
INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

IN THE MATTER OF :

NEW AGE TECHNOLOGY LIMITED, CORPORATE DEBTOR

ON BEHALF OF

- **CORPORATE DEBTOR**
 - **OPERATIONAL CREDITORS**
 - **INTERIM RESOLUTION PROFESSIONAL/ RESOLUTION PROFESSIONAL**
 - **FINANCIAL CREDITORS**
 - **OTHER PARTIES**
-

PETITION NO. ___/2017

ON SUBMISSION TO NATIONAL COMPANY LAW TRIBUNAL

UNDER SECTION 7 OF INSOLVENCY & BANKRUPTCY CODE, 2016

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

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TABLE OF ABBREVIATIONS

<u>Abbreviations</u>	<u>Full Forms</u>
&	And
AHM	Ahmedabad
AIR	All India Reporter
All	Allahabad
Anr.	Another
Art.	Article
AT	Appellate Tribunal
BLRC	Bankruptcy law Reform Committee
Bom.	Bombay
CLA	Company Law Appeal
Co.	Company
CoC	Committee of Creditors
Col.	Colonel
CP	Civil Petition
Del.	Delhi
Didn't	Did not
Doc.	Document
Doesn't/doesn't	Does not
Don't/don't	Do not
Dr.	Doctor
Etc.	Et cetera
GHC	Gujarat High Court
GN	General
G.S.R.	Gazette Statutory Regulations
HDB	Hyderabad Bench
Hon'ble	Honourable

i.e.	That is
IB	Insolvency and Bankruptcy
IBBI	Insolvency and bankruptcy Board of India
IBC	Insolvency And Bankruptcy Code
Ibid.	Ibidium
ILR	Indian Law Review
IM	Information Memorandum
Inc.	Incorporated
Ind AS	Indian Accounting Standard
IRP	Interim Resolution Professional
J./Jus	Justice
LTD./Ltd./ltd	Limited
M/s	Messrs
Mad	Madras
MP	Madhya Pradesh
Ms.	Miss
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
No.	Number
Ori	Orissa
ORS./Ors.	Others
P. or Pg.	Page
Para.	Paragraph
PB/Pun.	Punjab Bench
PVT./Pvt./pvt	Private
Re./Ref.	Reference
REG	Regulation
RP	Resolution Professional

Rs.	Rupees
S./ sec.	Section
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reports
THSPL	Ten Hospitality Service Pvt. Ltd
UNCITRAL	United Nations Commission on International Trade Law
v.	Versus
Viz./viz.	Namely
Vol.	Volume
W	Writ

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37. Sree Metaliks Limited & Anr. v. Union of India & Anr., (Calcutta High Court) writ petition 7144(W) of 2017-07/04/2017
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1. The Insolvency and Bankruptcy Board of India (Resolution Process For Corporate Persons) Regulations, 2016, Notification No. IBBI/2016-17/GN/REG004, Dated November 30, 2016.

2. The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, Vide G.S.R. 1108(E), dated 30th November, 2016.

STATUTES

1. The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

2. Transfer of Property Act, 1882, No. 4, Acts of Parliament, 1882 (India).

STATEMENT OF FACTS

New Age Technology Limited is the fourth largest manufacturer of solar panels in the world and the largest in India, its registered office is in New Delhi and the Corporate Office is in Mumbai. The company has few movable and immovable properties which is further given in lease.

The promoters of New Age in 20015, diversified into hotel and Real estate business, setting up a company Radha Hospitality Private Limited (RPHL). Then New Age entered into a JV company with RPHL. Promoters also acquired Ten Hospitality Services Pvt. Ltd. (THSPL) a Singapore based Company.

New Age took financial assistance from a consortium of Banks in year 2008 during setting up Gujarat plant. A total term loan and capital assistance of Rs 2196 crores was borrowed from three banks- Indo Bank, RST bank, People's Bank. Working assistance of 195 crores was taken from North India Bank.

The 85% of New Age's client base is formed by two major clients which are Dan Morris Energy Inc. (morris) and Texas Power International (TPI), both US based companies. These two companies suffered legal consequences and had to shut down plants. Morris asked New Age to put the orders in hold while TPI stated its inability to continue.

New Age now suffered a financial crisis, they passed resolution to sell Mumbai house. The custom department attached the bank account in Mumbai and for this high court rejected the petition of New Age. Therefore, New Age defaulted the Banks.

RST Bank filed an application before NCLT under the Insolvency and Bankruptcy code, 2016 and nominated Mr. S Mahesh as IRP. NCLT accepted the application and declared the moratorium on 5th April 2017 and appointed Mr Amit Thakur as IRP.

To take possession of the Gujarat plant IRP appointed XYL securities and preserved the unit. The supplier of EVA film, JSEW also refused to further supply EVA films as payment was due. IRP asked the lease rental amount from peoples bank which they already adjusted in clearing their debt.

Marvel Organics one of the financial creditor filed the claim without any document in support. Their claim of 20 crores reached to 136 crores. IRP appointed two valuers on 8th April 2017, KGB valuers and AKP valuers. But they were related to New Age.

The Public Depositors also filed their claims which were however rejected by IRP on the ground that they do not fall under 'operational creditors'.

IRP in order to take possession of the flat in Mumbai wrote director for the possession who did not respond, so this issue was taken to NCLT by the IRP.

Xi Mao a Chinese company refused to supply raw material to New age before it clears the debt that is 10 crores.

The committee of creditors was constituted where RHPL was not a part and RHPL objected to its exclusion from CoC. Coc appointed Mr Divesh Sharma as the Resolution Professional which was confirmed by the board.

The lease with regard to the guest house sent a notice to RP and asked for renewal for next 3 years with subject to 30% increase in the amount. The RP did not renew the lease and terminated it.

The subsidiary of New age that is THPSL, insolvency proceedings were initiated against it. Mr Chew John requested RP to put hold on his insolvency process till the process of THPSL gets completed. The Information Memorandum was prepared by RP and invited expression of interest for the resolution plan. The Blue Plaza, Thailand based hotel, JKV pvt Ltd and promoters of new age requested the copy of IM.

The resolution plan was submitted separately by promoters of new age and the blue plaza. During CoC meeting objections were pointed out by RP as New age failed to identify the source of funds to pay dissenting creditors. The blue plaza had proposed the plan of repayment over 5 years.

28th September 2017, in the meeting of committee of creditors, the plan was approved with modification that repayment will be made within 5 years than 10 years. The resolution professional then filed the plan with the NCLT.

ISSUES RAISED

ISSUES ON BEHALF OF CORPORATE DEBTOR

1. Whether the application filed by the RST Bank before the NCLT under the Insolvency and Bankruptcy Code, 2016 (IBC) is maintainable?
2. Whether the appointment of RP is correct or not?
3. Whether the termination of the lease agreement before its end by the RP is wrong?

ISSUES ON BEHALF OF OPERATIONAL CREDITORS

1. Whether examination of Resolution plans, during the CoC meeting correct?

ISSUES ON BEHALF OF RESOLUTION PROFESSIONAL/ IRP

1. Whether appointing security services for preserving the unit of New Age is justified act of Mr. Amit Thakur, interim resolution professional?
2. Whether People's Bank can adjust the lease rental amount towards its dues?
3. Whether the application filed before the NCLT, seeking appropriate orders for taking possession of the Mumbai Flat maintainable or not?
4. Whether JKL Pvt ltd is entitled to receive a copy of Information Memorandum?

ISSUES ON BEHALF OF FINANCIAL CREDITORS/CREDITORS COMMITTEE

1. Whether the appointment of Mr. Amit Thakur as the Interim Resolution Professional to carry out the functions of the Corporate Debtor's Company justified as per The Insolvency and Bankruptcy Code, 2016?
2. Can the appointed Interim Resolution Professional (IRP), Mr. Amit Thakur include Marvel Organics Ltd., one of the financial creditors of New Age in the Committee of Creditors without it filing the documents for its claim?
3. Is RHPL (Radha Hospitality Pvt. Ltd.) part of the Committee of creditors (CoC) or not? Are there any defects in the constitution of committee of Creditors?

ISSUES ON BEHALF OF OTHER PARTIES (Public Depositors, Director, JKL)

- 1. Whether IRP can reject the claims of public depositors on the ground that they do not fall within the purview of operational creditor?**
- 2. Whether the Singapore proceedings will be recognized before the NCLT or not?**

SUMMARY OF ARGUMENTS

ISSUES ON BEHALF OF CORPORATE DEBTOR

1. Financial Creditors submit that the application is maintainable before NCLT as default has occurred, Application is complete and there are no disciplinary proceedings against the proposed IRP. Corporate Debtors argue that the application is not maintainable on the grounds of natural justice, incomplete application procedure.
2. The appointment of the Resolution professional is proper as it is done with due procedure as mentioned in section 22 of the IBC, 2016.
3. The appointment of the Resolution professional is proper as it is done with due procedure as mentioned in section 22 of the IBC, 2016.

ISSUES ON BEHALF OF OPERATIONAL CREDITORS

1. The Resolution Plan doesn't conform to section 30(2) and regulation 39 as it doesn't give priority to CIRP costs and operational creditors. The time period proposed to settle operational creditors is far more than allowed time period, and there is no provision for future management of corporate debtor as well as supervision of the plan.

ISSUES ON BEHALF OF RESOLUTION PROFESSIONAL/ IRP

1. IRP humbly submits that IRP is to manage the operations of corporate debtor as a going concern and "protect and preserve" the value of the property of corporate debtor and for this he can appoint the security to the unit whereas Corporate Debtor argues that IRP acted beyond its power.
2. People's Bank argues that the lease rental amount can be adjusted this act was done before the commencement of insolvency resolution whereas the IRP contends that bank being financial creditor cant act individually and has to comply with the resolution plan.
3. According to Section 54 of the Transfer of Property Act the sale is valid and thus the ownership rights are with director and the corporate debtor does not have ownership rights on this property. Under section 18(1)(f) of the code,2016 it is given that it's the duty of RP to take control and custody of any assets that may or may not be in possession of the corporate debtor hence RP cannot exercise power on it and seek orders for is

possession. But as per Sec.43 this is Preferential transactions adjudicating authority on application made by RP the possession of the Mumbai flat can be taken by the RP for liquidation of assets.

4. The appointment of the Resolution professional is proper as it is done with due procedure as mentioned in section 22 of the IBC, 2016.

ISSUES ON BEHALF OF FINANCIAL CREDITORS/CREDITORS COMMITTEE

1. Interim Resolution Professional contends that his appointment is justified as per Section 16(2) of the Insolvency and Bankruptcy Code, 2016 and Rule 9 (2) of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. However, Corporate Debtor argues that the appointment of Interim Resolution Professional is unjustified as per Section 16(2) of the Insolvency and Bankruptcy Code, 2016.
2. IRP advocates that as per Rule 12 of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, claim of Marvel Organics Ltd. can be included in the list of creditors. Corporate Debtor argues that Marvel should be penalized on the grounds of concealment of material facts.
3. As per the proviso to section 21(2) RHPL is a related party and cannot be given rights of participation, voting in the meeting of CoC and its debt has already been paid. The operational creditors should not be included in the CoC and if they are they do not have the right to participate or vote in the meetings of the CoC.

ISSUES ON BEHALF OF OTHER PARTIES (Public Depositors, Director, JKL,)

1. Public depositors argues that they fall within the meaning of 'financial creditors' and their claims shall be accepted whereas IRP contended that public depositor do not fall within the meaning of operational creditors and rejected their claims.
2. The Singapore proceedings should be recognized as foreign non main proceedings because the main centre of interest of the corporate debtor lies in India not in Singapore. While recognizing such proceeding as per 21(3) of UNCITRAL Model Law on Cross-Border Insolvency (1997) the court should not give unnecessarily broad powers that such relief should not interfere with the administration of main proceeding.

ARGUMENTS ADVANCED

ISSUES ON BEHALF OF CORPORATE DEBTOR

1. **WHETHER THE APPLICATION FILED BY THE RST BANK BEFORE THE NCLT UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC) IS MAINTAINABLE?**

ARGUMENTS PRESENTED BY FINANCIAL CREDITOR:

It is humbly submitted that in pursuance of Section 6 and 7 of the Insolvency and Bankruptcy Code, 2016 through which a party files an application before this forum. “Initiation of Corporate Insolvency Resolution Process by Financial Creditor”¹ and “Persons who may initiate Corporate Insolvency Resolution Process”.² The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate debtor is located.³ The Hyderabad bench of the National Company Law tribunal laid down three grounds for maintainability of the application under the code in the case of *Canara Bank, Prime Corporate Branch vs. Deccan Chronicle Holdings Limited*⁴ :-

1. **Default:**

It is the most important element for initiating corporate insolvency resolution process against corporate debtor. Default means non- payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be. An application may be filed by the financial creditor under the Insolvency and Bankruptcy Code, 2017 once the default crosses the threshold limit which is one lakh rupees as per Section 4 of the code. The Corporate Debtor defaulted an amount of Rs. 650 Crores which can be proved using documents like annual financial statements of the Corporate Debtor’s Company.

¹ The Insolvency and Bankruptcy Code, 2016, § 7, No. 31, Acts of Parliament, 2016 (India).

² The Insolvency and Bankruptcy Code, 2016, § 6, No. 31, Acts of Parliament, 2016 (India).

³ The Insolvency and Bankruptcy Code, 2016, § 60, No. 31, Acts of Parliament, 2016 (India).

⁴ *Canara Bank, Prime Corporate Branch v. Deccan Chronicle Holdings Limited*, CP No: IB/41/7/HDB/2017.

2. Application should be complete :

Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 specifies that an application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 should be filed in accordance with Form 1 of the Code with the documents, records and the name of a resolution professional proposed to act as the interim resolution professional in respect of the corporate debtor. Rule 8 of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides supplementary documents that may be used to prove the existence of debt that includes financial contract supported by Company's annual financial statements showing that the debt has not been paid, the records available with an information utility. If all the above mentioned documents have been presented before the tribunal that establishes the default by the corporate debtor with the authorized signature, the application by the Financial Creditor is maintainable before NCLT.

3. No disciplinary proceeding against the proposed Resolution Professional :

There should not be any disciplinary proceedings pending against the proposed resolution professional. If the proposed Interim Resolution Professional, Mr. S. Mahesh, the financial creditor's empanelled lawyer is free from any disciplinary proceedings, then the application is maintainable before NCLT.⁵

The Supreme Court in *SL Kapoor vs. Jagmohan*⁶ laid down the exception to the principles of Natural Justice. In instances where disclosure would be prejudice to public interest, statutory exclusion, prompt response is required, purely administrative matters or where the procedural defect would have made no difference to the outcome, the principle of natural justice doesn't apply.

ARGUMENTS PRESENTED BY CORPORATE DEBTOR:

The Corporate Debtor raised objections to the maintainability of the Application before NCLT on various grounds :-

⁵Gurinandan Fasion Pvt. Ltd. v. Pooja Tex-Prints Pvt. Ltd., C.P.No (I.B.)No. 1/9/NCLT/AHM/2017.

⁶ SL Kapoor v. Jagmohan, 1981 AIR 136.

Rule 4 and 6 of the The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 mandates the applicant to dispatch, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the Corporate Debtor. The application remains incomplete. Therefore, the application is not maintainable before NCLT. The Calcutta High Court in the case of *Sree Metaliks Limited vs. Union of India*⁷ said that the Adjudicating Authority has to adhere to the **Principle of Natural Justice**⁸ while deciding an application filed under section 7 of the Code. Court held that a person cannot be condemned unheard as specified in the Section 424(1) of the Companies Act 2013⁹. This same rationale was reiterated by National Company Law Appellate Tribunal in the case of *ICICI Bank vs. Innoventives Industries Ltd*¹⁰, “The insolvency resolution process under Section 7 or Section 9 of IB Code, 2016 have serious civil consequences not only on the corporate debtor company but also on its directors and shareholders in view of the fact that once the application under Sections 7 or 9 of the IB Code, 2016 is admitted it is followed by appointment of an 'interim resolution professional' to manage the affairs of the corporate debtor, instant removal of the board of directors and moratorium for a period of 180 days.” The Corporate Debtor also argued that the following application is against Section 7(4) of the Insolvency and Bankruptcy Code, 2016 which mandates the Adjudicating Authority to ascertain the existence a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor within fourteen days. Hence the application is not maintainable before NCLT.

Corporate Debtor also contend that if the petition has been filed by a person not authorized in accordance with the law or if it lacks material particulars, then the application is not maintainable.

2. WHETHER THE APPOINTMENT OF RP IS CORRECT OR NOT?

ARGUMENTS PRESENTED BY FINANCIAL CREDITORS

Appointment of a Resolution Professional is covered under section 22 of the code, which states that the committee of creditors have an option to continue with the current IRP as an RP or to

⁷Sree Metaliks Limited & Anr. v. Union of India & Anr., (Calcutta High Court) writ petition 7144(W) of 2017-07/04/2017.

⁸ Starlog Enterprises Limited v. ICICI Bank limited, (NCLAT) Company Appeal (AT) No. 5 of 2017-24.05.2017.

⁹ Kaliber Associates Pvt Ltd. v. Mrs. Tripat Kaur., (NCLAT) Company Appeal (AT) No. 52 of 2017-26.05.2017.

¹⁰ ICICI Bank v. Innoventives Industries Ltd, [2017]142SCL11.

appoint a new RP.¹¹ This has to be done in the first meeting of the committee of creditors, which is done in the current case. It was held in *Indian Bank v. Kadevi industries limited*¹², “The first meeting of the committee of creditors, shall be held within 7 days of the constitution of committee of creditors and their decision has to be communicated to the Tribunal as per Section 22 of IBC, 2016.” As per the report of Bankruptcy Law Reforms Committee,

“The first phase of the IRP is completed when the creditors committee is formed, and the window to submit the claims is closed. The creditors committee can apply to the adjudicator to appoint a new RP to replace the interim RP. The RP must be chosen by a majority vote in the creditors committee for the adjudicator to accept the application.”

Section 22 sub section (3)(b) of the code states that where the committee of creditors resolves under sub-section 2 to replace the interim resolution professional, it shall file an application before the adjudicating authority for the appointment of the proposed resolution professional. Sub section (4) states that the adjudicating authority shall forward the name of the resolution professional proposed under clause (b) of sub section (3) to the Board for its confirmation and shall make such appointment after confirmation by the Board. The Board then has to confirm the name within a period of 10 days. Here, Mr Dhivesh Sharma was resolved by the committee of creditors to be the RP. The resolution and henceforth, appointment is correct under section 22 of the code, provided the resolution was passed by the majority of 75% of the creditors amount-wise.

ARGUMENTS PRESENTED BY CORPORATE DEBTOR:

Since the constitution of committee itself was wrong in the first place as it included operational creditors, the resolutions passed by them should be declared void ab initio. So an RP other than the IRP, could be appointed only by a majority vote of 75% of committee of creditors and since the committee of creditors is wrongly formed, it should be re constituted with taking into account the real shares and claims of the creditors and then a fresh resolution should be passed for appointment of a RP.

¹¹ The Insolvency and Bankruptcy Code, 2016, § 22, No. 31, Acts of Parliament, 2016 (India).

¹² *Indian Bank v. Kadevi industries limited*, CP(IB)/10/7/HDB/2017.

3. WHETHER THE TERMINATION OF THE LEASE AGREEMENT BEFORE ITS END BY THE RP IS WRONG?

ARGUMENTS PRESENTED BY CORPORATE DEBTOR:

The Corporate Debtor has a guesthouse in Hyderabad which is taken on lease for 3 years in 2014. The insolvency proceedings started against the corporate debtor in April, 2017. The RP was appointed on April 17, 2017. A notice was given by the lessor regarding the lease coming to an end along with a proposal to renew the lease. The RP, instead of continuing or negotiating for continuance of the lease agreement, terminated the lease agreement with effect from March 31, 2017 which is prior to the termination date. The corporate debtor humbly contends that this is done in breach of the duties of the RP as mentioned in section 25. Section 25(1) states that it shall be the duty of the RP to preserve and protect the assets of the corporate debtor, including the continuing business operations of the corporate debtor.¹³ Termination of the lease that too prior to its termination date, is against the section as it is the opposite of continuing business operations. This act rather implies that the business has to be ended soon. The principle of going concern enshrined in section 25(1) is violated as going concern means that the business has to be conducted in such a manner assuming that it will go on for indefinite period of time and that the business will not be shut down within a foreseeable future. This is also one of the basic principles of accountancy. The principle of going concern is further violated by termination of the lease prior to the termination date. This is way against the going concern principle and shows the preoccupied mindset of the RP to liquidate the corporate debtor. The RP has clearly, by his actions, violated this principle and hence stands in breach of his statutory duty under section 25(1). This transaction cannot be classified as an avoidable transaction under section 46 because it is not within one year. Also this comes as an offence as mentioned in section 70(2) of the code which prescribes for punishment and fine if an insolvency professional deliberately contravenes any provisions of this part. Since he has contravened his statutory duty under section 25(2), he has contravened the provisions of this part and hence is liable for the fine and punishment prescribed in section 70(2) of the code.

¹³ The Insolvency and Bankruptcy Code, 2016, § 25, No. 31, Acts of Parliament, 2016 (India).

ARGUMENTS PRESENTED BY RP

Section 25(1) confers a duty of preservation of assets, including the business operations of the debtor. This talks about the assets including business operation- the definition is not inclusive but suggests in what lines the assets are to be construed. A guest house is not within the use of primary business operation of the corporate debtor and hence terminating the lease agreement for the guest house doesn't amount to violation of statutory duty under section 25. Also, section 25(2)(b) states that the RP has to deal with the third parties as an agent of and for the benefit of the corporate debtor. The RP humbly submits that it was for benefit of the debtor as it would save the corporate debtor from incurring monthly expenses for an activity which is not directly linked to its business in such a vulnerable stage. The principle of going concern has not at all been violated as there can be sale of fixed assets without harming the principle of going concern.

ISSUES ON BEHALF OF OPERATIONAL CREDITORS

1. WHETHER EXAMINATION OF RESOLUTION PLAN, DURING THE CoC MEETING CORRECT?

ARGUMENTS PRESENTED BY RP:

The resolution plan proposed by New Age suffers from multiple defects and hence can't be approved directly, without modifications. Section 30 of the code governs the resolution plan. Section 30(2) states that a resolution plan must have the following requirements:-

- I. Provision for payment of insolvency resolution process cost.
- II. Provision for repayment of debts to operational creditors.
- III. Provision for management of corporate debtor after the resolution plan.
- IV. Provision for implementation and supervising of the resolution plan.
- V. Should not contravene any provisions of the law.¹⁴

Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency resolution process for corporate persons) Regulations, 2016 talk about mandatory contents of a resolution plan. They are as follows:-

¹⁴ The Insolvency and Bankruptcy Code, 2016, § 30, No. 31, Acts of Parliament, 2016 (India).

- i. IRP costs and that IRP will be paid in priority to any other creditor.
- ii. Liquidation value due to the operational creditors in priority to financial creditors, which shall be paid within 30 days of approval of the Resolution Plan.
- iii. Liquidation value due to the dissenting financial creditors and that such recovery should be made before any recovery by the financial creditors who voted for the plan.

The resolution plan proposed by New Age thus, suffers from multiple defects:

- The plan provides for payment of only 60% of the CIRP cost. Referring to I and i above, IRP costs have to be paid in utmost priority. Since there are provisions for payment of creditors, the plan makes sure that it has funds. Then there is no ground on which RP can be discounted for 40% of his costs.
- The plan proposed by New Age is such that the operational creditors will be paid in the upcoming three years, which contravenes regulation 38 as mentioned in ii above. The regulation is very clear on the fact that the operational creditors have to be paid within 30 days of the approval of the plan strictly. The Corporate debtor cannot extend the payment to a period of 3 years to operational creditors, that too by votes of financial creditors.
- No provision has been made for payment to the dissenting financial creditors as stated in iii.
- Along with these, there is no provision whatsoever as to the functioning and management of the corporate debtor after the resolution plan, which is a pre-requisite as mentioned in section 30 of the code. Also, there is no provision for supervision of the plan which is hit by section 30 of the code.

With the above defects in consideration, the resolution plan proposed by New Age should not be allowed to be approved.

ISSUES ON BEHALF OF RESOLUTION PROFESSIONAL/ IRP

1. WHETHER APPOINTING SECURITY SERVICES FOR PRESERVING THE UNIT OF NEW AGE IS JUSTIFIED ACT OF MR. AMIT THAKUR, INTERIM RESOLUTION PROFESSIONAL?

ARGUMENTS PRESENTED BY INTERIM RESOLUTION PROFESSIONAL

This is humbly submitted before the National Company Law Tribunal that Mr. Amit Thakur, the interim resolution professional who was appointed by the Insolvency and Bankruptcy Board of India on 5th April, 2017. IRP had to carry functions according to the Insolvency and Bankruptcy Code of 2016.

The appointment of IRP is to manage the operations of corporate debtor as a going concern and make every endeavour to “**protect and preserve**” the value of the property ¹⁵as stated under section 16 of the IBC.¹⁶ ¹⁷ Thereafter the appointment as IRP, Mr Amit Thakur visited the Gujarat Plant to take the possession of the New Age assets. There he was not allowed to enter the unit of New Age because the local political leader along with the union workers led an agitation against Mr. Amit Thakur¹⁸ and prevented him to take the possession.

In pursuance of Section 17 of the code, the management of affairs of the corporate debtor has to be done by the interim resolution professional from the date of appointment. The officers and the manager of corporate debtor shall report to the IRP and provide him access to the documents and records of corporate debtor.

The most crucial point in the present argument is the ‘duties of the interim resolution professional’, which are stated in the section 18 of the IBC:

(f) take **control and custody** of any asset over which the corporate debtor has the ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or depository of securities or any other registry that records the ownership of the assets.¹⁹

Reliance placed on the observation made in the case of *State Bank of India v. Bhushan Steel Limited 2017, NCLT New Delhi*,²⁰ where it was held that the Interim resolution professional shall **perform all his functions religiously and strictly** which are contemplated by sections 15, 17, 18, 19, 20, & 21 of IBC. It was also further stated and made clear that all the personnel

¹⁵ Bank of New York Mellon, London Branch v. Zenith Infotech Limited, AIR 2017 SC 1735.

¹⁶ The Insolvency and Bankruptcy Code, 2016, § 16, No. 31, Acts of Parliament, 2016 (India).

¹⁷ IDBI Bank Limited v. Jaypee Infratech Limited, CP No.(IB) 77/ALD/2017.

¹⁹The Insolvency and Bankruptcy Code, 2016, § 18, No. 31, Acts of Parliament, 2016 (India).

²⁰ State Bank Of India v. Bhushan Steel Limited, C.P. No. (IB)- 201 (PB)/2017.

connected with the Corporate Debtor are under legal obligation under section 19 of IBC to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. Therefore, the IRP is under obligation to protect and preserve the value of the property of ‘Corporate Debtor’ as imposed under section 20 of IBC.^{21 22}

The union workers along with the local leaders did not assist and cooperate with Mr Thakur, they led agitation against IRP therefore it became a duty of Mr. Amit Thakur to prevent them and preserve the unit²³ for doing this appointing XYL security must be justified as it was a reasonable and just step taken by him for the preserving of unit of New Age.

ARGUMENTS PRESENTED BY CORPORATE DEBTOR

In pursuance of the section 19(2) of the Insolvency and Bankruptcy Code, “where any personnel of the corporate debtor, its promoters or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to adjudicating authority for necessary directions”.

After the application is made to the adjudicating authority, it is adjudicating authority who shall give order according to the application.²⁴

Mr Amit Thakur, the interim resolution professional did not comply with the provisions of the code by not giving the application to the adjudicating authority and informing them about the agitation by union workers and local political leader. In violation of assistance and cooperation by corporate debtor personnel an **application under section 19(2) shall be made to the adjudicating authority** which would take appropriate steps on it.²⁵

In view of factual position in the present case where union workers were against the Interim Resolution Professional as it involves the rights of workers and details regarding debt, wages, gratuity, bonus. The Bankruptcy and insolvency code is not expected to go to the controversy of non payment of wages workers or their rights. The union workers contends that the competent

²¹ The Insolvency and Bankruptcy Code, 2016, § 20, No. 31, Acts of Parliament, 2016 (India).

²² Bank Of India v. Tirupati Infraprojects Pvt. Ltd., C.P. No.(IB)-104 (PB)/2017.

²³ Punjab National Bank v. Concord Hospitality Pvt. Ltd., C.P. No.(IB)- 43/Chd/Pb/2017.

²⁴ The Insolvency and Bankruptcy Code, 2016, § 19(3), No. 31, Acts of Parliament, 2016 (India).

²⁵ IDBI Bank Limited v. Jaypee Infratech Limited, C.P. No. (IB) 77/ALD/2017.

authority concerned with the union worker's rights shall be Labour Court or Authority under the payment of wages Act, Bonus and gratuity etc, or on the applications filed by the workers in their individual capacity or through their labour union.²⁶

Reliance placed on the observation made in the case *J K Jute Mills Mazdoor Morcha v. Juggilal Kamlpal*²⁷ 2017, NCLT Allahabad, where an application under the code was rejected on the ground that above stated observation is subjected to a competent Court of Law as the case may be and the observation shall not meant to come in the way to implement an order/direction issued by a competent court/statutory authority, labour forum. It was held that the petition is not maintainable under the code and was rejected.

In view of the above argument it is submitted that the act of Mr. Amit Thakur as Interim resolution professional is not justifiable through the provisions of the code and he acted beyond his power and scope.

2. WHETHER PEOPLE'S BANK CAN ADJUST THE LEASE RENTAL AMOUNT TOWARDS ITS DUES?

ARGUMENTS PRESENTED BY PEOPLE'S BANK

The New Age owns a property "New Age House" in Jaipur, which has been given on lease to People's Bank , Jaipur Branch under a registered deed dated 6.01.2011. Lease Rental of Rs 15,06,900/ per month was payable to New age.

Amount of Lease Rental- Rs. 79,41,026/-

Principal amount of debt- Rs 500 crore

Outstanding amount – Rs 790 crore.

The People's Bank can exercise its right of set off as there is one loan account and the deposit to the lease amount. The right to set off is self-executory and do not need any prior permission from any authority. The debtor has defaulted and stopped making its payment, in such situation Bank can take necessary steps to recover its debt and can hold any other service to the debtor. This was done prior the commencement of insolvency resolution. The acts done after the commencement

²⁶ JK Jute Mills Mazdoor Morcha v. Juggilal Kamlpal Jute Mills Company Ltd., C.P. No. (IP) 36/ALD/2017.

²⁷ Ibid.

of the insolvency resolution are not allowed but prior to it are justified. Also according to the section 43 of the code if the resolution professional is in the opinion that corporate debtor has at relevant time given preference to such transaction(as present in the case and mentioned under (2) then RP shall apply for avoidance of preferential transactions.²⁸ The preference should be deemed to be given at relevant time which is two years preceding the insolvency procedure.²⁹

ARGUMENTS PRESENTED BY INTERIM RESOLUTION PROFESSIONAL

The Interim Resolution Professional Amit Thakur, took possession of the Gujarat Plant, New Age unit. The IRP once appointed has to manage the affairs of the corporate debtor in pursuance of the section 17 of the code.³⁰ Also on 8th March 2017, JSEW LTD the supplier of EVA film refused to supply EVA Films till New Age clears the past debt and agrees to pay the future dues.

The insolvency process once started then the creditors' claims will be frozen for next 180 days, (moratorium period) as during this time the NCLT hears the proposals for revival and decide on future course of actions. No coercive proceedings can be launched against the corporate debtor in any form or under other law until the approval of resolution plan or the initiation of liquidation process.³¹ No other application to be filed against the corporate debtor.³² Once the Insolvency Professional is appointed then it takes possession of the assets of the corporate debtor, collect financial information utilities.

The public announcement is done by the NCLT for the initiation of the insolvency proceedings and to receive the claims from creditors. After receiving such claims the IRP constitutes a Committee of Creditors³³ the creditor committee then takes decision regarding the insolvency resolution. The Resolution professional conducts entire corporate insolvency process and manage the corporate debtor during the period.

In pursuance of Section 13(2) of IBC, after the public announcement was made by IRP, the moratorium was ³⁴declared and in consequences of the moratorium the following prohibitions are

²⁸ The Insolvency and Bankruptcy Code, 2016, §43, No. 31, Acts of Parliament, 2016 (India).

²⁹ The Insolvency and Bankruptcy Code, 2016, § 43(3), No. 31, Acts of Parliament, 2016 (India).

³⁰ The Insolvency and Bankruptcy Code, 2016, § 17, No. 31, Acts of Parliament, 2016 (India).

³¹ Bank of New York Mellon, London Branch v. Zenith Infotech Limited, AIR 2017 SC 1735.

³² State Bank Of India v. Bhushan Steel Limited, C.P. No. (IB)-201 (PB)/2017.

³³ The Insolvency and Bankruptcy Code, 2016, § 20, No. 31, Acts of Parliament, 2016 (India).

³⁴ The Insolvency and Bankruptcy Code, 2016, § 14, No. 31, Acts of Parliament, 2016 (India).

imposed: section 14(1) (a) (b) (c) & (d); (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."³⁵ Therefore, Peoples Bank in the present case must be liable to repay the lease rental amount to the interim resolution professional. As the supply of goods and essential services are must to run the unit and shall not be terminated or suspended or interrupted during the moratorium period.³⁶ The Bankers right to set off or adjust the amount of lease rental towards its dues will not survive as the rules relating to the insolvency are mandatory. After the commencement of the insolvency proceedings, the Insolvency and Bankruptcy code 2016 governs the right of set-off or any other way to receive the claim post insolvency resolution.

4. WHETHER THE APPLICATION FILED BEFORE THE NCLT, SEEKING APPROPRIATE ORDERS FOR TAKING POSSESSION OF THE MUMBAI FLAT MAINTAINABLE OR NOT?

ARGUMENTS PRESENTED BY OTHER PARTY (THE DEBTOR):

The IRP has filed an application before NCLT for taking the possession of the concerned flat. The Duties of IRP are provided in the section 18 of the Insolvency and bankruptcy Code, 2016. This being an exhaustive section deals with various kinds of duties of IRP. It is clearly mentioned in the provision that an IRP can take control and custody of the any assets over which the corporate debtor have some ownerships rights. According to the facts present on 4th December 2016 the Board of Directors of Corporate debtor passed a resolution to sell the said property to one of its managing director on the decided consideration of Rs. 5 crores to raise funds however the market value of the same house is stipulated to be much higher. The transferee or the managing director paid Rs.55 lakhs in advance and got the possession of the house and promised to pay the rest of the amount.

Section 54 of the transfer of Property Act (IV of 1982) defines sale as under: "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Therefore, sale can easily be said to be transfer of ownership for money consideration.³⁷ This section does not provide for the compulsory writing or registration for the sale of immovable property of whatever value, though no actual sale can be completed otherwise than provided in this section.

³⁵ State Bank of India v. Bhushan Steel Limited, CP. No. (IB)-201 (PB)/2017.

³⁶ Reliance commercial Finance Ltd. And ors. V. Anil Ltd., C.P. (IP) No. 71/7/NCLT/AHM/2017.

³⁷ Avtar Singh, Textbook on the transfer of property Act 195(Universals 2010).

Price is the essential element of a sale which is the quid pro quo, for which the vendor agrees to part with his property. At the time of contract of sale the price should be ascertained for which the property is going to be transferred. The price may be paid for the time of the execution of sale, before it in the advance or after the sale. A sale will be nonetheless a sale whether the price is paid down or the price be promised to be paid.³⁸ For the validity of a sale, inadequacy of consideration is not any relevant factor. Even where the price of the price or consideration is found by the court to be less than the market price of the property the sale is held to be valid.³⁹

In this case the flat sold to the director is stipulated to have higher market value than its sale price this does not affect the validity of sale because where the consideration is money but is not specific; the transaction would still be a sale. Thus, if the transaction on the-face of it is complete, it cannot be regarded as a mere agreement only on the ground that the price is unascertained at that time.⁴⁰ If the recitals are indecisive, surrounding circumstances or conduct of parties are the relevant factors⁴¹ to decide the validity of sale. The term “paid or promised” shows that a sale is complete on registration even though price has not been paid but is promised to be paid.⁴² Thus, payment of price is not a sine qua non to the completion of sale.

A promise that price will be paid within a year is valid,⁴³ but if it is no paid the seller cannot set aside the sale⁴⁴ or sue for getting the possession back.⁴⁵ His only remedy would be sue the buyer for the price. Generally speaking, in a sale, the three requirements of law are that transfer of property by sale must take place with the help of a validly executed sale deed, by the transferor in writing, is properly attested, and registered Unless, the all three conditions are complied with, no right passes from the seller to the buyer or in other words, there can be no sale. However, in case where the property is of nominal value, the sale of property can be completed by a simple delivery of possession of such property. An unregistered sale deed can be used as evidence as to

³⁸ Lekshmana Chettiyar Pazhaniappa Chettiyar v. South Indain Planting and industrial Co. Ltd. AIR 1953 T.C.161.

³⁹ Hakim Singh v. Ram Sanahi, AIR 2001 All 231.

⁴⁰ Unnao Commercial Bank v. Kailash Nath, AIR 1955 All 393.

⁴¹ Hara Bewa v. Banchandilal, AIR 1957 Ori 243.

⁴² Premanarayana v. Kuwarji, AIR 1993 MP 164.

⁴³ Kamleshwar Prasad v. Abadi, (1915) ILR 37 All 631.

⁴⁴ Govindammal v. Gopalachariar, (1906) 16 Mad LJ 524; Bai Devmani v. Ravi Shankar, AIR 1929 Bom 147.

⁴⁵ Lakshmi Narain Barnwal v. Jagdish Singh, AIR 1991 Pat 99.

character of possession of the property⁴⁶, despite its value,⁴⁷ such as adverse possession or of co-ownership.⁴⁸

The Doctrine of Past Performance, based on principle of equity, developed in England and was subsequently added to the Transfer of Property Act, 1882 via the Amendment Act of 1929. Section 53A says that if under a contract for transfer of immovable property, the purchaser has paid the price and has taken possession of the property even though the transfer deed or conveyance has not been registered. In such cases the transferor is debarred from agitating his title to the property against the purchaser. In *Sardar Govindrao Mahadik v. Devi Sahai*⁴⁹, it was reiterated that to qualify for the protection of the doctrine of part performance it must be shown that there is an agreement to transfer of immovable property for consideration and the contract is evidenced by a writing signed by the person sought to be bound by it and from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty. Supreme Court in *Rambahu Namdeo Gajre v. Narayan Bapuji*⁵⁰ held that the doctrine of part performance aims at protecting the possession of such transferee.

Under section 18(1)(f) of the code,2016 it is given that it's the duty of RP to take control and custody of any assets that may or may not be in possession of the corporate debtor here the property is sold to director of the corporate debtor and Directors generally have limited liabilities and separate entity from the company and so the ownership and possession of the flat is with the Director only and hence RP cannot exercise power on it and seek orders for its possession.

ARGUMENTS PRESENTED BY RP

But according to Section 43 which talks about Preferential transactions and relevant time, a RP is of the opinion that at relevant time discussed in Sec 46 the corporate debtor gave preference in transaction discussed in Sec. 43(2) transaction such as transfer of property owned by corporate debtor for the benefit of a creditor to a related party in this case the director then in accordance with section 44 which provides for orders in case of preferential transactions the adjudicating

⁴⁶ Varatha Pillai v. Jeevarathammal, (1919) 43 Mad 244.

⁴⁷ Kemam Kandaswamy v. Chinappa, AIR 1921 Mad 82.

⁴⁸ Dawal v. Dhanna, (1917), ILR 41 Bom 550.

⁴⁹ Sardar Govindrao Mahadik v. Devi Sahai, 1982 2SCR 186.

⁵⁰ Rambahu Namdeo Gajre v. Narayan Bapuji, (2004) 8 SCC 614.

authority on application made by RP the possession of the Mumbai flat can be taken by the RP for liquidation of assets for the benefit of creditors or any other direction as given by the adjudicating authority. So the Director should release the possession of Mumbai flat to RP.

And this transaction of transferring property (Mumbai flat) is an undervalued transaction as per section 45 and relevant time given in section 46. Section 47 says that RP should file application regarding this or report it to the Adjudicating authority which on examination being satisfied that the transaction is undervalued shall pass order restore the position as it existed before the transaction and reserve its effects and the property to be vested in the Corporate debtor or can require the debtor who benefits from such transaction to pay back any gains he received out of such transaction as per section 48.

4. WHETHER JKL PVT LTD IS ENTITLED TO RECEIVE A COPY OF INFORMATION MEMORANDUM?

ARGUMENTS PRESENTED BY JKL:

The Corporate Debtor has a guesthouse in Hyderabad which is taken on lease for 3 years in 2014. The insolvency proceedings started against the corporate debtor in April, 2017. The RP was appointed on April 17, 2017. A notice was given by the lessor regarding the lease coming to an end along with a proposal to renew the lease. The RP, instead of continuing or negotiating for continuance of the lease agreement, terminated the lease agreement with effect from March 31, 2017 which is prior to the termination date. The corporate debtor humbly contends that this is done in breach of the duties of the RP as mentioned in section 25. Section 25(1) states that it shall be the duty of the RP to preserve and protect the assets of the corporate debtor, including the continuing business operations of the corporate debtor.⁵¹ Termination of the lease that too prior to its termination date, is against the section as it is the opposite of continuing business operations. This act rather implies that the business has to be ended soon. The principle of going concern enshrined in section 25(1) is violated as going concern means that the business has to be conducted in such a manner assuming that it will go on for indefinite period of time and that the business will not be shut down within a foreseeable future. This is also one of the basic

⁵¹ The Insolvency and Bankruptcy Code, 2016, § 25, No. 31, Acts of Parliament, 2016 (India).

principles of accountancy. The principle of going concern is further violated by termination of the lease prior to the termination date. This is way against the going concern principle and shows the preoccupied mindset of the RP to liquidate the corporate debtor. The RP has clearly, by his actions, violated this principle and hence stands in breach of his statutory duty under section 25(1). Also this comes as an offence as mentioned in section 70(2) of the code which prescribes for punishment and fine if an insolvency professional deliberately contravenes any provisions of this part⁵². Since he has contravened his statutory duty under section 25(2), he has contravened the provisions of this part and hence is liable for the fine and punishment prescribed in section 70(2) of the code.

ARGUMENTS PRESENTED BY RP:

Section 25(1) confers a duty of preservation of assets, including the business operations of the debtor. This talks about the assets including business operation- the definition is not inclusive but suggests in what lines the assets are to be construed. A guest house is not within the use of primary business operation of the corporate debtor and hence terminating the lease agreement for the guest house doesn't amount to violation of statutory duty under section 25. Also, section 25(2)(b) states that the RP has to deal with the third parties as an agent of and for the benefit of the corporate debtor. The RP humbly submits that it was for benefit of the debtor as it would save the corporate debtor from incurring monthly expenses for an activity which is not directly linked to its business in such a vulnerable stage. The principle of going concern has not at all been violated as there can be sale of fixed assets without harming the principle of going concern.

ISSUES ON BEHALF OF FINANCIAL CREDITORS/CREDITORS COMMITTEE

1. WHETHER THE APPOINTMENT OF MR. AMIT THAKUR AS THE INTERIM RESOLUTION PROFESSIONAL TO CARRY OUT THE FUNCTIONS OF THE CORPORATE DEBTOR'S COMPANY JUSTIFIED AS PER THE INSOLVENCY AND BANKRUPTCY CODE, 2016?

⁵² The Insolvency and Bankruptcy Code, 2016, § 70(2), No. 31, Acts of Parliament, 2016 (India).

ARGUMENTS PRESENTED BY INTERIM RESOLUTION PROFESSIONAL

Appointment of Mr. Amit Thakur as the Interim Resolution Professional to carry out the functions of the Corporate Debtor's Company is justified as per section 16 (2) of the Insolvency and Bankruptcy Code, 2016. Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.⁵³ Interpreting Section 16 (2) of the Code, the tribunal held in *Essar Steel Bankruptcy Case*⁵⁴, "It is a settled position in law that the expressions 'may' and 'shall' by themselves do not convey legislative intent. The NCLT applied these principles and the GHC Ruling to hold that it had discretionary powers." Therefore, the use of word 'shall' in section 16 (2) of the code do not signify the legislative intent. Hence, tribunal has discretionary power in the appointment of the Interim Resolution Professional under the Insolvency and Bankruptcy Code, 2016.

Rule 9 (2) of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 mandates the applicant to confirm the eligibility of the proposed insolvency professional for appointment as the resolution professional in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Rule 3 of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 lists down the eligibility criteria for Resolution Professional for Corporate Insolvency Resolution Process. It lists down various criteria such as the person or the partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor. If the applicant didn't confirm the eligibility of the proposed Interim Resolution Professional, then the Board has discretionary power to appoint the person who fulfills all the eligibility criteria as laid down in the Rule 3 (1) of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Therefore, appointment of Mr. Amit Thakur as Interim Resolution Professional is justified under The Insolvency and Bankruptcy Code, 2016. On 6th march 2017, the electricity supplier GSES issued demand notice for past dues within 10 days and on failing to

⁵³ The Insolvency and Bankruptcy Code, 2016, § 16(2), No. 31, Acts of Parliament, 2016 (India).

⁵⁴ *Essar Projects India Ltd. v. MCL Global Steel Pvt. Ltd.*, C.P. No. 20/1 & BP/NCLT/MAH/2017.

make payment GSES disconnected the electricity. The supply of electricity comes within the scope of essential goods as mentioned in Regulation 32 of The Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016. Section 14(2) of the code states that the supply of essential goods or services to be corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period. This was reaffirmed in the case of *Reliance Commercial Finance Ltd. v. Anil Ltd.*⁵⁵ It was held that “as the supply of goods and essential services are must to run the unit and shall not be terminated or suspended or interrupted during the moratorium period.” So the stopping of supply of electricity would be against the said section and regulation and hence the electricity supplier should be asked to continue the power supply.

ARGUMENTS PRESENTED BY CORPORATE DEBTOR

Corporate Debtor contends that the appointment of Interim Resolution Professional is not justified as per the Insolvency and Bankruptcy Code, 2016 based on the following grounds:

Appointment of the Interim Resolution Professional violates Section 16 (1) of the Code that gives power to the Adjudicating Authority to appoint an Interim Resolution Professional within fourteen days from the Insolvency commencement date. An Insolvency Professional shall be eligible to be appointed as a resolution professional for a corporate insolvency resolution process of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.⁵⁶

Also, Section 16 (2) of the Insolvency and Bankruptcy Code, 2016 clearly states that when the application for the CIRP is initiated by a financial creditor, the Adjudicating Authority should appoint the interim resolution professional as proposed by the Financial Creditor in the application filed by them. Facts clearly states that IBBI recommended and confirmed Mr. Amit Thakur as Interim resolution Professional which is not as proposed by the Financial Creditor and hence stands unjustified. If any Disciplinary proceedings are pending against the appointed Interim Resolution Professional, Mr. Amit Thakur, then the appointment is not justified as specified in the Section 16 (2) of the Insolvency and Bankruptcy Code, 2016.

⁵⁵ *Reliance Commercial Finance Ltd. v. Anil Ltd*, C.P. (IB) No. 66, 69, 70 and 71/7/NCLT/AHM/2017.

⁵⁶ The Insolvency and Bankruptcy Code, 2016, § 16(1) , No. 31, Acts of Parliament, 2016 (India).

Chapter II of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 lists down the eligibility criteria for the Resolution Professional. If the Interim Resolution Professional does not fulfill all the criteria mentioned in the Regulation 3 of the said chapter, then the appointment of the Interim Resolution Professional is unjustified as per the Code.

2.CAN THE APPOINTED INTERIM RESOLUTION PROFESSIONAL (IRP), MR. AMIT THAKUR INCLUDE MARVEL ORGANICS LTD., ONE OF THE FINANCIAL CREDITORS OF NEW AGE IN THE COMMITTEE OF CREDITORS WITHOUT IT FILING THE DOCUMENTS FOR ITS CLAIM?

ARGUMENTS PRESENTED BY INTERIM RESOLUTION PROFESSIONAL:

Mr. Amit Thakur added the claim of Marvel Organics Ltd., one of the financial creditors of New Age to the list of Committee of Creditors even though they failed to file any documents in support to substantiate its claim. Chapter IV of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 deals with Proof of Claims which states that the Interim Resolution Professional or the Resolution Professional, as the case may be, call for such other evidence or clarifications as he deems fit from a creditor for substantiating the whole or part of its claim.⁵⁷

Rule 12 of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that the creditor shall submit proof of claim on or before the last date mentioned in the public announcement. Sub- Regulation (2) of the same rule further elaborates that the creditor who failed to submit proof of claim within the time stipulated in the public announcement, may submit proof to the interim resolution professional or the resolution professional, as the case may be, till the approval of a resolution plan by the committee.

Therefore, even though Mr. Amit Thakur added the claim of Marvel to the list and invited it to the committee of Creditors, The financial creditor can submit any documents in support to substantiate its claim of 136 Crore till the resolution plan by the committee is approved. It is the duty of the Interim Resolution Professional to make available any financial information so

⁵⁷ Rule 10, The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

required by the committee of creditors under Sub Section (9) within a period of seven days of such requisition.⁵⁸

ARGUMENTS PRESENTED BY FINANCIAL CREDITOR

RST Bank contend that the Interim Resolution Professional cannot appoint Marvel Organics Ltd., one of the financial creditors of New Age to the list and in the Committee of Creditors because they have omitted to substantiate their claim of 136 crores rupees.

By virtue of the Code, if any person furnishes information in the application made under section 7, which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material, such person shall be punishable with fine which shall not be less than one lakh rupees, but may extend to one crores rupees.⁵⁹

The Principal Bench of National Company Law Tribunal in the case of *Annapurna Infrastructure Pvt. Ltd. and Ors. vs. Sori Infra Resources Ltd.*⁶⁰ dismissed the application because there was a deliberate suppression of material facts disputing the demand raised by the applicant has not been disclosed and no disclosure has been made with regard to execution of the proceeding as per the prescribed performa. Hence, the petition was dismissed. In the matter of *State Bank of India vs. Bhushan Steel Limited*,⁶¹ Computation of the default amount is grossly incorrect and contrary to the provisions of the law. The parties have placed reliance on para 11 to 15 of the judgement rendered by learned National Company Law Appellate Tribunal in *M/s. Starlog Enterprises Limited vs. ICICI Bank Limited*⁶² and argued that petition like these are not only liable to be dismissed but penalty as laid down in the section 75 of Insolvency and Bankruptcy Code, 2016 deserves to be imposed. The petition was disposed off.

Since the claim of Marvel is inflated highly without any supporting evidence, they will get a higher voting share in the committee of the creditors. So without proof, incorporating Marvel's claim would be against the legal intent behind the code.

⁵⁸The Insolvency and Bankruptcy Code, 2016, § 21(10), No. 31, Acts of Parliament, 2016 (India).

⁵⁹ The Insolvency and Bankruptcy Code, 2016, § 75, No. 31, Acts of Parliament, 2016 (India).

⁶⁰ *Annapurna Infrastructure Pvt. Ltd. and Ors. v. Sori Infra Resources Ltd.*, [2017]139CLA150.

⁶¹ *State Bank of India v. Bhushan Steel Limited*, C.P. No. (IB) -201(PB)2017.

⁶² *M/s. Starlog Enterprises Limited v. ICICI Bank Limited*, [2017]139CLA8.

3. IS RHPL (RADHA HOSPITALITY PVT. LTD.) PART OF THE COMMITTEE OF CREDITORS (CoC) OR NOT? ARE THERE ANY DEFECTS IN THE CONSTITUTION OF COMMITTEE OF CREDITORS?

ARGUMENTS PRESENTED BY RP

In 2015, the promoters of the Corporate Debtor diversified into hotel and real estate business. They set up a new company Radha Hospitality Pvt. Ltd. Corporate Debtor entered into a Joint Venture agreement with RHPL acc. to which RHPL will construct the hotel and commercial tower by contributing 50% costs and Corporate Debtor will pay the balance. Corporate Debtor paid 90% of its obligation in short span of time. In November 2016 the Corporate Debtor paid the balance 10% to RHPL after completion of construction. So the corporate had already paid the dues towards the agreement. RHPL was not included in the CoC and objected its exclusion from representation, participation and voting rights in the CoC.

Section 21 of Insolvency and Bankruptcy code 2016 deals with the composition of Committee of Creditors its workings and the rights of creditors part of CoC. The proviso to Subsection 2 of this section as given “Provided that a related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors” clearly states that a related party cannot be given rights of representation, participation or voting this section does not specifically say that a related party will not be included in CoC but it will not enjoy any rights as such which on interpretation can be clearly understood that this proviso restricts a related party to be part of committee of creditors. The term “related party” is explained in Section 5(24) of this code.

Section 2(76) of Companies Act,2013 defines “related party” and clause (viii) includes any company which is a holding, subsidiary or an associate company of such company; or a subsidiary of a holding company to which it is also a subsidiary. Section 2 Subsection (6) “associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company

Indian Accounting Standard (Ind AS) 24 in Para.9 deals with related party which provides that An entity is related to a reporting entity if any of the following conditions applies: (i) The entity

and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others). (ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member). Black's Law Dictionary⁶³ defines 'joint venture' thus : "Joint Venture : A business undertaking by two or more persons engaged in a single defined project. The necessary elements are : (1) an express or implied agreement; (2) a common purpose that the group intends to carry out; (3) shared profits and losses; and (4) each member's equal voice in controlling the project." It connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses.⁶⁴

This all proves that RHPL is a related party to Corporate debtor and hence cannot be given voting and participation rights in CoC. In the case of *Edelweiss Asset Reconstruction Company Limited vs. Synergies-Dooray Automotive Limited and Ors.*⁶⁵ It was held that a related party of Corporate Debtor and cannot be permitted to participate or vote in the meetings of the CoC of Corporate Debtor. Operational Creditor is just like a related party does not have the right to participate or vote in the meetings of the CoC except where Corporate Debtor has no financial creditors and only has operational creditors.

ARGUMENTS PRESENTED BY CORPORATE DEBTOR:

Section 21 of IBC, 2016 discusses about the Committee of Creditors (CoC) subsection 2 provides that CoC shall comprise only of Financial creditors and not operational creditors. Section 5 (20) defines Operational creditor which means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. The CoC includes JSEW Ltd., GSES, EPF Dues and XI MAO which are operational creditors with other

⁶³ WILLIAM BLACKSTONE, BLACK'S LAW DICTIONARY, 843 (BRYAN A. GARNER 2010).

⁶⁴ Fakir Chand Gulati v. Uppal Agencies Pvt. Ltd., (2008) 10 SCC 345.

⁶⁵ Edelweiss Asset Reconstruction Company Limited vs. Synergies-Dooray Automotive Limited and Ors C.A. No. 57 of 2017 in CP (IB) No. 01/HDB/2017.

financial creditors. So, the Committee of creditors is not properly constituted by the Resolution Professional.

ISSUES ON BEHALF OF OTHER PARTIES (Public Depositors, Director, JKL,)

1. WHETHER IRP CAN REJECT THE CLAIMS OF PUBLIC DEPOSITORS ON THE GROUND THAT THEY DO NOT FALL WITHIN THE PURVIEW OF OPERATIONAL CREDITOR?

ARGUMENTS PRESENTED BY PUBLIC DEPOSITORS & CORPORATE DEBTOR:

New Age in the year of 2012 had invited ‘public deposits’ for its working capital needs. Later due to financial crunch, New Age could not service the interest to the public depositors. Aggrieved by this, the public depositors filed claim before Interim Resolution Professional. However the IRP rejected the claims of public depositor on the ground that they do not fall within the purview of operational creditors. The maintainability of applications for initiating corporate insolvency resolution process depends on the two criteria where applicant has to either fall within the definition of ‘financial creditor’ or ‘operational creditor’ as under the Insolvency Bankruptcy code. “A person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred” is financial creditor.⁶⁶ “Any person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred” is Operational Creditor.⁶⁷

In the present facts, New Age in year 2012 invited public deposits for its working capital needs. Working capital needs are the required value of funds that a company is required to keep on hand in order to be able to pay its debt obligations and other business related expenses.⁶⁸ The required value of funds that a company is required to keep on hand in order to be able to pay its debt obligations and other business related expenses. Several factors go into the determination of this requirement. Relying in the case where ‘working capital needs’ were both for clearing the debts and carrying out the business.⁶⁹

⁶⁶ The Insolvency and Bankruptcy Code, 2016, § 5(7), No. 31, Acts of Parliament, 2016 (India).

⁶⁷ The Insolvency and Bankruptcy Code, 2016, § 5(20), No. 31, Acts of Parliament, 2016 (India).

⁶⁸ <http://www.businessdictionary.com/definition/working-capital-requirement.html>

⁶⁹ N Parthasarthy v. Controller Capital Issues, (1991) 2 SCR 329.

The insolvency and bankruptcy code identify the term ‘financial debt’ which means debt along with interest, if any, which is disbursed against the consideration of the time value of money.⁷⁰ Bringing forward the case *Nikhil Mehta & ors v. AMR Infrastructure Ltd*,⁷¹ where the maintainability of application was decided by identifying the ‘financial debt. In this mentioned case NCLAT held that whether a debt is financial debt must be disbursed against the ‘time value of money’ or the price associated with the time that an investor must wait until an investment matures or related income is earned. Since a financial debt is owed to them and the interest is paid to the public deposit, it clears the test of ‘time value of money’ as laid down in the aforementioned case. This allows public depositors to fall under the purview of ‘financial creditors’.

Reliance on the decision taken by NCLT in the case *Hind Motors Ltd v. Adjudicating authority*, where it was held that ‘public depositors’ who also comes within the meaning of ‘financial creditors’ and if the public depositor showing its due debt claims itself as ‘operational creditor’ then the resolution professional or the adjudicating authority cannot reject the claims, if any adverse decision is taken then it will be open for the appellant to raise the question before appellate tribunal.

The nature of the transaction in the present case was wrongly interpreted by the Interim Resolution Professional, where he wrongly came to the conclusion that the transaction does not fall within the purview of operational creditors and rejected the claims.

Appointment of valuer, this was done on 8th April 2017 by the Interim Resolution Professional. M/s KGB Valuers and M/s AKP valuers were appointed. They were the registered valuer to determine the liquidation value of New Age. For this purpose, section 27 of The Insolvency and Bankruptcy Board Of India (Insolvency Resolution for Corporate Persons) Regulations, 2016 states that the interim resolution professional shall within 7 days of his appointment, appoint two registered valuers to determine the liquidation value of the corporate debtor in accordance with the Regulation 35: Provided that the shall not be-

- (a) A relative of the interim resolution professional:

⁷⁰ The Insolvency and Bankruptcy Code, 2016, § 5(8), No. 31, Acts of Parliament, 2016 (India).

⁷¹ *Nikhil Mehta v. AMR Infrastructure*, C.P. No. (ISB)-03 (PB)/2017.

(b) A related party of the corporate debtor.

Therefore, the appointment of valuer which is related party to New Age is violation of the above mentioned provision of the code. Also in pursuance of the Section 70(2), IRP must be punished for misconduct in course of corporate insolvency resolution process as he deliberately contravened the provision of this part, so shall be punished with imprisonment.⁷² Since he has contravened his statutory duty under section 25(2), he has contravened the provisions of this part and hence is liable for the fine and punishment prescribed in section 70(2) of the code.

ARGUMENTS PRESENTED BY INTERIM RESOLUTION PROFESSIONAL

A party bringing claims to the Interim Resolution Professional is classified in two categories under this code, one is 'Financial Creditor' and another is 'Operational creditor'. It is for the party to prove through which it is approaching to the adjudicating authority. It is assumed from the fact given that the claim by Public Depositor was through section 7 of the code, i.e. claim by operational creditors⁷³. "Any person to whom an operational debt is owned and includes any person to whom such debt has been legally assigned or transferred" is Operational Creditor.⁷⁴

Also, considering the observation of the Bankruptcy Law Reforms Committee in its final report, para 5.2.1, "*Operational Creditors are those whose liability from the entity comes from a transaction on operations. Thus, the wholesale vendor of spare parts whose spark plugs are kept in inventory by car mechanics and who gets paid only after the spark plugs are sold is an operational creditor. Similarly, the lessor that the entity rents out space from is an operational creditor to whom the entity owes monthly rent on a three-year lease*"⁷⁵

The applicant humbly submits before this hon'ble National Company Law Tribunal, the judgement in the case Col. Vinod Awasthy v. AMR Infrastructure⁷⁶ where the Hon'ble Tribunal Interpreted the definition of 'Operational Creditor' under the IBC, petitioner should supply goods or render any service to acquire the status of the 'operational creditor'

⁷² The Insolvency and Bankruptcy Code, 2016, § 70(2), No. 31, Acts of Parliament, 2016 (India).

⁷³ The Insolvency and Bankruptcy Code, 2016, § 7, No. 31, Acts of Parliament, 2016 (India).

⁷⁴ The Insolvency and Bankruptcy Code, 2016, § 5(20), No. 31, Acts of Parliament, 2016 (India).

⁷⁵ http://finmin.nic.in/reports/BLRCReportVol1_04112015.pdf

⁷⁶ Col. Vinod Awasthy v. AMR Infrastructure Ltd. (C.P. No. (IB)10(PB)/2017.

In the case of *Mukesh Kumar & anr v. AMR Infrastructure*,⁷⁷ it was held that the respondent which failed to repay the debt taken by the petitioner towards the allotment of commercial shop in a mall was not considered as the ‘operational creditor’ within the meaning of section 9 as debt incurred by respondent must be arisen out of the provisions of goods, services or employment. It can also not be considered as the ‘financial debt’ within the meaning of the section 5(8) to mean a debt which is disbursed against the consideration of time or value. Also Section 10 of the IBC confers a discretion on this Tribunal to either admit or reject the application and in case of rejection to give an opportunity to the applicant before such rejection to rectify the defects within seven days from the date of receipt of such notice from the Adjudicating Authority⁷⁸.

Further stating the decision taken by NCLT in the case *Hind Motors Ltd v. Adjudicating authority*⁷⁹, where it was held that ‘public depositors’ who does not come within the meaning of ‘financial creditors’ and if the public depositor showing its due debt claims itself as ‘operational creditor’ then the resolution professional or the adjudicating authority can reject the claims.

Since, the Public depositors as falls neither in the meaning of ‘operational creditor’ and nor the nature of transaction falls within the test laid down in *Nikhil Mehta v. AMR case*⁸⁰, thereby the claims of public depositors shall be rejected.

2. WHETHER THE SINGAPORE PROCEEDINGS WILL BE RECOGNIZED BEFORE THE NCLT OR NOT?

ARGUMENTS PRESENTED BY RP

In 2016, the corporate debtor acquired Ten Hospitality Service Pvt. Ltd (THSPL), a Singapore based company. In January 2017 THSPL raised capital through private equity fund, LAVCA capital for its redevelopment and expansion of USD50 million. For this security interest was created in favour of AFB Investment Pte., based in Mauritius and created first charge on immovable assets of THSPL. Mr. Chew John informed RP that insolvency proceedings has been initiated against THSPL by AFB Investment Pte and requested RP to hold any further action inn

⁷⁷ *Mukesh Kumar & anr v. AMR Infrastructure*, C.P. No. (IB)30(PB)/201.

⁷⁸ *In Re Hind Motors Ltd*, [2017]138CLA249.

⁷⁹ *Ibid*.

⁸⁰ *Nikhil Mehta v. AMR Infrastructure*, C.P. No. (ISB)-03 (PB)/2017.

insolvency proceedings against corporate debtor as Singapore is the centre of main interests but RP replied that centre of main interest would lie in India. Mr. Chew John moved application before NCLT for recognition of Singapore proceedings. UNCITRAL Model Law on Cross-Border Insolvency (1997) focuses on four key elements (a) Access to local courts for representatives of foreign insolvency proceedings and for creditors and authorization for representatives of local proceedings to seek assistance elsewhere; (b) Recognition of certain orders issued by foreign courts; (c) Relief to assist foreign proceedings; and (d) Cooperation among the courts of States where the debtor's assets are located and coordination of concurrent proceedings. Because, it can be inferred from Article 13 that foreign creditors have the same right as local creditors to commence and participate in proceedings in the enacting State. The objective of this Model Law is to establish simplified procedures for recognition of qualifying foreign proceedings to avoid time-consuming legalization or other processes and provide certainty with respect to the decision to recognize. Article 11 of UNCITRAL Model Law on Cross-Border Insolvency (1997) allows for application by a foreign representative to commence a proceeding under laws of the enacting State relating to insolvency.

Article 17 Decision to recognize a foreign proceeding provides that, subject to contrary to public policy, when the specified requirements of article 2 concerning the nature of the foreign proceeding (i.e. that the foreign proceeding is, as a matter of course, a collective proceeding for the purposes of liquidation or reorganization under the control or supervision of the court) and the foreign representative are met and the evidence required by article 15 has been provided, the court should recognize the foreign proceeding without further requirement. The foreign proceeding shall be recognized: (a) As a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or (b) As a foreign non-main proceeding if the debtor has an establishment within the meaning of subparagraph (f) of article 2 in the foreign State. A non-main proceeding is one taking place where the debtor has an establishment. This is defined as “any place of operation where the debtor carries out non-transitory economic activity with human means and goods or services”⁸¹ Proceedings commenced on a different basis, such as presence of assets without a centre of main interests or establishment, would not qualify for recognition under the Model Law scheme. A foreign proceeding is deemed to be the “main”

⁸¹ UNCITRAL Model Law on Cross-Border Insolvency (1997), Art. 2(f), June 21, 1985.

proceeding if it has been commenced in the State where “the debtor has the centre of its main interests”. The Model Law does not define the concept “centre of main interests”. However, an explanatory report (the Virgos-Schmit Report),⁸² prepared with respect to the European Convention, provided guidance on the concept of “main insolvency proceedings” and the Report has been accepted generally as an aid to interpretation of the term “centre of main interests” in the EC Regulation. Recitals (12) and (13) of the EC Regulation state: “(13) The ‘centre of main interests’ should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.” Hence the centre of main interests would lie in India.

The Virgos-Schmit Report explained the concept of “main insolvency proceedings” as follows: “73. Main insolvency proceedings “Article 3 (1) enables main insolvency universal proceedings to be opened in the Contracting State where the debtor has his centre of main interests. Main insolvency proceedings have universal scope. “Where companies and legal persons are concerned, the Convention presumes, unless proved to the contrary, that the debtor’s centre of main interests is the place of his registered office. This place normally corresponds to the debtor’s head office.”

And also Article 16. provides for Presumptions concerning recognition and its clause 3 states the that documents submitted in support of the application for recognition are authentic, whether or not they have been legalized In the absence of proof to the contrary, the debtor’s registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor’s main interests. The Registered office of Corporate Debtor is in India so, the centre of main interests lies here only. And reading this with Article 17 it can be observed the main foreign proceedings will be where the centre of main interests lies and hence the Insolvency proceedings against corporate debtor in India are the main foreign proceedings thus the Singapore proceedings will be recognized as non-main foreign proceeding to the main proceedings against corporate debtor.

Article 21 deals with Relief that may be granted upon recognition of a foreign proceeding whether main or non-main, includes stay on the commencement or continuation of individual

⁸² M.Virgos and E. Schmit, Report on the Convention on Insolvency Proceedings.

actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor etc. Paragraph 3 reflects that idea by providing (a) that relief granted to a foreign non-main proceeding should be limited to assets that are to be administered in that non-main proceeding, and (b) that, if the foreign representative seeks information concerning the debtor's assets or affairs, the relief must concern information required in that non-main proceeding. The objective is to advise the court that relief in favour of a foreign non-main proceeding should not give unnecessarily broad powers to the foreign representative and that such relief should not interfere with the administration of another insolvency proceeding, in particular the main proceeding. So the Singapore proceedings will be recognized as foreign non main proceedings but the reliefs granted should not give wide powers to the foreign representative and not interfere the main proceedings that the creditors in the main proceedings are deprived of their rightful shares.

Punjab High Court in case of *Lakhpai Rai Sharma v. Atma Singh*⁸³ following the decision in Privy Council in *Anantapadmanabhaswami v. Official Receiver of Secunderabad*⁸⁴ held that where in an insolvency proceedings started in a foreign country an adjudication order is passed against the insolvent by the Court of the country, it has no effect on the immovable property of the insolvent in India and consequently the property of insolvent situated in India can be proceeded against by the decree holder who has obtained a decree against the insolvent. Similar is the view taken by Calcutta High Court in *Re: Summermulla Surana*⁸⁵ and *Sumkin Bussan International (Hong Kong) Ltd. vs. King Shing Enterprises Ltd. and Anr.*⁸⁶ where the grant of stay to execution on main proceedings was vacated. Similar action will be taken in the present case.

⁸³ *Lakhpai Rai Sharma v. Atma Singh* A.I.R. 1962 Pun. 228.

⁸⁴ *Anantapadmanabhaswami v. Official Receiver of Secunderabad* 1933(35)BomLR747.

⁸⁵ *Re: Summermulla Surana* AIR1932Cal124.

⁸⁶ *Sumkin Bussan International (Hong Kong) Ltd. vs. King Shing Enterprises Ltd. and Anr* 2005(6)BomCR240.

PRAYER

Wherefore, in the light of the questions presented, arguments advanced and authorities cited, the different parties humbly requests the National Company Law Tribunal to adjudge and declare that:

- PRAYER ON BEHALF OF CORPORATE DEBTOR/ PROMOTERS OF CORPORATE DEBTORS
 1. The application filed by Financial Creditors is not maintainable before NCLT.
 2. The appointment of IRP is not correct.
 3. Appointment of security services and possession of unit is not within the ambit to IRP's powers.
 4. Marvel cannot be included in the CoC without filing for its claim.
 5. The CoC is not correctly constituted.
 6. The appointment of RP is not valid.
 7. The termination of lease agreement by RP prior to its termination date is against the principle of going concern and should be declared void.
 8. JKL Pvt. Ltd. is not entitled to receive a copy of IM.
 9. The resolution plan proposed by corporate debtor should be approved.

- PRAYER ON BEHALF OF OPERATIONAL CREDITORS
 1. The resolution plan proposed by corporate debtor contravenes the provisions of this code and hence should not be approved.

- PRAYER ON BEHALF OF RESOLUTION PROFESSIONAL/ IRP
 1. Appointment of security services and possession of unit is within the ambit to his powers.
 2. People's Bank cannot adjust the lease rental amount towards its dues because the creditor's claim is frozen till the moratorium is in force.
 3. Marvel can be included in the CoC without filing for its claim.
 4. The claim of Public Depositors does not fall under financial debt and it's not valid claim.

5. RP can take possession of Mumbai Flat and directors.
 6. RHPL cannot be included in the CoC as it is a related party.
 7. Singapore proceedings will not be recognized as foreign main proceedings.
 8. The termination of lease agreement by RP should not be declared void.
 9. The resolution plan proposed by corporate debtor contravenes the provisions of this code and hence should not be approved.
- PRAYER ON BEHALF OF FINANCIAL CREDITORS/ CREDITORS COMMITTEE
 1. The application filed by Financial Creditors is maintainable before NCLT.
 2. The appointment of IRP is correct.
 3. The lease rental amount is not inflated and can be adjusted by People's Bank towards its dues.
 4. The CoC is not correctly constituted.
 5. The appointment of RP is valid.
 6. The resolution plan proposed by corporate debtor should be approved.
 - PRAYER ON BEHALF OF OTHER PARTIES(Public Depositors, Director, JKL) -
 1. The claim of Public Depositors fall under financial debt and its valid claim
 2. RP can take possession of Mumbai Flat and directors.
 3. JKL Pvt. Ltd. is entitled to receive a copy of IM.

