

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA NO.27/2025 IN CP(IB) No.330/ALD/2018

(An application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016).

IN THE MATTER OF:

Sunil Kumar Sharma

Suspended Board of Director

Of Jaiprakash Associates Limited.

Registered office at E-9/14, Vasant Vihar, New Delhi-110057

.....Applicant

Versus

Mr. Bhuvan Madan,

Resolution Professional

For Jaiprakash Associate Limited

Registered office at:

A-103, Ashok Vihar, Phase-III (Behind Laxmi Bai College)

New Delhi-110052

..... Respondent No. 1

State Bank of India

Registered office at:

C-Block, 11 Parliament Street, New Delhi-110001

.....Respondent No. 2

ICICI Bank Limited

Registered office at:

Near Chakli Circle, Old Padra Road,

Vadodara, Gujarat-390007.

..... Respondent No. 3

IA NO.27/2025 IN CP(IB) No.330/ALD/2018

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IDBI Bank Limited

Registered Office at:
IDBI Tower, WTC Complex, Cuffe Parade,
Colaba, Mumbai-400005

.....Respondent No. 4

LIC of India

Registered Office at:
Jeevan Bharati, Tower II, 124,
Connaught Circus, New Delhi-110001

.... Respondent No. 5

Canara Bank

Registered Office at:
T.S. No. 81-1 of 15th Wardlight House Hill Mangalore,
Mangalore, Karnataka - 000000.

... Respondent No. 6

AXIS Bank Limited

Registered Office at:
Rishul 3rd Floor opp. Samartheshwar Temple Law Garden
Ellisbridge Ahmedabad, Gujarat - 380006.

... Respondent No. 7

Bank of Maharashtra

Registered Office at:
Lokmangal, 1501, Shivaji Nagar, Pune – 411005

....Respondent no. 8

IFCI Limited

Registered Office at:
IFCI Tower, 61 Nehru Place, New Delhi-110 019

... Respondent no. 9

UCO Bank

Registered Office at:
10, BTM Sarani, Kolkata West Bengal - 700001

... Respondent No. 10

Punjab National Bank

Registered Office at:
Plot No, 4, 205 Delhi RD, Sector 10 Dwarka,
Delhi - 110075

... Respondent No. 11

Asset Care & Reconstruction Enterprise Limited

Registered Office at:
2nd Floor, Mohandev Building 13, Tolstoy Marg,
New Delhi - 110001.

... Respondent No. 12

South Indian Bank

Registered Office at:
D-2, Jhandewalan Extension, Type 4, Block B,
Aram Bagh, Jhandewalan, New Delhi- 110055

... Respondent No. 13

Punjab and Sind Bank

Registered Office at:
4th Floor, Psb Building, T Sohanlal Marg,
Rajendra Place, Near IMLY Restaurant, New Delhi- 110008

... Respondent No. 14

Jammu & Kashmir Bank Ltd.

Registered office at:
M. A. Road, Srinagar, Kashmir – 190001

... Respondent No. 15

Asset Reconstruction Company (India) Limited

Registered office at:
10th Floor, the Ruby, 29, Senapati Bapat Marg,
Dadar West, Mumbai – 400028

... Respondent No. 16

Export- Import Bank of India (Exim Bank)

Registered office at:

Centre One Building, Floor 21, World Trade Centre Complex,
Cuffe Parade, Mumbai-400 005.

... Respondent No. 17

Bank of India

Registered office at:

Star House, C-5 G Block,
Bandra Kurla Complex, Mumbai-400 051

... Respondent No. 18

Indian Overseas Bank

Registered office at:

763 Anna Salai, Chennai-600002

... Respondent No. 19

Small Industries Developmental Bank of India (SIDBI)

Registered office at:

SIDBI Tower, 15, Ashok Marg, Lucknow-226001

... Respondent No. 20

Indian Bank

Registered office at:

A-2, First Floor, Ring Rd, Block C,
South Extension I, New Delhi- 110049

... RESPONDENT NO. 21

Standard Chartered Bank

Registered office at:

B-68, Block B, Greater Kailash-I,
Greater Kailash, New Delhi - 110048

... Respondent No. 22

Bank of Baroda

Registered office at:

Baroda House, Near Mandvi, P.B. No. 506, Vadodra – 390005.

... Respondent No. 23

The Karur Vysya Bank

Registered office at:
No. 20, Erode Road, Vadivel Nagar,
L.N.S., Karur - 639002.

... Respondent No. 24

Indusind Bank Limited

Registered office at:
8th Floor, Tower 1, One Indbls CTR,
841, Senapati Bapat Marg, Elphinstn RD(W),
Mumbai – 400013.

... Respondent No. 25

Union Bank of India (E-Corporation Bank)

Registered office at:
Union Bank Bhavan, 239, Vidhan Bhavan Marg,
Nariman Point, Mumbai - 400 021

...Respondent No. 26

Central Bank of India

Registered office at: Chandermukhi BLDG.,
Nariman Point, Mumbai – 400 021

... Respondent No. 27

SREI Equipment Finance Limited

Registered office at:
Vishwakarma 86C, Topsia Road (South), Kolkata - 700046

... Respondent No. 28

YES Bank Limited

Registered office at:
9th Floor, Nehru Centre, Discovery of India,
Dr. Annie Besant Road, Worli, Mumbai - 400018.

... Respondent No. 29

DBS Bank India Ltd.

Registered office at:

Ground Floor Nos. 11 & 12, Capitol Point, Baba Kharak Singh Marg, Connaught Place, Delhi - 110001.

... Respondent No. 30

Bank of New York Mellon

Registered office at:

Unit 1, First Floor, First International Financial Center (FIFC) Plot Nos. C-54 & C-55, G Block Bandra Kurla Complex, Bandra East Mumbai - 400051

... Respondent No. 31

AND IN THE MATTER OF:

ICICI Bank Limited

..... Financial Creditor

Vs.

Jaiprakash Associates Limited

..... Corporate Debtor

Order Pronounced on: 06.03.2025

CORAM:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

Appearances:

Sh. Abhishek Anand with : *For the Applicant*
Sh. Karan Kohli, Sh. Manni
Sethi & Ms. Palak Kalra,
Advs.

Sh. Abhinav Vashisht Sr. : For the Resolution
Adv. Assisted By Ms. Gunjan Professional/Respondent
Jadwani, Sh. Anoop Rawat,
Sh. Sagar Dhawan,
Sh. Aditya Marwah &
Ms. Anushri Joshi, Advs.

ORDER

1. This application has been filed by the Applicant being one of the Suspended Board of Director and Personal Guarantor of the Corporate Debtor under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (“Code/IBC”) read with Rule 11 of the National Company Law Tribunal Rules, 2016. The following prayer has been made in the application:

“In view of the facts and circumstances and the submissions made in the present application, the Applicant most humbly prays that this Hon’ble Adjudicating Authority may be pleased to grant the following relief(s):

- I. *Allow the present Application;*
- II. *Kindly quash and set aside the Agenda Items 7 & 8 in the meeting and E-Voting Agenda Item No. 4 and consequential resolution passed by the Committee of Creditors with 81.80% voting share in the 7th meeting of the Committee of*

Creditors convened on 19.12.2024 being in contravention to the provisions of the Code and Regulations made thereunder;

III. During the pendency of the present application kindly issue an ex-parte ad-interim stay on issuance of FORM — G as resolved by the Committee of Creditors with 81.80% voting share in the 7th meeting of the Committee of Creditors convened by Resolution Professional on 19.12.2024 being in contravention to the provisions of the Code and Regulations made thereunder;

IV. Consequentially, issue appropriate directions to the Respondents to follow the mandate of Regulation 36B(6A) of the CIRP Regulations as required;

V. Pass any other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

- 2.** This matter earlier came up for hearing on 10.01.2025 when a notice was issued to the non-Applicant/ Respondents and the Ld. Counsel representing the RP had put in an appearance and sought time to file a reply by serving an advance copy to the other side.

3. The matter further came up for hearing on 24.01.2025 on which date the following order was passed:

“

2. *Ld. Counsel representing the Applicant states that as per the provisions of Regulation 36B(6A) of the CIRP Regulations, the following mandate has been cast for being adhered to by the RP for the purpose of considering the Resolution Plan and invitation for expression of interest are to be made as per the provisions of 36A of the Regulations, 2016 by issuing Form G.*

36B(6A) of the CIRP Regulations, 2016

“If the resolution professional, does not receive a resolution plan in response to the request under this regulation, he may, with the approval of the committee, issue request for resolution plan for sale of one or more of assets of the corporate debtor.”

3. *Ld. Counsel representing the Applicant takes us to the minutes of the COC meeting held on 19th December, 2024 vide Agenda Item No.7 to discuss the strategy for marketing of the assets of the Corporate Debtor in accordance with Regulation 36A of the CIRP Regulations. The relevant extract of the said discussion is at Page No.138 and the same is reproduced hereunder:*

Agenda 07: To discuss the strategy for marketing of the assets of the Corporate Debtor in accordance with Regulation 36B of the CIRP Regulations.

In the 2nd CoC meeting held on 30th July 2024, the RP had apprised that to ensure wider marketing reach out and value maximization of the Corporate Debtor, Expression of Interest (EOI) may be invited for either the Corporate Debtor as a whole or for any one or more business clusters, as deliberated and approved by the CoC. Accordingly, the RP proposed 8 business clusters to the CoC. Post the 2nd CoC meeting, the RP and his team have had multiple discussions with the key lenders and with other stakeholders including the management of the Corporate Debtor to develop the approach and marketing strategy for the resolution process and inviting EOIs from prospective bidders.

Basis such discussions, it emerged that in order to increase the chances of having a time-bound resolution and maximizing the value of the Corporate Debtor, it would be beneficial to run a simultaneous process of inviting EOIs for (i) submission of resolution plans for the Corporate Debtor as a whole as a going concern and (ii) submission of resolution plans for one or more clusters to be subsequently stitched together to achieve composite resolution for the Corporate Debtor as a whole as a going concern, while ensuring that preference is given to the resolution plans received for the Corporate Debtor as a whole as a going concern.

4. Ld. Counsel representing the Applicant further submits that since, in accordance with the mandate of the provisions of 36B(6A) of the

Regulations, 2016, the RP was bound to follow the steps enumerated therein, and therefore, since the steps provided under the Code were not being followed, therefore a communication was made on 19th December, 2024 addressed to the RP for adhering to the aforesaid provisions of the Regulations.

5. *Ld. Counsel representing the RP seeks yet another opportunity to file the reply.*

6. *Since, as per the aforesaid provisions of the Regulations, the RP is expected to strictly adhere to the provisions of the 2016 Regulations, let a short affidavit be also filed in the meantime, so as to clarify about the compliances being made by him strictly under the Regulation 36B(6A) of CIRP Regulation.*

7. *Let the short affidavit be filed within a period of one week with advance copy to be supplied to the Ld. Counsel representing the Applicant. Reply, if any, also in the meantime be filed.*

8. *The matter is adjourned for further hearing on 5th February, 2025, to come up higher on the Board.”*

4. The matter further came up for hearing on 05.03.2025. It was submitted by the Ld. Counsel representing the RP that a reply on behalf of the RP has been filed vide Diary

No.354 dated 03.03.2025. Similarly, the Ld. Counsel, Ms. Srideepa Bhattacharyya had put in an appearance on behalf of the CoC and stated that the reply on behalf of the CoC has also been filed vide Diary No.358 dated 03.03.2025.

5. Therefore, after hearing the matter at length on behalf of the respective parties, the matter had been reserved.
6. The present application as aforesaid has been filed inter alia seeking the prayers reproduced earlier. It has been averred in the application as well as submitted by the Ld. Counsel representing the Applicant, during the course of hearing, that the CIRP was initiated against the Corporate Debtor in terms of an order dated 03.06.2024 passed by this Adjudicating Authority. Thereafter, the order of initiating the CIRP against the Corporate Debtor was challenged by the present Applicant before the Hon'ble NCLAT by way of a Company Appeal No.1158-1162 of 2024 filed on 05.06.2024. The relevant excerpt of the application is reproduced below:

“9. That the Applicant herein being aggrieved by the order passed by this Hon’ble Adjudicating Authority initiating the CIRP qua the Corporate Debtor preferred an appeal bearing No. Company Appeal (AT) (Ins.) No. 1158-1162 of 2024 titled as Sunil Kumar Sharma Suspended Board Of Director Of Jaiprakash Associates Limited Vs ICICI Bank Ltd & Anr. (hereinafter referred to as “Appeal”) on 05.06.2024.

- 7.** Subsequently, Respondent No.1 convened a 2nd CoC meeting on 30.07.2024 and as per Agenda Item No.8, the strategy for inviting an Expression of Interest (“EOI”) for resolution of the Corporate Debtor had been worked out and two options had been provided at the threshold itself which has been mentioned in the application as reproduced below:

“11. That the Respondent No. 1 convened 2nd CoC meeting qua the Corporate Debtor on 30.07.2024 wherein, Agenda Item No. 8 specifically aimed at discussing the eligibility criteria for submission of Expressions of Interest (hereinafter referred to as

“EOI”) and approving the EOI document. During the meeting, the Respondent No. 1 apprised the members of the CoC regarding the strategies under consideration for marketing the Corporate Debtor and achieving a successful resolution. Two primary options were presented:

- *Option 1: Submission of EOIs for the Corporate Debtor as a whole, including its investments and shareholding interest in its associates and subsidiaries.*

- *Option 2: Submission of EOIs for one or more clusters of the Corporate Debtor, with the Chairperson, in consultation with and with prior approval of the CoC, having categorized the Corporate Debtor's business operations into eight distinct clusters based on the complexity and scale of operations of Jaiprakash Associates Limited. The clusters were delineated as follows:*

- *Cluster 1: Real Estate*
- *Cluster 2: Investment in Jaiprakash Power Ventures (24%)*
- *Cluster 3: Cement*
- *Cluster 4: Hospitality*
- *Cluster 5: Investment in BJCL (74%)*
- *Cluster 6: Jaypee Fertilizers & Industries*

➤ *Cluster 7: Cricket Stadium & F1 Racetrack*

➤ *Cluster 8: EPC & Residual Entity*

”

- 8.** It has also been averred and submitted on behalf of the Applicant that while the matter was pending before the Hon’ble NCLAT in an appeal challenging the order initiating the CIRP of the Corporate Debtor, the Ld. Counsel representing the Financial Creditor submitted that the relevant Agenda Items related to the publication of Form G have been deleted from the discussions held during the meeting of the CoC convened on 30.08.2024. It is relevant to reproduce the Agenda Item No.8 of the said CoC meeting as under:

“Agenda Item No.8 To discuss the eligibility criteria for Expression of Interest (EoI) and approve the EoI document: The Chairperson apprised the members of the CoC that for marketing the company and successful resolution of the Corporate Debtor the following two options are being considered: Option 1: Submission of EOI for the Corporate Debtor as a whole (including its investments and shareholding interest in its associates and subsidiaries) Option 2: Submission of EOI for one or more Clusters of the Corporate Debtor-

Having regard to the complexity and scale of operations of Jaiprakash Associates Limited, the Chairperson and, in consultation with and prior approval of the CoC of JAL, categorized the business of the Corporate Debtor in 8 clusters (“Cluster(s))”.

- Cluster 1: Real Estate*
- Cluster 2: Investment in Jaiprakash Power Ventures (24%)*
- Cluster 3: Cement*
- Cluster 4: Hospitality*
- Cluster 5: Investment in BJCL(74%)*
- Cluster 6: Jaypee Fertilizers & Industries*
- Cluster 7: Cricket Stadium & F1 Racetrack*
- Cluster 8: EPC & Residual Entity Further, the details of the proposed financial eligibility criteria for Corporate Debtor as a whole and Cluster wise was discussed in detail with the members of the CoC.*

- 9.** The factum of the statement so made on behalf of the Financial Creditor namely, ICICI Bank has been recorded in the order dated 29.08.2024 passed by the Hon’ble NCLAT which is placed at Page No.93 of the paper book. However, later on, the appeal filed by the present

applicant before the Hon'ble NCLAT was dismissed in terms of an order dated 06.12.2024.

- 10.** Further another meeting of the CoC was convened on 19.12.2024 to discuss the strategy for marketing the assets of the Corporate Debtor in accordance with the Regulation 36B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"). In the said meeting, it was discussed that the marketing strategy of the Corporate Debtor has been prepared in compliance with Regulation 36C of the CIRP Regulations and 8 business clusters had been proposed for inviting Expression of Interest by way of two options i.e. one for inviting Expression of Interest and consequential invitation of Resolution Plans of the Corporate Debtor as a whole as a going concern and as per option two for inviting the Expression of Interest and consequential invitation of Resolution Plans with respect to the 8 business clusters of the Corporate Debtor.
- 11.** The Ld. Counsel representing the Applicant while arguing the matter has taken us through deliberations which

have taken place in the 7th CoC meeting held on 19.12.2024. The copy of said minutes has been placed as Annexure No. A3 starting from Page No.99 onwards of the application. The Ld. Counsel representing the Applicant has referred to Agenda Item No.7 starting from Page No.137 onwards. He particularly refers to the relevant para of the minutes where the discussions have taken place giving alleged reasoning about straightway going in for two options for inviting Expression of Interest for the Corporate Debtor. The relevant part of the minutes of the 7th CoC meeting reads as under:

“Basis such discussions, it emerged that in order to increase the chances of having a time-bound resolution and maximizing the value of the Corporate Debtor, it would be beneficial to run a simultaneous process of inviting EOIs for (i) submission of resolution plans for the Corporate Debtor as a whole as a going concern and (ii) submission of resolution plans for one or more clusters to be subsequently stitched together to achieve composite resolution for the Corporate Debtor as a whole as a going concern, while ensuring that preference is given to the resolution

plans received for the Corporate Debtor as a whole as a going concern.

The RP sought views of the RP legal advisor on this matter:

The RP legal advisor stated that the CIRP regulation 36B requires plans to be invited for resolution of the corporate debtor as a going concern in the first instance; however, for maximization of value and in consultation with the members CoC the various business segments of the corporate debtor can be considered and segregated as business clusters for inviting corresponding resolution plans. Option I would be to invite resolution plans for the company as a whole as a going concern. Under option II, there will be various clusters/ combinations of clusters comprising one or more business segments, wherein, the CoC will have the flexibility to consolidate the resolution plans received for these clusters/ combination of clusters and integrate them into one composite resolution plan to achieve composite resolution for the Corporate Debtor as a whole as a going concern. Both approaches will aim to achieve the resolution of the corporate debtor as a going concern.”

12. The Ld. Counsel representing the Applicant further submitted that during the course of the 7th CoC meeting, wherein the Applicant was also present in his capacity as the Suspended Director of the Corporate Debtor, requested the RP to allow him to present his concerns regarding the proposed strategy. It is stated by the Ld. Counsel, that the Applicant during the meeting expressed disagreement with the approach of simultaneously inviting Resolution Plans for the Corporate Debtor as a whole and on a business cluster-wise basis as his view was that such approach may be contrary to the Code and its Regulations. The relevant part of the minutes of the meeting where the Applicant has made his observations of disagreement is also reproduced below:

“Mr. Sunil Sharma, suspended director of the Corporate Debtor, requested the RP to allow him to present his concerns regarding the proposed strategy. He stated that firstly as per his understanding, the CoC will have to seek extension of time and then EOI and resolution plans for the company as a whole. He expressed disagreement with the approach of simultaneously inviting

resolution plans for the CD as a whole and on a business, cluster-wise plans may be considered. Additionally, Mr. Sharma emphasized that the marketing of assets and the invitation for Expressions of Interest are distinct activities and should not be combined in a single CoC meeting / single process. He further highlighted that, due to the nature of the business, it may not be feasible for the CD to provide sufficient details to separate assets and liabilities for multiple clusters. Mr. Sharma also raised concerns regarding the proposed criteria for Earnest Money Deposit (EMD) and net worth, stating that the amounts were low, which he believed could impact the seriousness of potential bidders. He further stated that in the event that the CoC proceeds with the simultaneous approach, then they reserve their right to seek legal remedies as permissible under law. They also informed the members that, during the course of the meeting, they had submitted a letter expressing their views on the proposed process (Annexed as Annexure 3)”.

13. Ld. Counsel representing the Applicant further stated that a formal representation was also submitted by the Applicant on 19.12.2024 itself, a copy thereof is also attached as Annexure No. A4 on Page No.154 of the

present paper book. The Ld. Counsel representing the Applicant during the course of the hearing argued that the approach being undertaken by the RP on the alleged approval of the CoC for simultaneously inviting the Expression of Interest and consequentially the Plans by way of applying two options is contrary to the provisions of the Code. He submits that the provisions of Section 25 of the Code provide the duties of the Resolution Professional. Further, Clause (h) of Sub-Section (2) of Section 25 thereof stipulates that the Resolution Professional will invite Prospective Resolution Applicants who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans. Also, as per Regulation 36A of IBBI Resolution Process for Corporate Persons, 2016 (CIRP Regulations), the Resolution Professional is required to publish for inviting Expression of Interest in Form G which as per the

provisions of sub-sections contained therein, result into issuing a final list of the Prospective Resolution Applicants as provided under Clause (12) of Regulation 36A of CIRP Regulations.

- 14.** He further takes us to the provision of Regulation 36B Clause (1) of the CIRP Regulations which states that the Resolution Professional shall within 5 days of the date of issue of the final list under the sub-Regulation (12) of Regulation 36A issue the Information Memorandum, Evaluation Matrix and a Request For Resolution Plans to every Resolution Applicant mentioned in the final list. According to the Ld. Counsel, representing the Applicant, the Regulation 36A & B of the CIRP Regulations mandates the RP to issue Form G and finalize the list of the Prospective Resolution Applicant. He particularly refers to the provision of the Regulation 36B (6A) of CIRP Regulations to the effect that if the Resolution Professional does not receive a Resolution Plan in response to the request under this Regulation, he may be with the approval of the committee of creditors issue

request for Resolution Plan for sale of one or more of the assets of the Corporate Debtor. He, therefore, submits that inviting the Expression of Interest and subsequently finalizing the list for inviting the Resolution Plan can only be one step at a time i.e. if RP does not receive a Resolution Plan then only he may go in for an invitation of Resolution Plan for sale of one or more of the assets of the Corporate Debtor.

- 15.** According to Ld. Counsel, representing the Applicant, therefore inviting an Expression of Interest and consequently finalizing the list thereof to invite the Resolution Plan and also, resorting to inviting the Resolution Plan by way of sale of clusters of the business of the Corporate Debtor is contrary to the provisions of Regulation 36B (6A) of the CIRP Regulations. He, therefore, submits that the procedure adopted by the Resolution Professional by way of publication is in violation of the provisions of the Code as well as the Regulations framed thereunder. He relies upon various judgments passed by Hon'ble Courts to the effect that if

a statute provides for a thing to be done in a particular manner then it has to be done in that manner alone and in no other manner. The relevant excerpts of the judgments relied upon are reproduced below:

“36. The Hon’ble Supreme Court has repeatedly upheld this principle, In Opto Circuit India Ltd. vs Axis Bank, AIR 2021 SC 75, it was held that; “This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner.....

....in the case of Chandra Kishor Jha vs. Mahavir Prasad and Ors. (1999) 8 SCC 266 and in the course of consideration observed as hereunder: “It is a well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.”

37. Further, in the case of Selvi J.Jayalalithaa & Ors vs State Of Karnataka, 2013 AIR SCW 5767 and State of U.P. v. Singhara Singh, 1963 SCC OnLine SC 23, the Hon’ble Supreme Court of India held that: “8. The rule adopted in Taylor v. Taylor is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has

laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed.”

39.another judgment passed by the Hon’ble Supreme Court in the case of Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755, wherein it has been held that: “35. It is well settled that where a statute provides for a thing to be done in a particular manner, then it has to be done in that manner, and in no other manner.””

16. Ld. Counsel representing the Applicant has also made submissions that the principle of the commercial wisdom of the CoC has also to be seen in the context of the provisions of the Code and no violation of the provisions of the Code can be allowed under the garb of applying the principles of commercial wisdom of CoC. He placed his reliance on the case of M.K. Rajagopalan vs Dr. Periasamy Palani Gounder and Anr, (2023) SCC OnLine SCC 574, passed by the Hon’ble Supreme Court as follows:

“44.4. Although, the aspects aforesaid did not form the part of consideration of CoC but, they cannot be ignored merely with reference to the

status assigned to the commercial wisdom of CoC. The principles underlying the decisions of this Court respecting the commercial wisdom of CoC cannot be over-expanded to brush aside a significant shortcoming in the decision making of CoC when it had not duly taken note of the operation of any provision of law for the time being in force.”

Further, he also relied on the following judgments passed by the Hon’ble NCLAT-: *Moons Technologies Ltd. v. The Administrator of Dewan Housing Finance Corporation Ltd, 2022 SCC OnLine NCLAT 834 and Jindal Power Ltd. Vs. Dhiren Shantilal Shah RP of Tuticorin Coal Terminal Pvt. Ltd. and Anr., Company Appeal (AT) (Insolvency) No. 1166-1167 of 2023.*

17. Ld. Sr. Counsel representing the RP, in its reply, argued that the decision to go in for exercising two options to invite Expression of Interest and consequential submission of Resolution Plans from the Prospective Resolution Applicants has been done in order to maximize the value of the Corporate Debtor. He also refers to and relies upon the 7th meeting of the CoC held on 19.12.2024, the relevant part of which has been

reproduced in the earlier part of this order, and the same is attached as Annexure on Page 138 of the paper book. He submits that in order to maximize the value of the Corporate Debtor simultaneously going in for two options is beneficial as submission of the Resolution Plan for the Corporate Debtor as a whole as a going concern is the first option and also submission of the Resolution Plan for one or more clusters shall be subsequently stitched together to achieve composite resolution for the Corporate Debtor as a whole as a going concern.

- 18.** Ld. Sr. Counsel representing the RP therefore submits that the aim of going in for both options is the same namely, the resolution of the Corporate Debtor. Moreover, even as per the second option, the Resolution Plans for one or more clusters are to be stitched together to make it a composite Resolution Plan for the Corporate Debtor. He argued that the RP has invited the Expression of Interest by simultaneously adopting two options as per Regulation 36A of the CIRP Regulations and the provisions of Regulation 36B of the CIRP Regulations

would be applicable at the time wherein the Resolution Plans have been invited and there are no Resolution Plans received in response thereto. He submitted that the Request for Resolution Plan (RFRP) is to be issued after carrying out the present exercise and thereafter the Prospective Resolution Applicant would be invited to submit their Resolution Plans for consideration by the CoC under the two options as published by the RP. He also refers to Regulations 36 & 37 of the CIRP Regulations.

- 19.** According to the Ld. Sr. Counsel, Regulation 36C of the CIRP Regulations provides a strategy for marketing the assets of the Corporate Debtor in consultation with the committee and as per Regulation 37 of the CIRP Regulations, a Resolution Plan shall provide for the ledgers as may be necessary for Corporate Insolvency Resolution of the Corporate Debtor for maximization of the value of the assets. Ld. Sr. Counsel has also referred to the provisions of Section 5 (25) of the Code. As submitted by him, according to Section 5 (25) of the Code,

the Resolution Applicant can be an individual or jointly with any other person who would submit the Plan to the Resolution Professional pursuant to the invitation made under Section 25(2)(h) of the Code. He, therefore submits that a Resolution Plan can be submitted jointly with any other person as a consortium of the Prospective Resolution Applicants. He also further refers to Section 5(26) of the Code, which defines a Resolution Plan to mean a Plan proposed by the Resolution Applicant of the Corporate Debtor as a going concern.

20. Ld. Sr. Counsel representing the RP also submitted that the present process of inviting Expression of Interest simultaneously will also result in saving time and would speed up the process of CIRP for the purpose of taking a conclusive decision on the Resolution Plan. He refers to and relies on the following judgements cited as follows:

“31. Moreover, the Hon'ble Supreme Court has time and again reiterated the importance of a timely resolution under the Code. In Kridhan Infrastructure Pvt. Ltd. v. Venkestesan Sankaranarayan & Ors., Civil Appeal No 3299 of

2020, the Hon'ble Supreme Court has held that "Time is a crucial facet of the scheme under the IBC. To allow such proceedings to lapse into an indefinite delay will plainly defeat the object of the statute." The intent of the Code was also noted in Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 wherein the Hon'ble Supreme Court drew reference to the Bankruptcy Law Reforms Committee of November, 2015 and held that "Speed is of essence for the working of the bankruptcy code ... delays cause value destruction. Thus, achieving a high recovery rate is primarily about identifying and combating the sources of delay."

21. Ld. Sr. Counsel representing the RP has also raised objections with regard to the locus standi of the Applicant to challenge the process of inviting Expression of Interest initiated by the RP.

22. Ld. Counsel representing the CoC has also endorsed the submissions made by the Ld. Sr. Counsel representing the RP by saying that simultaneously inviting Expression of Interest for the various business clusters of the Corporate Debtor is not in violation of any of the

provisions of the Code and that the provisions of the Code have been fully complied with. She also refers to some of the judgments that inviting Expression of Interest and consequential Resolution Plans for different business clusters is not in violation of the provisions of the Code. The various judgments relied and cited by the Ld. Counsel of CoC are as follows: - *Reserve Bank of India v. Dewan Housing Finance Corporation Ltd., C.P. (IB) No. F4258/MB/C-II/2019 passed by NCLT Mumbai Bench vide order dated June 7, 2021, Nageswara Rao v. Committee of Creditors, I.A. No. 2949 of 2023 in C.P. (IB) No. 1231 of 2021 ("Reliance Capital") passed by NCLT Mumbai Bench vide order dated February 27, 2024, M.K. Rajagopalan v. Dr, Periasamy Palani Gounder 2023 SCCOnLine SC 574 passed by Hon'ble Supreme Court, State Tax Officer (1) v. Rainbow Paper Limited 2022 SCC OnLine SC 1162 passed by Hon'ble Supreme Court and Brilliant Alloys v. S. Rajagopal 2018 SCCOnLine SC 3154 passed by Hon'ble Supreme Court.*

23. The Ld. Counsel representing the CoC further submitted that the judgements as referred to and relied upon by the Ld. Counsel representing the Applicant are irrelevant, as the CoC in the present matter has acted in compliance of the provisions of the Code and the CIRP Regulations.

24. Ld. Sr. Counsel representing the RP has also raised an objection as to the maintainability of the present application filed by the Ex-Director on the ground that the Applicant does not have a locus standi. It is argued by the Ld. Sr. Counsel, representing the RP, that the Form G has been published giving two options and the Ex-Director does not have any role in the context of inviting Expression of Interest and consequential Resolution Plan from the Prospective Resolution Applicants. The said objection has been contested by the Ld. Counsel representing the Applicant on the ground that being the Director of Ex-management, he has pervasive role in the manner in which the process of publication of Form G for inviting the Expression of Interest and consequential Resolution Plan from the

Prospective Resolution Applicants, is done. He also further submitted that during the course of 7th CoC meeting held on 19.12.2024, the Applicant has shown his disagreement to the proposal of the RP and its consideration by the CoC for issuing two options at the threshold to the Prospective Resolution Applicants being in contravention of the provisions of the Code and its Regulations made thereunder. He also further submitted that even a written representation of the same date i.e. 19.12.2024 was also submitted before the RP. Despite this, objection raised by him the Form G has been published giving two options at the threshold to the Prospective Resolution Applicants and this action according to the Ld. Counsel representing the Applicant is irrational and in violation of the provisions of the Code and its Regulations. He also relied upon a judgement passed by the Hon'ble Supreme Court in the case of the *Vijay Kumar Jain Vs. Standard Chartered Bank & Ors.* (CIVIL APPEAL NO.8430 OF 2018), which is reproduced below :

“9. This statutory scheme, therefore, makes it clear that though the erstwhile Board of Directors are not members of the committee of creditors, yet, they have a right to participate in each and every meeting held by the committee of creditors, and also have a right to discuss along with members of the committee of creditors all resolution plans that are presented at such meetings under Section 25(2)(i).”

25. The Ld. Counsel representing the Applicant submits that the Hon’ble Supreme Court in the said judgement has acknowledged the role of the Director of Ex-management in the entire process.

26. We have examined this aspect and find that the Director of Ex-management has been an integral part of the process of the CIRP and is a member of the CoC having no voting rights and is ceased of the process being undertaken by the CoC. Therefore, on the disagreement raised by him during the course of the 7th CoC meeting having not been taken care of by the CoC in accordance with the provisions of the Code and Regulations with regard to carrying forward the process, the Applicant

would be entitled to file and maintain the present application. We therefore, uphold the maintainability of the present application on the ground of the Applicant having the locus standi in the present matter.

27. We have perused the record of the present matter and heard the Ld. Counsels representing the parties as referred to herein above.

28. In the present case a procedure has undoubtedly been adopted by simultaneously exercising two options namely, the inviting Expression of Interest and consequential Resolution Plan with respect to the Corporate Debtor as a whole as a going concern and the second option for inviting the Expression of Interest and the consequential Resolution Plan for different business clusters of the Corporate Debtor. The business clusters initially which were 8 in number had been further increased to 12 by further segregating different business/operations of the Corporate Debtor.

29. We are, therefore examining the aspect of sustainability of such publication of Form G inviting Expression of

Interest in terms of provisions of Section 25 (2)(h) read with Regulations framed thereunder. Further, the validity of such Form G simultaneously exercising two options being legally valid or contravening the provisions of the Code and the Regulations made thereunder in any manner is also examined. In order to appreciate point at issue, it would be relevant to reproduce some of the provisions of the Code and the Regulations made thereunder. Sections 5(25), 5(26), Section 25 (2)(1) & 25 (2)(h) of the Code are reproduced hereunder: -

“5(25) "resolution applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25 [or pursuant to section 54K, as the case may be];

5(26) “Resolution plan” means a plan proposed by 3 [resolution applicant] for insolvency resolution of the corporate debtor as a going concern in accordance with Part II 4 [Explanation:- For removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of

the corporate debtor, including by way of merger, amalgamation and demerger;]

25. Duties of resolution professional. –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -

(h) Invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.”

30. From a reading of the aforesaid provisions, it may be seen that Regulation 5(25) defines the Resolution Applicant who can be an individual or can be as jointly with any other person entitled to submit a Resolution Plan. There is no quarrel concerning that a Resolution Plan can be submitted either individually or by a combination or

consortium of persons submitting a Resolution Plan with respect to the Corporate Debtor. Further, Section 5 (26) is more relevant in the context of defining a Resolution Plan which would mean that a Plan proposed by a Resolution Applicant for Corporate Insolvency Resolution of the Corporate Debtor as a going concern. Therefore, the emphasis upon the Resolution Plan is in the context of the Corporate Debtor as a going concern and further, the essence of the Code that when a CIRP is initiated against the Corporate Debtor, the process needs to be initiated in a manner so as to resolve the Corporate Debtor as a going concern.

31. In that context, we further read sub-Section 25(2)(h) as reproduced above which also unequivocally infers that the RP has to preserve the assets of the Corporate Debtor including the continued business of the Corporate Debtor and invite Prospective Resolution Applicants to submit a Resolution Plan or Plans who would fulfill such criteria as may be laid down by him with the approval of the committee of the Corporate Debtor having regard to the

complexity and scale of operation of the business of the Corporate Debtor. The reference of fulfilling such criteria by the Prospective Resolution Applicants made in Section 25 (2)(h) is only in the context of laying down any such criteria which a Prospective Resolution Applicant would be required to fulfil in order to qualify to be a Prospective Resolution Applicant for submission of the Expression of Interest and the Resolution Plan.

32. Regulation 36A of the CIRP Regulations however deals with invitations for Expression of Interest by way of publication of Form G and a final list of the Prospective Resolution Applicants shall be issued in terms of Regulation 36A (12). Thereafter, as per the provisions of Regulation 36B of the CIRP Regulations, the Resolution Professional has to issue the Information Memorandum and a Request for Resolution Plan to every Prospective Resolution Applicant mentioned in the final list. It is thus very relevant that inviting an Expression of Interest in terms of Regulation 36A of the CIRP Regulations automatically entails into submission of the Resolution

Plans by such Prospective Resolution Applicants whose names have been finalized in terms of Regulation 36A (12) of the CIRP Regulations. Therefore, the Regulation 36B (6A) would remain applicable even at the stage of inviting the Expression of Interest in accordance with the provision of Regulation 36A, in view of the fact, that it is the finalization of the list of the Prospective Resolution Applicants who will submit their Expression of Interest and further be entitled to file their Resolution Plans.

33. The provision of Regulation 36B(6A) of the CIRP Regulations, therefore, clearly mandates a positive action upon the Resolution Professional to first go in for inviting Resolution Plan and only if the Resolution Professional does not receive a Resolution Plan in response to the request then he may go in for inviting Resolution Plan for sale of one or more of the assets of the Corporate Debtor. The relevant provisions of Regulation 36A and 36B are worth reproducing hereunder:

“36A. Invitation for expression of interest.

(1) The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the [Schedule-I] at the earliest, [not later than sixtieth day] from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans. [Clarification: The resolution professional after the approval of the committee may invite a resolution plan for each real estate project or group of projects of the corporate debtor.]

(2) The resolution professional shall publish Form G (i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the resolution professional, the corporate debtor conducts material business operations; (ii) on the website, if any, of the corporate debtor; (iii) on the website, if any, designated by the Board for the purpose; and (iv) in any other manner as may be decided by the committee.

(3) The Form G in the [Schedule-I] shall - (a) state where the detailed invitation for expression of interest can be downloaded or obtained from, as the case may be; and (b) provide the last date for submission of expression of interest which shall not

be less than fifteen days from the date of issue of detailed invitation.

(4) The detailed invitation referred to in sub-regulation (3) shall- (a) specify the criteria for prospective resolution applicants, as approved by the committee in accordance with clause (h) of sub-section (2) of section 25; (b) state the ineligibility norms under section 29A to the extent applicable for prospective resolution applicants; (c) provide such basic information about the corporate debtor as may be required by a prospective resolution applicant for expression of interest[;] (d) not require payment of any fee or any non-refundable deposit for submission of expression of interest; and (e) provide details of the corporate debtor's registration status as a micro, small, or medium enterprise in accordance with the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006). [Provided that where the corporate debtor has any real estate project, the committee, for an association or group of allottees in such real estate project, representing not less than ten per cent. or one hundred creditors out of the total number of creditors in a class, whichever is lower, may relax the following:(a) eligibility criteria for submission of

expression of interest provided in clause (a) above; and (b) conditions regarding the refundable deposit.]

(4A) Any modification in the invitation for expression of interest may be made in the manner as the initial invitation for expression of interest was made: Provided that such modification shall not be made more than once.]

(5) A prospective resolution applicant, who meet the requirements of the invitation for expression of interest, may submit expression of interest within the time specified in the invitation under clause (b) of sub-regulation (3).

(6) The expression of interest received after the time specified in the invitation under clause (b) of sub-regulation (3) shall be rejected.

(7) An expression of interest shall be unconditional and be accompanied by- (a) an undertaking by the prospective resolution applicant that it meets the criteria specified by the committee under clause (h) of sub-section (2) of section 25; (b) relevant records in evidence of meeting the criteria under clause (a); (c) an undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A to the extent applicable; (d) relevant information and records to enable an

assessment of ineligibility under clause (c); (e) an undertaking by the prospective resolution applicant that it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process; (f) an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code; and (g) an undertaking by the prospective resolution applicant to the effect that it shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.

(8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with- (a) the provisions of clause (h) of sub-section (2) of section 25; (b) the applicable provisions of section 29A, and (c) other requirements, as specified in the invitation for expression of interest

(9) The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence under sub regulation (8).

(10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.

(11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) maybe made with supporting documents within five days from the date of issue of the provisional list. (12) On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.

36B. Request for resolution plans.

(1) The resolution professional shall, within five days of the date of issue of the final list under sub-regulation (12) of regulation 36A, issue the information memorandum, evaluation matrix and a

request for resolution plans to every resolution applicant in the final list: Provided that where such documents are available, the same may also be provided to every prospective resolution applicant in the provisional list.]

(2) The request for resolution plans shall detail each step in the process, and the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines.

(3) The request for resolution plans shall allow prospective resolution applicants a minimum of thirty days to submit the resolution plan(s).

(4) The request for resolution plans shall not require any non-refundable deposit for submission of or along with resolution plan.

(4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance

with the terms of the plan and its [implementation schedule:] [Provided that where the corporate debtor has any real estate project, the committee may relax the requirement to provide for performance security for an association or group of allottees in such real estate project, representing not less than ten per cent. or one hundred creditors out of the total number of creditors in a class, whichever is lower.]

Explanation I.– For the purposes of this sub-regulation, “performance security” shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.

Explanation II. – A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.]

(5) Any modification in the request for resolution plan or the evaluation matrix issued under sub-regulation (1), shall be deemed to be a fresh issue and shall be subject to timeline under sub-regulation (3). [Provided that such modifications shall not be made more than once.]

(6) The resolution professional may, with the approval of the committee, extend the timeline for submission of resolution plans.

(6A) If the resolution professional, does not receive a resolution plan in response to the request under this regulation, he may, with the approval of the committee, issue request for resolution plan for sale of one or more of assets of the corporate debtor.

(7) The resolution professional may, with the approval of the committee, re-issue request for resolution plans, if the resolution plans received in response to an earlier request are not satisfactory, subject to the condition that the request is made to all prospective resolution applicants in the final list: Provided that provisions of sub-regulation (3) shall not apply for submission of resolution plans under this sub-regulation.”

34. The reference made to the provision of Regulation 36C of the CIRP Regulations, is only in the context of marketing the assets of the Corporate Debtor and the strategy to be worked out for such an exercise to be undertaken by the Resolution Professional in consultation with the CoC. Even this provision of Regulation 36C of the CIRP

Regulations cannot be read to mean that the business of the Corporate Debtor can be stipulated into the business clusters and the Expression of Interest can be straightway invited from the Prospective Resolution Applicants by providing as a second option while publishing Form G. The provision of Regulation 37 of the CIRP Regulations however deals with the necessary ingredients to be made in the Resolution Plan to be ultimately submitted by a Prospective Resolution Applicant who has participated in the process of giving response to the Expression of Interest entailing submission of the Resolution Plan.

35. In view of the conjoint reading of the provisions of Regulation 36A (12) & 36B (6A) it is unequivocally clear that the Resolution Professional would have the liberty to invite Resolution Plans for the Corporate Debtor as a whole as a going concern with different clusters/assets for the purpose of inviting Expression of Interest entailing submission of the Resolution Plans. However, as per the mandate cast upon under Regulation 36A(1), he has to

necessarily invite the Expression of Interest in Form G for the Corporate Debtor as a whole entailing submission of the Resolution Plan from the Prospective Resolution Applicant for the Corporate Debtor as a whole as a going concern. Thereafter, under Regulation 36B(6A) splitting of asset at a next stage is provided in case Resolution Plan for the Corporate Debtor as whole as a going concern is not received.

36. We have also perused the judgment referred to by the Ld. Counsel representing the parties and are in agreement that the provisions of the statute have to be read and implemented strictly in the manner it is intended to be read as provided therein. Therefore, as per the format of Form-G provided in Schedule I of the CIRP Regulations, when Expression of Interest is invited, the details of the Corporate Debtor as a whole to be given specifying its all business and assets. No provision is there for splitting of business and assets. As per Regulation 36B(6A) of the CIRP Regulations, it is only when RP does not receive a resolution plan under Regulation 36B(1) on the basis of

Expression of Interest, he may, thereafter, with the approval of CoC , may call for sale of one or more assets. There is no provision for publishing Form-G, which stipulates splitting the business of the Corporate Debtor as is being done in the present case.

37. Hence, the manner in which Form G has been published for exercising two options simultaneously under the pretext of maximization of the assets of the Corporate Debtor, commercial wisdom of the CoC, or expediting the CIR Process also cannot be sustained as adherence to the provisions of the statutes is a *sine qua non* and the statutory intent cannot be read to interpret in a manner *dehors* the Code.

38. Whereas there cannot be any quarrel with respect to the maximization of the value of the assets of the Corporate Debtor, expedient pursuance of CIRP, and exercising of commercial wisdom by the CoC. Also the judgements relied upon by the Ld. Counsels, representing the RP as well as the CoC, are not attracted being not on the point of the facts and circumstances prevailing in the present

matter. However, in view of our foregoing discussions, the adherence to the provisions of the Code would prevail over the action initiated by the Resolution Professional by publishing Form G for inviting an Expression of Interest by giving two options at the threshold. The provisions of the Code and the Regulations made thereunder cannot be permitted to be eclipsed.

39. It is also worthwhile to note that in terms of our order dated 24.01.2025, as reproduced in the earlier part of this order, we have also asked the RP to file an affidavit to show the manner in which there is a compliance of the provisions of Regulation 36B (6A) of the Regulations in that context, the RP has filed an affidavit vide Diary No.358 dated 03.03.2025 the Ld. Counsel representing the Applicant has referred to the relevant part of the affidavit of the RP which reads as under:

“3. In this regard, I state that the Form G and detailed invitation for expression of interest (including the terms, eligibility criteria in terms of Section 25(2)(h)) for the Corporate Debtor was issued by the RP based on consultation with the

members of the Committee of Creditors ("CoC") and discussions that took place in the 7th CoC meeting of the Corporate Debtor held on 19 December 2024 and with due approval of the CoC of the Corporate Debtor, to invite interested and eligible prospective resolution applicants to submit expression of interest in terms of Regulation 36A of the CIRP Regulations. To the best of my understanding, belief and based on legal advise, the issuance of Form G and detailed invitation for expression of interest are in accordance with the principles of the Code and the rules and regulations framed thereunder."

- 40.** It is contended by the Ld. Counsel representing the Applicant that the said affidavit does not clarify that the provisions of the CIRP Regulations i.e., Regulation 36B (6A) read with the provisions of Section 25(2)(h) of the Code have been adhered to by the RP. The RP was asked to file the affidavit in the background of the fact that the RP had given two options for inviting the Expression of Interest and the rationale of the publication of Form G in such a manner which remains to be clarified.

41. In view of our foregoing discussions, we find that the Form G publication inviting Expression of Interest entailing submission of the Resolution Plans by giving two options at the threshold and the second option by splitting the business operations of the Corporate Debtor into multiple clusters being in violation of the provisions of the Code and the Regulations made thereunder is untenable in law. The provisions of the Code and the Regulations have to be read as they are which provides for the steps to be followed one after the other i.e. the Resolution Plans with respect to the clusters which are the assets of the Corporate Debtor can be done only after the exhaustion of the first option where no Resolution Plan with the Corporate Debtor as a whole as a going concern has been received in the first instance.

42. We, therefore, are of the view that option two initiated in the first instance itself along with option one is in violation of the provisions of the Code as referred to above.

43. We are however also conscious of the fact that the process of inviting Expression of Interest by publication of Form G has been initiated and as per the provisions of the Code and the Regulations made thereunder, the Expression of Interest are to be invited in the first instance for the Corporate Debtor as a whole as a going concern. Since option one already stipulates that measure, therefore the process being only with respect to option one may continue. The Form G, therefore, to the extent of also providing option two for inviting Expression of Interest and Resolution Plans for multiple clusters of the Corporate Debtor is, therefore, set aside.

In view of our above decision, Form G published by RP shall continue with option one i.e. inviting Expression of Interest for the Corporate Debtor as a whole as a going concern, and option two is set aside i.e. cluster wise expression of interest if any filed, will not be considered at this stage.

44. Needless to say the RP after due approval from the CoC would be at liberty to publish a fresh Form G if there are

no Resolution Plans received for the Corporate Debtor as a whole as a going concern, from the Prospective Resolution Applicants in the first instance by following option one.

45. I.A. No. 27 of 2025 stands disposed off in the aforesaid terms accordingly.

-Sd-
(Ashish Verma)
Member (Technical)

-Sd-
(Praveen Gupta)
Member (Judicial)

Date: 06.03.2025

Avaneesh Kumar Singh
(Stenographer)