

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI**

IA-5678(PB)/2020, IA-2437/2021

In

CP (IB)-244(PB)/2019

IN THE MATTER OF:

STRESSED ASSETS STABILIZATION FUND (SASF)

... Financial Creditor

Vs.

JAIN STUDIOS LIMITED

...Corporate Debtor

In the matter of IA-5678(PB)/2020:

Manish Agarwal

Resolution Professional

For Jain Studios Limited

707, Saket, Opp. Rohtash Sweets,

Meerut-250001

...Resolution Professional/Applicant

In the matter of IA-2437/2021

SCINDIA POTTERIES AND SERVICES PVT LTD.

.... Applicant

Vs.

MR. MANISH AGARWAL

.... Resolution Professional/Respondent

Order delivered on: 18.07.2022

CORAM

JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA, HON'BLE MEMBER (T)

PRESENT

For SRA: Mr. Neeraj Kr Gupta, Mr. Bharat Chadha, Advocate.

For CoC: Mr. Vikas Tiwari, Mr. Rishabh Bharadwaj,
Mr. Kumar Deepraj, Advocates.

For RP: Mr. Abhishek Anand, M. Karam Kholi, Mr. Sahil Bhatia,
Mr. Mohit Uppal, Advocates, Mr. Manish Aggarwal (RP).

For Applicant in IA-2437/2021: Mr. Gaurav Mitra, Mr. Approv Agarwal,
Ms. Riya Thomas, Ms. Alisha Mathew,
Mr. Abhishek Kumar Jaiswal Advocates.

ORDER

PER- SHRI AVINASH K SRIVASTAVA, MEMBER (T)

1. The Resolution Professional i.e., Mr. Manish Agarwal has filed application number IA-5678(PB)/2020 under Section 30(6), 31 r/w 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) r/w Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), in CP (IB)-244(PB)/2019, seeking following reliefs:

- a. Allow the present application.
- b. Approve and accept the resolution plan along with Addendum submitted by Asteroid Shelters homes Private Limited as approved by the Committee of Creditors with 98.10%, voting share in its 6th CoC meeting as submitted in respect of the Corporate Debtor i.e., Jain Studios Limited.
- c. Declare that upon approval of the Resolution Plan by this Adjudicating Authority, the provisions of the Resolution Plan shall be binding on the Company, its creditors, guarantors, members, employees and other stakeholders in accordance with Section 31 of the IBC and shall be given effect to and implemented pursuant to the Order of this Adjudicating Authority.
- d. Approve the appointment of the monitoring agency as approved by the Committee of Creditors.
- e. Approve and grant reliefs and directions sought under the resolution plan by the resolution applicants.

2. Another application IA-2437/2021 is filed by M/s. Scindia Potteries and Services Private Limited, stating that it is the owner of land and building located at Scindia Villa, Sarojini Nagar, Ring Road, New Delhi-110023 (Property) and is represented through its Manager and Authorised

Signatory i.e., Mr. P.K. Ram. The following prayers and interim prayers have been made:

Prayers:

“a) Direct the Resolution Professional to furnish a copy of the complete Resolution Plan to the Applicant as well as a copy of the application filed seeking approval of the Resolution Plan;

b) Direct the Resolution Professional to hand over the vacant physical possession of the premises (situated at Scindia Villa, Sarojini Nagar, Ring Road New Delhi 110023 possession of which were taken by him pursuant to being appointed the Interim Resolution Professional) to the Applicant or in the alternate to the Hon’ble Court of Sh. Munish Markan, A.D.J., Patiala House Courts, New Delhi where the proceedings being Ex. No. 80 of 2018 titled ‘Scindia Potteries & Services Private Limited Vs. Dr. J.K. Jain & Anr.’ is pending, forthwith and in any event the moment the moratorium ceases to have effect;

Interim Prayers:

a) Pass an Order staying the approval of the Resolution Plan till the submissions of the Applicant are duly incorporated in the Information Memorandum and Resolution Plan in reference to the Sections 25 and 29 of IBC and Regulation 36 of the CIRP Regulations.

b) Pass an order to direct the Corporate Debtor to remove all their movable assets from the property to some other location other than the said property.

c) Pass such other and further Order (s) and/or direction(s) as this Hon’ble Court may deem fit and proper, in the facts and circumstances of the present case and in the interest of justice.

3. We proceed to pass a common Order in both the above stated applications, as the IA-2437/2021 is filed as an objection to the Resolution Plan application and therefore, both the IA-5678(PB)/2020 and IA-2437/2021, are connected.

4. Mr. Manish Agarwal is the Resolution Professional (Applicant), for the Corporate Debtor i.e., M/s. Jain Studios Limited, who has filed this application alongwith the Resolution Plan duly approved by the Committee of Creditors (CoC), with 98.10% voting share, accompanied by the compliance certificate on prescribed Form H.

5. The Corporate Debtor viz., M/s. Jain Studios Limited (JSL) is a Company incorporated under the provisions of Companies Act, 1956 having Company Identification Number L92199DL1991PLC042611, situated at Jain Studio Campus, Scindia Villa, Sarojini Nagar, Ring Road, New Delhi-110023, engaged in the media and broadcasting business. The Corporate Insolvency Resolution Process (CIRP), against M/s. Jain Studios limited (Corporate Debtor) was admitted by this Adjudicating Authority vide Order dated 26.02.2020, pursuant to the application filed under Section 7 of IBC, 2016, by one of Financial Creditor viz., Stressed Assets Stabilization Fund (SASF) and the Applicant was appointed as Interim Resolution Professional (IRP) vide the same Order.

6. The Public Announcement regarding the commencement of CIRP was made on 28.02.2020 and the Committee of Creditors (CoC) was constituted on 20.03.2020. The Financial Creditor i.e., SASF filed its claim in Form C dated 09.03.2020, of Rs. 565,25,70,825 (including interest). The 1st CoC meeting was convened on 26.03.2020, wherein it was resolved to appoint IRP as the Resolution Professional with 100% vote. The 2nd CoC meeting was convened on 22.07.2020, wherein the Applicant apprised the CoC that in terms of Regulation 27 of the CIRP Regulations, Applicant appointed two registered valuers from each asset class (i.e., land & building, plant & machinery, securities and Financial Assets). The CoC in the said meeting discussed and approved with 98.1% vote, the Evaluation Matrix, Eligibility Criteria and Form-G. The Applicant published Invitation for Expression of

Interest in Business Standard (English and Hindi) on 23.07.2020, in FORM-G as approved by the CoC. The Applicant received Resolution Plans from two separate Prospective Resolution Applicants (PRA) i.e., M/s. Asteriod Shelters homes Pvt Ltd for Rs. 8 Crores and M/s. AN International Import and Export for Rs. 7 Crores.

7. The 4th Meeting of the CoC was convened on 28.10.2020 wherein the CoC deliberated on the Resolution Plans and requested M/s. Asteriod Shelters homes Pvt Ltd to submit the revised Resolution Plan to the Applicant. The 5th CoC meeting was convened on 27.11.2020, wherein it was resolved to file necessary application for extension of time period of CIRP and this Adjudicating Authority vide Order dated 09.12.2020 was pleased to extend the CIRP period for further 90 days.

8. In the 6th CoC meeting was convened on 11.12.2020, the applicant informed the CoC that the PRA M/s. Asteroid Shelters Home Pvt. Ltd, revised its Resolution Plan vide its email dated 11.12.2020, thereby agreeing to bear the CIRP expenses incurred in future post approval of resolution plan by the CoC over and above the resolution amount provided in the resolution plan. The Resolution Plans of the PRAs i.e., M/s. Asteriod Shelters Home Pvt. Ltd. and M/s. A.N. International Import & Export were placed for voting before the members of the CoC.

9. The Members of the CoC rejected the Resolution Plan submitted by M/s. A.N. International Import & Export on putting to vote, however, approved the Resolution Plan offered by M/s. Asteriod Shelters Home Pvt. Ltd. (SRA) with 98.10% voting share. The resolution passed is as follows:

“RESOLVED THAT the Resolution Plan offered by M/s. M/s. Asteriod Shelters Home Pvt Ltd for Rs. 9 Crore be and is hereby approved under section 30(4) of IBC”

10. The Applicant issued the letter of Intent dated 16.12.2020 in favour of the SRA and informed that an amount of Rs. 90,00,000 (Rupees ninety lakhs), is to be deposited as Performance Security within 7 days of passing

of the Resolution Plan, which was deposited by the SRA with Punjab National Bank on 16.12.2020 and on 16.06.2022 for an amount of Rs. 94,45,549 (Rupees ninety four lakhs forty five thousand five hundred forty nine). The Confirmation of Deposit is placed on file at page 245 of the application and is marked as Annexure-A-17 and at Pg 8 of the filing 'Any other document' dated 01.07.22.

11. The Resolution Professional/Applicant has filed an additional affidavit dated 20.05.2022 and deposed that during the CIRP of the Corporate Debtor the deponent has not received any claim from the Employee Provident Fund Organization, Employee's State Insurance Corporation and Claims pertaining to gratuity.

12. The SRA has filed additional affidavit dated 20.05.2022 and deposed that the SRA is engaged in real estate business and is desirous of diversifying business activity by venturing into media sector. It is further stated that the SRA will seek renewal of all existing broadcasting license and other approvals already granted in the name of the Corporate Debtor or will try to obtain new license from the Ministry of Information and Broadcasting and it is also planning to promote One District One Product Scheme to promote MSMEs in India. The SRA has deposited the Earnest Money Deposit of Rs. 5,00,000 (Rupees Five Lakh).

OVERVIEW OF THE RESOLUTION PLAN

The proposed Resolution Plan provides as follows:

I. The SRA i.e., M/s. Asteriod Shelters Home Pvt. Ltd is a private limited company incorporated on 19.11.2012, registered with the Registrar of Companies, Delhi and is engaged in the business of real estate. The authorized share capital is Rs 32,00,00,000 (Rupees Thirty-Two crore) and its paidup capital is Rs. 19,68,00,000 (Rupees nineteen Crore Sixty-eight Lakh).

II. The Cause of Default for the Corporate Debtor is that it continued to incur losses due to which it had to shut its operations since three years. Pursuant to the death of Mr. JK Jain (Director & Founder of Jain Group),

the management of the Company became instable which led to the downfall of the Corporate Debtor and it did not keep itself abreast with the latest technology. The plan for addressing the default is that the SRA will take over the Corporate Debtor completely by way of mix of Equity/Preference Shares, Secured loans/unsecured loan/debentures from the Resolution Applicant. The directors of the SRA shall form the board of directors of the newly constituted JSL (Corporate Debtor) which will ensure that the SRA has independent control over the Corporate Debtor so as to ensure proper functioning and management of the Corporate Debtor as per its own style and structure.

III. The Corporate Debtor shall stand automatically delisted from the stock Exchanges in terms of the Delisting Regulations from the effective date

IV. The terms of the Resolution plan shall not affect the rights of the Corporate Debtor to recover any amount due to the Corporate Debtor from any third party including any Related Parties of the Corporate Debtor and there shall be no set-off of any such amounts recoverable by the Corporate Debtor against any amount paid by the Corporate Debtor or any liability extinguished pursuant to this Resolution Plan.

V. The management and control of the business of the Corporate Debtor during the term of the Resolution Plan shall be as follows:

- (i) The Reconstituted Board of the Corporate Debtor will be constituted within three (3) business days after the approval.
- (ii) On and from the effective date the Corporate Debtor will be managed and controlled by the Reconstituted Board which shall work in coordination with the Monitoring Committee upto closing date.
- (iii) The SRA will appoint suitably qualified and experienced persons as Chief Executive Officer, Chief Financial Officer, other Key Managerial Personnel (KMP) for operations of the Corporate Debtor and the other KMP of the Corporate Debtor.

VI. The SRA is proposing to infuse Rs. 09.00Crore (Rupees Nine Crores) to settle the dues, acquire the Corporate Debtor and to execute the Resolution Plan. As on 20.09.2020, the total claims filed by the Financial Creditors is Rs. 576,19,41,357 (Rupees Five Hundred Seventy-Six Crores Nineteen Lakhs Forty-One Thousand Three Hundred and Fifty Seven) out of which the entire amount has been admitted by the Resolution Professional. The total claim filed by the Operational Creditors is Rs.33,10,098 (Rupees Thirty-Three Lakh Ten Thousand Ninety-Eight) out of which the entire amount has been admitted by the Resolution Professional. The total claims filed by the Employees of the Corporate Debtor (who have court decree in their favour) aggregate to Rs. 17,90,825 (Rupees Seventeen Lakhs Ninety Thousand Eight Hundred Twenty-Five) out of which the entire amount has been admitted by the Resolution Professional.

VII. The details of the proposed distribution of Rs. 9 crore in accordance with the Section 53(1) of IBC, is extracted overleaf:

The details of the proposed distribution of the Plan Value [i.e INR 9 Cr.] in accordance with sub-section (1) of Section 53 of the IBC in the event of a liquidation of the Corporate Debtor is tabulated as under:

Sr. No.	Order of Priority	Distribution (in accordance with sub-section (1) of Section 53 of the IBC)	Amount Claimed (INR)	Amount Receivable (INR)
1.	S.53 (1) (a)	Insolvency Resolution Process Costs	.	Full Payment
2.	S.53 (1) (b) (i)	Workmen's dues for the period of twenty four months preceding the liquidation commencement date	NIL	NIL
3.	S.53 (1) (b)(ii)	Debts owed to secured creditor in the event such secured creditor has relinquished security in the manner set out in S. 52	565,25,70,285/-	INR 8,82,09,175/- [Subject to deduction of CIRP Costs on actuals]
4.	S.53 (1) (c)	Wages and any unpaid dues owed to employees other than workmen dues for the period of twenty four months preceding the liquidation commencement date	7,97,75,243/-	NIL
5.	S.53 (1) (d)	Financial debts owed to	10,93,71,072/-	NIL

		unsecured creditors		
6.	S.53 (1) (e) (i)	Any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date	NIL	NIL
6.	S.53 (1) (e)(ii)	Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest	NIL (assuming that no secured creditor has enforced its security interest)	NIL (assuming that no secured creditor has enforced its security interest)
7.	S.53 (1) (f)	Any remaining debts and dues	33,10,098/-	NIL
8.	S.53 (1) (g)	Preference shareholders, if any	NIL	NIL
9.	S.53 (1) (h)	Equity shareholders or partners, as the case may be	NIL	NIL

VIII. The financial proposal as provided under the plan is as under:

Liabilities and borrowings towards Secured Financial Creditors				
Sr. No.	Name of the Financial Creditor	Claim Submitted	Claim Admitted	Amount proposed
1	Stressed Asset Stabilization Fund	Rs.565,25,70,280	Rs. 565,25,70,280	Rs. 8,82,09,175 [Subject to deduction of CIRP costs on actuals]
Total		Rs. 565,25,70,280	Rs. 565,25,70,280	Rs. 8,82,09,175

			[Subject to deduction of CIRP costs on actuals]
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Liabilities and borrowings towards Financial Creditors (Un-Secured)				
Sr. No.	Name of the Financial Creditor	Claim Submitted	Claim Admitted	Amount proposed
1.	Standard Chartered	Rs. 10,93,71,072	Rs. 10,93,71,072	Nil
Total		Rs. 10,93,71,072	Rs. 10,93,71,072	Nil

Liabilities towards Operational Creditors				
Sr. No.	Name of Operational Creditor	Claim Submitted (Rs.)	Claim Admitted (Rs.)	Amount proposed (Rs.)
1	BSE Limited	24,14,478	24,14,478	Nil
2	KVMR consultancy Services Pvt. Ltd.	8,85,000	8,85,000	Nil
3	SS Consultancy	10,620	10,620	Nil
Total		33,10,098	33,10,098	Nil

IX. The extract of the distribution of the total consideration against the liabilities is as under:

IV. THE RESOLUTION PLAN AMOUNT DISTRIBUTION

In view of the liabilities of the CD, as stated hereinabove, the RA proposes to infuse a total amount of INR 09 crores into the CD under the instant resolution plan. A break-up of the aforesaid total consideration, as against the afore-mentioned liabilities of the CD, is as under:

S. NO	Creditors / Expenses	Amount (in INR.)	Remarks
1	CIRP Expenses	Full Payment	The CIRP Costs will be paid in full and in priority to any other creditor of the Company / CD. The RA has proposed to infuse INR 09 crores for the CD. Thus, after adjusting the CIRP cost from the infused amount, the balance amount will be utilized for payment to the creditors and other stakeholders. The payment of CIRP cost shall be paid to the Resolution professional within 30 days of approval of resolution plan by the Adjudicating Authority.
2	Financial Creditor – (Secured) Stressed Assets Stabilization Fund	8,82,09,175/- [Subject to deduction of CIRP Costs]	Amount may vary after adjusting the CIRP cost. The payment of CIRP cost shall be paid to the Resolution professional within 90 days of approval of resolution plan by the Adjudicating Authority.
3	Operational Creditors	NIL	
4	Employees	17,90,825/-	The said employees shall be paid within 30 days of approval of
			resolution plan by the Adjudicating Authority.
	Total	INR 9,00,00,000/-	

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X. The SRA has filed an affidavit dated 10.05.2022 and deposed that amount payable to the employees of the Corporate Debtor has been increased from Rs.17,90,825 to Rs. 40,00,000 within a period of 30 days from the approval of the Resolution Plan. The extract of the amended chart w.r.t., the amount payable is as follows:

CIRP Process Cost	Full Payment
Financial Creditors(Secured) Stressed Assets Stabilization Fund	Rs. 8,82,09,175 [Subject to deduction of CIRP Cost]
Operational Costs	NIL
Employees	Rs. 40,00,000
Total	Rs. 9,22,09,175

XI. The extract of the sources of fund as provided under the Resolution Plan is as follows:

SCHEDULE - X: SOURCE OF FUNDS:

- I. The offered amount i.e. INR 09 Crores will be brought by Resolu Applicant through a mix of Debt and Equity.

Release of Funds:

As far as the release of the funds is concerned, we agree as follows:

No	Details	Amount INR (In Crores)
1	Within 30 calendar days from the final order passed by the Hon'ble NCLT, therein approving the instant Resolution Plan	Payment of CIRP costs + INR 17,90,825 i.e payment to employees who have court decree in their favour
2.	Within 90 calendar days from the final order passed by the Hon'ble NCLT, therein approving the instant Resolution Plan	Rs. 9 crores minus CIRP expenses and payment to the employees with court decree i.e Rs. 17,90,825/-
	Total	09,00,00,000/-

1. The proposed infusion amount shall be advanced by the RA on or before the lapse of 90 calendar days from the Effective Date. In regard to the aforesaid, the RA shall infuse an amount aggregating to INR 09 Crore (the "Equity Commitment") in the Company / CD by way of debt and equity.
2. The Board of the Company / CD shall pass the following resolutions unanimously on the Effective Date:
 - (i) Issue and allot the Equity Shares at face value and without premium to the RA and its nominees, respectively in dematerialized form, free of all Encumbrances against the Equity Commitment (or such part thereof as determined by the Resolution Applicant) in deemed compliance of relevant provisions of the CA 2013. The nominees will hold one Equity Share each in their name jointly with the Resolution Applicant;
 - (ii) avail any debt (as infused by or arranged by the RA);
 - (iii) authorize the directors, company secretary and any other authorized person of the Company / CD for making of entries in, and updating, the register of shareholders/directors of the Company / CD to reflect the aforesaid changes and file requisite forms and returns on behalf of the Company / CD with the jurisdictional Registrar of companies;
3. Simultaneous with the Capital Reduction, the Equity Shares shall be issued to the Resolution Applicant, as the case may be in the manner specified in this plan.

XII. The Resolution Professional has filed two additional Affidavits dated 01.07.2022 is filed by wherein it is stated that the SRA proposes to infuse an amount an amount Rs. 5,00,000 as Equity (shares of Rs. 10 each) and remaining amount of Rs. 9,17,09,175 in the form of Debt/Unsecured Loan, alongwith the amended Form H wherein at clause 7, it is stated as under:

"the earlier the SRA had earmarked an amount of Rs. 0.18 lacs to the Employees of the Corporate Debtor. However, in order to further protect the interest of several employees of Corporate Debtor, the SRA vide an affidavit dated 10.05.2022, has increased the amount payable to the Employees of the Corporate Debtor from Rs. 0.18 Lacs to Rs. 0.40 Lacs. In view of the above, the Resolution Professional is filing the present revised Form -H."

The extract of Clause 7 of Form H is reproduced as overleaf:

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7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs.crs)

Sl. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Dissenting Secured Financial Creditors	-	-	-	-
2	Other Secured Financial Creditors	565.26	565.26	8.82	1.56
3	Unsecured Financial Creditors Related Parties*	-	-	-	-
4	Other Unsecured Financial Creditors	10.93	10.93	0	0
5	Operational Creditors	.33	.33	0	0
	Government	-	-	-	-
	Workmen	-	-	-	-
	Employees*	.18	.18	.40	222
6	Other Debts and Dues	-	-	-	-
	Total	576.7	576.7	9.22	-

* Earlier the Successful Resolution Applicant had earmarked an amount of Rs. 0.18 Lacs to the Employees of the Corporate Debtor. However, in order to further protect the interest of several employees of Corporate Debtor, the Successful Resolution Applicant vide an affidavit dated 10.05.2022, has increased the amount payable to the Employees of the Corporate Debtor from Rs. 0.18 Lacs to Rs.0.40 Lacs. In view of the above, the Resolution Professional is filing the present revised Form – II.

XIII. The SRA proposes to pay **NIL** amount in full and final settlement to the dissenting financial Creditor i.e., Standard Chartered bank, in accordance with Section 53 (1) of the IBC.

XIV. The term and implementation Schedule of the proposed Resolution Plan is extracted overleaf:

XIII. TERM AND IMPLEMENTATION SCHEDULE

The RA proposes to use all efforts as may be commercially reasonable to implement this Resolution Plan within a period of 180 Business Days from the Effective Date of Plan Approval Order in accordance with the Implementation Schedule and other terms contained in this Resolution Plan. It may be appreciated that the total infusion amount under the instant plan, being proposed by the RA is INR 09 crores.

The RA proposes to implement of the Resolution Plan in the following manner ("Implementation Schedule"):

Step	Action	Time
Step 1	Approval Date: Approval of the plan by the NCLT	T
Step 2	Effective Date [Of NCLT Approval] <ul style="list-style-type: none"> - Reconstitution of the Board of the Company - Appointment of the Monitoring Committee - The Capital Reduction shall become effective 	T + 3
Step 3	Infusion for the purposes of Payment of CIRP Costs	T + 45
	Payment of CIRP Costs	T + 50
	Infusion for the purposes of Payment to Creditors other than Financial Creditors	T + 90
	Payment to Creditors other than Financial Creditors	T + 90
	Closing Date <ul style="list-style-type: none"> - Infusion of/payment of the remaining consideration amount by the RA to be paid to FC's [i.e. INR 09 cr. - [CIRP Costs] - [Payment to Creditors other than Financial Creditors]]. 	T+90 D*

As

	- Other actions specified in this plan shall take effect which do not have a specific timeline	
Step 4	Further time for implementation the instant plan in case of factors beyond the scope of the RA, such as COVID-19 or any other offshoot thereof or any uncontrollable or unusual event	T + 90 D* + 90 D*

D* = Calendar Days

The proposed infusion amount of INR 09 cr shall be advanced by the RA on or before the lapse of 90 calendar days from the Effective Date.

It is also apposite to note that in the present set of unique circumstances wherein the commercial activities have come to a complete standstill owing to the spread of COVID-19, the RA proposes to seek a buffer time of 90 calendar days over and above the timeline specified till Step 3, since capital infusion is not always solely dependent upon the net worth of an investor. Rather, the same is vastly affected by the market forces and ongoing commercial atmosphere. Keeping the aforesaid in mind, the RA seeks a buffer time of further 90 days for successfully implementing the instant resolution.

XV. The director of the SRA i.e., Mr. Pradeep Kumar Agarwalla has placed on file an affidavit in compliance of Section 29A of IBC and deposed that the SRA and any connected person as per explanation I provided under Section 29A of the IBC is not an undischarged insolvent or is not identified as a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or doesn't have an account or an account of a Corporate Debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India under the Banking Regulation Act, 1949 or guidelines of a financial sector regulator issued under any other law or have not been convicted for any offence punishable with imprisonment for 2 years or more under any Act or have not been disqualified to act as a director under the Companies Act, 2013 or have been prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities market or has not indulged in preferential transaction or undervalued transaction or

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fraudulent transaction in respect of which an order has been made by the Adjudicating Authority under the IBC or have not executed a guarantee in favour of a creditor in respect of a Corporate Debtor against which an application for insolvency resolution made by such creditor has been admitted under the IBC and no such guarantee has been invoked by the creditor or remains unpaid in full or part or not subject to any disability, corresponding to clauses (a) to (h) of Section 29A, IBC, under any law in a jurisdiction outside India. The SRA unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and its connected persons as per the provisions of the IBC and the rules and regulations framed thereunder to submit a Resolution Plan and that it shall provide all data, documents and information as may be required to verify the statements made under the affidavit.

IA-2437/2021

SUBMISSIONS OF M/S. SCINDIA POTTERIES AND SERVICES PRIVATE LIMITED

13. This application is filed under Section 60 (5) of IBC by M/s. Scindia Potteries and Services Private Limited (SPSPL) stating that it is the owner of the Property and had granted a revocable permission to one Dr. J.K Jain in the year 1983, for exclusively using the Property for residential purpose. The eviction notice dated 19.01.2001 was issued to Dr. J. K Jain, thereby revoking the permission granted in the year 1983; however, on failing to vacate, an eviction suit was filed by SPSPL, which was decreed in its favour and against Dr. J. K Jain and all other companies existing on behest of Dr. J. K Jain at the said property. Further, a money decree dated 17.07.2017, for an award of mesne profits was passed in favour of SPSPL by Ld. Patiala House Court.

14. The grievance of the SPSPL is that in case it is not allowed to intervene in the present proceedings, irreparable harm and injury shall occasion upon it due to the Resolution Plan, and which should not do away with the obligations of the Corporate Debtor as the Corporate Debtor has no right, title or interest in the Property inter alia the Decree dated 17.07.2017

and there is no disclosure of the pending appeal filed against the Decree before the Hon'ble High Court of Delhi, where no stay on the execution of the Decree has been granted. The letter dated 06.02.2021, was sent to the Resolution Professional and the members of the CoC informing that the Corporate Debtor has no right, title or interest in the Property and that the amount is due from the Corporate Debtor.

15. The Resolution Professional moved an application before the Ld. Executing Court for stay on account of moratorium issued under Section 14 of the IBC, which was allowed vide Order dated 20.03.2021. The moratorium protects the legal possession of the property by the Corporate Debtor and in case the property does not belong to the Corporate Debtor then the Rule -*jus in personam* will be applicable and therefore, the Property should go to *bona fide* and legal owner i.e., SPSPL. It is a settled law as enshrined in the Latin maxim *nemo dat quod non habet* that no one can give what they do not have and in context of the transfer of property, it means that no one can transfer a better title than he himself has, thus the Property of SPSPL cannot be transferred to the Resolution Applicant neither can the execution proceedings be extinguished or sought to be extinguished. Further, the money decree which is in favour of SPSPL also cannot be extinguished.

REPLY/SUBMISSIONS OF THE RESOLUTION PROFESSIONAL

16. The Resolution Professional has filed reply dated 05.06.2021, to the application IA-2437/2021 and submitted that the application filed by SPSPL is completely misconceived and hence deserves to be dismissed. The SPSPL has no locus to seek a copy of the Resolution Plan as it is neither a stakeholder nor a creditor of the Corporate Debtor and it is admitted that no claim has been filed in the CIRP of Corporate Debtor, hence SPSPL not being a stake holder is not entitled to the copy of the Resolution Plan. The Property is not an asset of the Corporate Debtor which is an admitted fact and thus, no disclosure regarding the said Property is being made by the Resolution Professional in the Information Memorandum of the Corporate Debtor. Further the intention of the legislature and the objective of the Code i.e., resolution of the Corporate Debtor is clear that the Resolution Plan can

only provide the transfer of all or part of assets of the Corporate Debtor and therefore, the Property not being an asset of the Corporate Debtor cannot be transferred to the SRA or dealt by the CoC under Section 30(4) of the IBC. The Regulation 37 of the CIRP Regulations provides for only transfer of assets of the Corporate Debtor and not the assets owned by third party. Thus, when the law itself envisages that the properties of the Corporate Debtor can only be sold or transferred under the Resolution Plan then no occasion arises in filing the application for seeking copy of the Resolution Plan.

17. The Property does not form part of the Information Memorandum of the Corporate Debtor as the Resolution Professional is envisaged with a duty to prepare an Information Memorandum in terms of Section 25 (g) read with Section 29 of the IBC. Further, in terms of the Regulation 36 of the CIRP Regulations only the properties of the Corporate Debtor can be included in the Information Memorandum and hence, the Resolution Plan submitted under section 30 of IBC cannot in any manner transfer or deal with the property which is not part of the Information Memorandum.

18. The prayer for possession of the Property is not maintainable as the same is already a subject matter before the Ld. Executing Court and in case the SPSPL is aggrieved by the Order dated 20.03.2021 passed by the Ld. Executing Court the appropriate remedy is to prefer an appeal against the said Order, therefore, by way of this application SPSPL cannot seek challenge of the Order. RP has referred to the well settled principle of law i.e., the Doctrine of colorable legislation, which means that what cannot be done directly cannot be done indirectly. The Property is neither part of the Information Memorandum nor the said Property is part of the Resolution Plan of the Corporate Debtor and by virtue of Section 14(1) (d) of the IBC, the SPSPL cannot take possession of the said Property till the moratorium is lifted or the Resolution Plan is approved.

19. The SPSPL has not come with clean hands as it has concealed material facts knowingly and has deliberately indulged in dishonesty for

wrongful and malafide gain to ask for status quo/stay against the Resolution Professional. The application filed by SPSPL was dismissed by this Adjudicating Authority vide Order dated 09.02.2021 on the ground that moratorium is in force over the assets of the Corporate Debtor, and it was also clarified that if SPSPL is the owner of the Property, it is at liberty to bring all necessary facts before the Ld. Executing Court. SPSPL is seeking similar relief which is already been decided by this Adjudicating Authority and shall operate as *res judicata* to this application.

20. The movable assets on the said Property belong to the Corporate Debtor and upon approval of the Resolution Plan, the same shall be removed. Further, the Corporate Debtor is in possession of the said property and in terms of section 14 of the IBC the Corporate Debtor cannot be dispossessed of the Property, thus the relief sought is not maintainable.

REJOINDER BY SPSPL

21. SPSPL has filed rejoinder dated 06.08.2021 and submits that the warrants of possession have been issued by the Ld. Executing Court much prior to the commencement of CIRP, pursuant to a Decree of Eviction in favour of SPSPL and against the Corporate Debtor. Further, reliance has been placed on various judgments, some of which are as follows:

21.1.1.1. In the matter of ***Power Grid Corporation of India Vs. Jyoti Structures Ltd, LSI-85-HC-2017-(DEL)***, while examining the scope of moratorium under Section 14 of IBC has held that Proceedings under Section 14 do not mean all proceedings and that the use of narrower term against the Corporate Debtor in Section 14 (1) (a) as opposed to the wider phrase by or against the Corporate Debtor used in Section 33(5) of the IBC further makes it evident that Section 14 (1) (a) is intended to have restrictive meaning and applicability. Therefore, to disallow the SPSPL from seeking possession of their own property which does not form a part of the assets of the Corporate Debtor would be affording wider interpretation to Section 14 of IBC than intended by the Code and would be miscarriage of justice towards SPSPL.

21.1.1.2. In the matter of *Schweitzer Systemtek India Private Limited vs. Phoenix ARC Private Limited* 52 NCLAT, New Delhi Company Appeal (AT) (Insolvency 129/2014 dated 09.08.2017, wherein it is noted that moratorium in Section 14 of IBC has no application on the properties which are beyond the ownership of the Corporate Debtor.

CONCLUSION

22. We have heard the parties and carefully perused the documents. The issue w.r.t. the handing over the possession of the Property has to be dealt with first. In this regard the definitions provided in the resolution plan submitted by the SRA are to be referred, which read as under:

- (i) Assets- “All assets (tangible and intangible), properties, goods, rights, benefits and privileges of the Company/ corporate Debtor”.
- (ii) Secured Immovable Assets- “all of the immovable properties (including leasehold rights in case of leasehold land) and assets of the Corporate Debtor, present and future”.
- (iii) Secured Movable Asset- “all of the movable properties and assets of the corporate Debtor, present and future”.

Perusal of the above stated definitions, makes it is clear, that the scope of the Resolution Plan is limited to ‘only the assets of the Corporate Debtor’ and not ‘assets of any third party’, thus, the SRA is not making any claim over the Property. Further, it is not in dispute that the Corporate Debtor is not the owner of the Property, and therefore, it was not included by the Resolution Professional as an ‘asset’ in the Information Memorandum and is not part of the Resolution Plan as well. In this regard reference can be made to the Regulation 37(a) of CIRP Regulations which reads as under:

“37. Resolution Plan.

A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following: -

- (a) transfer of all or part of the **assets of the corporate debtor** to one or more persons;”*

In view of the above stated provision, the Resolution Plan can include only the assets of the Corporate Debtor and transfer only those assets. Therefore, the Resolution Professional has taken proper action by not including the Property in issue in the Information Memorandum in terms of the provisions of IBC, therefore, the Resolution Professional is directed to handover the possession of the Property to SPSPL, forthwith from the date of this Order, free of all restraint as it is not part of the 'assets of the Corporate Debtor' and the moratorium ceases to exist with effect from the date of this Order.

23. In terms of Regulation 39(4) of the CIRP Regulations, the Resolution Professional has filed compliance certificate in Form-H which is annexed as **Annexure A-16** from page 235-243, as revised at pages 1-7 of the filing 'Any other document' dated 01.07.2022 . It has been submitted in the application and in Form H duly certified by Resolution Professional that the final Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016 and does not contravene any of the provisions of the law for time being in force. The term of the Resolution Plan is 90+90days.

24. The list of financial creditors of the CD being member of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for /Dissented/Abstained)
1.	Stressed Assets Stabilization Fund	98.10%	Approved
2.	Standard Chartered Bank	1.90%	Abstained from voting
	TOTAL	100%	

25. As a sequel to aforesaid discussions, we are satisfied that all the requirements of Section 30(2) are fulfilled. In respect of compliances regarding CIRP Regulations especially Regulations 38 and 39, the Resolution Professional has certified in Form-H and explained in detail that the Resolution Plan has complied with all the required Regulations.

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26. For the reasons discussed above, in our considered view, the Resolution Plan fulfils the requirement as referred in Section 30(2) of the Code and there are sufficient provisions in the Plan for its effective implementation as required under the proviso of Section 31(1) of the Code. The Resolution Plan has been approved by CoC with majority voting of 98.10%. Many judgments of Hon'ble Supreme Court and Hon'ble NCLAT have treated the commercial wisdom of CoC as final. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan.

27. Accordingly, we hereby **approve** the Resolution Plan dated 15.09.2020 along with Addendum dated 24.09.2020, which was earlier approved by the CoC by the majority vote of 98.10% voting share.

28. On perusal of the documents for the Resolution Plan, Form H- Compliance Certificate, item 15 provides the details of Section 66 or avoidance application filed/pending, any preferential transaction under Section 43, undervalued transaction under Section 45, extortionate credit transactions under Section 50, fraudulent transaction under Section 66, the Resolution Professional has submitted in the revised FORM H dated 08.07.2022 that based on the clarifications received from the ex-directors the Resolution Professional formed an opinion that there exists no transactions which fall within the ambit of Section 43, 45, 50 or 66 of the IBC. The item 15 of Form H- Compliance Certificate is extracted overleaf :

15. Provide details of section 66 or preference application filed / pending.

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	Forensic audit report was received by Resolution Professional on 27.08.2020 and same was also shared with ex-directors for their clarifications on 24.11.2020. Based on the clarifications received from ex-directors, the Resolution Professional formed an opinion that there exists no transaction which falls within the ambit of Section 43, 45, 50, or 66 of the Code.	NA	NA
2	Undervalued transactions under section 45	Forensic audit report was received by Resolution Professional on 27.08.2020 and same was also shared with ex-directors for their clarifications on 24.11.2020. Based on the clarifications received from ex-directors, the	NA	NA

As

		Resolution Professional formed an opinion that there exists no transaction which falls within the ambit of Section 43, 45, 50, or 66 of the Code.		
3	Extortionate credit transactions under section 50	Forensic audit report was received by Resolution Professional on 27.08.2020 and same was also shared with ex-directors for their clarifications on 24.11.2020. Based on the clarifications received from ex-directors, the Resolution Professional formed an opinion that there exists no transaction which falls within the ambit of Section 43, 45, 50, or 66 of the Code.	NA	NA
4	Fraudulent transactions under section 66	Forensic audit report was received by Resolution Professional on 27.08.2020 and same was also shared with ex-directors for their clarifications on 24.11.2020. Based on the clarifications received from ex-directors, the Resolution Professional formed an opinion that there exists no transaction which falls within the ambit of Section 43, 45, 50, or 66 of the Code.	NA	NA

29. It is clarified that Section 30(2)(f) of the Code mandates that the Resolution Plan should not be against any provisions of the existing law. The Resolution applicant, therefore, shall adhere to all the applicable laws for the time being in force under the proposed Resolution Plan, whether or not specifically provided therein. As regards the reliefs and concessions sought in the Resolution Plan, same will be entitled only as per law.

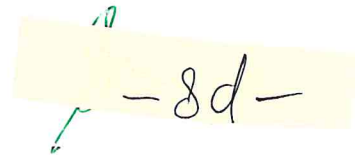
30. It is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.

31. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded on its database in terms of Section 31(3)(b) of the Code.

32. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this Order.

33. The IA-2437/2021 in CP (IB)-244(PB)/2019, is **allowed** to the above stated extent.

34. All other IAs pending if any, shall stand disposed in terms of above Order.

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RAMALINGAM SUDHAKAR
(President)

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AVINASH K. SRIVASTAVA
(Member Technical)