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**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
AT ALLAHABAD**

I.A / C.A. NO. _____ OF 2019

IN

CP No. (IB) 77 /ALD/2017

(Under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with
Rule 11 of National Company law Tribunal Rules, 2016)

IN THE MATTER OF:

INSOLVENCY & BANKRUPTCY BOARD OF INDIA
7TH FLOOR, MAYUR BHAWAN, SHANKAR MARKET,
CONNAUGHT CIRCUS,
NEW DELHI -110001

...INTERVENOR/APPLICANT

AND

IN THE MATTER OF:

IDBI BANK LIMITED

.... FINANCIAL CREDITOR

V/S.

JAYPEE INFRA TECH LIMITED

.... CORPORATE DEBTOR

INDEX

S.NO.	PARTICULARS	PAGES
1.	Application for Intervention and seeking appropriate directions under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016	1-16
2.	Affidavit in support of the Application	17-19
3	Annexure A1 (Colly): Copy of the order dated 15.04.2019 passed by Hon'ble National Company Law Tribunal Bench III (In Reference), New Delhi and Written Note filed by the Applicant	20-40
4	Annexure A2 (Colly): The copy of CoC minutes	41-75

3

5	Annexure A3: Copy of order dated 28.01.2019	76-79
6	Annexure A4: Copy of Order dated 29.04.2019 by Hon'ble National Company Law Tribunal Bench Principal Bench, New Delhi in <i>M/s Swaraj Overseas v. Goldline Ventures Pvt. Ltd.</i> (IB)-1634(PB)/2018	80-81
7	Annexure A5: Record of discussions of Insolvency Law Committee meeting held on 2 May, 2019	82-87
8	Annexure A6: Copy of the order dated 28.09.218 by Hon'ble National Company Law Tribunal Bench Principal Bench, New Delhi in <i>Nikhil Mehta & Sons (HUF) & Ors. Vs. M/s AMR Infrastructure Ltd.</i> , [2018] 147 CLA 39	88-119
9	Vakalatnama	120-121
10	Proof of Service	122

FILED THROUGH:

[Signature]

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COUNSEL FOR INTERVENOR/APPLICANT

Place:

Delhi: 17.05.2019

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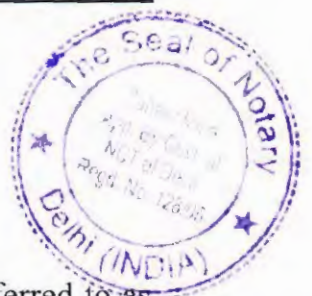
TO
THE HON'BLE CHAIRMAN AND
THE MEMBERS OF THE NATIONAL
COMPANY LAW TRIBUNAL

**APPLICATION FOR INTERVENTION AND FOR SEEKING
ARROPRIATE DIRECTIONS UNDER SECTION 60 (5) OF THE
INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH RULE
11 OF THE NATIONAL COMPANY LAW TRIBUNAL RULES, 2016,**

MOST RESPECTFULLY SHOWETH:

I. DETAILS OF THE APPLICANT:

The Insolvency & Bankruptcy Board of India (hereinafter referred to as
"Applicant") is a statutory body established under Section 188 of the
Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as
"Code"). The Board is a key pillar of the ecosystem responsible for



implementation of the Code that consolidates and amends the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of the value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.

II. JURISDICTION OF THE BENCH

The Applicant humbly submits that the subject matter of the Application is within the jurisdiction of the Hon'ble Bench.

III. LIMITATION

Not Applicable.

IV. FACTS OF THE CASE: -

1. That the present application is being filed by the Applicant under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 for intervention and for seeking appropriate directions from this Hon'ble Tribunal for successful completion of resolution process of the Corporate Debtor while balancing interest of all stakeholders in view of the peculiar facts and circumstances of the case and placing on record the sequence of events leading to an anomalous situation in this resolution process. The events are enumerated herein for the kind consideration of this Hon'ble Tribunal.
2. That the Company Petition No. (IB)77/ALD/2017 was filed by the Financial Creditor (IDBI) for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor under Section 7 of the Code. It is respectfully submitted that this Hon'ble Tribunal vide its



order dated 07.08.2017 admitted the petition and initiated the CIRP of the Corporate Debtor. It is further respectfully submitted that vide the same aforesaid order, Mr. Anuj Jain was appointed as Interim Resolution Professional (IRP).

3. That being aggrieved by the order passed by this Hon'ble Tribunal regarding admission of the matter, various homebuyers who had invested their money in numerous residential projects of Corporate Debtor and its parent company Jaiprakash Associates Limited (JAL) approached the Hon'ble Supreme Court by way of writ petitions under Article 32 of the Constitution of India in W.P (Civil) No. 744 of 2016, titled as *Chitra Sharma and Ors. Vs. Union of India and Ors.*, along with other writ petitions contending that despite being vital stakeholders they had no *locus* in the CIRP, therefore the provisions of the IBC should be declared *ultra vires*. The home buyers also wanted equal status as financial creditors as their claims were not covered under any of the provisions of the pre-amended IBC. During the pendency, the Code was amended with effect from June 06, 2017 and included homebuyers in the category of financial creditors under the Code. It is respectfully submitted that the amended IBC now allow home buyers to initiate CIRP under section 7 and they are part of the CoC under Section 21.
4. That the Hon'ble Supreme Court vide its judgment dated 09.08.2018 directed re-commencement of the CIRP and the initial period of 180 days be revived with effect from August 09, 2018. It is needless to say that this period can be extendable by a further period of 90 days under the provisions of IBC, if required. And consequently a new Committee of Creditors ("CoC") got constituted in accordance with the amended



provisions of the IBC to enforce the statutory status of the homebuyers as financial creditors.

5. That the Applications bearing CA No. 223/2018 in the matter of Jaypee Greens Krescent Home Buyers Welfare Association Vs. Mr. Anuj Jain, IRP Jaypee Infratech Limited. and CA No. 266 /2018 in the matter of IDBI Bank & Ors. Vs. Anuj Jain Jaypee Infratech Limited have been filed by different creditors as the many of the home buyers of the CoC have not been voting and leading to a deadlock situation thereby many agenda items have not been able to obtain the minimum threshold of 51% and/or 66%, as a case may be for passing of various resolutions by the CoC. It is humbly submitted that this Hon'ble Tribunal vide its order dated 13.12.2018 referred the applications to the NCLT, Principal Bench, New Delhi for its consideration.
6. That it is respectfully submitted that the Hon'ble National Company Law Tribunal Bench III (In Reference), New Delhi, vide its order dated 15.04.2019 issued notice to the Applicant/Intervenor to obtain view of applicant on the above said issue taking into consideration the larger public interest involved and interpretation of provisions having wider ramifications. In compliance of the said order Applicant herein filed its written Note. It is further respectfully submitted that the matter was heard on various dates and the judgment got reserved. Copy of the order dated 15.04.2019 passed by Hon'ble National Company Law Tribunal Bench III (In Reference), New Delhi and Written Note filed by the Applicant are annexed and marked as **ANNEXURE :A-1(colly)**.



7. That it is most respectfully submitted that following are only two such illustrations, where important resolutions could not be passed by the CoC.

Meeting	Resolution	Vote Cast %		Abstained from voting
		For	Against	
First meeting of the CoC Dated 15.09.2018	Voting on the appointment of Mr. Anuj Jain Interim Resolution Professional (IRP) as a Resolution Professional (RP) and ratification of professional fees and IRP insurance	5.58%	47.47%	46.95%
Second meeting of the COC dated 17.10.2018	Appointment of Mr. Vijay Kumar V. Iyer as the Resolution Professional	57.24%	1.54%	41.23%
Sixth meeting of the COC dated 18.02.2019	Conduct of additional Forensic Audit of Corporate Debtor from date of incorporation till 31 st March 2014 and cost of the same may be considered as part of CIRP expenses	34.45 %	33.42 %	32.18%
Ninth meeting of COC dated 26.04.2019	Voting of the final resolution plan of Suraksha Realty Limited along with Lakshdeep Investments and Finance Private Limited	23.47%	41.85%	34.69%

The copy of all aforesaid CoC minutes are annexed herewith and marked as ANNEXURE A- 2 (Colly).

8. That it is most respectfully submitted in the light of aforesaid CoC details that the deadlock in voting lead to the situation where the Resolution Professional could not be appointed and the CIRP is getting



is being continued by the Interim Resolution Professional, Mr. Anuj Jain by virtue of the order this Hon'ble Court dated 28.01.2019 (Para 6) under section 16(5) of the Insolvency and Bankruptcy Code 2016 (hereinafter "IBC"). Copy of order dated 28.01.2019 is annexed herewith and marked as **ANNEXURE A-3**.

9. That it is most respectfully submitted that Section 16 (5) of the IBC provides that the term of the interim resolution professional shall continue till the date of appointment of the resolution professional under section 22. Further, Section 22 (2) of the Code provides :

"The committee of creditors, may, in the first meeting, by a majority vote of not less than sixty-six per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional." Furthermore, section 23(1) provides that *"Subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period:*

Provided that the resolution professional shall, if the resolution plan under sub-section(6) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31."

10. That it is pertinent to mention here that in the instant matter the interim Resolution Professional is exercising the powers of Resolution Professional, although he was not confirmed as Resolution Professional in the first CoC meeting dated 15.09.2018 due to only 5.58% of the



voting rights assented to the appointment of RP as against 66% voting required in terms of the Code. It is most respectfully submitted that on the similar issue, Hon'ble Principal Bench of NCLT, New Delhi in the matter of *M/s Swaraj Overseas v. Goldline Ventures Pvt. Ltd.* (IB)-1634(PB)/2018, has confirmed the IRP as RP vide its order dated 29.04.2019 with a voting share of 52.13% (which was below the requisite majority of 66%). Copy of Order dated 29.04.2019 by Hon'ble National Company Law Tribunal Bench Principal Bench, New Delhi in *M/s Swaraj Overseas v. Goldline Ventures Pvt. Ltd.* (IB)-1634(PB)/2018 is annexed and marked as **ANNEXURE :A-4**.

11. It is further respectfully submitted that Mr. Vijay Kumar V. Iyer whose name was proposed to be appointed as RP in the second CoC meeting dated 17.10.2019 could not be appointed as Resolution Professional despite having 57.24% of the voting rights assented to his appointment as against the requisite 66% of voting share under the provisions of section 22 (2) for replacement of IRP by RP. This has given rise to an anomalous situation which has not only hampered the resolution process but also defeats the object and intent of the Insolvency and Bankruptcy Code, 2016, which foresee the situation where the IRP/RP, who is conducting the CIRP, commands the trust of the majority of the CoC. It is most respectfully submitted that the spirit of the IBC could not be in the consonance of the situation where a professional who has lost trust of majority and have got nearly 5-6 % of the vote in his favour could conduct a CIRP, which could lead to the situation where a resolution plan would be accepted while maintaining the interest of all stakeholders.



12. That it is humbly submitted that the Code has specified the percentage of voting share to be followed by the CoC for passing resolutions by “not less than” the percentage of voting share mentioned against each resolution. However, it is relevant to mention that the Code has used the expression “**voting share**” and not the “**total voting share**” for taking majority decisions. It is also important to be seen that, under the Code, the voting share (not the total voting share) is 66% percent in case of important decisions (for eg., approval of resolution plan), 90% in case of withdrawal of application and in the case of routine decisions, it is a simple majority of 51%. The Bankruptcy Law Reforms Committee which conceptualised the Code, in its Report on page 85, in para 5.3.1, had observed:

“If a creditor chooses not to participate in the negotiations, despite having been so informed, the vote of creditors committee will be calculated without the vote of this creditor.”

13. That it is most respectfully submitted that the voting in the case of large number of financial creditors such as home buyers is complex, as it requires convergence of large number of creditors for voting in order to take majority decisions. This issue was also identified by the Insolvency Law Committee (“ILC”) in its report dated 26th March, 2018, at page 40, which is as follows: -

“While the Code aims at ensuring increased participation of all the members of the CoC in the decision-making process in the meetings, large CoCs pose significant logistical challenges.... Further, if the CoC comprises of a large number of creditors, then the likelihood of abstinence by individual financial creditors is very high, leading to disruption of decision making ability of the CoC. This defeats the very objective of creditor participation as envisaged under the Code.”



14. That it is further respectfully submitted that the ILC in its extra ordinary meeting held on 2nd May 2019 deliberated upon the issue of voting mechanism to be adopted for financial creditors especially homebuyers where generally decision making process of the CoC is at stake due to lack of the majority and where large number of financial creditors, who are home buyers abstain from exercising their vote. The committee took into consideration the larger public interest involved and interpretation of the provisions having wider ramifications not only in JIL case but extending beyond other matters as well. The committee members were apprised of the issue of reducing the voting threshold for the decisions of CoC as discussed in its report of March 2018 which are as follow:

"11.5 The Committee also noted that globally, bankruptcy laws prescribe different voting thresholds for decisions of the CoC. In USA, approval of a plan requires 66 percent or more voting share in value and 50 percent or more voting share in number for each class of creditors. The position is similar in Canada, however, such requirement applies to each class of unsecured creditors. In the UK, approval of a plan under administration requires a simple majority in value of the creditors present and voting. While such threshold is higher in Singapore as the requirement therein is to obtain 75 percent or more of voting share by value and more than 50 percent voting share in number of creditors present and voting, for approval of the plan. The Committee was of the view a higher threshold with the present and voting requirement, or a lower threshold sans the present and voting requirement, may be adopted."

The committee proceeded to decide in para 11.6 which is as under:



"11.6 After due deliberation and factoring in the experience of past restructuring laws in India and international best practices, the Committee agreed that to further the stated object of the Code i.e. to promote resolution, the voting share for approval of resolution plan and other critical decisions may be reduced from 75 percent to 66 percent or more of the voting share of the financial creditors. In addition to approval of the resolution plan under section 30(4), other critical decisions are extension of the CIRP beyond 180 days under section 12(2), replacement or appointment of RP under sections 22(2) and 27(2), and passing a resolution for liquidation under section 33(2) of the Code. Further, for approval of the other routine decisions for continuing the corporate debtor as going concern by the IRP/RP, the voting share threshold may be reduced to 51 percent or more of the voting share of the financial creditors."

Record of discussions of Insolvency Law Committee meeting held on 2 May, 2019 is annexed herewith and marked as **ANNEXURE :A-5**.

15. That the committee also referred in the aforesaid extraordinary meeting the observations of the Hon'ble Supreme Court held in the matter of *Arcelormittal India Private v. Satish Kumar Gupta*, 2018 SCC Online SC 1733 that:

"if there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible".

16. That it is humbly submitted that the time period of corporate insolvency resolution process prescribed under the Code is prescribed as 180 days which already got expired on 05.02.2019 and this Hon'ble Tribunal vide



order dated 28.01.2019 has already extended the CIRP of the Corporate Debtor by a further period of 90 (Ninety) days, and the statutory prescribed maximum time period of 270 days has already expired on 06.05.2019. It is also pertinent to mention that the IDBI has filed an application number CA No. 115/2019 before this Hon'ble Tribunal seeking exclusion of the period from the date of first COC meeting dated 12.09.2018 till 11.03.2019 for completion of insolvency process and the same is pending adjudication.

17. That it is most respectfully submitted that the process under the Code is being already hampered for substantive time period due to lack of adequate voting percentage as prescribed under various provisions of the Code. Unless voting issue is resolved, resolution on crucial matters such as appointment of RP or resolution plan is unlikely to be approved. An IP without majority support would continue as RP under section 16(5), which is not leading to the situation, where a resolution plan can be accepted. It is most respectfully submitted that this situation defeats the very objective of the Code, creates stalemate and the anomalous situation.

18. That it is most respectfully submitted that the Hon'ble Supreme Court, the matter of *K. Sashidhar Vs. Indian Overseas Bank (Civil Appeal No.10673 of 2018)* is clearly distinguishable on facts and therefore the observation made in para 35 should not be applicable to the facts and circumstances of the case where financial creditors like home buyers are members of CoC. The Hon'ble Supreme Court in para 35 of the aforesaid case has observed that:

“...the ‘percent of voting share of the financial creditors’ approving vis-a-vis dissenting-is required to be reckoned. It is not on the basis of



members present and voting as such. At any rate, the approving votes must fulfil the threshold percent of voting share of the financial creditors.” {emphasis supplied}.

It is humbly submitted that in the aforesaid case, the matter was not of a nature where the complex voting issue relating to any special class, which is huge in number, and scattered all over world, who was forming the class of financial creditors, such as home buyers was being considered. The Hon’ble Supreme Court was mainly considering the question relating to approval/rejection of resolution plan under subsection (4) of section 30 of the Code, as it then stood and therefore the aforesaid case is not applicable to the facts and circumstances of the present case.

19. That in the instant case, there is a stalemate in decision making process by the CoC for want of sufficient participation of home buyers class of financial creditors in the meetings and decision making and therefore, there is necessity for the appropriate direction of the Hon’ble Court, i.e., adjudicatory authority. The sole reason as to why the CIRP of the Corporate Debtor had been ordered to recommence the process by the Hon’ble Supreme Court vide order dated 09.08.2018 was to protect the interest of all concerned. The present stalemate in the instant matter which appears to have been caused due to prescribed voting pattern, if permitted to continue particularly in the context of section 22(2) of the Code which provides that:

“...shall not be less than 66% of the voting share of the financial creditors either to resolve to appoint the interim resolution professional as the resolution professional or to replace the interim resolution professional by another resolution professional”,



then the objective of the Code as indicated in its long title would be frustrated and the process will end up in liquidation, which will adversely affect the public interest for whose interest the Hon'ble Supreme Court re-commenced the CIRP.

20. That it is most respectfully submitted that the voting on resolution plan is getting frustrated due to the reason that present IRP does not command trust of the financial creditor/ CoC, which is apparent for the voting percentage, which was for the confirmation of IRP to the RP. In the matter of JIL the plan of resolution applicant, Suraksha Realty Limited along with Lakshdeep Investments and Finance Private Limited witnessed a total voting of 65.32% (assent 23.47%, dissent 41.85%). Voting on the appointment of resolution professional witnessed assent of 5.58% only, against the requisite 66% as per section 22(2) of the Code.

21. That it is most respectfully submitted that the Hon'ble Principal Bench of the NCLT in *Nikhil Mehta & Sons (IIUF) & Ors. Vs. M/s AMR Infrastructure Ltd.*, [2018] 147 CLA 39 considered 51% voting as adequate as the RP had secured largest percentage of the voting threshold. Copy of the order dated 28.09.2018 by Hon'ble National Company Law Tribunal Bench Principal Bench, New Delhi in *Nikhil Mehta & Sons (IIUF) & Ors. Vs. M/s AMR Infrastructure Ltd.*, [2018] 147 CLA 39 is annexed and marked as **ANNEXURE :A-6**.

22. That it is most respectfully submitted that since the financial creditors, including class creditors, get prior information about the process and that they understand the issues at stake, their abstention cannot be regarded as negative voting, but as an implied consent. It is therefore submitted that a stakeholder, who with adequate notice and opportunity to participate, does not do so, should be deemed to have given his or her assent to the other stakeholders to decide on the matter at hand. This is necessary to prevent decisions being stalled



which could be result of non-participation. It is pertinent to mention that in matter of Tata Steel Limited Vs Liberty House Group Pvt. Ltd. & Ors., Company Appeal (AT (Insolvency) No. 198 of 2018, Hon'ble NCLAT has held that if some members of the CoC having 2.88% voting shares remained absent, it cannot be held that they have considered the feasibility and viability and other requirements as specified by the Board, therefore, their shares should not have been counted for the purpose of counting the voting shares of the CoC. Relevant paragraph of the aforesaid judgement is reproduced as follows.:

"46. We find that the 'Resolution Plan' submitted by 'JSW Steel' has been approved by the 'Committee of Creditors' with 97.12% voting shares and voters having 2.88% voting shares remained absent. If some members of the 'Committee of Creditors' having 2.88% voting shares remained absent, it cannot be held that they have considered the feasibility and viability and other requirements as specified by the Board, therefore, their shares should not have been counted for the purpose of counting the voting shares of the 'Committee of Creditors'. In fact, 97.12% voting shares of members being present in the meeting of the 'Committee of Creditors' and all of them have casted vote in favour of 'JSW Steel', we hold that the 'Resolution Plan' submitted by 'JSW Steel' has been approved with 100% voting shares."

23. That the Applicant is filing the present application for seeking appropriate directions from this Hon'ble Tribunal in relation to resolve the stalemate caused due to voting pattern under section 22(2) and Sec 30 (4) so as to ensure that the CIRP is taken to its logical conclusion as per objective of the Insolvency and Bankruptcy Code 2016 and this deadlock condition should not lead to the situation where the entity cannot continue as going concern as the IRP does not command the trust



of majority of financial creditor and rather has received the negligible vote share.

24. That the present application is bonafide and the applicant is filing the same as per mandate given in the provisions of the IBC and in the interest of justice.

25. That allowing the instant application will not in any manner cause any prejudice to the right of any of the parties. On the contrary if the present application is not allowed it would disrupt the process and affect adversely the interest of the homebuyers and other financial creditor, which is neither as per spirit of the Code nor the objective of the Hon'ble Supreme Court in the light of the judgement in the case of Chitra Sharma & Ors Vs Union of India & Ors.

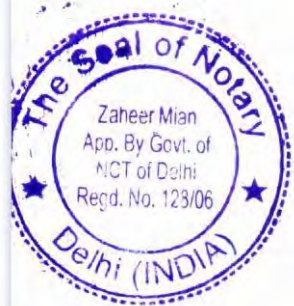
26. That the balance of convenience and equity vests in favour of the Applicant and the instant Application deserves to be allowed on the aforesaid grounds and reasons stated in above paragraphs.

V. Particulars of the Bank Draft Evidencing Payment of Fee for the Application.

- (i) Name of the Bank on which drawn:
- (ii) Name of issuing Bank: Punjab National Bank
- (iii) Demand Draft No: 22584
- (iv) Date: 16.05.2019
- (v) Amount: INR1000/-

The Application are depositing the requisite payment of fee for the present application by a demand draft, as prescribed.

VI. RELIEF SOUGHT



In the above circumstances, the Petitioner humbly prays that this Hon'ble Tribunal may be pleased to:

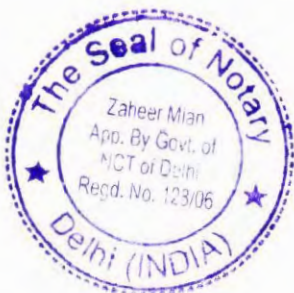
- i) pass appropriate directions in respect of voting required for crucial decisions including appointment of resolution professional (RP) and approval of the resolution plan.
- ii) any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case.

Date: 17.05.2019

Place:

(Signature)
For Insolvency and Bankruptcy Board of India

Umesh Kumar Sharma
Chief General Manager





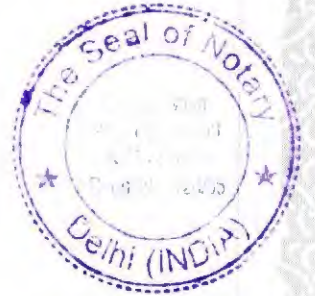
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

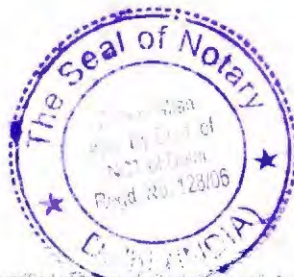
Certificate No.	: IN-DL88617710612138R
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Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1782336191243082R
Purchased by	: UMESH KUMAR SHARMA
Description of Document	: Article 4 Affidavit
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: UMESH KUMAR SHARMA
Second Party	: Not Applicable
Stamp Duty Paid By	: UMESH KUMAR SHARMA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line

This stamp paper is part and parcel of the attached application.

Umesh Sharma



Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.echallanmp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL AT
ALLAHABAD**

I.A / C.A. NO. _____ OF 2019

IN

CP No. (IB) 77 /ALD/2017

(Under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of National Company law Tribunal Rules, 2016)

IN THE MATTER OF:

INSOLVENCY & BANKRUPTCY BOARD OF INDIA
7TH FLOOR, MAYUR BHAWAN, SHANKAR MARKET,
CONNAUGHT CIRCUS,
NEW DELHI -110001

...INTERVENOR/APPLICANT

AND

IN THE MATTER OF:

IDBI BANK LIMITED

.... FINANCIAL CREDITOR

V/S.

JAYPEE INFRATECH LIMITED

.... CORPORATE DEBTOR

AFFIDAVIT

I, Umesh Kumar Sharma , S/o Sh. Dharam Pal Sharma aged
about 59 years, working as Chief General Manager of Insolvency and
Bankruptcy Board of India (hereafter "IBBI"), situated at 7th Floor,
Mayur Bhawan, Connaught Circus, New Delhi-110001, presently at
Delhi do hereby solemnly affirm and state as under:

1. That I am the authorized signatory of the IBBI and have been duly

authorized by the IBBI. I am well conversant with the facts and



11/9/2019
Register Sl. No.



18

circumstances of the matter as per the records of IBBI made available to me. As such, I am competent to swear and affirm this Affidavit.

2. That the accompanying application has been drafted under my instructions, the contents thereof are true and correct to the best of my knowledge as derived from the records made available to me.
3. The Annexures filed with this application are true copies of respective originals.

Verification

I, Umesh Kumar Sharma, the deponent named above, do hereby verify that the contents of of the present Affidavit are true and correct to my knowledge as derived from the records of IBBI made available to me and that no part of it is false and nothing material as been concealed therefrom.

For Insolvency and Bankruptcy Board of India

 Umesh Kumar Sharma
 Chief General Manager
Deponent

Place : New Delhi

Date : 17.05.2019



Register Si. No. 119/2019

ATTESTED

NOTARY PUBLIC
DELHI INDIA

17 MAY 2019

I identify the deponent who has signed in my presence

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH III (IN REFERENCE)
NEW DELHI

CA.495(PB)/2019
With
CA No.223/ALD/2018
& CA.No.266/ALD/2018 in
CP No.(IB)77/ALD/2017

IN THE MATTER OF SECTION under Section 60(5)(c) of
Insolvency and Bankruptcy Code, 2016).

In the matter of:

IDBI Bank Limited

Versus

Jaypee Infratech Limited

...Financial

btor

Coram:

R.VARADHARAJAN,
Hon'ble Member (JUDICIAL)

Counsel for the Applicant : Mr. Rahu'
In CA.No.223/ALD/2018

Dubey,
Mr. Sh
Mar

16.4.2017



Counsel for Respondent / : Mr. Sumit Batra, Mr. Sanjay Bhatt,
Applicant in CA No.495/PB/ Ms. Srishti Kapoor, Advocates.
2019 & CA No.266/ALD/2018

ORDER

1. Upon reference made by the Hon'ble President vide order dated 19.03.2019, in exercise of the powers under Section 419(5) of the Companies Act, 2013 in view of the difference of opinion expressed by Hon'ble Members, Allahabad Bench, NCLT between themselves, this Single Bench is seized of the above noted applications in CA No.223 of 2018 and CA No.266 of 2018 filed under Section 60(5)(c) of Insolvency & Bankruptcy Code, 2016 (IBC,2016) and the question framed by the Hon'ble Members over which they have expressed their differing opinion is as follows, as given in paragraph 1 of their Common Order dated 13.12.2018.

1.The question of law that has been raised in both applications, one by Nine Home Buyers Association and other by eight Financial Creditors, all of them being the members of Committee of Creditors (CoC) is whether the various threshold voting share fixed for the decision of the CoC under various sections of the I & B Code needs to be followed



literally or whether they are only directory, and if so, what procedure has to be followed in determining the voting percentage among the CoC to pass a particular resolution.

2. The short facts as can be gleaned from the order itself for the above question being raised and which it had endeavored to answer based on the above two applications has been succinctly explained in the Common Order itself in view of a virtual stalemate encountered by the Financial Creditors comprising of three classes, namely, Home Buyers, Lenders and Fixed Depositors having the following voting percentages to the total debt of the Corporate Debtor which is not in dispute, viz.

Lenders	41.8%
Home Buyers	58.10%
Fixed Depositors	0.01%
Total	100%

3. The Common Order at paragraph 8 goes on to detail the ~~voting prescribed under the different provisions of IBC, 2016~~



w.e.f. 06.06.2018 in the form of a table which is extracted as below for ready reference:-

S. N o.	Subject	Percentage of vote of CoC after amendment
1	Withdrawal of applications admitted U/s 7,9 or 10 (Section 12A)	Section 12A Withdrawal of ongoing CIRP applications with 90% approval of CoC
2	Section 12(2) Application for extension of CIRP period 90days beyond 180 days	66% voting of CoC
3	Section 22(2) Appointment of IRP as RP	66% voting of CoC
4	Section 27(2) Replacement of RP	66% voting of CoC
5	Section 28(3) Approval of Committee of Creditors for certain action	66% voting of CoC
6	Section 30(4) Approval of Resolution Plan by CoC	66% voting of CoC
7	Section 33(2) Decision of the CoC to liquidate the Corporate Debtor	66% voting of CoC
8	Section 21(8), Voting threshold reduced to 51% for routine decisions from 75%	

4. Again the Common Order taking into consideration the above noted percentages of the different classes of Financial Creditors in the Corporate Debtor and the voting share prescribed under the different provisions of IBC,2016 goes on to detail the impasse encountered in the CIRP of the Corporate Debtor in the two CoC meetings held on 12.09.2018 and 17.10.2018 at

paragraph 3 (a) and 3(b) of the Common Order which is to the

following effect:-



3. (a) In the first meeting, six voting items were placed by the IRP before the CoC, out of which four voting items have been held to be rejected by the CoC on account of not having met the minimum voting threshold under the IBC, whereas two voting items were deferred. The table hereunder is illustrative of the result of the First CoC meeting:-

Voting Item No.	Voting item	Voting percentage required	Voting percentage achieved	Decision
1	Voting on appointment of Mr. Anuj Jain, IRP as RP and ratification of professional fees and IRP insurance	66%	5.58%	Rejected
2	Voting on reimbursement/Ratification of appointment of advisors/consultants and expenses incurred on or by IRP	51%	45.24%	Rejected
3	Voting on delegation of Authority by IP/RP-Section 28 Item	66%	44.66%	Rejected
4	Voting on approval of related party transactions- Section 28 Item.	66%	45.79%	Rejected
5	Voting on acceptance of resignation of 5 Independent Directors - Section 28 Item	-	-	Deferred
6	Shortening of notice period from 5 days to 3 days	-	-	Deferred

3 (b) In the second meeting, total six voting items were tabled before the CoC. In the second meeting, barring one all other voting items were held to be rejected by the CoC on account of not having met the required voting threshold under the IBC. The table hereunder is illustrative of the result of the Second CoC meeting:-



Voting Item No.	Voting item	Voting percentage required	Voting percentage achieved	Decision
1	Appointment of Mr. Vijaykumar V.Iyer as RP	66%	57.2%	Rejected
2	Appointment of Deloitte Touche Tohmatsu India LLP ("DTTILLP") to assist the RP	66%	57.3%	Rejected
3	Approval of fee of RP	66%	54.9%	Rejected
4	Approval of related party transactions- Section 28 Item	66%	37.8%	Rejected
5	Acceptance of resignation of 7 Independent Directors - Section 28 Item	66%	28.6%	Rejected
6	Approval of Form G (Invitation for expression of interest)	51%	53.3%	Passed

5. The common order brings out the fact that 9 out of 10 resolutions proposed seem to have been rejected in view of the poor response in voting by the Home Buyers as compared to the en masse participation by the Lenders which has lent to canvassing differing proposition by the Lenders as Financial Creditors on the one hand and Home Buyers on the other as opposed to IRP taking a differing view as extracted in paragraph 16,18,21 and 22 of the Common Order which is as follows:

16. It is stated by the Financial Creditors that the percentage of votes cast in favour or against a particular voting item ought to be calculated by taking into account only those votes that are actually cast and accordingly abstained votes should be disregarded.



18. It is stated by the home buyers that in response to the representation made before the Authorized Representative, the IRP stated in the meeting the abstention in voting process would be counted as negative vote.

21. It is contended by the Home Buyers Association, the approach adopted by the IRP will militate against the very object and purpose of the Code. It is stated that in a situation like the present one wherein thousand of common people have invested their life's savings to procure a home for themselves, the Corporate Debtor's liquidation would be all the more undesirable. The Hon'ble Supreme Court in its decision dated 9.8.2018 while reviving the CIRP against the Corporate Debtor in Chitra Sharma v. Union of India, observed that:

"During the course of hearing, there has been an unanimity of opinion that the liquidation of JIL will not subserve the interests of the home buyers".

22. The contention of the learned counsel appearing for the home buyers is that the home buyers are to be considered as a separate class of creditors as they have same goal and similar agenda, thereby forming a homogenous group amongst themselves, and the rule of majority in cases of voting by creditors in class should be made applicable for the purpose of CIRP of the Corporate Debtor.

6. The Hon'ble Allahabad Bench, NCLT after taking into consideration the relevant provisions of IBC, 2016 in relation to voting share goes on to state at paragraph 30 of the Common Order and further seeks to break the impasse in the subsequent paragraphs as per the opinion of Hon'ble Judicial Member, as follows:-

30. The various provisions in the I & B Code prescribes particular percent of voting share of Financial Creditors for passing resolutions in COC. The concept of present and voting is neither expressly nor impliedly stated in any of the provisions of the I&B Code that



contemplated a particular percent of voting share of Financial Creditors is required for passing the resolutions. Therefore, it is necessary to examine, whether the concept of present and voting can be introduced by this Authority by way of purposive of interpretation.

41. In the case on hand, the home buyers as a class constituted 58.1% of voting share. The IRP so far conducted two CoC meetings, the first meeting on 7.9.2018 and the second meeting on 17.10.2018. The resolutions passed/rejected in the said meetings have been displayed in para 3(a) and 3(b) of this order. A perusal of those tables goes to show that the majority of the resolution have not been passed because the percentage of total votes polled are not even meeting the required threshold percent of voting share for that particular resolution.

42. The Hon'ble NCLT, Principal Bench in M/s AMR Infrastructure Limited held that, in case where the CoC consist of only one class of creditors namely 'Real Estate', then the majority vote in favour of Resolution has to be taken into consideration irrespective of threshold of 66% provided in Section 22(2) of the Code. In the instant case there are multiple class of Financial Creditors in CoC. But more than 50% of the total voting share constitute a class of creditors namely 'Home Buyers/Allottees of Flats and Plots of Corporate Debtor'. In the process of voting, each home buyer has got a vote, but the value of vote is based on value of verified claim due to him. Due to non-participation of majority of Home Buyers deadlock has been created in CIRP that may invariably lead to liquidation of Corporate Debtor. To avoid liquidation and to see that CIRP to proceed, following the rationale adopted in the decision in M/s AMR Infrastructure Ltd. a procedure need to be evaluated to further the objectives of I&B Code balancing the interests of various stakeholders in the Code.

47. Therefore, in order to advance the object of I&B Code and the Amendment Act 2 of 2018 and with a view to safeguard the interests of all classes of creditors and all stakeholders, I am of the considered view, " That in case where the CoC comprise Real Estate class of creditors up to 50 per cent of voting share or more than when there is a dead lock in passing the resolutions, the highest number of voting share in favour of resolution has to be taken into consideration without looking into the threshold limit provided under the various provisions of the I&B Code, except for the purpose of withdrawal of the petition, the approval of the resolution plan, and liquidation i.e. under Section 12A, 30(4) and 33(2) respectively, so that CIRP would continue for the time being in the meanwhile Central Government may bring amendment to the relevant provisions of I&B Code and CIRP regulations prescribing the procedure to be followed in determining the voting share for passing various resolutions where



CoC comprise of Real Estate class of creditors 50% or more and when there is dead lock in passing the resolutions, or else the CIRP which remained static continue to be the same not only in this case, but in the cases of similar nature where Real Estate/ Home Buyers as a class that comprise majority percent voting share abstain from voting."

7. On the other hand the Hon'ble Member-Technical of Allahabad Bench has expressed opinion at paragraph 55 of the Common Order to break the impasse created in CIRP as follows:-

55. In the case on hand, even if all Banks and 17% of Home Buyers vote in favour of Resolution Plan, it will still not sail through as it would not receive mandatory voting percentage of 66%. Therefore, required important/crucial decisions will still fail U/s 12A, 30(4) and 33(2), bringing CIRP to a halt at these crucial stages. Therefore, the lasting solution to the problem of dead lock can only be found by treating Home Buyers as a class and their voting pattern taken with reference to total voting share of the class, to reflect the will of the class.

8. The differing opinions expressed has led the Hon'ble Members, Allahabad Bench to frame the question of difference of opinion being referred to the Hon'ble President, NCLT and thereby upon reference to this Single Bench. It is required to note that the main Company Petition filed by IDBI against Jaypee Infratech Limited led to the initiation of CIRP against

the Corporate Debtor which led to the Home Buyers approaching the Hon'ble Supreme Court in the matter of



Chitra Sharma vs. Union of India in W.P (Civil) No.744 of 2017 as well as other connected Writ Petitions and reported in 2018 SCC Online SC874 and during the pendency of the Writ Petition, Insolvency and Bankruptcy (Amendment) Ordinance, 2018 came into effect from 06.06.2018 which was also taken note of by the Hon'ble Supreme Court while delivering the judgement dated 9.8.2018 and its apposite to note the directions issued by the Hon'ble Supreme Court at paragraph 42 of its judgement in Chitra Sharma's case, as follows:-

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42 We, accordingly, issue the following directions:

- (i) In exercise of the power vested in this Court under Article 142 of the Constitution, we direct that the initial period of 180 days for the conclusion of the CIRP in respect of JIL shall commence from the date of this order. If it becomes necessary to apply for a further extension of 90 days, we permit the NCLT to pass appropriate orders in accordance with the provisions of the IBC;
- (ii) We direct that a CoC shall be constituted afresh in accordance with the provisions of the Insolvency and Bankruptcy (Amendment) Ordinance, 2018, more particularly the amended definition of the expression "financial creditors";
- (iii) We permit the IRP to invite fresh expressions of interest for the ~~submission of resolution plans by applicants, in addition to the three~~ short-listed bidders whose bids or, as the case may be, revised bids may also be considered;
- (iv) JIL/JAL and their promoters shall be ineligible to participate in the CIRP by virtue of the provisions of Section 29A;



(v) RBI is allowed, in terms of its application to this Court to direct the banks to initiate corporate insolvency resolution proceedings against JAL under the IBC;

(vi) The amount of Rs 750 crores which has been deposited in this Court by JAL/JIL shall together with the interest accrued thereon be transferred to the NCLT and continue to remain invested and shall abide by such directions as may be issued by the NCLT.

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In the above Writ Petition No. 744 of 2017 both the Central Government through Ministry of Corporate Affairs through its Secretary and the Regulator, namely, Insolvency and Bankruptcy Board of India, Chairperson were party respondents and pre-dominantly at whose instance the Insolvency and Bankruptcy (Amendment) Ordinance, 2018 prior to Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 and the Amendment to the Regulations, namely, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 were effected and subsequently brought into force on and from 06.06.2018 and 03.07.2018 respectively.



9. As evident from the above discussion, it is material to note that taking into consideration the purposive interpretation sought to be given in interpreting the relevant provisions of IBC,2016 and the relevant Regulations framed thereunder by Insolvency and Bankruptcy Board of India (IBBI) and opinion expressed by the Hon'ble Members, Allahabad Bench, this Reference Bench is of the considered view that a notice is required to be issued to the Central Government through Union of India, Ministry of Corporate Affairs, Secretary, 5th Floor, Shastri Bhawan, Dr. R.P.Road, District, New Delhi, Delhi as well as to Insolvency and Bankruptcy Board of India, Chairman, Union of India, 7th Floor, Mayur Bhavan, Shankar Market, District, Connaught Circus, New Delhi, Delhi to obtain their view taking into consideration the larger public interest involved and interpretation of the provisions having wider ramifications not only in relation to the present case but also extending beyond to other matters as well whether pending or in future under IBC,2016.



Issue notice to authorities of the Application returnable by
22.04.2019 at the below mentioned addresses:-

(i) Union of India, Ministry of Corporate Affairs,
Secretary, 5th Floor, Shastri Bhawan, Dr. R.P.Road,
District, New Delhi, Delhi

(ii) Insolvency and Bankruptcy Board of India,
Chairman, Union of India, 7th Floor, Mayur Bhavan,
Shankar Market, District, Connaught Circus, New
Delhi, Delhi

Process by Dasti permitted.

FREE OF COST COPY



(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Nirmala Vincent
16/4/19.

NIRMALA VINCENT
Court Officer
National Company Law Tribunal
Govt. of India, New Delhi

IN THE MATTER OF:

IDBI BANK LIMITED

...FINANCIAL CREDITOR

VERSUS

JAYPEE INFRATECH LIMITED

...CORPORATE DEBTOR

WRITTEN NOTE ON BEHALF OF RESPONDENT NO. 8

Provisions relating to voting in other Laws

1. Decision of majority to take or not to take a decision is respected, acknowledged and acted upon in business and in polity. Decision passed by the majority prevails upon that of the minority. Generally, majority decisions are taken by method of securing more than half of the eligible votes. That means, majority of more than half of the number of votes needs to be cast (polled) to arrive at a decision. In certain situations, a certain percentage of votes is prescribed for taking decisions. This principle is also prevalent in legislatures and other bodies in which alternatives can be considered and amended in a process of deliberation until the final version of a proposal is adopted or rejected by majority vote. The Indian Parliamentary system also follows the majority vote principle in case of all ordinary Bills and resolutions. Such majority is the excess of the number of votes cast in favour as against the votes cast against by members of the House **present and voting**, subject to quorum requirements.

2. It is useful to look at analogous provisions in other legislation. Under the Companies Act, 2013, and its predecessor legislations, voting by large and dispersed groups require a vote on a "present and voting" basis, i.e., only the votes cast are to be considered while calculating whether the required thresholds were met. A few examples are:

- (a) Voting by members for passing resolutions under various provisions of the Companies Act, 2013. Section 114 of the Companies Act, 2013 (corresponding to Section 189 of the Companies Act, 1956) describes ordinary and special resolutions as those passed by the requisite thresholds amongst the votes cast in person, by proxy or by postal ballot.
 - (b) Voting by members and creditors for schemes of compromise or arrangement under Chapter XV of the Companies Act, 2013 (corresponding to Sections 391-394 of the Companies Act, 1956). Section 230 (6) of the Companies Act, 2013 sets out that schemes of compromise or arrangement may be approved by classes of members and creditors representing three-fourths in value of such class, by votes cast in person, by proxy or postal ballot.
3. That decisions in relation to affairs of a Company under the Companies Act, 2013 (as also the repealed Companies Act, 1956) are to be taken by majority of the votes cast by those present and voting.

In the case of an ordinary resolution¹ decisions are made **by way of simple majority**. However, a special resolution requires that the votes cast in favour of the resolution are not less than three times the number of the votes, if any, cast against the resolution i.e. by 75% majority.

The quorum² in the meetings under the Companies Act, 2013 may also be limited to the persons **present**, in case, the meeting is adjourned multiple times due to lack of quorum i.e., in such a circumstances also, resolution will be passed as per the **members present and voting**.

The ordinary resolutions are relevant for matters of routine nature. There are matters of greater importance, which can be passed only after passing certain thresholds i.e. a fixed percentage of the “total voting power”³. These include the instances of calling of extraordinary general meeting, demand for poll, special resolutions and investigation into the affairs of the company, etc.

Section 2(89) of the Companies Act, 2013 defines “**total voting power**” to mean “...the **total number of votes which may be cast** in regard to that on a poll at a meeting” denoting that the total voting power is determined on the basis of the **total number of members, having a right to vote on that matter are present at the meeting and cast their votes**.

4. Similarly, “**voting share**” is defined under the Insolvency and Bankruptcy Code, 2016 (the Code) to mean **share of the voting rights** of a single financial creditor in the committee of creditors (CoC) which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor.

5. The Code has specified the percentage of voting share to be followed by the CoC for passing resolutions by “**not less than**” the percentage of voting share mentioned against each resolution. However, it is interesting to note that the Code throughout has used the expression “**voting share**” and not “**total voting share**” for taking majority decisions. It may be seen that under the Code, the voting share (not the **total** voting share) is 66% percent in case of **important decisions** (say, approval of resolution plan), 90% in case of an **extremely important decision** (allowing withdrawal of application) and in the case of all other **routine decisions**, it is a simple majority. The Bankruptcy Law Reforms Committee which conceptualised the Code, in its Report on page 85, in para 5.3.1, had observed:

“If a creditor chooses not to participate in the negotiations, despite having been so informed, the vote of creditors committee will be calculated without the vote of this creditor.”

6. Voting in the case of large number of financial creditors such as home buyers is complex, as it requires convergence of large number of creditors for voting in order to take majority decisions. This was identified by the Insolvency Law Committee in its report dated 26th March, 2018, at page 40, as follows: -

¹ Section 114 of the Companies Act, 2013

² Section 103 of the Companies Act, 2013

³ Section 2(89) of the Companies Act, 2013 provides that total voting power, in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes.

"While the Code aims at ensuring increased participation of all the members of the CoC in the decision-making process in the meetings, large CoCs pose significant logistical challenges.....Further, if the CoC comprises of a large number of creditors, then the likelihood of abstinence by individual financial creditors is very high, leading to disruption of decision making ability of the CoC. This defeats the very objective of creditor participation as envisaged under the Code."

Regulations by the Board

7. Under section 240(2) of the Code, the Board may make regulations, *inter alia*, relating to the following matters :-

- (a) The number of creditors within a class of creditors under clause (b) of sub-section (6A) of section 21 [Section 240(2)(na)];
- (b) the **manner of voting** and **determining of the voting share** in respect of financial debts under sub-section (7) of section 21 [Section 240(2)(nc)];
- (c) the manner of assigning voting share to each creditor under sub-section (7) of section 24 [Section 240(2)(q)].

8. The Board has specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons Regulations, 2016 (CIRP Regulations) in respect of matters, *inter alia*, relating to manner of voting. These include:

- (a) voting by the CoC [Regulation 25];
- (b) voting through electronic means [Regulation 26]; and
- (c) voting share of creditors in a class to be in proportion to the financial debt along with interest at the rate of eight percent per annum, unless a different rate has been agreed to between the parties [Regulation 16A(7)].

9. Of the above, Regulation 25 of the CIRP Regulations is significant. Sub-regulation (3) of Regulation 25, as it stood before amendment, had provided that **where all members are present in a meeting**, the resolution professional shall take a vote of members of the committee on any item listed for voting after discussion on the same. This Sub-regulation has since been amended w.e.f. 4th July, 2018 to provide that the resolution professional shall take a vote of the members of the committee **present in the meeting**, on any item listed for voting after discussion on the same. Hence, it may be seen that the intention of the Board has been expressed to ensure voting to be taken by the members **present and voting**.

Regulation 22(1) provides "a meeting of the committee shall be quorate if members of the committee representing **at least thirty three percent of the voting rights** are **present either in person or by video conferencing or other audio and visual means**"

The CoC is also empowered to modify the percentage of voting rights required for quorum in respect of any future meetings under the proviso to Regulation 22(1). Detailed provisions have

been made under Regulation 23 for participation through video conferencing and under Regulation 24 regarding conduct of meeting of the CoC.

10. It is thus, clear that under the aforesaid Regulation the quorum is 33% of the (total) voting rights. Whereas under the Code decisions are to be taken by 51% or 66% or 90% of the voting share. The intention obviously, is that where the quorum exists, they are able to take decisions by calling for a vote of those present either physically or via the other modes prescribed. The resolution process under the Code is to be completed in a time bound manner. Where such resolution fails or is not concluded in the given timeframe, it would lead to liquidation of the corporate debtor. If stalemate or deadlock in decision making on account of absence of voting were to be allowed, it would lead to liquidation without a fair attempt at resolution. This would not be in consonance with the object of the Code. The Code contemplates resolution in the first instance and only where efforts are not successful that liquidation is adopted.

11. Furthermore, in order to facilitate smooth process of resolution, the Board has also issued Guidelines, *inter alia*, to the insolvency professionals, vide Circular No. IBBI/CIRP/018/2018 dated 14th September, 2018, to the effect that a financial creditor who is not a member of CoC (yet to be admitted as a member) does not have voting right in the CoC and such person cannot be regarded as one who has voted against a resolution plan or abstained from voting (**copy enclosed**).

12. The Code has throughout used the expression “**voting share**” and not “**total voting share**” wherever reference of voting by the CoC appears, as shown below:

S. No.	Section	Expression used
1.	12(2)	Sixty-six per cent. of the voting share
2.	12A	Ninety per cent. voting share
3.	21(8)	Fifty-one per cent. of voting share
4.	22(2)	Sixty-six per cent. of the voting share
5.	28(3)	Sixty-six per cent. of the voting share
6.	30(4)	Sixty-six per cent. of voting share
7.	33(2)	Sixty-six per cent. of the voting share

13. Home buyers are separate class of financial creditors and they are different from the other classes of creditors in terms of financial debt owed to them by the corporate debtor, their numbers, **voting share**, and the manner of voting through authorised representatives for taking various decisions by the CoC.

Case Law

14. The Hon’ble Principal Bench of the NCLT in *Nikhil Mehta & Sons (HUF) & Ors. Vs. M/s AMR Infrastructure Ltd.*, [2018] 147 CLA 39 laid down the formulation that where the CoC comprises only of allottees, resolutions may be passed by a majority of members who are voting.

15. The Hon’ble NCLAT in the case of *Tata Steel Limited Vs. Liberty House Group Pte. Ltd. & Ors.*, [2019] 149 CLA 48 in its order dated 4.02.2019, while examining the issue of voting share

for the purpose of approval of the resolution plan, held that “A member of the ‘Committee of Creditors’ who is not present in the meeting either directly or through Video Conferencing and thereby not considered its feasibility and viability and such other requirements as may be specified by the Board, their voting shares, therefore, cannot be counted for the purpose of counting the voting shares of the members of the ‘Committee of Creditors’. Therefore, we hold that only the members of the ‘Committee of Creditors’ who attend the meeting directly or through Video Conferencing, can exercise its voting powers after considering the other requirements as may be specified by the Board. **Those members of the ‘Committee of Creditors’ who are absent, their voting shares cannot be counted.**” {emphasis supplied}

16. The Hon’ble Supreme Court, in the matter of *K. Sashidhar Vs. Indian Overseas Bank* (Civil Appeal No.10673 of 2018) while referring to the **approval of Resolution Plans** held in para 46:

“...neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors. The fact that substantial or majority percent of financial creditors have accorded approval to the resolution plan would be of no avail, unless the approval is by a vote of not less than 75% (after amendment of 2018 w.e.f. 06.06.2018, 66%) of voting share of the financial creditors. To put it differently, the action of liquidation process postulated in Chapter-III of the I&B Code, is avoidable, only of approval of the resolution plan is by a vote of not less than 75% (as in October, 2017) of voting share of the financial creditors. Conversely, the legislative intent is to uphold the opinion or hypothesis of the minority dissenting financial creditors. That must prevail, if it is not less than the specified percent (25% in October, 2017; and now after the amendment w.e.f. 06.06.2018, 44%). The inevitable outcome of voting by not less than requisite percent of voting share of financial creditors to disapprove the proposed resolution plan, de jure, entails in its deemed rejection.”

17. The Hon’ble Supreme Court further observed in para 35 that “...the ‘percent of voting share of the financial creditors’ approving vis-a-vis dissenting-is required to be reckoned. **It is not on the basis of members present and voting as such.** At any rate, the approving votes must fulfil the threshold percent of voting share of the financial creditors.” {emphasis supplied}

18. It may be stated that in the matter of *K. Sashidhar Vs. Indian Overseas Bank* referred supra was not a matter where the Hon’ble Supreme Court was considering complex voting issue relating to special class of financial creditors, such as home buyers, although the principles seem to be similar to the voting percentage but the context is different. The Hon’ble Court was mainly considering the question relating to approval/rejection of resolution plan under sub-section (4) of section 30 of the Code, as it then stood, (the voting percentage has since been reduced to 66% from 77%). More particularly, whether the resolution plan ought to muster the approval of CoC by 75% or 66% voting share or not. The matter was also one which mainly revolved around the question whether the change of voting percentage from 75% to 66% has retrospective effect and

also whether the NCLT and IBBI have powers to exercise commercial wisdom over the decision of the CoC, as also on the feasibility and viability of resolution plans. The Hon'ble Supreme Court also answered the question that section 30(4) of the Code is mandatory and not directory.

19. Judicial precedents in respect of section 391 of the Companies Act, 1956 explains the rationale underlying the "present and voting" requirement. The Punjab and Haryana High Court in the case of *In re: Swift Formulations (P.) Ltd.*, (2004) 121 Comp Cas 27, observed: "*if the creditors who have been duly served with the notices of the meeting which was also accompanied by the scheme, if they do not chose to be present in the meeting and express their view one way or the other, the only inference that could be drawn is prima facie, they have no objection for the said scheme being approved. Any other interpretation in this regard would make it impossible for any company to get any of the schemes approved. If a mere absence of the shareholder or a creditor of the company has to be construed as opposition to the scheme which is proposed, then it would render section 391(2) of the Act redundant and certainly that was not the intention of the Legislature. When the persons who had ample opportunity to oppose such a scheme, who are invited to attend the meeting and to cast their vote against the said scheme, do not chose to attend the meeting, participate in the meeting or express their views by easting vote against it, it only means that they have no objection for sanction of the scheme, and by absence and not opposing the scheme, they have given their implied consent, though not an express consent by being present in the meeting and voting for the scheme.*"

20. Several High Courts have placed reliance upon the decision in *Swift Formulations* (supra). The Karnataka High Court in *Kirloskar Electric Co. Ltd.* (2003) 116 Comp Cas 413 (Kar) held that a member present but abstaining from exercising its right to vote would not be considered for the purposes of section 391. It observed: "*Right to vote means right to exercise the right in favour of or against the motion or resolution. A member present and voting may remain neutral, indifferent, unbiased or impartial not engaged on either side. Voting has to be either in the affirmative or negative i.e., 'yes' or 'no' on the ballot paper or voting paper...A vote cast without indicating the mind of the voter either for or against the resolution is no voting at all. Similarly, voting for or against the motion subject to the conditions stipulated in the vote is no voting in the eye of law...Therefore, in construing whether a resolution is passed by three-fourths majority present and voting, what is to be taken into consideration in calculating the majority is not the number of persons present and voting, but the number of valid votes polled in such meeting...In this context, a voter who is not present at the meeting, who is present and not voting, present and voting by casting a blank ballot, and casting a ballot with conditions arid stipulations, all stand on the same footing. It is no "voting" in the eye of law.*"

21. In the matter of *In re: Arvind Mills Limited*, (2002) 111 Comp Cas 118 (Guj), the High Court expressly held that abstentions from voting cannot be counted a negative voting. It observed: "*That a bare attempt to vote by depositing blank ballot containing any writing is not effective and cannot be included in the total count. Only those ballots that express voters preference can be counted. The requirement contemplates only two preferences: one affirmative and the other negative. To adopt any other rule would be to say that three ballots were contemplated- one*

affirmative, one negative, and another neither affirmative nor negative but forming a new class into which all ballots void for any reason must go."

Provisions in Other Jurisdictions

22. It is useful to look at analogous provisions in insolvency laws in other jurisdictions. Insolvency laws in some other jurisdictions also provide for a present and voting requirement. In *Bessemer Steel & Ordnance Co., Re* (1875) 1 Ch. D 251, a decision frequently relied upon by Indian courts, the Chancery Court held that the arrangements should be carried into effect and that such decisions would bind even those who were not present as: "*all the creditors of the company received notice of this meeting, and it must be presumed that those who did not attend left it to those who did to decide whether the agreement was advantageous or not, or they took so little interest in the matter that they did not think it worth their while to attend. At all events, I think that under the Act of Parliament only those creditors who were present at the meeting are to be attended to, and that three-fourths in value of those present are sufficient to sanction the contract.*" Currently, Rule 17.18 (2) of the Insolvency (England and Wales) Rules, 2016 provides that "*a resolution is passed when a majority of the members attending or represented have voted in favour of it.*"

23. Section 1126 of the US Bankruptcy Code sets out the relevant provisions for counting ballots for determining acceptance of a plan of reorganization. With respect to the calculation of votes, the House and Senate Reports discuss that only those votes that are actually cast for or against a plan can be considered. This subject has been considered by the American courts frequently. Placing reliance on the Congressional guidance, American courts have generally held that the ballots of only those creditors that affirmatively vote for or against a plan can be counted [*In re Jim Beck Inc.*, 207 B.R. 1010, 1015 (Bankr. W.D. Va. 1997)]. However, in some instances, courts have concluded deemed acceptance on part of a non-voting creditor which did not object to confirmation of the plan [*In re Ruti-Sweetwater Inc.*, 836 F.2d 1263 (10th Cir. 1988)].

24. In the instant case, the Hon'ble NCLT is considering a matter where there is a stalemate in decision making process by the CoC for want of sufficient participation of home buyers class of financial creditors in the meetings and decision making. The present matter seeks to address a complete deadlock, where generally decision making process of the CoC is at stake due to lack of majority, where large number of financial creditors, who are home buyers abstain from exercising their vote. This was not the case before the Hon'ble Supreme Court in the matter of *K. Sashidhar Vs. Indian Overseas Bank*. The Hon'ble Court did not consider any question as to the method of conducting meetings and also the method of actual conducting of voting by CoC. Hence, the situation in the instant case and the context are different from the case cited supra. In view of the above, a view may be expressed that the above said matter was not one where the main legal issue directly relatable to the **total voting share** necessary for passing resolutions generally by the CoC while conducting voting in CoC.

25. The Code provides sufficient measures to make available information in advance to all the financial creditors, including the home buyer class creditors, under Regulation 8A of the CIRP Regulations and under Form CA under the Schedule to the said Regulations for submission of

their claims. Further, they are also given opportunity to indicate the choice of an insolvency professional to act as their authorised representative. The home buyer class financial creditors are also given electronic means of communication between the authorised representative and the creditors in the class under Regulation 16A(6) of the CIRP Regulations. Further, the authorised representative is under obligation to circulate the agenda of the CoC meeting to the creditors in a class and he shall announce the voting window at least 24 hours before it opens for voting instructions and another 12 hours for actual voting. Regulation 25(4) provides for the resolution professional to announce the decision taken on items along with the names of the members of CoC who voted for or against the decision or abstained from voting. This again, indicates that the members need to be **present and vote** in the meetings. Voting is also made open for 24 hours from the circulation of the minutes of voting for the benefit of the members who did not vote at the meeting by electronic system. Hence, it can be seen that the creditors in a class get every opportunity to understand their voting rights and the method of casting their vote. Since financial creditors, including class creditors, get prior information about the process and that they understand the issues at stake, their abstention cannot be regarded as negative voting, but as an implied consent. It is also brought to the notice of the Hon'ble NCLT that the Board has since done away with the concept of "dissenting financial creditor" from the CIRP Regulations w.e.f. 05-10-2018, which was earlier contained as Regulation 2(1) thereof.

26. A stakeholder, who with adequate notice and opportunity to participate, does not do so, should be deemed to have given his or her assent to the other stakeholders to decide on the matter at hand. This presumption is necessary to prevent decisions being stalled as a result on non-participation. In view of the position above, the Hon'ble NCLT may like to take an appropriate view in the matter.

Filed by,

Vikas Mehta,

Advocate for Respondent no. 8

Voting Results

For the
First meeting of the Committee of Creditors (CoC)
Date: 15 Sep 2018
Venue: Pullman & Novotel Hotel, Aerocity IGI, New Delhi – 110 037

Determination of Voting Place and Mode

It was unanimously concluded during the First CoC meeting that voting under regulation 25(5) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP") will take place via electronic means and the voting portal.

Voting Decision

The agenda items and the voting matters, including the matters enumerated in Section 22(2) and Section 28(1) of the Insolvency and Bankruptcy Code, 2016 and Regulation 34 of the CIRP which requires the approval of committee of the creditors, was circulated earlier and all the voting members confirmed the receipt of notice and agenda items within the prescribed time. The IRP had detailed discussion on the voting items with the CoC before the commencement of the vote. The results of the vote is as follows:

Voting Item No.	Voting Item	Decision	Annexure
1	Voting on the appointment of Mr. Anuj Jain, Interim Resolution Professional (IRP) as a Resolution Professional (RP) and ratification of professional fees and IRP insurance.	Rejected	Annexure 1
2	Voting on reimbursement/ Ratification of appointment of advisors/ consultants and expenses incurred on or by IRP.	Rejected	Annexure 2
3	Voting on delegation of Authority by IRP/ RP - Section 28 item.	Rejected	Annexure 3
4	Voting on approval of related party transactions – Section 28 item.	Rejected	Annexure 4
5	Voting on acceptance of resignation of 5 Independent Directors – Section 28 item	Deferred	-
6	Shortening of notice period from 5days to 3 days.	Deferred	-

The voting on the above mentioned Voting item started on 14 Sep, 2018 at 12:00 AM (0000 hours) and closed on 15 Sep, 2018 at 12:00 PM (1200 hours). The e-voting was conducted through Central Depository Services (India) Limited on portal www.evotingindia.com.

Annexure – 1**Voting item**

Appointment of Mr. Anuj Jain, Interim Resolution Professional (IRP) as a Resolution Professional (RP) or to replace the IRP by another RP and ratification of professional fees and insurance costs.

Voting results

Particulars	Claim admitted	Value (Voting %)			Total %
		Assented	Dissented	Abstained	
Banks	9,783	0.00%	36.08%	1.16%	37.24%
Home Buyers	16,373	5.57%	11.38%	45.38%	62.33%
FD Holders	113	0.01%	0.00%	0.42%	0.43%
Total	26,269	5.58%	47.47%	46.95%	100.00%

Section 22(2) of the IBC, stipulates that *"the CoC, may, in the first meeting, by a majority vote of 66% of the voting share of the financial creditors, either resolve to appoint the IRP as a RP or to replace the IRP by another RP"*.

The voting was conducted for appointment of the IRP as RP and ratification of professional fees and insurance cost.

Since the members representing only **5.58%** of the voting rights assented to the matter, the decision on the item stands **Rejected**.

Individual voting is annexed herewith in following order:

Class of creditor	Annexure
Banks and Financial Institutions	Annexure A
Home Buyers	Annexure B (certificate from authorized representative)
FD Holder	Annexure C (certificate from authorized representative)

Annexure – 2**Voting item**

Reimbursement/ Ratification of appointment of advisors/ consultants and expenses incurred on or by IRP.

Regulation 34 of the CIRP "the CoC shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process cost".

Particulars	Claim Admitted	Value (Voting %)			
		Assented	Dissented	Abstained	Total %
Banks/ FIs	9,783	30.63%	1.52%	5.10%	37.24%
Home Buyers	16,373	14.60%	2.29%	45.45%	62.33%
FD Holders	113	0.01%	0.00%	0.42%	0.43%
Total	26,269	45.24%	3.80%	50.96%	100.00%

Further, Section 21(8) of the IBC stipulates that "Save as otherwise provided in the code, all decision of the CoC shall be taken by a vote of not less than 51% of the voting share of the financial creditors"

Since the members representing only **45.24%** of the voting rights assented to the matter, the decision on the item stands **Rejected**.

Individual voting is annexed herewith in following order:

Class of creditor	Annexure
Banks and Financial Institutions	Annexure A
Home Buyers	Annexure B (certificate from authorized representative)
FD Holder	Annexure C (certificate from authorized representative)

Annexure – 3**Voting item**

Approval for delegation of Authority by IRP/ RP - Section 28 item.

Section 28(1)(h) stipulates that "Notwithstanding anything contained in any other law for the time being in force, the IRP/RP, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely: - delegate its authority to any other person".

Voting Result

Particulars	Claim Admitted	Value (Voting %)			
		Assented	Dissented	Abstained	Total %
Banks/ FIs	9,783	29.36%	2.79%	5.10%	37.24%
Home Buyers	16,373	15.29%	1.57%	45.46%	62.33%
FD Holders	113	0.01%	0.00%	0.42%	0.43%
Total	26,269	44.66%	4.36%	50.98%	100.00%

Further, Section 28(3) of the IBC stipulates that "No action shall be approved by the CoC unless approved by a vote of 66% of the voting shares"

Since the members representing only **44.66%** of the voting rights assented to the matter, the decision on the item stands **Rejected**.

Individual voting is annexed herewith in following order:

Class of creditor	Annexure
Banks and Financial Institutions	Annexure A
Home Buyers	Annexure B (certificate from authorized representative)
FD Holder	Annexure C (certificate from authorized representative)

Annexure – 4**Voting item**

Approval of related party transactions – Section 28 item.

Section 28(1)(f) stipulates that "Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely: - undertake any related party transaction".

Voting Result

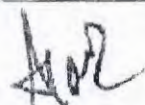
Particulars	Admitted Claim	Value (Voting %)			
		Assented	Dissented	Abstained	Total %
Banks/ FIs	9,783	30.63%	1.52%	5.10%	37.24%
Home Buyers	16,373	15.14%	1.68%	45.50%	62.33%
FD Holders	113	0.01%	0.00%	0.42%	0.43%
Total	26,269	45.79%	3.20%	51.02%	100.00%

Further, Section 28(3) of the IBC stipulates that "No action shall be approved by the CoC unless approved by a vote of 66% of the voting shares"

Since the members representing only 45.79% of the voting rights assented to the matter, the decision on the item stands **Rejected**.

Individual voting is annexed herewith in following order:

Class of creditor	Annexure
Banks and Financial Institutions	Annexure A
Home Buyers	Annexure B (certificate from authorized representative)
FD Holder	Annexure C (certificate from authorized representative)



Anuj Jain

IP Registration no. IBBI/IPA-001/IP-P00142/2017-18/10306

Interim Resolution Professional – Jaypee Infratech Ltd.

(Jaypee Infratech Limited is under Corporate Insolvency Resolution Process of the Insolvency and Bankruptcy Code 2016. Its affairs, business and assets are being managed by the Interim Resolution Professional, Mr. Anuj Jain, appointed by the National Company Law Tribunal by order dated 9th August, 2017 under the provisions of the Code read with order dated 09th August 2018 passed by Hon'ble Supreme Court in Writ Petition (Civil) No. 744/2017)

Annexure A

INDIVIDUAL VOTING BY BANKS AND FINANCIAL INSTITUTIONS

46

Voting Item No. – 1

Voting on the appointment of Mr. Anuj Jain, Interim Resolution Professional (IRP) as a Resolution Professional (RP) and ratification of professional fees and IRP insurance.

Name of financial creditor	Voting share	Vote (Assented / Dissented / Abstained)	Voting share for decision
Axis Bank Limited	0.83%	Dissented	NIL
Bank of Maharashtra	1.52%	Dissented	NIL
Corporation Bank	2.68%	Dissented	NIL
IDBI Bank Limited	16.50%	Dissented	NIL
IFCI Limited	1.07%	Dissented	NIL
India Infrastructure Finance Company Limited	3.94%	Dissented	NIL
Life Insurance Corporation of India	2.88%	Dissented	NIL
SREI Equipment Finance Limited	0.10%	Dissented	NIL
State Bank of India	2.88%	Dissented	NIL
Syndicate bank	1.49%	Dissented	NIL
The Jammu and Kashmir Bank Limited	0.93%	Dissented	NIL
Union Bank of India	1.27%	Dissented	NIL
ICICI Bank Limited	1.2%	Abstained	NIL
Total	37.24%		NIL

Voting Item No. – 2

Voting on reimbursement/ Ratification of appointment of advisors/ consultants and expenses incurred on or by IRP.

Name of financial creditor	Vote (Assented / Dissented / Abstained)	Voting share for decision
Axis Bank Limited	Assented	0.83%
Bank of Maharashtra	Dissented	NIL
Corporation Bank	Assented	2.68%
IDBI Bank Limited	Assented	16.50%
IFCI Limited	Assented	1.07%
India Infrastructure Finance Company Limited	Abstained	NIL
Life Insurance Corporation of India	Assented	2.88%
SREI Equipment Finance Limited	Assented	0.10%
State Bank of India	Assented	2.88%
Syndicate bank	Assented	1.49%
The Jammu and Kashmir Bank Limited	Assented	0.93%
Union Bank of India	Assented	1.27%
ICICI Bank Limited	Abstained	NIL
Total		30.63%

Annexure A

INDIVIDUAL VOTING BY BANKS AND FINANCIAL INSTITUTIONS

47

Voting Item No. – 3

Voting on delegation of Authority by IRP/ RP - Section 28 item.

Name of financial creditor	Vote (Assented / Dissented / Abstained)	Voting share for decision
Axis Bank Limited	Assented	0.83%
Bank of Maharashtra	Dissented	NIL
Corporation Bank	Assented	2.68%
IDBI Bank Limited	Assented	16.50%
IFCI Limited	Assented	1.07%
India Infrastructure Finance Company Limited	Abstained	NIL
Life Insurance Corporation of India	Assented	2.88%
SREI Equipment Finance Limited	Assented	0.10%
State Bank of India	Assented	2.88%
Syndicate bank	Assented	1.49%
The Jammu and Kashmir Bank Limited	Assented	0.93%
Union Bank of India	Dissented	NIL
ICICI Bank Limited	Abstained	NIL
Total		29.36%

Voting Item No. – 4

Voting on approval of related party transactions – Section 28 item.

Name of financial creditor	Vote (Assented / Dissented / Abstained)	Voting share for decision
Axis Bank Limited	Assented	0.83%
Bank of Maharashtra	Dissented	NIL
Corporation Bank	Assented	2.68%
IDBI Bank Limited	Assented	16.50%
IFCI Limited	Assented	1.07%
India Infrastructure Finance Company Limited	Abstained	NIL
Life Insurance Corporation of India	Assented	2.88%
SREI Equipment Finance Limited	Assented	0.10%
State Bank of India	Assented	2.88%
Syndicate bank	Assented	1.49%
The Jammu and Kashmir Bank Limited	Assented	0.93%
Union Bank of India	Assented	1.27%
ICICI Bank Limited	Abstained	NIL
Total		30.63%

Dear Mr. Anuj Jain
Interim Resolution Professional
Jaypee Infratech Limited
(company under corporate insolvency resolution process)
Sector 128, Noida 201304

15/09/2018 48

Sub: Results of E-voting done by Home Buyers of Jaypee Infratech Limited

Dear Sir,

The details of Voting done by Home Buyers together with result are as follows:

Result of E-voting conducted for EVSN 180912013 on CDSL.

Voting Start Date and Time : 14-09-2018 00:00

Voting End Date and Time : 15-09-2018 12:00

Voting Finalisation Date and Time: 15-09-2018 12:14

S No	Particulars	Total Strength as per list made available		Voted in Favour		Voted Against		Abstained (balancing number)	
		Nos	Voting % as a % of Total Voting Rights of COC	Nos	Voting % as a % of Total Voting Rights of COC	Nos	Voting % as a % of Total Voting Rights of COC	Nos	Voting % as a % of Total Voting Rights of COC
1	Resolution 1	28113	62.3	2473	5.6	4324	11.4	21316	45.3
2	Resolution 2	28113	62.3	5811	14.6	953	2.3	21349	45.4
3	Resolution 3	28113	62.3	6090	15.3	667	1.6	21356	45.4
4	Resolution 4	28113	62.3	6065	15.1	673	1.7	21375	45.5

Resolution Number	Description
Resolution 1	Voting on the appointment of Mr. Anuj Jain, Interim Resolution Professional (IRP) as a Resolution Professional (RP)
Resolution 2	Voting on reimbursement/ Ratification of appointment of advisors/ consultants and expenses Incurred on or by IRP.
Resolution 3	Voting on delegation of Authority by IRP/ RP - Section 28 Item.
Resolution 4	Voting on approval of related party transactions - Section 28 Item.

Kindly also note that I received large complains – more than 1000 during the time voting lines were opened through phone calls, emails, Text Messages and watsup on my mail ID – kuverma@gmail.com and my phone number +91 98360 77900 that Home Buyers did not get the Voter User ID and Password. There was also minor incidence report of technical glitches like Home Buyer unable to vote after log in as there is no EVSN to vote.

Kuverma

It can be a major reason for very low voting percentage of less than 25% of home buyers (Count of numbers of home buyers and not voting percentage). Only 6798 Home Buyers exercised voting as against attempt made by us to get voting done by 28113 Home Buyers.

Based on strong feedback received, I request that

1. Public Announcement to be made for Home Buyers to update phone number and email ID for proper communication in future.
2. Call centres to be activated at the earliest for queries of Home Buyers
3. Polling agents to be hired - One each for say every 500 Home Buyer so that all assistance be provided - For making them understand the agenda and mode of voting.
4. COC agenda & minutes to be translated in Hindi also as certain home buyers told that they are not comfortable with English.
5. HB should be able to log in through a web portal and should be able to generate voter ID password on their own over mobile phone connected with the home buyer which is duly updated by Home Buyer in case it is not received and delivered in SPAM.

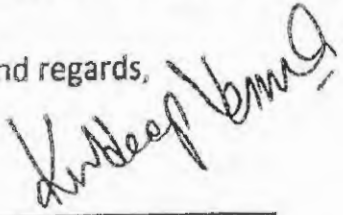
Conclusion

Based on oral feedbacks received from many home buyers who could not vote, I would recommend to do a re-voting **only for Home Buyers class of creditors** after proper updating of records of Home Buyers and effective electronic communication mechanism between the authorised representative and the Home Buyers so that large complain of non-receipt of voting ID and password is addressed. Based on my experience during present round of voting by Home Buyers, I think present electronic means of communication of sending push mails from CDSL/service provider for voting is not fully effective and/or sufficient for communication with 28113 Home Buyers. It will have effect on all future voting as well on all agenda item which requires voting under Insolvency and Bankruptcy Code 2016.

It may take some time, however objective of inclusion and participation of Creditors in a class under Insolvency and Bankruptcy Code 2016 should be achieved.

Please let me know in case any clarification is required.

Kind regards,


Kuldeep Verma

Authorised Representative - Home Buyers of Jaypee Infratech Limited

Regn No: IBBI/IPA-001/IP-P00014/2016-2017/10038

E- kuverma@gmail.com/ Phone - 98360 77900

Add: # 3 Jagabandhu Modak Road, 4th Floor, Shovabazaar, Kolkata 700005

E-Voting Results in respect of Meeting of Committee of Creditors with respect to FD Holders of M/s Jaypee Limited (Under Corporate Insolvency Resolution Process)									
Date: September 15, 2018									
Sr. No	Resolution	Favour		Against		Abstained		Total No. of Votes cast	Total No. FD Holders
		Voting in Numbers	Voting in %	Voting in Numbers	Voting in %	Voting in Numbers	Voting in %		
1	Appointment of Mr. Anuj Jain as a Resolution Professional or to replace the IRP with another RP and ratification professional Fees and extension of IRP Insurance	82	1.45	23	0.41	5566.00	98.17	105	5670
2	Reimbursement /Ratification of appointment of advisors /consultants and expenses incurred by the IRP	87	1.53	16	0.28	5567	98.18	103	5670
3	Delegation of authority by IRP/RP (Section 28 item)	90	1.59	13	0.23	5567	98.18	103	5670
4	Approval of Related party Transactions (Section 28 item)	86	1.52	16	0.28	5568	98.20	102	5670

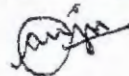
Thanks and Regards



Anju Agarwal
 Authorised Representative of FD Holders
 For Jaypee Infratech Ltd
 IBBI reg No. : IBBI/PA-001/IP-P00106/2017-18/10213

E-Voting Results in respect of Meeting of Committee of Creditors with respect to FD Holders of M/s Jaypee Limited (Under Corporate Insolvency Resolution Process)								
Date: September 15, 2018								Rs. In Cr.
Sr. No	Resolution	Favour		Against		Abstained		Total claim of FD Holders
		Amount of claim	Voting in % out of total Rs. 26,269 cr	Amount of claim	Voting in % out of total Rs. 26,269 cr	Amount of claim	Voting in % out of total Rs. 26,269 cr	
1	Appointment of Mr. Anuj Jain as a Resolution Professional or to replace the IRP with another RP and ratification professional Fees and extension of IRP Insurance	3.33	0.013	0.43	0.002	109.42	0.42	113.18
2	Reimbursement /Ratification of appointment of advisors /consultants and expenses incurred by the IRP	3.39	0.013	0.31	0.001	109.48	0.417	113.18
3	Delegation of authority by IRP/RP (Section 28 item)	3.47	0.013	0.23	0.001	109.48	0.417	113.18
4	Approval of Related party Transactions (Section 28 Item)	3.26	0.012	0.24	0.001	109.68	0.418	113.18

Thanks and Regards



Anju Agarwal
 Authorised Representative of FD Holders
 For Jaypee Infratech Ltd
 IBBI reg No. : IBBI/IPA-001/IP-P00106/2017-18/10213

Voting Results for the Second Meeting of the Committee of Creditors (CoC)
of Jaypee Infratech Limited held on 17th Oct 2018

Venue: Pullman & Novotel Hotel, Aerocity IGI, New Delhi – 110 037

Determination of Voting Place and Mode

It was unanimously concluded during the Second CoC meeting that voting under regulation 25(5) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP") will take place via electronic means and the voting portal.

Voting Results

The agenda items and the voting matters, including the matters enumerated in Section 22(2) and Section 28(1) of the Insolvency and Bankruptcy Code, 2016 (IBC) and Regulation 36A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which requires the approval of committee of the creditors, was circulated earlier and all the voting members confirmed the receipt of notice and agenda items within the prescribed time. The IRP had detailed discussion on the voting items with the CoC before the commencement of the vote.

The results of the voting is as follows:

Voting Item	Voting Item	Voting % required	Voting % Achieved	Decision	Annexure
1	Appointment of Mr. Vijaykumar V. Iyer as the Resolution Professional	66%	57.2%	Rejected	Annexure 1
2	Appointment of Deloitte Touche Tohmatsu India LLP ("DTTILLP") to assist the Resolution Professional	66%	57.3%	Rejected	Annexure 2
3	Approval of fee of the Resolution Professional	66%	54.9%	Rejected	Annexure 3
4	Approval of related party transactions – Section 28 item.	66%	37.8%	Rejected	Annexure 4
5	Acceptance of resignation of 7 Independent Directors – Section 28 item	66%	28.6%	Rejected	Annexure 5
6	Approval of Form G (Invitation for expression of interest)	51%	53.3%	Passed	Annexure 6

As per Regulation 16A(9) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the voting on the above mentioned Voting items were carried out by Authorized Representatives of class of creditors i.e. Home Buyers and FD Holders to obtain prior voting instructions from 14 October, 2018 at 1500 hours till 16 October, 2018 at 1500 hours. For those who did not vote at CoC, the e-voting was conducted as per Regulation 25 (5) of said IBBI Regulations from 19 October 2018 at

1700 hours till 22 October 2018 at 1200 hours after duly circulating the minutes of meeting 24 hours prior to the start of voting.

The e-voting was conducted through Central Depository Services (India) Limited on portal www.evotingindia.com for Banks and Financial institutions and through Authorized Representatives on newly developed web portal <http://www.jaypeeinfratech.in> for class of creditors i.e. Home buyers & FD holders.



Anuj Jain

IP Registration no. IBBI/IPA-001/IP-P00142/2017-18/10306

Interim Resolution Professional – Jaypee Infratech Ltd.

(Jaypee Infratech Limited is under Corporate Insolvency Resolution Process of the Insolvency and Bankruptcy Code 2016. Its affairs, business and assets are being managed by the Interim Resolution Professional, Mr. Anuj Jain, appointed by the National Company Law Tribunal by order dated 9th August, 2017 under the provisions of the Code read with order dated 09th August 2018 passed by Hon'ble Supreme Court in Writ Petition (Civil) No. 744/2017)

Voting item 1

Appointment of Mr. Vijaykumar V. Iyer as the Resolution Professional to replace Interim Resolution Professional Mr. Anuj Jain, for the corporate insolvency resolution process of the Corporate Debtor

Description: Appointment of Mr. Vijaykumar V. Iyer as the Resolution Professional to replace Interim Resolution Professional Mr. Anuj Jain, for the corporate insolvency resolution process of the Corporate Debtor, and authorize IDBI Bank (applicant bank), to communicate to the Hon'ble National Company Law Tribunal, Allahabad Bench (Adjudicating Authority), the decision of appointment of Mr. Vijaykumar V. Iyer as the Resolution Professional of the Corporate Debtor, as per the requirements of the Insolvency and Bankruptcy Code, 2016 read with the rules and regulations framed there under.

Section 22(2) of the IBC, stipulates that "the CoC, may, in the first meeting, by a majority vote of 66% of the voting share of the financial creditors, either resolve to appoint the IRP as a RP or to replace the IRP by another RP".

Voting results

Particulars	Claim admitted	Value (Voting %)			Total %
		Assented	Dissented	Abstained	
Banks	9,783	41.70%	0.00%	0.00%	41.7%
Home Buyers	13,660	15.53%	1.54%	41.15%	58.2%
FD Holders	19	0.01%	0.00%	0.08%	0.1%
Total	23,462	57.24%	1.54%	41.23%	100%

Since the members representing only 57.24% of the voting rights assented to the matter, the decision on the item stands **Rejected**.

Individual voting is annexed herewith in following order:

Class of creditor	Annexure
Banks and Financial Institutions	Annexure A
Home Buyers	Annexure B (certificate from authorized representative)
FD Holder	Annexure C (certificate from authorized representative)

Voting item 2

Appointment of Deloitte Touche Tohmatsu India LLP ("DTTILLP") to assist the Resolution Professional in connection with the corporate insolvency resolution process of the Corporate Debtor.

Since this voting item is associated with appointment of Resolution Professional, this is a 66% voting item under Section 22 (2) of the IBC.

Voting results

Particulars	Claim Admitted	Value (Voting %)			
		Assented	Dissented	Abstained	Total %
Banks/ Fis	9,783	41.70%	0.00%	0.00%	41.7%
Home Buyers	13,660	15.64%	1.44%	41.15%	58.2%
FD Holders	19	0.01%	0.00%	0.08%	0.1%
Total	23,462	57.35%	1.44%	41.23%	100%

Since the members representing only **57.35%** of the voting rights assented to the matter, the decision on the item stands **Rejected**.

Individual voting is annexed herewith in following order:

Class of creditor	Annexure
Banks and Financial Institutions	Annexure A
Home Buyers	Annexure B (certificate from authorized representative)
FD Holder	Annexure C (certificate from authorized representative)

Voting item 3

Proposed fee of Resolution Professional

Approval of fee of the Resolution Professional, (who will be assisted by DTTILLP) at INR 45.00 lakhs per month, plus OPE, and GST, as a part of the insolvency resolution process costs to be paid out of the cash flows of the Corporate Debtor to the extent possible.

Since this voting item is associated with appointment of Resolution Professional, this is a 66% voting item under Section 22 (2) of the IBC.

Voting Result

Particulars	Claim Admitted	Value (Voting %)			
		Assented	Dissented	Abstained	Total %
Banks/ FIs	9,783	41.70%	0.00%	0.00%	41.7%
Home Buyers	13,660	13.24%	3.30%	41.67%	58.2%
FD Holders	19	0.00%	0.00%	0.08%	0.1%
Total	23,462	54.94%	3.30%	41.75%	100%

Since the members representing only **54.94%** of the voting rights assented to the matter, the decision on the item stands **Rejected**.

Individual voting is annexed herewith in following order:

Class of creditor	Annexure
Banks and Financial Institutions	Annexure A
Home Buyers	Annexure B (certificate from authorized representative)
FD Holder	Annexure C (certificate from authorized representative)

Annexure – 4**Voting Item 4**

Approval of related party transactions – Section 28 item.

Section 28(1)(f) stipulates that "Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely: - undertake any related party transaction".

Further, Section 28(3) of the IBC stipulates that "No action under Section 28 (1) shall be approved by the CoC unless approved by a vote of 66% of the voting shares"

Voting Result

Particulars	Admitted Claim	Value (Voting %)			
		Assented	Dissented	Abstained	Total %
Banks/ FIs	9,783	34.06%	7.64%	0.00%	41.7%
Home Buyers	13,660	3.69%	12.90%	41.62%	58.2%
FD Holders	19	0.01%	0.00%	0.08%	0.1%
Total	23,462	37.76%	20.54%	41.70%	100%

Since the members representing only 37.76% of the voting rights assented to the matter, the decision on the item stands **Rejected**.

Individual voting is annexed herewith in following order:

Class of creditor	Annexure
Banks and Financial Institutions	Annexure A
Home Buyers	Annexure B (certificate from authorized representative)
FD Holder	Annexure C (certificate from authorized representative)

Annexure – 5**Voting item**

Acceptance of resignation of seven directors (Section 28 item)

Section 28(1)(j) stipulates that "Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely: - make any change in the management of the corporate debtor or its subsidiary".

Further, Section 28(3) of the IBC stipulates that "No action under Section 28 (1) shall be approved by the CoC unless approved by a vote of 66% of the voting shares"

Voting Result

Particulars	Admitted Claim	Value (Voting %)			
		Assented	Dissented	Abstained	Total %
Banks/ FIs	9,783	26.14%	15.56%	0.00%	41.7%
Home Buyers	13,660	2.43%	14.49%	41.30%	58.2%
FD Holders	19	0.01%	0.00%	0.08%	0.1%
Total	23,462	28.58%	30.05%	41.38%	100%

Since the members representing only **28.58%** of the voting rights assented to the matter, the decision on the item stands **Rejected**.

Individual voting is annexed herewith in following order:

Class of creditor	Annexure
Banks and Financial Institutions	Annexure A
Home Buyers	Annexure B (certificate from authorized representative)
FD Holder	Annexure C (certificate from authorized representative)

Annexure – 6**Voting item**

Approval of Form G (Invitation for expression of interest)

As per Regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 The resolution professional shall publish brief particulars of the invitation in Form G of the Schedule

Further, Section 21(8) of the IBC stipulates that "Save as otherwise provided in the code, all decision of the CoC shall be taken by a vote of not less than 51% of the voting share of the financial creditors"

Voting Result

Particulars	Admitted Claim	Value (Voting %)			
		Assented	Dissented	Abstained	Total %
Banks/ FIs	9,783	37.29%	4.41%	0.00%	41.7%
Home Buyers	13,660	15.95%	0.90%	41.36%	58.2%
FD Holders	19	0.01%	0.00%	0.08%	0.1%
Total	23,462	53.25%	5.31%	41.44%	100%

Since the members representing **53.25%** of the voting rights assented to the matter, the decision on the item stands **Passed**.

Individual voting is annexed herewith in following order:

Class of creditor	Annexure
Banks and Financial Institutions	Annexure A
Home Buyers	Annexure B (certificate from authorized representative)
FD Holder	Annexure C (certificate from authorized representative)

60

Annexure A

INDIVIDUAL VOTING BY BANKS AND FINANCIAL INSTITUTIONS

Voting Item No. – 1

Appointment of Mr. Vijaykumar V. Iyer as the Resolution Professional to replace Interim Resolution Professional Mr. Anuj Jain, for the corporate insolvency resolution process of the Corporate Debtor, and authorize IDBI Bank (applicant bank), to communicate to the Hon'ble National Company Law Tribunal, Allahabad Bench (Adjudicating Authority), the decision of appointment of Mr. Vijaykumar V. Iyer as the Resolution Professional of the Corporate Debtor, as per the requirements of the Insolvency and Bankruptcy Code, 2016 read with the rules and regulations framed there under.

Name of financial creditor	Voting share	Vote (Assented / Dissented / Abstained)	Voting share for decision
IDBI Bank Limited	18.47%	Assented	18.47%
India Infrastructure Finance Company Limited	4.41%	Assented	4.41%
Life Insurance Corporation of India	3.23%	Assented	3.23%
State Bank of India	3.22%	Assented	3.22%
Corporation Bank	3.00%	Assented	3.00%
Bank of Maharashtra	1.70%	Assented	1.70%
Syndicate bank	1.66%	Assented	1.66%
Union Bank of India	1.43%	Assented	1.43%
ICICI Bank Limited	1.30%	Assented	1.30%
IFCI Limited	1.20%	Assented	1.20%
The Jammu and Kashmir Bank Limited	1.04%	Assented	1.04%
Axis Bank Limited	0.93%	Assented	0.93%
SREI Equipment Finance Limited	0.12%	Assented	0.12%
Total	41.70%		41.70%

Voting Item No. – 2

Appointment of Deloitte Touche Tohmatsu India LLP ("DTTILLP") to assist the Resolution Professional in connection with the corporate insolvency resolution process of the Corporate Debtor.

Name of financial creditor	Voting share	Vote (Assented / Dissented / Abstained)	Voting share for decision
IDBI Bank Limited	18.47%	Assented	18.47%
India Infrastructure Finance Company Limited	4.41%	Assented	4.41%
Life Insurance Corporation of India	3.23%	Assented	3.23%
State Bank of India	3.22%	Assented	3.22%
Corporation Bank	3.00%	Assented	3.00%
Bank of Maharashtra	1.70%	Assented	1.70%
Syndicate bank	1.66%	Assented	1.66%
Union Bank of India	1.43%	Assented	1.43%
ICICI Bank Limited	1.30%	Assented	1.30%
IFCI Limited	1.20%	Assented	1.20%
The Jammu and Kashmir Bank Limited	1.04%	Assented	1.04%

65

Annexure A**INDIVIDUAL VOTING BY BANKS AND FINANCIAL INSTITUTIONS**

Name of financial creditor	Voting share	Vote (Assented / Dissented / Abstained)	Voting share for decision
Axis Bank Limited	0.93%	Assented	0.93%
SREI Equipment Finance Limited	0.12%	Assented	0.12%
Total	41.70%		41.70%

Voting Item No. – 3

Approval of fee of the Resolution Professional, (who will be assisted by DTTILLP) at INR 45 00 lakhs per month, plus OPE, and GST, as a part of the insolvency resolution process costs to be paid out of the cash flows of the Corporate Debtor to the extent possible.

Name of financial creditor	Voting share	Vote (Assented / Dissented / Abstained)	Voting share for decision
IDBI Bank Limited	18.47%	Assented	18.47%
India Infrastructure Finance Company Limited	4.41%	Assented	4.41%
Life Insurance Corporation of India	3.23%	Assented	3.23%
State Bank of India	3.22%	Assented	3.22%
Corporation Bank	3.00%	Assented	3.00%
Bank of Maharashtra	1.70%	Assented	1.70%
Syndicate bank	1.66%	Assented	1.66%
Union Bank of India	1.43%	Assented	1.43%
ICICI Bank Limited	1.30%	Assented	1.30%
IFCI Limited	1.20%	Assented	1.20%
The Jammu and Kashmir Bank Limited	1.04%	Assented	1.04%
Axis Bank Limited	0.93%	Assented	0.93%
SREI Equipment Finance Limited	0.12%	Assented	0.12%
Total	41.70%		41.70%

Voting Item No. – 4

Approval of related party transactions – Section 28 item

Name of financial creditor	Voting share	Vote (Assented / Dissented / Abstained)	Voting share for decision
IDBI Bank Limited	18.47%	Assented	18.47%
India Infrastructure Finance Company Limited	4.41%	Dissented	NIL
Life Insurance Corporation of India	3.23%	Assented	3.23%
State Bank of India	3.22%	Dissented	NIL
Corporation Bank	3.00%	Assented	3.00%
Bank of Maharashtra	1.70%	Assented	1.70%
Syndicate bank	1.66%	Assented	1.66%
Union Bank of India	1.43%	Assented	1.43%
ICICI Bank Limited	1.30%	Assented	1.30%
IFCI Limited	1.20%	Assented	1.20%
The Jammu and Kashmir Bank Limited	1.04%	Assented	1.04%
Axis Bank Limited	0.93%	Assented	0.93%

INDIVIDUAL VOTING BY BANKS AND FINANCIAL INSTITUTIONS

Name of financial creditor	Voting share	Vote (Assented / Dissented / Abstained)	Voting share for decision
SREI Equipment Finance Limited	0.12%	Assented	0.12%
Total	41.70%		34.06%

Voting Item No. – 5

Acceptance of resignation of 7 Independent Directors – Section 28 item.

Name of financial creditor	Voting share	Vote (Assented / Dissented / Abstained)	Voting share for decision
IDBI Bank Limited	18.47%	Assented	18.47%
India Infrastructure Finance Company Limited	4.41%	Dissented	NIL
Life Insurance Corporation of India	3.23%	Dissented	NIL
State Bank of India	3.22%	Dissented	NIL
Corporation Bank	3.00%	Dissented	NIL
Bank of Maharashtra	1.70%	Dissented	NIL
Syndicate bank	1.66%	Assented	1.66%
Union Bank of India	1.43%	Assented	1.43%
ICICI Bank Limited	1.30%	Assented	1.30%
IFCI Limited	1.20%	Assented	1.20%
The Jammu and Kashmir Bank Limited	1.04%	Assented	1.04%
Axis Bank Limited	0.93%	Assented	0.93%
SREI Equipment Finance Limited	0.12%	Assented	0.12%
Total	41.70%		26.14%

Voting Item No. – 6

Approval of Form G (Invitation for expression of interest)

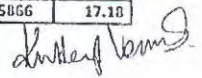
Name of financial creditor	Voting share	Vote (Assented / Dissented / Abstained)	Voting share for decision
IDBI Bank Limited	18.47%	Assented	18.47%
India Infrastructure Finance Company Limited	4.41%	Dissented	NIL
Life Insurance Corporation of India	3.23%	Assented	3.23%
State Bank of India	3.22%	Assented	3.22%
Corporation Bank	3.00%	Assented	3.00%
Bank of Maharashtra	1.70%	Assented	1.70%
Syndicate bank	1.66%	Assented	1.66%
Union Bank of India	1.43%	Assented	1.43%
ICICI Bank Limited	1.30%	Assented	1.30%
IFCI Limited	1.20%	Assented	1.20%
The Jammu and Kashmir Bank Limited	1.04%	Assented	1.04%
Axis Bank Limited	0.93%	Assented	0.93%
SREI Equipment Finance Limited	0.12%	Assented	0.12%
Total	41.70%		37.29%

63

Jaypee Infrastructure Limited

Voting Results for Home Buyers for agenda items for 2nd meeting of COC held on 17th October 2018

Resolution	Agenda		Yes (Count)	Yes (%)	No (Count)	No (%)	Abstain (Count)	Abstain (%)	Total (Count)	Total (%)
R1	Appointment of Mr. Vijaykumar V. Iyer as the Resolution Professional	Prior Instructions	3059	9.25	323	0.75	29	0.06	3411	10.06
		Voting post COC (Excluding HB who cast vote while giving Prior Instructions)	2129	6.28	304	0.78	24	0.06	2457	7.12
		Total	5188	15.53	627	1.53	53	0.12	5868	17.18
R2	Appointment of Deloitte Touche Tohmatsu India LLP ("DTTILLP") to assist the Resolution Professional	Prior Instructions	3072	9.28	309	0.72	30	0.06	3411	10.06
		Voting post COC (Excluding HB who cast vote while giving Prior Instructions)	2152	6.35	282	0.72	23	0.05	2457	7.12
		Total	5224	15.63	591	1.44	53	0.11	5868	17.18
R3	Approval of fee of the Resolution Professional	Prior Instructions	2520	7.71	749	1.95	142	0.40	3411	10.06
		Voting post COC (Excluding HB who cast vote while giving Prior Instructions)	1837	5.53	519	1.35	101	0.25	2457	7.12
		Total	4357	13.24	1268	3.30	243	0.64	5868	17.18
R4	Approval of related party transactions – Section 28 item.	Prior Instructions	717	2.17	2564	7.54	130	0.35	3411	10.06
		Voting post COC (Excluding HB who cast vote while giving Prior Instructions)	573	1.52	1792	5.36	92	0.24	2457	7.12
		Total	1290	3.69	4356	12.90	222	0.59	5868	17.18
R5	Acceptance of resignation of 7 Independent Directors – Section 28 item	Prior Instructions	519	1.60	2834	8.31	58	0.14	3411	10.06
		Voting post COC (Excluding HB who cast vote while giving Prior Instructions)	327	0.82	2079	6.17	51	0.13	2457	7.12
		Total	846	2.42	4913	14.48	109	0.27	5868	17.18
R6	Approval of Form G (Invitation for expression of interest)	Prior Instructions	3165	9.48	179	0.40	66	0.18	3410	10.06
		Voting post COC (Excluding HB who cast vote while giving Prior Instructions)	2209	6.47	187	0.50	60	0.15	2456	7.12
		Total	5374	15.95	366	0.90	126	0.33	5866	17.18



Total Shareholder Voting %										
Resolution	Resolution description	Voted in favour			Voted against			Abstained		
		Shareholder	Percentage	Share	Shareholder	Percentage	Share	Shareholder	Percentage	Share
3 & 9	Appointment of Mr. Vijaykumar V. Iyer as the Resolution Professional		0.0035%			0.0005%			0.0000%	
17 & 23			0.0030%			0.0002%			0.0000%	
	Total		0.0065%			0.0007%			0.0000%	
4 & 10	Appointment of Deloitte Touche Tohmatsu India LLP ("DTTILLP") to assist the Resolution Professional		0.0036%			0.0002%			0.0002%	
18 & 24			0.0031%			0.0001%			0.0000%	
	Total		0.0067%			0.0003%			0.0002%	
5 & 11	Approval of fee of the Resolution Professional		0.0022%			0.0016%			0.0002%	
19 & 25			0.0028%			0.0003%			0.0000%	
	Total		0.0050%			0.0019%			0.0002%	
6 & 12	Approval of related party transactions – Section 28 item		0.0033%			0.0003%			0.0004%	
20 & 26			0.0024%			0.0006%			0.0002%	
	Total		0.0057%			0.0009%			0.0006%	
7 & 13	Acceptance of resignation of 7 Independent Directors – Section 28 item		0.0034%			0.0002%			0.0004%	
21 & 27			0.0021%			0.0010%			0.0001%	
	Total		0.0055%			0.0011%			0.0005%	
8 & 14	Approval of Form G (Invitation for expression of interest)		0.0036%			0.0001%			0.0003%	
29 & 28			0.0030%			0.0002%			0.0000%	
	Total		0.0065%			0.0003%			0.0003%	

Anju Agarwal
 (Insolvency Professional)
 Reg. No.: IBI/IFA-001/19-P00106/2017-2018/10213
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 Address: 73, National Park, Lalpat Nagar-IV, New Delhi-110024

65

Resolution No.	Resolution description	Section 23	Section 24	Section 25	Section 26	Section 27	Section 28	Section 29	Section 30
3 & 9	Appointment of Mr. Vijaykumar V. Iyer as the Resolution Professional	32		7					
17 & 23		18		2					
	Total	50		9					
4 & 10	Appointment of Deloitte Touche Tohmatsu India LLP ("DTTILLP") to assist the Resolution Professional	33		5				1	
18 & 24		19		1					
	Total	52		14				1	
5 & 11	Approval of fee of the Resolution Professional	13		13				2	
19 & 25		15		4				1	
	Total	28		23				3	
6 & 12	Approval of related party transactions - Section 28 item	29		0				4	
20 & 26		12		5				3	
	Total	41		11				7	
7 & 13	Acceptance of resignation of 7 Independent Directors - Section 28 item	32		4				3	
21 & 27		11		7				2	
	Total	43		11				5	
8 & 14	Approval of Form Q (Invitation for expression of interest)	36		1				2	
22 & 28		18		1				1	
	Total	54		2				3	



Anju Agarwal
 (Insolvency Professional)
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66

Voting Results for the Sixth Meeting of the Committee of Creditors (CoC)
of Jaypee Infratech Limited held on 18th February 2019

Venue: Holiday Inn, Aerocity Access Rd, Hospitality District Asset Area 12, New Delhi – 110 037

Determination of Voting Place and Mode

It was unanimously concluded during the Sixth CoC meeting that voting under regulation 25(5) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP") will take place via electronic means and the voting portal.

Voting Results

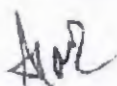
The agenda items and the voting matters, which requires the approval of committee of the creditors, was circulated earlier and all the voting members confirmed the receipt of notice and agenda items within the prescribed time. The IRP had detailed discussion on the voting items with the CoC before the commencement of the vote.

The results of the voting is as follows:

Voting Item	Voting Item	Voting % required	Voting % Achieved	Decision	Annexure
1	Conduct the Addition Forensic Audit of Corporate Debtor from Date of Incorporation till 31st March 2014 and cost of the same may be considered as part of CIRP Expenses	51%	34.45%	Rejected	Annexure 1

The voting on the above mentioned Voting item was started on 21 February 2019 at 1200 hours till 25 February 2019 at 1500 hours after duly circulating the minutes of meeting 24 hours prior to the start of voting.

The e-voting was conducted through Central Depository Services (India) Limited on portal www.evotingindia.com for Banks and Financial institutions and through Authorized Representatives on newly developed web portal <http://jaypeeinfratechar.in/> for class of creditors i.e. Home buyers & FD holders.



Anuj Jain

IP Registration no. IBBI/IPA-001/IP-P00142/2017-18/10306

Interim Resolution Professional – Jaypee Infratech Ltd.

(Jaypee Infratech Limited is under Corporate Insolvency Resolution Process of the Insolvency and Bankruptcy Code 2016. Its affairs, business and assets are being managed by the Interim Resolution Professional, Mr. Anuj Jain, appointed by the National Company Law Tribunal by order dated 9th August, 2017 under the provisions of the Code read with order dated 09th August 2018 passed by Hon'ble Supreme Court in Writ Petition (Civil) No. 744/2017)

Annexure – 1**Voting item 1**

Conduct the Addition Forensic Audit of Corporate Debtor from Date of Incorporation till 31st March 2014 and cost of the same may be considered as part of CIRP Expenses.

Voting results

Particulars	Claim admitted	Value (Voting %)			Total %
		Assented	Dissented	Abstained	
Banks	9,783	1.60%	32.20%	7.10%	40.8%
Home Buyers	14,147	32.85%	1.20%	25.00%	59.1%
FD Holders	23	0.001%	0.02%	0.08%	0.1%
Total	23,953	34.45%	33.42%	32.18%	100%

Section 21(8) of the IBC stipulates that "Save as otherwise provided in the code, all decision of the CoC shall be taken by a vote of not less than 51% of the voting share of the financial creditors"

Since the members representing **34.45%** of the voting rights assented to the matter, the decision on the item stands *Rejected*.

Individual voting is annexed herewith in following order:

Class of creditor	Annexure
Banks and Financial Institutions	Annexure A
Home Buyers	Annexure B (certificate from authorized representative)
FD Holder	Annexure C (certificate from authorized representative)

INDIVIDUAL VOTING BY BANKS AND FINANCIAL INSTITUTIONS

Voting Item No. – 1

Conduct the Addition Forensic Audit of Corporate Debtor from Date of Incorporation till 31st March 2014 and cost of the same may be considered as part of CIRP Expenses.

Name of financial creditor	Voting share	Vote (Assented / Dissented / Abstained)	Voting share for decision
IDBI Bank Limited	18.1%	Dissented	NIL
India Infrastructure Finance Company Limited	4.3%	Dissented	NIL
Life Insurance Corporation of India	3.2%	Dissented	NIL
State Bank of India	3.2%	Abstained	NIL
Corporation Bank	2.9%	Dissented	NIL
Bank of Maharashtra	1.7%	Abstained	NIL
Syndicate bank	1.6%	Assented	1.6%
Union Bank of India	1.4%	Dissented	NIL
ICICI Bank Limited	1.3%	Abstained	NIL
IFCI Limited	1.2%	Dissented	NIL
The Jammu and Kashmir Bank Limited	1.0%	Dissented	NIL
Axis Bank Limited	0.9%	Abstained	NIL
SREI Equipment Finance Limited	0.1%	Dissented	NIL
Total	40.8%		1.6%

Jaypee Infratech Limited

Annexure B

Voting Result for Home Buyer for agenda item for the 6th meeting of COC held on 18th Feb 2019

Resolution	Pre/Post	Resolution description	Voted in Favour		Voted Against		Abstained from Voting	
			Home buyers (Count)	Home buyers (%)	Home buyers (Count)	Home buyers (%)	Home buyers (Count)	Home buyers (%)
57	Post COC	Forensic Audit	12,131	32.85%	422	1.20%	10696	25.00%
		Total (count)	12131		422		10696	
		Total (%)	32.85%		1.20%		25.00%	

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25/02/2019

Voting Result of FD Holders in case of Jaypee Infratech Limited after the 6th
COC meeting held on 18/02/2019

Voting results (6thCoC 18.02.2019)								
Resolu tion ID	Pre/P ost	Resolution description	Voted in Favour		Voted in Against		Voted in Abstained	
			FD Holders (Count)	FD Holder s (%)	FD Hold ers (Cou nt)	FD Hold ers (%)	FD Hold ers (Cou nt)	FD Hold ers (%)
57	Post Coc	Forensic Audit	16	0.00%	8.00	0.02 %	646	0.08 %
		Total (count)	16		8		646	
		Total (%)	0.00%		0.02%		0.08%	

Anju Agarwal
Authorized Representative of FD Holders
(Jaypee Infratech Limited)



Voting Results for the Ninth Meeting of the Committee of Creditors (CoC)
of Jaypee Infratech Limited held on 26th April 2019

Venue: Holiday Inn, Aerocity Access Rd, Hospitality District Asset Area 12, New Delhi – 110 037

Determination of Voting Place and Mode

It was unanimously concluded during the Ninth CoC meeting that voting under regulation 25(5) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP") will take place via electronic means and the voting portal.

Voting Results

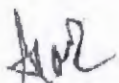
The agenda items and the voting matters, which requires the approval of committee of the creditors, was circulated earlier and all the voting members confirmed the receipt of notice and agenda items within the prescribed time. The IRP had detailed discussion on the voting items with the CoC before the commencement of the vote.

The results of the voting is as follows:

Voting Item	Voting item	Voting % required	Voting % Achieved	Decision	Annexure
1	Voting on the final resolution plan of Suraksha Realty Limited along with Lakshdeep Investments and Finance Private Limited.	66%	23.47%	Rejected	Annexure 1

The voting on the above mentioned Voting item was started on 30 April 2019 at 1600 hours for Banks and Financial Institutions and at 1830 hours for Home Buyers and Fixed Deposit ("FD") Holders till 03 May 2019 at 1200 hours after duly circulating the minutes of meeting 24 hours prior to the start of voting.

The e-voting was conducted through Central Depository Services (India) Limited on portal www.evotingindia.com for Banks and Financial institutions and through Authorized Representatives on newly developed web portal <http://jaypeeinfratechar.in/> for class of creditors i.e. Home buyers & FD holders.



Anuj Jain

IP Registration no. IBBI/IPA-001/IP-P00142/2017-18/10306

Interim Resolution Professional – Jaypee Infratech Ltd.

(Jaypee Infratech Limited is under Corporate Insolvency Resolution Process of the Insolvency and Bankruptcy Code 2016. Its affairs, business and assets are being managed by the Interim Resolution Professional, Mr. Anuj Jain, appointed by the National Company Law Tribunal by order dated 9th August, 2017 under the provisions of the Code read with order dated 09th August 2018 passed by Hon'ble Supreme Court in Writ Petition (Civil) No. 744/2017)

72

Annexure – 1

Voting item 1

Voting on the final resolution plan of Suraksha Realty Limited along with Lakshdeep Investments and Finance Private Limited.

Voting results

Particulars	Claim admitted	Value (Voting %)			Total %
		Assented	Dissented	Abstained	
Banks	9,783	1.01%	39.64%	0.00%	40.65%
Home Buyers	14,264	22.46%	2.19%	34.62%	59.26%
FD Holders	24	0.00%	0.02%	0.07%	0.09%
Total	24,071	23.47%	41.85%	34.69%	100.00%

Section 28(3) of the Insolvency and Bankruptcy Code, 2016 stipulates that *"No action shall be approved by the committee of creditors unless approved by a vote of sixty six per cent of the voting shares."*

Since the members representing **23.47%** of the voting rights assented to the matter, the decision on the item stands **Rejected**.

Individual voting is annexed herewith in following order:

Class of creditor	Annexure
Banks and Financial Institutions	Annexure A
Home Buyers	Annexure B (certificate from authorized representative)
FD Holder	Annexure C (certificate from authorized representative)

73

Annexure A

INDIVIDUAL VOTING BY BANKS AND FINANCIAL INSTITUTIONS

Voting item No. – 1

Voting on the final resolution plan of Suraksha Realty Limited along with Lakshdeep Investments and Finance Private Limited.

Name of financial creditor	Voting share	Vote (Assented / Dissented / Abstained)	Voting share for decision
IDBI Bank Limited	18.01%	Dissented	NIL
India Infrastructure Finance Company Limited	4.30%	Dissented	NIL
Life Insurance Corporation of India	3.15%	Dissented	NIL
State Bank of India	3.14%	Dissented	NIL
Corporation Bank	2.93%	Dissented	NIL
Bank of Maharashtra	1.65%	Dissented	NIL
Syndicate bank	1.62%	Dissented	NIL
Union Bank of India	1.39%	Dissented	NIL
ICICI Bank Limited	1.26%	Dissented	NIL
IFCI Limited	1.17%	Dissented	NIL
The Jammu and Kashmir Bank Limited	1.01%	Assented	1.01%
Axis Bank Limited	0.91%	Dissented	NIL
SREI Equipment Finance Limited	0.11%	Dissented	NIL
Total	40.65%		1.01%

74

Annexure B

Voting results (9thCoC 26.04.2019)

Resolution	Pre/Post	Resolution description	Voted in Favour		Voted in Against		Voted in Abstained	
			Home buyers (Count)	Home buyers (%)	Home buyers (Count)	Home buyers (%)	Home buyers (Count)	Home buyers (%)
1	Post Coc	Resolution Plan of Suraksha	8,019	22.46%	860	2.19%	14,632	34.62%
		Total (count)	8019		860		14632	
		Total (%)	22.46%		2.19%		34.62%	

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Voting results (9thCoC 26.04.2019)								
Resolution ID	Pre/Post	Resolution description	Voted in Favour		Voted in Against		Voted in Abstained	
67	Post Coc	Resolution Plan of Suraksha	24	0.00%	55.00	0.02%	646	0.07%
		Total (count)	24		55		646	
		Total (%)	0.00%		0.02%		0.07%	



Authorized Representative of FD Holders
 Anju Agarwal
 Insolvency Professional

National Company Law Tribunal

Allahabad Bench

76

CA No. 22/2019,

CP No.(IB) 77/ALD/2017

ATTENDENCE - CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.01.2019

NAME OF THE COMPANY: IDBI Bank Vs. Jaypee Infratech Ltd.

SECTION OF I & B CODE: 12(2) & (3) IBC

Sl. NO.	Name	Designation	Representation	Signature
1.	Sh. Rahul Agarwal	Advocate	For Financial Creditor	[Signature]
2.	Sh. Sanjay Bhatt	Advocate	For Jaypee Infratech Ltd.	[Signature]

CA NO.22/2019, CP NO.(IB)77/ALD/2017

Sh. Rahul Agarwal, Advocate for the Financial Creditor (IDBI Bank) and Sh. Sanjay Bhatt, Advocate for the RP are present.

1. Heard the learned counsels appearing of IRP and Financial Creditor (IDBI Bank).
2. Interim Resolution Professional (IRP) for Jaypee Infratech Ltd. filed this application U/s 12(2) & (3) of the I & B Code, 2016 read with regulation 40 of IBC (Insolvency Resolution for Corporate Persons) Regulations, 2016, seeking extension of the Corporate Insolvency Resolution Process (CIRP) for a further period of 90 days beyond 180 days.
3. CP No.(IB)77/ALD/2017 filed by the Financial Creditor (IDBI Bank) was admitted on 09.08.2017, commencing the CIRP in respect of Corporate Debtor Jaypee Infratech Ltd. (JIL) appointing IRP and imposing moratorium.
4. The Hon'ble Supreme Court vide order dated 09.08.2018 passed in Writ Petition (Civil) No.741 of 2017 directed revival of CIRP by another 180 days afresh from the stage of appointment of IRP and further directed the IRP to follow the provisions of IBC afresh in all respects from the stage of

Sd/

Sd/

appointment of IRP. The Hon'ble Supreme Court directed that a new Committee of Creditors (COC) should be constituted in accordance with the amended provisions of I & B Code to give effect to the statutory status as Financial Creditors granted to the allottees under real estate projects of JIL. The Hon'ble Supreme Court also ordered that if it becomes necessary to apply for a further extension of 90 days, permitted the NCLT to pass appropriate orders in accordance with the provisions of IBC.

5. In compliance of the order of the Hon'ble Supreme Court dated 09.08.2018 read with the order dated 14.08.2018 passed by this Authority, applicant as IRP for JIL, issued public announcement in the revised Form A on 17.08.2018, constituted a COC on 30.08.2018 and filed report before this Authority on 31.08.2018. IRP identified two class of creditors as allottees and fixed deposit holders. After following the due process, IRP filed application being CA No.206/2018 for appointment of Insolvency Professionals, who scored maximum votes from their respective class as authorized representatives for each class of creditors and the same was allowed by this Authority vide order dated 05.09.2018 appointing Mr. Kuldeep Verma as Authorized Representative for class of allottees and Ms. Anju Agarwal as Authorized Representative for class of fixed deposit holders.

6. The agenda item concerning continuation/ appointment of IRP as RP in the first COC meeting has not been approved. However, in terms of Section 16(5) of the IBC as amended which came into force w.e.f 06.06.2018, IRP is continuing to perform the role of RP for JIL. IRP conducted the fifth COC on 17.01.2019 after serving due notice on 11.01.2019 containing agenda with the list of matters to be discussed and issues to be voted upon

sd/-

sd/-

at the meeting. There was only one voting matter, namely, Extension of CIRP process for further period of 90 days as per Section 12(2) of the IBC.

7. COC in its 5th meeting held on 17.01.2019 by a majority voting share of 71.49% approved the resolution authorizing the RP to file an application to the Adjudicating Authority to extend the period of CIRP beyond 180 days. The voting share required for passing a resolution to extend the CIRP period is 60%. However, the resolution was passed by a majority voting share of 71.49%. Pursuant to the said resolution, IRP filed this application.

8. On this application, this Authority ordered notice to all the Stakeholders by email. IRP issued notices to all the Stakeholders by email and filed proof of service. None opposed the application.

9. The reasons stated for seeking extension of CIRP for a further period of 90 days beyond 180 days are as follows:-

i. Voting Deadlock :

Voting items being tabled before COC are not being passed on account of not having met the required threshold under the IBC as only small number of allottees cast their vote and large number of allottees failed to exercise their votes.

The decision on the voting deadlock has been referred to the Hon'ble President, NCLT for hearing by one or more Members of the Tribunal by this Adjudicating Authority, NCLT, Allahabad Bench U/s 419(5) of the Companies Act read with rule 60 of NCLT Rules.

ii. Delay in Evaluation Matrix and Process Note :

In the third COC meeting held on 27.11.2018, there were two voting matters, namely 1- Proposed Evaluation Matrix and 2- Process Note for

SC/

Request for Resolution Plan. Both the voting items were deferred. The COC members could not come to a consensus on the Evaluation Matrix due to various suggestions made by the authorized representative which were not acceptable to other COC members, and as a result Evaluation Matrix and Process Note could not be finalized and put to vote for approval of COC members.

COC received a request from the prospective resolution applicant seeking till 15.02.2019 for submission of binding resolution plans.

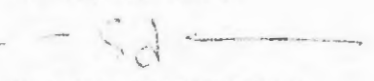
10. It is further stated in the application that this is a bonafide application filed in good faith and for just reasons.
11. COC in its 5th meeting held on 17.01.2019 by a voting strength of 71.49% approved the resolution seeking extension of CIRP period for a further period beyond 180 days and authorized the RP to file this application. None of the Stakeholders raised any objection.

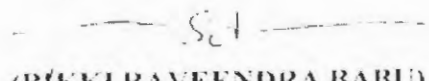
For the reasons stated above in the para no.9, it is necessary to extend the CIRP for a further period of 90 days beyond 180 days.

Hence, this application is allowed extending the CIRP for a further period of 90 days beyond 180 days.

Application (CA No.22/2019) is disposed of accordingly.

Dated: 28.01.2019


(SANKU KAJWALE)
MEMBER (TECHNICAL)


(BIKKI RAVEENDRA BABU)
MEMBER (JUDICIAL)

Typed by:
Kavita Prakash Srivastava
(Stenographer)

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

Item No. 7
(NB)-1634(PB)/2018

IN THE MATTER OF:

M/s. Swaraj Overseas

.... Applicant/petitioner

v.

Goldline Ventures Pvt. Ltd.

.... Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016

Order delivered on 29.04.2019

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR
HON'BLE PRESIDENT

SH. S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the applicant

Mr. Arvind Kumar, Adv. with Mr. Rocky Ravinder
Gupta, RP

ORDER

CA-781(PB)/2019:-

This is an application with a prayer for continuation of the IRP Mr. Rocky Ravinder Gupta as RP. The minutes of the two CoC meetings have been placed on record which have taken place on 30.05.2019 and 12.04.2019. In both the CoC meetings there was a lack of requisite majority of 66 % in terms of Section 22 of the Code to replace the IRP and therefore, the necessary inference is that the IRP is to continue to function as RP as per the letter and spirit of Section 22 (2) of the Code, because according to the aforesaid provision to replace an IRP requisite percentage of vote required is 66 % whereas in both the meetings of CoC the voting share in favour of the continuation of the RP is 52.13 %. In view thereof, we accept



Record of Discussion of the Insolvency Law Committee Meeting held on May 2, 2019,

Dr. M.S. Sahoo, Chairperson of the Insolvency and Bankruptcy Board of India (IBBI) briefed the Insolvency Law Committee (ILC) on the agenda for the extraordinary meeting of the ILC called by the Ministry of Corporate Affairs (MCA). He explained that in the case of *IDBI Bank Limited v. Jaypee Infratech Limited*, the National Company Law Tribunal, Delhi (NCLT Delhi) has asked the MCA and the IBBI for their views on the voting mechanism to be adopted for financial creditors who are homebuyers *"taking into consideration the larger public interest involve(d) and interpretation of the provisions having wider ramifications not only in relation to the present case but also extending beyond to other matters as well whether pending or in future under IBC, 2016."*

Mr. Anuj Jain, the interim resolution professional for the corporate debtor, Jaypee Infratech Limited (JIL) was asked to present the problem statement arising in the corporate insolvency resolution process (CIRP) of JIL under the Insolvency and Bankruptcy Code, 2016 (Code). Mr. Jain informed the ILC that in the present case, banks had a voting share of [41.8]% of the committee of creditors (CoC), fixed deposit holders had a voting share of [0.01]% of the CoC and homebuyers had a voting share of [58.1]% of the CoC. However, a very small number of homebuyers exercised their votes. Illustratively, in the first CoC meeting the total voting percentage of home buyers present was 17.18%. Mr. Jain accordingly apprised the ILC that given the low turnout of homebuyers at meetings of the CoC, the CoC was unable to pass resolutions with the thresholds required under the Code. Orders of the NCLT Delhi as well as NCLT Allahabad also record failure of proposed voting items in successive meetings being passed due to inability to meet the minimum voting threshold under the Code. The upshot is that no substantive resolutions have been passed by the CoC thus far and only minor procedural matters were agreed to by the CoC. Mr. Jain also highlighted another concern, that those homebuyers who had failed to file claims were not accounted for in most resolutions plans received by him. However, he also stated that originally approximately [5000] homebuyers out of total [26000] had not filed claims and this figure had reduced to approximately [3000] homebuyers as on date. He proposed that a long term solution would be to have classes of creditors under the Code as each class had common needs and could be treated homogeneously. To support his suggestion to treat homebuyers as a class, Mr. Jain informed the ILC that past records of CoC meetings demonstrate that out of the homebuyers present and voting on an average approximately [80%] voted in favour of the proposed resolution while [20%] voted against it. Mr. Jain further added that through the course of the CIRP the highest turnout by homebuyers has so far been [60%] of total homebuyers and a total of [7000] homebuyers have never voted on any item. Therefore, unless homebuyers were treated as a separate class of creditors, it would be very difficult to achieve the thresholds stated in the Code for CoC approval for various matters including approval of a resolution plan. He also highlighted that it is a heterogeneous group.

Thereafter, Mr. Kuldeep Verma the authorised representative for homebuyers in the CIRP of JIL informed the ILC of various possible reasons due to which homebuyers failed to participate in CoC meetings so far. These include lack of access to or understanding of the technology required for electronic voting, lack of understanding of the scheme of the Code, apprehension that voting may disentitle them to possession of a flat and so on. He reiterated the position of homebuyers as submitted before the Allahabad bench of the NCLT - i.e. 1) they must be treated as a separate class of creditors as they had the same goal and form part of a homogenous group amongst themselves 2) the rule of majority in cases of voting by creditors in a class should be applied to them and following the case of *Nikhil Mehta & Sons v. M/s AMR Infrastructure Ltd.*, votes of homebuyers who voted should be considered to be the votes for the entire class of creditors. He also informed the ILC that realistically in a best case scenario a resolution applicant could be expected to hand over completed flats to homebuyers in 2-2.5 years and homebuyers would have to be cognizant of this reality while voting. He further informed the ILC that in spite of his best efforts to encourage homebuyers to vote, voting by even 80% of homebuyers seemed almost impossible given past voting patterns of home buyers.

ILC members were also apprised about the issue of reducing the voting threshold for decisions of the CoC as discussed in the ILC Report of March 2018. The relevant extract of the report is reproduced as under:-

11.5 "The Committee also noted that globally, bankruptcy laws prescribe different voting thresholds for decisions of the CoC. In USA, approval of a plan requires 66 percent or more voting share in value and 50 percent or more voting share in number for each class of creditors. The position is similar in Canada, however, such requirement applies to each class of unsecured creditors. In the UK, approval of a plan under administration requires a simple majority in value of the creditors present and voting. While such threshold is higher in Singapore as the requirement therein is to obtain 75 percent or more of voting share by value and more than 50 percent voting share in number of creditors present and voting, for approval of the plan. The Committee was of the view a higher threshold with the present and voting requirement, or a lower threshold sans the present and voting requirement, may be adopted

11.6 After due deliberation and factoring in the experience of past restructuring laws in India and international best practices, the Committee agreed that to further the stated object of the Code i.e. to promote resolution, the voting share for approval of resolution plan and other critical decisions may be reduced from 75 percent to 66 percent or more of the voting share of the financial creditors. In addition to approval of the resolution plan under section 30(4), other critical decisions are extension of the CIRP beyond 180 days under section 12(2), replacement or appointment of RP under sections 22(2) and 27(2), and passing a resolution for liquidation under section 33(2) of the Code. Further, for approval of the other routine decisions for

continuing the corporate debtor as going concern by the IRP/RP, the voting share threshold may be reduced to 51 percent or more of the voting share of the financial creditors."

Thereafter, Mr. Saji Kumar from IBBI gave a brief background of the existing legal position. He particularly, cited Regulation 25(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which states as follows --

"The resolution professional shall take a vote of the members of the committee present in the meeting, on any item listed for voting after discussion on the same."

Mr. Kumar stated that based on the above provision, the understanding of the IBBI has always been to only consider CoC members who are present and voting while deciding if a resolution by the CoC has satisfied the threshold prescribed under the Code. Citing Regulation 25 of the CIRP Regulations and particularly sub-clauses (5) and (6), Mr. Kumar highlighted that homebuyers were given enough opportunity to participate and vote in the CoC meetings under the Code as well as the CIRP Regulations.

After hearing the practical difficulties arising in the present case, Mr. Injeti Srinivas, Secretary, MCA and Chairperson of the ILC sought to seek views of the members of the ILC in order to arrive at a workable solution which would further reasonable construction of the Code. Such reasonable construction in the view of the Supreme Court must support resolution of the corporate debtor as a going concern so long as an appropriate resolution applicant is available. The following observation of the Supreme Court in the case of *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta* is relevant in this context:

"If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible"

Keeping the above principles in mind, the MCA proposed the following for consideration by the ILC:

1. Should homebuyers be treated as a separate class of creditors given that their concerns and interests in the CIRP are distinct from other financial creditors such as banks? For example, homebuyers who have financed significant part of the housing projects with their savings desire completed homes whereas some other stakeholders such as fixed deposit holders may be purely interested in a monetary refund.
2. Should the voting thresholds for homebuyers be calculated on a present and voting threshold as is the case under the Companies Act, 2013? Doing so would address the practical difficulty that has manifested in the present case - i.e. lack of participation by homebuyers in the CoC despite best efforts of the authorised representative to encourage them to participate and vote.

3. What should be the voting threshold for decisions by the class of homebuyers? The ILC was informed that in the past, the NCLT has in the case of *Nikhil Mehta & Sons v. M/s AMR Infrastructure Ltd* held that in case of a deadlock in decision making in a CoC consisting solely of home buyers, the statutory requirement of 66% of votes was merely directory in nature and the decision taken by the majority in the CoC should be considered. On this the ILC opined that the threshold in the code are mandatory in the nature.

Subject to the above, the ILC observed that if the above approach was adopted, the present impasse wherein no decisions were being able to be made by the CoC would be resolved. As a result, the CoC would be in a position to approve a resolution plan which was acceptable to majority of the homebuyers present and voting. Notably, this approach would also ensure that financial creditors such as banks and fixed deposit holders continue to retain their right to vote as per their voting share.

While several members and others present at the meeting of the ILC were in agreement with adopting an outcome based approach which would ensure value maximisation through resolution rather than liquidation of the corporate debtor, certain others raised a few issues.

The representative from RBI stated that any decision recommended by the ILC to solve the present deadlock in the decision making process of the CoC of JIL should not unduly prejudice any group of stakeholders. She also observed the class of homebuyers was sufficiently heterogeneous and hence care should be taken while developing the framework.

Dr. Sahoo, Chairperson, IBBI, observed that, the Report of the Bankruptcy Law Reforms Committee which laid down the foundation for the Code had recommended that votes of those who remained absent must not be included. Dr. Sahoo also highlighted that while making any recommendations in the instant case, the ILC should take into consideration the decision of the NCLAT in the matter of *Tata Steel Limited v. Liberty House Group Pte. Ltd. & Ors* wherein the NCLAT held that the members of the CoC may approve or reject a resolution plan only after considering its feasibility and viability.

Mr. Sunil Mehta, Managing Director and Chief Executive Officer of Punjab National Bank agreed with the approach proposed by Mr. Srinivas and stressed that the entire spirit of democracy hinged on the concept of "present and voting".

The representative from Institute of Company Secretaries of India ("ICSI") highlighted that in addition to prescribing a rule of majority based on the total amount of outstanding debts, a minimum threshold on the number of the creditors present and voting in the separate class of homebuyers may also be considered.

Mr. Uday Kotak, Executive Vice Chairman and Managing Director, Kotak Mahindra Bank agreed that homebuyers may form a separate class of financial creditors. However, he posed certain questions to the ILC such as will the mechanism of present and voting apply only to homebuyers or to all financial creditors?

After taking the views of different members and others present at the meeting, and representation of the Vidhi Centre of Legal policy, who are providing research assistance to the ILC, favored adopting the outcome based approach suggested above. On issues raised by the Vidhi Centre, Chairman ILC observed that Law evolves, as difficulties and challenges of implementation arise but the ultimate touchstone is interpretation of Law that aids the realization of the objects of the Law, the IBC 2016 in the instant case. This approach would not just be beneficial to financial creditors but also to all other stakeholders of the corporate debtor as it would ensure resolution of IIL over liquidation. The ILC stated that excluding voting share of homebuyers for non-participation was not unfair as those not exercising their votes are seen as person indifferent to either of the outcome. Moreover they should not get a veto power to create a stalemate/impasse like situation. Dr Sahoo, Chairperson IBBI stated that non-participating homebuyers would be excluded from the numerator and the denominator. It was reiterated that one of the key aims of the Code is to first reach a resolution in order to maximise the value which may be given to creditors. Towards this end, there have been instances where courts have creatively interpreted provisions of the Code to be outcome oriented. Creative interpretation is when the court looks at both the literal language as well as the purpose or object of the statute in order to better determine what the words used by the draftsman of legislation mean. For example, in *Macquarie Bank Limited v. Shilpi Cable Technologies Ltd.* the Supreme Court adopted a creative interpretation to dilute the requirement of a certificate in Section 9(3)(c) of the Code (as it stood then) and allowed operational creditors to file applications without a certificate even though a literal reading of the statute mandated such a certificate to file the application. In another case, *Arcelormittal India Private Limited v. Satish Kumar Gupta and Ors.* the Supreme Court creatively interpreted Section 29A of the Code to be in line with the objects of the Code. In light of the above, it was discussed that there exists sufficient precedent to argue that if the current voting mechanism under the Code was proving to be unworkable in the context of homebuyers, in public interest and to facilitate resolution over liquidation, a view may be taken that the decision of majority homebuyers present and voting would be treated as the decision of the entire class of homebuyers.

Dr. T.K. Vishwanathan, Former Secretary General of the Lok Sabha agreed with the view presented by the MCA and stated that in the given circumstances this approach would be legally tenable.

The representative of the Department of Financial Services, Ministry of Finance enquired as to whether the government was planning to issue a Removal of Difficulty Order ("RoD") under section 242 of the Code in order to adopt the above approach. However, the MCA clarified that

the proposed approach was case specific at present given the unique difficulty arising in the CIRP of JIL. Whether in future an RoD or legislative amendment would be needed may be discussed at a later date based on the interpretation of the judiciary and the experience gained from the CIRP of JIL.

The meeting concluded with all members agreeing with the view proposed by the MCA which was to adopt an outcome based approach which would facilitate resolution of JIL over liquidation.

List of Participants:-

S.No.	Name	Designation
1	Mr. Injeti Srinivas	Chairperson ILC & Secretary
2	Mr. M. S. Sahoo	Chairperson, IBBI
3	Mr. T. K. Viswanathan	Former Secretary General, Lok Sabha and Chairman, BLRC
4	Mr. Sunil Mehta	MD & CEO
5	Mr. Uday Kotak	CII and MD & CEO (through video conferencing)
6	Mr. Amit Agarwal	Joint Secretary, DFS
7	Smt. Lily Vadera	Executive Director (through video conferencing)
8	Mr. Ranjeet Pandey	President, ICSI
9	Mr. Gyaneshwar Kumar Singh	Joint Secretary MCA
Others in Attendance		
1	Ms. Mamta Suri	Executive Director, IBBI
2	Mr. K.R. Saji Kumar	Executive Director, IBBI
3	Mr. Rakesh Tyagi	Director
5	Ms. Yogini D. Chauhan	Deputy Director
6	Mr. Saurabh Gautam	Assistant Director
7	Mr. Sunil Kumar	DGM, IBBI
8	Mr. Anuj Jain	IRP, Jaypee Infratech Ltd.
9	Mr. Kuldeep Verma	Authorized Representative of Home Buyers
10	Ms. Alka Kapoor	CEO IIP of ICSI
11	Ms. Vedika Mittal Kumar	Vidhi Centre for Legal Policy
12	Ms. Aishwarya Satija	Vidhi Centre for Legal Policy
13	Ms. Shreya Prakash	Vidhi Centre for Legal Policy
14	Mr. Oitihya Sen	Vidhi Centre for Legal Policy

FIT FOR INDEXING.

88

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

CA No. 811(PB)/2018

in
(IB)-02(PB)/2017

IN THE MATTER OF:

Nikhil Mehta & sons (HUF) &Ors.

....

**APPLICANT /
PETITIONER**

v.

M/s. AMR Infrastructure Ltd.

....

RESPONDENT

SECTION:

Under Section 7 of Insolvency & Bankruptcy Code, 2016

Order delivered on 29.09.2018

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR

Hon'ble President

Sh. S.K. Mohapatra,

Hon'ble Member (T)

Presents

For the Petitioner(s):-

Mr. Nishant Singh, Mr. Mohit Singh,
Advs.

Mr. Abhishek Anand, Mr. Anant A. Pavgi,
Mr. Tushar Tyagi, Advs. for RP.

Mr. Sakal Bhushan, Amicus Curiae.

ORDER

M.M KUMAR, PRESIDENT

CA-811(PB)/2018

A short question of law raised in this application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 concerns the deadlock created by the low percentage of votes cast by a new

category of financial creditor – Real Estate (Commercial) and Real Estate (Residential). The aforesaid class of creditors were recognised by Code, 2016 by Amendment Act of 2018 w.c.f. 06.06.2018.

2. In order to put the controversy in its proper perspective it would first be necessary to notice few material facts. CP No. (IB)-02(PB)/2017 (Nikhil Mehta & sons (HUF) & Ors. v. M/s. AMR Infrastructure Ltd. was admitted for initiating Corporate Insolvency Resolution Process on 10.05.2018 by this Bench. Mr. Vikram Bajaj was appointed as Interim Resolution Professional. He made a public announcement on 15.05.2018 in terms of Regulation 6(1) of the IBBI, (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for brevity the 'CIRP Regulations'). The public announcement was published in the 'English Daily' (Business Standard) and its Hindi edition as well. The last date for submission of proof of claim in terms of Regulation 6(2)(c) of CIRP Regulations was 24.05.2018. A copy of the public announcement was duly uploaded on the website of the IBBI and has also been placed on record (Annexure A-2, colly).

3. The applicant- Interim Resolution Professional has taken various steps in discharge of his duties as per the requirement of law which include invitation of verification of claims; collation of information on assets of the company; custody of assets etc. A detailed progress report was filed by the applicant- Interim Resolution Professional and it was taken on record by this Bench on 05.07.2018 (Annexure A3).

4. In pursuance of amendment carried w.e.f 06.06.2018 corresponding Regulations have also been framed by the IBBI on 13.07.2018 which were to take effect from 03.07.2018. In terms of Section 21(6)(b) of the Code, 2016 the applicant- Interim Resolution Professional filed an application being CA-725(PB)/2018 with a prayer to appoint two authorised representatives. The application was allowed vide order dated 14.08.2018 and Mr. Alok Kaushik and Ms. Maya Gupta were appointed to represent class of creditor belonging to Real Estate (Commercial) & (Residential) respectively. A copy of the order has been placed on record (Annexure A-4).

5. The first meeting of the Committee of Creditors of AMR Infrastructure Limited was scheduled to be convened on 25.08.2018. Accordingly, a notice of the said meeting along with agenda papers and background notes was sent to the Authorised Representatives and suspended Board of Directors through email on 17.08.2018 as per the requirements of Code, 2016 (Annexure A-5, colly).

6. The applicant-Interim Resolution Professional has furnished a list of 906 financial creditors along with their admitted claims, email-IDs and vote shares to the Authorised Representatives and in terms of Regulation 16A (6) of the CIRP Regulations (3rd amendment) access was provided to the Authorised Representatives to electronic means of communication for communicating with the financial creditors namely their respective class of creditor. The detail of the aforesaid facility has



been disclosed in the application. It is asserted that the e-voting window remained open from early morning on 23.08.2018 till 10:00 AM on 25.08.2018. It was thus opened for more than 48 hours. It was kept open keeping in view the large number of financial creditors who are spread all over the country. A list of financial creditors has been placed on record (Annexure A-6). In other words all steps were taken by the RP and the Authorised Representatives for explaining the agenda items through meetings, email explanations and phone replies etc. to all the members. The applicant- IRP and the Authorised Representatives sent email links for e-voting and timely technical assistance was provided and wherever required instructions for voting with reminder were also sent by the Authorised Representatives to their respective class of creditors. It has been asserted that despite keeping the window open for over 48 hours, repeated follow up for voting and timely assistance, there were only 236 financial creditors in Real Estate (residential) representing (16.36 %) 'voting shares' had voted. Likewise in the Real Estate (commercial) only 227 financial creditors came forward for voting instructions which represent 36.4%. As such overall voting instructions of 463 financial creditors representing 52.78% voting shares were received by the Authorised Representatives prior to CoC meeting i.e. up to 10:00 AM on 25.08.2018. In view of the second proviso of sub-Section 3 of Section 25A of the Code, 2016 the remaining financial creditors were deemed



to have abstain from voting in the first meeting of the CoC. It has been highlighted that there are no well organised sector constituting financial creditors like banks or financial institutions involved in the case as the project was entirely funded through investments from individual investors on promise of 'assured return'. A summary of agenda item which were placed for decision of the CoC in its first meeting held on 25.08.2018 for voting and the voting thereon has been summed up in the application with the help of the following tables which reflect agenda items Nos. 4, 5, 6, 7, 8 & 9.

Agenda Items to be decided by Voting :

4. Ratification of cost of IRP

VOTING

Class of Creditors	Total Voted	Approving Resolution	Disapproving Resolution
Real Estate Residential	16.36%	8.63%	7.73%
Real Estate Commercial	36.42%	20.84%	15.58%
Total	52.78%	29.47%	23.31%

55.84% of the votes casted have been casted in favour of the resolution and 44.16% of the votes casted have been casted against the resolution.

5. Appointment of IRP as Resolution Professional (RP) by the COC (subject to written consent of IRP) under Section 22(3)(a) of Insolvency and Bankruptcy Code, 2016

VOTING

Class of Creditors	Total Voted	Approving Resolution	Disapproving Resolution
Real Estate Residential	16.36%	8.97%	7.39%

	Real Estate	36.42%	23.59%	12.83%
	Commercial			
	Total	52.78%	32.56%	20.22%
	61.69% of the votes casted have been casted in favour of the resolution and 38.31% of the votes casted have been casted against the resolution.			
6.	Fixing the expenses to be incurred on or by the Resolution Professional and Source of Funding for the expenses			
	Class of Creditors	Total Voted	Approving Resolution	Disapproving Resolution
	Real Estate Residential	16.36%	8.81%	7.55%
	Real Estate Commercial	36.42%	22.46%	13.96%
	Total	52.78%	31.27%	21.51%
	59.25% of the votes casted have been casted in favour of the resolution and 40.75% of the votes casted have been casted against the resolution.			
7.	Raising of Interim Finance to fund CIRP Cost			
	VOTING			
	Class of Creditors	Total Voted	Approving Resolution	Disapproving Resolution
	Real Estate Residential	16.36%	9.55%	6.81%
	Real Estate Commercial	36.42%	23.47%	12.95%
	Total	52.78%	33.02%	19.76%
	62.56% of the votes casted have been casted in favour of the resolution and 37.44% of the votes casted have been casted against the resolution.			
8.	Change of Management of MRG Promoters P Ltd. by removal of present directors and appointment of new directors.			
	VOTING			
	Class of Creditors	Total Voted	Approving Resolution	Disapproving Resolution

	Real Estate Residential	16.36%	16.02%	0.34%
	Real Estate Commercial	36.42%	36.12%	0.30%
	Total	52.78%	52.14%	0.64%
	98.79% of the votes casted have been casted in favour of the resolution and 1.21% of the votes casted have been casted against the resolution.			
9.	Banking arrangements for AMR Infrastructures Ltd.			
	VOTING			
	Class of Creditors	Total Voted	Approving Resolution	Disapproving Resolution
	Real Estate Residential	16.36%	15.87%	0.49%
	Real Estate Commercial	36.42%	35.53%	0.89%
	Total	52.78%	51.40%	1.38%
	97.39% of the votes casted have been casted in favour of the resolution and 2.61% of the votes casted have been casted against the resolution.			

7. The aforesaid tables are based on the minutes of the first meeting of the CoC held on 25.08.2018 (Annexure A-7). A perusal of the tables makes it patent that majority of the financial creditors have given voting instructions to their authorised representative in favour of the resolution proposed by the applicant-IRP. It is further evident that none of the resolutions proposed could meet the 'voting threshold' prescribed under the Code and none of the resolution has been approved as per the provisions as existing. As a consequence thereof the Corporate Insolvency Resolution Process has now met a road block. The applicant- IRP did not have ratification of his cost, no clear

mandate for incurring expenses, raising interim finance, for opening and operating bank accounts and change of management of subsidiary where the corporate debtor has 99 % shareholding. Thus the applicant-IRP is not in a position to take further steps to carry on the Corporate Insolvency Resolution Process including appointment of valuers; transaction auditing; taking control over the assets, taking further steps for inviting the resolution plan; legal action against identified transactions etc. The applicant-IRP has expressed his inability to proceed any further as neither the Code nor the Regulations framed there under provide any specific guidance for resolution of the deadlock. According to IRP Section 60(5) (c) of the Code, 2016 empowers this Tribunal to decide any question of law and fact arising out of or in relation to the Corporate Insolvency Resolution Process of the corporate debtor. Accordingly, the applicant-IRP seeks appropriate directions on the aforesaid agenda item from 4-9 as listed in the tables reproduced in the preceding paras.

8. In the aforesaid backdrop, the applicant-IRP has approached this Tribunal by citing the provisions which requires 66 % of the vote sharing to pass resolution by the CoC and the voting pattern as reflected in the tables would show that it was far below 66 % of voting share. According to the averments made the result of voting by the financial creditor in this class was 52.78% vote sharing only. It is in



the aforesaid facts and circumstances that the present application has been filed with the following prayers.

- "a) Allow the present application; and
- b) Issue necessary directions on Agenda Item 4 to 9 placed before the Committee of Creditors in the first meeting dated 25.08.2018 as detailed in paragraph X which could not be decided in view of the low voting in view of peculiar circumstances of the case which have resulted in voting by financial creditors representing 52.78% vote share only, and to consider the mandate given by the financial creditors who have actively voted and participated in the process and to resolve the consequent deadlock and stalemate;
- c) Pass such other or further order/ order(s) as may be deemed fit and proper in the facts and circumstances of the instant case."

9. When the application came up for hearing on 05.09.2018, we have noted the issue and also felt that it is likely to arise in a large number of cases. Accordingly, we requested Mr. Sakal Bhushan learned counsel to assist the court in addition to Mr. Abhishek Anand and other counsels representing the IRP and Authorised Representatives.



10. On behalf of the applicant-IRP Mr. Abhishek Anand has submitted that the log-jam has to be broken by interpreting the provisions of the Code and the CIRP Regulations framed by the IBBI. According to the learned counsel the aforesaid tables have depicted a fractured vote sharing pattern for issuing instructions to the Authorised Representatives in respect of ratification of cost of IRP. According to Section 21(8) all decisions of the CoC shall be taken by a vote of not less than 51% of vote sharing of the financial creditors subject to other provisions of the Code which provide different threshold. The vote sharing polled to arm the authorised representatives with consent have not been able to fetch adequate percentage of votes either out of the total votes or even out of the present and voting. For approval of various resolutions mentioned in the tables above only 29.47% have cast in favour and 23.31 % have been cast against it. Likewise in respect of the appointing the IRP as Resolution Professional as per the provisions of Section 22(2) the threshold of 66% vote sharing of the financial creditor is laid down either to resolve to appoint the IRP as RP or to replace him by another RP. However, even there, the total vote sharing is 32.56 % for continuation of the IRP as RP. Likewise in respect of all other items as listed in the tables in the preceding paras, a minimum threshold of 66% has not been achieved. According to the learned counsel if the principle of 'majority' as envisaged by Regulation 16A (6) of the

Regulations 2016 (1) is applied most of the items would meet the approval of CoC. Learned counsel has then argued that on the basis of Regulation 25(3) in respect of action to be taken by the Resolution Professional under Section 28(1), it is obligatory on the Resolution Professional to take a vote of the member of the committee present in the meeting on any item listed for voting after discussion on the same. Learned counsel has also highlighted by referring to the provisions of Section 25(5) the idea of providing electronic means to seek vote of the member, who did not vote at the meeting, on the matters listed for voting by electronic voting system in accordance with Regulations, 2016. The voting is required to be kept open for 24 hours.

11. Mr. Abhishek Anand learned counsel has also submitted that by virtue of provision made in Section 21(6A) (b) it can be argued that the class of Real Estate (commercial/ residential) can be regarded as a class distinct from organised sector of financial creditor like bank and other financial institutions. In that regard, it has been submitted that the issues may be decided by applying the principle of 'present and voting'.

12. We requested Mr. Sakal Bhushan, learned counsel to assist us to find out correct and legally acceptable canon of construction to interpret Section 22(2) of the Code. Learned Amicus has adopted a different line of reasoning than the counsel for Interim Resolution

Professional and submitted that the argument advanced by Mr. Anand, would lead to an interpretation which would run contrary to the intention of the legislature as could be gathered from the Code itself and other sources. Accordingly, Mr. Bhushan submitted that an approach which advances the object of the Code would be preferable as has been reiterated by the Hon'ble Supreme Court in *Atlas Cycle Industries Ltd. and Ors. v. State of Haryana* (1979) 2 SCC 196.

13. Keeping in view the aforesaid, Mr. Bhushan submitted various thresholds mentioned in the Code can be found in Sections 12A(90%), 12(2), 22(2), 27(2), 28(3), 30(4), 33(2) all 66 % and 21(8) 51%. Before the amendment of the Code vide the IBC (Amendment) Ordinance which has been now replaced by IBC (Second Amendment) Act, 2018 w.e.f. 06.06.2018, the threshold was 75 % of the total voting share of the financial creditors in all cases.

14. Learned Amicus submitted that for reviewing the working of the Code after one year of its promulgation, the Government set up the Insolvency Law Committee on 16.11.2017. The Committee submitted its Report to the Government on 28.03.2018. In Para No. 11.5 of the said Report, the committee considered the thresholds applicable in USA, Canada, UK and Singapore. The Report mentions that in USA and Canada the threshold was of the **total voting share** whereas in UK and Singapore it was of the **voting share of the present and**

voting. The committee in Para 11.6 recommended to reduce the threshold from 75% to 66% for the critical decisions and 51% for the routine decisions, but in both the cases of the total voting share of the financial creditors.

15. The recommendations of the Insolvency Law Committee has been promulgating by the IBC (Amendment) Ordinance which has been now replaced by IBC (Second Amendment) Act, 2018 w.e.f 06.06.2018. In the light of fact that the Government and Parliament have taken a conscious decision by not introducing the present and voting requirement in the IBC even while amending the IBC, it would not be open to adopt that cannon of interpretation for construction of these provisions.

16. According of Mr. Bhushan in the case in hand, the very appointment of the Resolution Professional by the CoC is facing a deadlock. First, only 52.78% financial creditors actually voted and out of that also, only 32.56% voted in favour of appointing the IRP as RP. Thus, the resolution has the approval of only 32.56% of the total voting share of the financial creditors against the requirement of 66% under Section 22(2) of the IBC. Even if we take the percentage of the present and voting (which course is not open), then also it comes to 61.69% ($32.56 \times 100 \div 52.78 = 61.69$), which too is short of 66%. It is worthwhile to highlight here that without the appointment of RP, the

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very working of the time-bound CIRP is just not possible and it would drag the corporate debtor to imminent liquidation under Section 33(1) of the IBC. And this cannot be the intention of law.

17. It is thus submitted that we must find out the real intention of the legislature in order to give a purposive interpretation to the various provisions of the IBC. Learned Amicus took us through the long title of the Code which states "An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution....". The preamble of the IBC (Amendment) Ordinance, 2018 which was promulgated to give effect to the Report of the Insolvency Law Committee also states "..... promoting resolution over liquidation of corporate debtor by lowering the voting threshold of committee of creditors.....". It is quite manifest that the intention of the legislature is to "promote resolution over liquidation", and thus every effort should be made to interpret the provisions of IBC in such a manner as would advance the very object of the legislation rather than defeating it.

18. Mr. Bhushan then submitted that the various thresholds (90%, 66% or 51%) are only directory in nature. Insistence on the thresholds strictly would only make the provisions of the Code unworkable and would lead to deadlocks thereby pushing the corporate debtors towards imminent liquidation, frustrating the very object of this



progressive legislation. Moreover, in Sections 12A, 12(2), 22(2), 27(2) and 30(4), the expression used by the legislature itself is "may". Though in Sections 28(3), 33(2) and 21(8) the expression used is "shall", yet the same can be interpreted to mean "may" in the light of the ratio of law reiterated in the Atlas Cycle Industries' case (supra). Thus construed, it can be safely held by the Tribunal that the various voting thresholds in the IBC are merely directory in nature, and that preference can be given to decisions taken by the largest percentage in the CoC in case of a deadlock. Only this interpretation would make the Code workable and advance the object of this progressive legislation rather than defeating it.

19. Having heard the learned counsel for the Resolution Professional and the learned Amicus we find that the issue which needs to be answered in the present case is whether in the facts and circumstances of the present case the threshold of 'voting shares' in respect of the class of Financial Creditors Real Estate (Commercial) and Real Estate (Residential) as provided in various provisions of the Code (e.g. section 22(2) provides threshold of 66%) is mandatory. In the alternative could it be laid down that in case CoC is consisted of Real Estate (Commercial & Residential) representing 100% voting share then could the resolution be deemed to be approved by the highest number of the financial creditors. In different provisions variant thresholds have been provided. Many of them have 66% [e.g.

Sections 12(2), 22(2), 27(2), 28(3) 30(4) and 33(2) 90% threshold is provided by section 12 and 51% is provided by section 21(8) of the Code. For the sake of illustration it would therefore be profitable to first read section 22(2) of the Code which is set out below *in extenso*:

"22. (1) The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

(2) The committee of creditors, may, in the first meeting, by a majority vote of not less than sixty-six per cent of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

(3) Where the committee of creditors resolves under sub-section (2)—

(a) to continue the interim resolution professional as resolution professional subject to a written consent from the interim resolution professional in the specified form, it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or

(b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional along with a written consent from the proposed resolution professional in the specified form.

4.....

5....."

20. A bare perusal of section 22(2) would show that an interim resolution professional can be appointed as a resolution professional

and the threshold limit of sixty six percent voting shares in the committee of creditors is required for passing a resolution. It is true that the expression 'may' have been used but it does not have any bearing on the expression 'by a majority vote of not less than sixty six percent of the voting shares of the financial creditors'. We feel that the expression 'may' in section 22(2) is associated with the later case 'either resolve to appoint the interim resolution professional as a resolution profession or to replace the interim resolution professional by another resolution professional'.

21. Therefore the use of word 'may' in section 22(2) would not help to decide the issue whether that the provision is mandatory or directory. In fact the emphasis is on the expression 'by a majority vote of not less than sixty six percent of the voting share of the financial creditors'. A reference to other provisions where threshold limit of sixty six percent of 'voting share' has been fixed, would reveal that it is also couched in the same language as would be evident from the perusal of section 27(2) and 30(4) of the Code. In these sections word 'may' have been used for purpose other than relatable to percentage of the voting shares prescribed for approval of a resolution. In section 12A of the Code the word 'shall' has been used for withdrawal of the application admitted under sections 7, 9 or 10 of the Code and section 28(3) again uses the expression 'shall'. In section 33(2) the word 'shall' has no bearing on the question of approval by not less than



sixty six percent of voting shares. Therefore the use of word 'may' or 'shall' cannot be a guiding factor to decide the question whether these provisions are mandatory or merely directory.

22. It does not however mean that there are no tool of interpretation to overcome the impass which has emerged in this case. In the case in hand the continuation of Corporate Insolvency Process has been threatened as the appointment of the resolution professional by the committee of creditors has met a roadblock along with many other items listed in the tables set out in preceding para. Facts are such that the voting share polled does not answer the threshold limit of sixty six percent which is required for approval of a resolution to appoint an interim resolution professional as a resolution professional in our example. The facts reveal that out of total number of 'voting shares' of the financial creditors only 52.78 percent concerning appointment of IRP as RP have actually voted and out of 52.78 percent only 32.56 percent voted in favour of appointing an interim resolution professional as resolution professional (see table item 5 supra). In other words the resolution has been approved by only 32.56 percent of the total voting shares of the financial creditor (which is majority votes) against the requirement of 'not less than sixty six percent of the voting share of the financial creditor' as provided under section 22(2) of the Code.



23. There is another aspect of the matter. The issue concerning the class of creditors namely Real Estate (Commercial & Residential) have engaged the attention of the Law Makers. It is appropriate to mention that in the case of Nikhil Mehta v. AMR Infrastructure decided on 23.01.2017, the Principal Bench has found that home buyers would not answer the description of the financial creditors as it stood at that time. The learned Appellate Tribunal on appeal carved out an exception and provided that in case where 'assured return' in respect of Real Estate (Commercial & Residential) is provided in the terms of agreement then on default such category of real estate class would become financial creditors. However, the legislature intervened by promulgating an ordinance on 06.06.2018. In its long title the problem concerning home buyers have been highlighted by observing as under:-

"WHEREAS the Insolvency and Bankruptcy Code 2016 (the Code), inter alia, provides for insolvency resolution of corporate persons in a time bound manner for maximisation of value of assets of such persons;

AND WHEREAS a need has been felt, inter alia, to balance the interest of various stakeholders in the Code, especially interests of home buyers and micro, small and medium enterprises, promoting resolution over liquidation of corporate debtor by lowering the voting threshold of committee of creditors

and streamlining provisions relating to eligibility of resolution applicants"

In section 5(8) the definition of expression 'financial debt' has been expanded to mean a debt along with the interest if any which is disbursed against the consideration for time value of money and includes the following: -

- "(a).....
- (b)
- (c)
- (d)
- (e)
- (f)

[Explanation – For the purposes of this sub-clause –

- (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
- (ii) this expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulations and Development) act, 2016 (16 of 2016)].

24. The aforesaid extension added to section 5(8)(f) would show that prospective purchasers of a real estate would be covered by the definition of financial debt and would be regarded as a financial creditor. Corresponding amendments have also been carried in section 7 making such class of persons eligible to file an application for initiation of CIR process against a corporate debtor. The threshold for the purposes of seeking extension of a period of CIR process, appointing IRP as RP etc is 66% for all the financial creditors irrespective of class to which they belong.



25. It is also worthwhile to highlight that in case of Real Estate (Commercial & Residential) distinct provisions have been made in section 21(6A) (a) and (b) which provide for appointment of a authorised representative. The authorised representative is to represent the interests of class of creditor- Real Estate (Commercial & Residential). The very object of making these amendments appeared to be that prospective buyers of Real Estate (Commercial & Residential) is comprised of thousands of scattered number of financial creditors and their interest are sought to be protected by the authorised representative.

26. There are other provisions which has been inserted by way of amendment in the code which would indicate that Real Estate (Commercial & Residential) are a class of creditor distinct from the well organised financial creditor like Banks, Financial Institutions, Asset Reconstructions Companies and others like non banking financial companies. These institutions are managed by a well organised hierarchical set of managers and their documentation is also maintained in all respect.

27. It appears to us that clubbing of these categories of financial creditors in one class would amount to merging the unequal for equal treatment. In this regard we may refer to the views of learned author Mr. H.M. Seervai in his celebrated treatise 'Constitutional Law of India' (4th edition). In para 9.8 in the chapter 'Right to Equality' the learned

author observed that a law based on permissible classification fulfils the guarantee of the equal protection of the laws and is valid; a law based on an impermissible classification violates that guarantee and is void. Commenting on a view expressed by Justice P.N. Bhagwati in **E. P. Royappa vs State of Tamil Nadu & Anr AIR 1974 SC 555**, learned author opined in para 9.9 as follows: -

"9.9 The new theory involves the fallacy of the undistributed middle. A standard book on Logic explains the fallacy thus:

" Consider the following standard form categorical syllogism:

All dogs are mammals

All dogs are mammals

Therefore all cats are dog.

The middle terms 'Mammals' is not distributed in either premiss, and this violates Rule 2. (In a valid categorical syllogism, the middle term must be distributed in at least one premiss). Any syllogism which violates Rule 2 is said to commit the Fallacy of the Undistributed Middle. It should be clear by the following consideration that any syllogism which violates this rule is invalid. The conclusion of any categorical syllogism asserts a connection between two terms. The premisses justify asserting such a connection only if they assert that each of the two terms is connected with a third term in such a way that the first two are appropriately connected with each other through or by means of the third. For the two terms of the conclusion really to be connected through the third, at least one of them must be related to the whole of the class designated by the third or middle term.

Otherwise each may be connected with a different part of that

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class, and not necessarily connected with each other at all. This is obviously what occurs in the example. Dogs are included in a part of the class of mammals, and cats are also included in part of the class of mammals. But different parts of that class may be (and, in this case are) involved, so the middle terms does not connect the syllogism a major and minor terms. For it is connected them all of the class designated by it must be referred to in at least one premiss, which is to say that in a valid syllogism the middle term must be distributed in at least on premiss"

28. In the present case merging of categories of all financial creditors and treating them as one would also amount to treating unequals as is equal which may result in violation of Article 14 of the Constitution. Therefore providing the same threshold for both categories may result to a declaration that those provisions are *ultra vires* of Article 14 of the Constitution.

29. However Hon'ble Supreme Court in various judgments has laid down that court should adopt an interpretation which sustains the provisions rather than leaning to a declaration that the provisions violate Article 14 of the Constitution. In that regard reliance may be placed on para 118 of the judgement of five judge bench in the case of **Delhi Transport Corporation v. D.T.C Mazdoor Congress and Ors.** 1991 Supp (1)SCC 600 . Placing reliance on the observation made in **Sunil Batra v. Delhi Administration (1978) 4 SCC 494**, the Supreme Court observed as under:



"Where, therefore, in the interpretation of the provisions of an Act, two constructions are possible, one which leads towards constitutionality of the legislation would be preferred to that which has the effect of destroying it. If we do not read the conferment of the power in the manner we have envisaged before, the power is liable to be struck down as bad....."

The aforesaid extracts from the judgment would suggest that the principle of construction which need to be adopted has to be such that sustain the constitutional validity of a statute rather than leaning in favour of construction which results in declaration of *ultra vires*.

30. Another principle which needs to be highlighted is that the statute must be construed to make it effective and operative. In that regard Mr. Bhushan learned amicus has maintained that the court should not lean towards a construction which is patently against the intentions of the legislature. While accepting the aforesaid submission we find that the interpretation of section 22(2) or related provisions should not be such as to render the provision nugatory. In that regard we draw support from the observations made by Hon'ble Supreme Court in the case of **Tinsukhia Electrical Supply Co. Limited v. State of Assam (1989) 3 SCC 709**. The 5 judge constitution bench emphasised that the provision of statute must be so construed as to make it effective and operative on the principle of '*ut res majisvaleat quam pereat*'. The aforesaid principles could be

culled out from the bare perusal of para 118 and 119. Speaking for the bench Justice Venkatachaliah (as his Lordship then was) observed as under:-

"The courts strongly lean against any construction which tends to reduce a statute to a futility. The provision of a Statute must be so construed as to make it effective and operative, on the principle "ut res majis valeat quam pereat". It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a Statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it. In Manchester Ship Canal Co. v. Manchester Racecourse Co. Farwell J. said (pp. 360-61)

"Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty."

119. In *Fawcett Properties Ltd. v. Buckingham County Council*, Lord Denning approving the dictum of Farwell, J. said (All ER p. 516)

"But when a Statute has some meaning, even though it is obscure, or several meanings, even though it is little to choose between them, the Courts have to say what meaning the Statute to bear rather than reject it as a nullity."

31. Thus the court have been reminded its duty to make what it can of a statute as a statute are meant to be operative and nothing short of impossibility should allow the court to declare a statute unworkable.

It has been emphasised that a statute is designed to be workable and interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable. We are therefore not open to the view that the provision of section 22(2) or allied provision of the Code concerning the class of financial creditors Real Estate (Commercial) & Real Estate (Residential) are not workable or there is any compelling reasons for us to say.

32. At this stage the report of the Insolvency Law Committee must be read. We refer to Para 11.5 of Report of Insolvency Law committee which read as under:-

11.5 The Committee also noted that globally, bankruptcy laws prescribe different voting thresholds for decisions of the CoC. In USA, approval of a plan requires 66 percent or more voting share in value and 50 percent or more voting share in number for each class of creditors. The position is similar in Canada, however, such requirement applies to each class of unsecured creditors. In the UK, approval of a plan under administration requires a simple majority in value of the creditors present and voting. While such threshold is higher in Singapore as the requirement therein is to obtain 75 percent or more of voting share by value and more than 50 percent voting share in number of creditors present and voting, for approval of the plan. The Committee was of the view a higher threshold with the present and voting requirement, or a lower threshold sans the present and voting requirement, may be adopted.



33. It is evident that the committee noted a global scenario where different voting share threshold for decision of the committee of creditors have been prescribed. The threshold has been either of the total voting shares or it is present and voting. The committee proceeded to decide in para 11.6 which is as under:

"11.6 After due deliberation and factoring in the experience of past restructuring laws in India and international best practices, the Committee agreed that to further the stated object of the Code i.e. to promote resolution, the voting share for approval of resolution plan and other critical decisions may be reduced from 75 percent to 66 percent or more of the voting share of the financial creditors. In addition to approval of the resolution plan under section 30(4), other critical decisions are extension of the CIRP beyond 180 days under section 12(2), replacement or appointment of RP under sections 22(2) and 27(2), and passing a resolution for liquidation under section 33(2) of the Code. Further, for approval of the other routine decisions for continuing the corporate debtor as going concern by the IRP/RP, the voting share threshold may be reduced to 51 percent or more of the voting share of the financial creditors"

34. A perusal of the aforesaid paras would make it patent that the Insolvency Law Committee has also opined about the object of the Code which is to promote the resolution. To achieve the aforesaid object the committee recommended the voting share threshold for decision of the committee of creditors in respect of section 22(2) as a sixty six percent of the total votes.



35. Another aspect which emerges is that the principle of voting share threshold on the basis of present and voting has been discarded. The recommendation of the committee has now been promulgated by Insolvency Bankruptcy Board (Amendment) Ordinance which is now known as Insolvency Bankruptcy Code (Second Amendment) Act, 2018 enacted with effect from 6-6-2018. In the light of the fact that the Government and Parliament have taken a conscious decisions by discarding the present and voting requirement in the Code, it would not be proper for judicial forum to adopt it by judicial interpretation. Therefore that criteria cannot be adopted for construction of section 22(2) of the Code. Therefore a workable solution by other interpretation process has to be adopted.

36. We have already opined that the court should lean against an interpretation which makes a statute unconstitutional and unworkable and adopt such an interpretation which makes it constitutional and workable and help in achieving its object. The object of the Code is to promote resolution and to discourage liquidation. It is seen that an interpretation which sustains the constitutional validity must be preferred over the one which result in declaring it as unconstitutional. It is not impermissible to add certain words which were not contained in the statute to achieve the object of enactment. In that regard reliance may be placed on the observations made by the Supreme Court in the case of **Directorate of Enforcement v. Deepak Mahajan**

(1994) 3 SSC 440 and **Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. and Anr.** (1999) 6 SCC 82. Therefore it would be necessary to read section 22 in a manner that it achieves its avowed purpose for promoting resolution over liquidation of every corporate debtors by providing the 'voting share' threshold of the committee of creditors. Therefore the efforts is required to be made to interpret these provisions including section 22(2) in a manner as would advance the object of the resolution rather than the one which would defeat it. Such a course is available in view of the judgement of the Hon'ble Supreme Court rendered in the case of **Atlas cycle Industries Limited and Ors. v. State of Haryana** (1979) 2 SCC 196. For the aforesaid proposition we find support from the following paras from "Crises of Statute Law" (page 242 5th edition) which reads as under: -

"The relevant rules of interpretation may be briefly stated thus: When a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from constituting it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions, the

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fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

37. The aforesaid paragraph has been approved by the Hon'ble Supreme Court in the cases of **the State of Uttar Pradesh & Ors. v. Babu Ram Upadhyaya (1961 CriLJ 77)** and **Atlas cycle Industries Limited and Ors. v. State of Haryana (1979 2 SCC 196)**.

38. When the principles laid down in the aforesaid paragraphs as approved by Hon'ble Supreme Court are applied to the provisions of section 22(2) and other cognate provisions we find that threshold voting share for decision of the committee of creditor by sixty six percent would not be mandatory in the cases of class of creditors where the prospective buyers of Real Estate (Commercial & Residential) alone constitute the CoC. It has been seen that in such cases the total polled voting share is very small which in the present case is 52.78 percent. Therefore we would say that in case of deadlock the preference can be given to the decisions taken by the highest percentage in the Committee of Creditors and section 22(2) must be regarded as directory in nature in case CoC is comprised 100% of class of creditors Real Estate (Commercial & Residential). Even otherwise we have already opined that the class of creditor like Real Estate (Commercial & Residential) are distinct than the other class of creditors which includes well organised financial institutions like



Bank, Financial Companies and non banking financial companies etc. Their representation in the committee of creditor is far smaller in number. Each individual Member has high 'voting shares'. On the contrary the class of financial creditor of Real Estate (Commercial & Residential) are scattered in thousands all over the country and is wholly unorganised. In choosing the authorised representative each one of them is not to participate for various reasons. Probably it is for the aforesaid reasons that in Regulation 16A of Insolvency and Bankruptcy Board of India (Insolvency Resolution process for corporate person) Regulation 2016 a provision has been made for selecting an insolvency profession which is choice of highest number of financial creditor in the class to act as authorised representative of the creditor of the respective class. If such a distinction is not implied then there is inherent danger of section 12(2), 12 A, 22(2), 27 (2), 28(3), 30(4), 33(2) & 21 (8) becoming unworkable and unconstitutional. It may thus be declared *ultra vires*. As the guidance available in various judgment of Hon'ble Supreme Court we may lean towards a construction which sustains the statute and we must also adopt an interpretation which makes the statute workable by advancing its object. Therefore we are of the view that in the case of Real Estate (Commercial & Residential) comprising 100% voting share in CoC the aforesaid provision must be read to mean that a resolution would be deemed to be passed if it is voted by highest number of



financial creditors in the class of Real Estate (Commercial & Residential). It would make the court workable and would also advance the object of this progressive legislation rather than defeating it.

39. As a sequel to above discussion, we approve (Agenda No.5) the name of interim resolution professional by appointing him as resolution professional because he had secured largest percentage of voting share threshold. Accordingly Mr Vikram Bajaj, Flat No. 12, Vasudaha Apartment, Plot No. 41, Sector 9 Rohini Delhi-110085 is appointed as resolution professional who was earlier worked as interim resolution professional. We further holds that Agenda item Nos.4, 6 to 9 are also deemed to be approved as majority in CoC has ratified those resolutions.

40. The applications stand disposed of.

(M.M.KUMAR)
PRESIDENT

28.09.2018

Sd/-

(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

28.09.2018
Aaru

VAKALATNAMA

IN THE COURT OF NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

C.A. No. of 2019

IN

CP No.77/ALD/2017

IN THE MATTER OF:

INSOLVENCY & BANKRUPTCY BOARD OF INDIA

...INTERVENOR/APPLICANT

AND

IN THE MATTER OF:

IDBI BANK LIMITED

.... FINANCIAL CREDITOR

V/S.

JAYPEE INFRATECH LIMITED

.... CORPORATE DEBTOR

KNOW ALL to whom these presents shall come that I, Umesh Kumar Sharma, Chief General Manager of IBBI, situated at 7th Floor, Mayur Bhawan, Connaught Circus, New Delhi-110001, the above named Applicant duly authorized by INSOLVENCY AND BANKRUPTCY BOARD OF INDIA, do hereby appoint:

Ms. Swarupama Chaturvedi, Advocate,

A- 370, LGF, Defence Colony, New Delhi-110014

Enrl. No. D/343-D/2000

Mobile: 9311825693 Email: office.swarupama@gmail.com

to be the advocate for the above mentioned cases to do all the following acts deeds and things or any of that is to say.

1. To act appear and plead in above mentioned case in this court or any other court in which the same may be tried and heard in the instances or in appeal letters patent appeal or review revision or execution, or any other stage of its progress until its final decision.
2. To present pleading appeals, Letters patent appeals, Cross-objection or petition for execution, revision withdraw compromise or other petition or affidavit its or other documents as shall be deemed necessary or advisable for the prosecution of the said in all its stages.
3. To withdraw or compromise the said case or submit to arbitration any difference dispute that shall arise touching or in any Matter relating to the said case.
4. To receive money and grant receipt therefore and to do all other acts and things which may be necessary to be done for the progress as in the course of the prosecution of the said case.
5. To employ any other Legal Practitioner authorizing him to exercise the power authorities hereby confirmed on the Advocates when ever he may think fit to do so.

AND I/We hereby agree ratify whatever the Advocate or his substitute shall do in the promise and in this connection.

AND I/We hereby agree not hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the court when the said case is called up for hearing.

AND I/We hereby agree that in the event of the whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid he shall be entitled withdraw from the prosecution of the said case until the same is paid. The said Advocate shall entitle to all cost adjournment recoverable from the opposite party.

IN WITNESS WHERE OF I/We here up to set our hand to these presents the contents of which have been explained to and understood by me/us.

This the day of May 2019

ACCEPTED

ADVOCATE

(Swarupama Chaturvedi)

For Insolvency and Bankruptcy Board of India

M. Umesh
Umesh Kumar Sharma
Chief General Manager

Umesh Kumar Sharma
Chief General Manager

Insolvency and Bankruptcy Board of India





भारतीय दिवाला और शोधन अक्षमता-बोर्ड 121
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File No: IBBI/AL/CF/156/ 953

Date: 15.05.2019

Authorisation Letter

TO WHOM SO EVER IT MAY CONCERN

The Insolvency and Bankruptcy Board of India (Board) established under Insolvency and Bankruptcy Code, 2016 (31 of 2016), hereby authorises, in accordance the Insolvency and Bankruptcy Board of India (Delegation of Powers and Functions) Order, 2017, **Shri Umesh Kumar Sharma, Chief General Manager** to file an Application in the matter of IDBI Bank Limited V/S. Jaypee Infratech Limited for:

- a) signing and affirming Affidavit, Reply Application, Company Petition, Complaint Petition, Written Statement, Counter etc., to be filed before any Court, Tribunal, Forum, Authority, etc. on behalf of the Board.
 - b) briefing Solicitors, Advocates, Senior Advocates, Counsels, Senior Counsels, or holding conference with them.
 - c) executing and filling of Vakalatnama in favour of the Solicitors, Advocates, Senior Advocates, Counsels, Senior Counsels to be engaged on behalf of the Board.
 - d) act for the Board in the above Suit/ Petition/Appeal reference and to authorise the Solicitors, Advocates, Senior Advocates, Counsels, Senior Counsels to conduct and prosecute (or defend) or withdraw the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and application for review, to file and obtain, return of documents and to deposit and receive money on Board's behalf in the said Suit/ Petition/Appeal/ Reference and in the above matter.
2. The Board agree to ratify all acts done by the aforesaid person, in pursuance of this authority.

Place: New Delhi

Date: 15th May 2019

(Ritesh Kavdia)

Executive Director