assets were directed to be distributed in accordance with the Code.

87. It is also noted that the interim award by the Industrial Tribunal-Cum-Labour court in favour of the workmen was passed on 13.03.2018 i.e., prior to the initiation of CIRP on 18.07.2018. The total amount as claimed in the correspondence Dated 18.03.2019 is more than Rs. 15 Crores.

88. We also note that under Section 238 of the Code, the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Therefore, the payment to the applicants-workmen, employees under the resolution plan is to be N in the order of priority as provided under Section 53 of the Code after the determination of the claims by the Resolution Professional. The payments towards workmen and employees dues are directed to be paid in the order of priority under the relevant clauses of sub-section (1) of Section 53 of the Code. In terms of clause (ii) of sub-section (3) of Section 53, the "workmen's dues" would have the same meaning as assigned to it in Section 326 of the Companies Act, 2013.

89. In view of the aforementioned discussion, the Resolution Professional is directed to consider the order of the Industrial Tribunal and all other relevant facts and admit the claims of the workmen/employees in accordance with the provisions of Section 53 of the Code.

90. In the result, CA No 328/2019 is disposed of with aforesaid directions.

CA No. 351/2019

91. The present application is filed by Mr. Rajesh Jain (hereinafter referred as 'Applicant') against Deepak Thukral, Resolution Professional (hereinafter referred as 'Respondent No. 1'), and Canara Bank (hereinafter referred as 'Respondent No. 2') under Section 60(5) of IBC.

92. The applicant has prayed to reject the resolution plan of M/s Micro Turners

and to direct the respondents to place on record the entire deliberations of the CoC with respect to the plan submitted by the Resolution Applicant.

93. The brief facts as stated in the application, are that the applicant is the son of Smt. Susheela Devi Jain, whose immovable property is stated to have been mortgaged with the bank for the loans availed by the corporate debtor. The applicant was a director of the corporate debtor till 2017 and also an alleged guarantor of the corporate debtor.

94. The grounds for challenging the Resolution Plan are that the resolution applicant has stated that the corporate debtor is running operations on old/ impaired machinery, but the Resolution Applicant has not mentioned the estimate of the capital expenditure required to replace this machinery. It is averred that the same machinery has been successfully used for manufacturing by Ms. Universal Precision Screws Limited during the CIRP period in association with Resolution Professional. The Resolution Applicant in the plan has wrongly stated that the operations of the corporate debtor have suffered due to sharing the brand with M/s. LPS- Bossard. However, the same has been opposed by the applicant. It is mentioned that the applicant has purchased 49% shares of M/s. LPS-Bossard from the corporate debtor, and subsequently, a Share Purchase Agreement was signed between the applicant and the corporate debtor. As per Clause 3 of the Agreement, the applicant is allowed to use the name as M/s. LPS Bossard. It is also stated that the Resolution Applicant has not provided the details of its own credentials in the Fastener Industry, and the plan has been passed by the CoC without examining the competence of the Resolution Applicant. The main plants of the corporate debtor are old and obsolete. The CoC has only relied on upfront payment made by the Resolution Applicant without understanding how the Resolution Applicant will revive the business of the corporate debtor. The proposed approval of the plan of M/s. Micro Turner by the CoC is an abuse of the CIRP process. The liquidation value of the corporate debtor has not been assessed correctly. The Resolution Plan is also in violation of Regulation 38(1) (a) as it does not deal with the interest of the stakeholders as well as Regulation 35 (3)(a) since it has not addressed the cause of default.

95. The written submissions have been filed by the applicant by Diary No. 01457/01 Dated 18.07.2022, stating that the land does not belong to the corporate debtor. The lease of the land, belonging to the family of the applicant expired pre-CIRP and the rent is outstanding. It is further stated that the Resolution Plan is based on his speculation that the Resolution Applicant will negotiate this land with Canara Bank and SBI for taking possession of the said land which does not belong to the corporate debtor. It is submitted that a plan based on such contingencies cannot be approved. The applicant has entered into a Share Purchase Agreement with the corporate debtor and the applicant has objected to the usage of the prefix LPS with LPS-Bossard. The applicant has also objected to the commercial viability of the plan.

96. Respondent No. 1-Resolution Professional has filed its written submission by

Diary No. 01457/5 Dated 09.09.2022 stating that the resolution plan has been approved by CoC with a 78.43% voting share. The feasibility and viability of the Resolution Plan fall within the commercial system of the CoC, and the applicant has no locus to challenge the resolution plan on the same. It is also stated that the SRA has proposed to acquire the land once the ongoing litigation/dispute is settled with Canara Bank and SBI, and the applicants.

97. Respondent No. 2-Canara Bank has filed its written submission by Diary No. 01457/7 Dated 10.10.2022 stating that the applicant is neither the financial creditor, an operational creditor nor an unsuccessful Resolution Applicant or the Suspended Board of Directors. The applicant is a third party and does not have any locus standi to file the present application. In respect of the mortgaged land, it is submitted that a civil suit is pending in Civil Court at Rohtak, and the applicant has not placed on record the civil suit.

98. It is mentioned by the applicant that land is allegedly mortgaged with the Bank as a security for the loan availed by the corporate debtor. The relevant portion of the resolution plan (page 55 of the resolution plan) on which reliance is placed by the applicant is reproduced as:

"As per the information extracted from the "Information Memorandum" Plan 2 has a part of land, already mortgaged with the bank land forming part and parcel of the Plant 2, which is in the name of Sushila Devi Jain and the same has been given on lease to LPS-Plan 2. This part of the land is integral for the plan 2 as some machinery is installed on this part. The operations of Plan 2 are dependent on this part. We propose to purchase that part of the land on clearance of all the litigations. It has been informed to us that for settlement of this land, we need to negotiate it with Canara Bank and SBI as this land is mortgaged with them. We have also understood that there is some court case on the said land. It must be noted that there should not by any production disruption due to personal land till the time of dispute settlement between Canara Bank and the owners of the land".

(Emphasis Supplied)

99. Rejoinder has been filed by the applicant by Diary No. 4002 Dated 09.08.2019, stating that one of the members of the CoC has committed fraud over the land in question with the mother of the applicant, which is already under challenge in a civil suit. Canara Bank is now trying to obtain unlawful ownership in connivance with the resolution applicant.

100. We have carefully considered the rival submissions and perused the documents.

101. In the present application, the applicant, who is not a stakeholder in CIRP has levelled various allegations against the Resolution Professional on issues which are strictly in the domain of the consideration by the CoC. It is also seen that the issue of the conflict of the ownership of the land has already been considered in the meetings of the CoC before approving the Resolution Plan. In

any case, this Adjudicating Authority is not the forum to adjudicate over the dispute of the land. We also note that as reflected in the Resolution Plan, the “Information Memorandum” correctly mentions the status of the land and this fact is already in the knowledge of the CoC before approving the Resolution Plan.

102. In view of the above discussions, we do not accede to the prayers of the applicant, CA No. 351/2019 is dismissed and disposed of accordingly.

CA No. 352/2019

103. The present application is filed by Mr. Vijay Harjai and Ors. (hereinafter referred as ‘Applicant’) against Deepak Thukral, Resolution Professional (hereinafter referred as ‘Respondent’).

104. The applicant has prayed to intervene in the application for approval of the Resolution Plan of M/s Micro Turners and to direct the respondents to place on record the entire deliberations of the CoC with respect to the plan submitted by the Resolution Applicant. It is further prayed to allow the applicant to be impleaded as a necessary party in the application filed by the Resolution Professional for the approval of the resolution plan.

105. The facts as briefly explained in the application for challenging the Resolution Plan are that the Resolution Professional has not submitted the forensic audit report before the approval of the Resolution Plan by the CoC. It is averred by the applicant that an inventory amounting to Rs. 180 Crores has been misappropriated by the management of the corporate debtor, and the same has also been admitted by the Resolution Professional. The valuation on which the resolution applicant has been submitted does not include the value of the aforesaid inventory. Another objection raised by the applicant is that the valuation of the assets of the corporate debtor is unfair and extremely low in the case of subsidiaries and associate concerns. The land belonging to the subsidiary companies have been sold at a highly undervalued price. The application filed by Resolution Profesional under Sections 43, 45, 47, 48, 49 or 66 has not been decided by the Tribunal and the avoidance application needs to be adjudicated prior to the Resolution Plan.

106. Written submissions on behalf of RP filed by Diary No. 01445/02 Dated 12.09.2022 stating that RP has appointed a Forensic Auditor for the transactions of the corporate debtor in the second meeting of the CoC and report Dated 12.04.2019 has been submitted to RP. As per Regulation 27 of IBBI(Insolvency Process for Corporate Persons) Regulations, 2016, the Resolution Profession is required to appoint two registered valuers to determine the fair value of the corporate debtor and there is no underline regulations for the valuation of related/associated/subsidiary companies/firms of the corporate debtor. The Resolution Professional has filed two avoidance applications bearing CA Nos. 366/2019 and 50/2020 on the basis of the same. The applicant cannot challenge the valuation of the corporate debtor as held in the case of Miheer H. Mafatlal v. Mafatlal Industries Limited, 1997 (1) SCC 579. It is also averred that all the

allegations made by the applicant are not backed by any relevant details. A copy of the resolution plan and other relevant documents are only required to be provided to the participants of the CoC, and the applicant is not eligible for the same as held in the judgment passed by Hon'ble Supreme Court in Vijay Kumar Jain V. Standard Chartered Bank & Ors, (2019) 20 SCC 455.

107. On pursual of records, we note that the applicant, who is an operational creditor has not been able to bring out any material irregularity in the CIRP Process and has also levelled allegations against the Resolution Professional which are not corroborated by the facts on record. The procedures for CIRP proceedings are clearly laid down in the Code and compliance thereto protects the interest of stakeholders. In view of the applicant's failure to bring on record any material irregularity on part of the resolution professional, the present application deserves to be dismissed.

108. In the result, CA No 352/2019 is dismissed and disposed of, accordingly.

IA No. 255/2021

109. The present application is filed by Deepak Thukral, Resolution Professional (hereinafter referred as 'Applicant') against Rameshwar Prasad Khanna (hereinafter referred as 'Respondent No.1'); Superintendent of Police, Rohtak Haryana (hereinafter referred as 'Respondent No.2'); Commissioner of Police, New Delhi (hereinafter referred as 'Respondent No.3') under Section 60(5) & Section 25(1) of IBC, 2016

110. It is prayed by the applicant to direct respondents to facilitate the handover of Car bearing No. HR-12-J-4152.

111. The brief facts of the case, as mentioned in the application, are that the applicant being Resolution Professional, received an e-mail from staff on 03.06.2020 that they have received a notice u/s 133 of the Motor Vehicle Act, 1988 from the Deputy Commissioner of Police, Traffic (Headquarters) New Delhi for violating the speed limit by vehicle registration No. HR-12-J-4152. On inquiry, the applicant has found that vehicle Reg. No. HR-12-J-4152 is not maintained in the list of assets and the aforesaid car is in the possession of respondent No.1. The applicant wrote an e-mail Dated 06.06.2020 to respondent No.1 to return the said vehicle. Respondent No.1 has replied by E-mail Dated 15.06.2020 that the aforesaid vehicle was not in his possession now. The applicant again received a notice on 23.07.2020 for violating the speed limit by the aforesaid vehicle. It is averred that vehicle No. HR-12-J-4152 is in the illegal possession of respondent No.1. The applicant has also lodged a criminal complaint before SSP, Rohtak on 27.07.2020 to avoid any complexities.

112. As per Section 25(1) of the Code, the Resolution Professional has a duty to preserve and protect the assets of the corporate debtor and shall take immediate custody and control of all the assets of the corporate debtor. The Resolution Professional is stated to have taken control of all assets according to the list of

the assets made available. It is submitted that the aforesaid vehicle is under the possession of an unauthorized person, and any mishappening will cause great prejudice to the applicant.

113. After going through the facts as submitted by the Resolution Applicant, we deem it appropriate to direct him to approach the concerned Police Authority to ascertain the identity of the entity presently owning the impugned vehicle. He is further directed to take possession of the vehicle if it is still in the name of the corporate debtor. The concerned police authority is directed to extend full cooperation to the Resolution Professional to implement our order.

114. In view of the above, IA No. 255/2021 is allowed with the aforesaid directions and disposed of accordingly.

115. Considering the facts and the legal issues discussed in the foregoing paragraphs, we hold that wherever directed, the aforementioned claims of various stakeholders are to be considered by the Resolution Professional under the relevant provisions of the IBC & in accordance with law and the same should be placed before CoC for approval. We, therefore, refer the resolution plan back for approval by the CoC with a direction to consider the claims within a period of 30 days as per the observations/directions in the foregoing paragraphs.

