Engi-visioning a new world

30th July, 2019

The National Stock Exchange of India Ltd.,
Exchange Plaza, Bandra kurla Complex,
Bandra (East),
Mumbai-400 051.

The BSE Limited.,
Phiroze Jeejeebhoy Towers,
17th Floor, Dalal Street,
Mumbai-400 001.

Dear Sir,

Re : Disclosure under Regulation 30 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015.

In continuation of our letter dated 29th July 2019 informing about the liquidation of the Company, please find attached detailed NCLT order dated 26th July 2019 uploaded by NCLT on 29th July 2019. The liquidation will commence from the date of the Order. The NCLT by the said order has appointed Mr. Sutanu Sinha as Liquidator of the Company and all the powers of the Board of Directors and Key Managerial Personnel shall be vested with the liquidator. The NCLT order is enclosed.

This is for your information and record.

Yours Truly,
For IVRCL Limited

B. Subrahmanyam
Company Secretary

IVRCL LIMITED

Regd. Office : M-22/3RT, Vijayanagar Colony, Hyderabad - 500 057, Telangana, India
Tel.: +91-40-3093 1999 (30 Lines), 2334 8467 / 3678 / 3550
Fax: +91-40-2334 5004 e-mail: info@ivrinfra.com, website: www.ivrcl.com
CIN: L45201AP1987PLC007959
Corporate Office : "MIHIR", 8-2-350/5/A/24/1B
Road # 2, Panchavati Colony, Banjara Hills, Hyderabad - 500 034, Telangana, India
Tel.: +91-40-3093 1111 / 1444 (60 Lines), 2335 6613 / 15 / 18 / 21 / 51-55, Fax: +91-40-3093 1122

An Integrated Management System (IMS) Certified Company

ISO 9001 International Standards Certifications ISO 9001:2008
ISO 14001 International Standards Certifications ISO 14001:2004
OHSAS 18001 International Standards Certifications OHSAS 18001:2007

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 26.07.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA NO. 608/ 2018 in IA NO. 544/2018 in CP(IB) NO. 294/7/HDB/2017
NAME OF THE COMPANY	IVRCL Limited
NAME OF THE PETITIONER(S)	State Bank Of India
NAME OF THE RESPONDENT(S)	IVRCL Limited
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
G Kalyan Chakravarthy Counsel for Applicant in IA 680/18	Advocate	9885292348	Kalyan.G

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Vijay Rajvi Ashwini	Advocate for RP	9703953935	

ORDER

IA No.680/2018 in IA No.544/2018

Order pronounced in open court vide separate order.

IA No.544/2018

Order seeking for liquidation is allowed vide separate order.

MEMBER JUDICIAL

AS

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

In the matter of IVRCL Limited

IA No.544/2018
In CP (IB) No.294/7/HDB/2017
Under section 33(2) of IB Code, 2016.

IVRCL Limited
Having its registered office at,
M-22/3RT, Vijayanagar Colony,
Hyderabad-500 057, Telangana
Rep. by. Sutanu Sinha,
Resolution Professional

... Applicant/Resolution Professional

AND

IA No. 680/2018 in IA No.544/2018
In CP (IB) No.294/7/HDB/2017
Under section 60(5) of IB Code, 2016

First Global Finance Pvt Limited
Head Office: Ratnam Square, Plot No.38/39,
Sector 19/A, Vashi, New Mumbai – 400 703.

...Applicant/
Intervenor

VERSUS

IVRCL Limited
Having its registered office at,
M-22/3RT, Vijayanagar Colony,
Hyderabad-500 057, Telangana
Rep. by. Sutanu Sinha,
Resolution Professional

...Corporate Debtor

State Bank of India
Having its Office at
State Bank Bhavan, Madame Came Road,
Mumbai – 400021, Maharashtra.

...Original Petitioner

Date of Order: 26.07.2019.

Parties/Counsels are present:-

For the Resolution Professional/Applicant in IA No. 544/2018:

Nirav Shah along with Alay Rizvi, Advocates

For the Applicant in IA No. 680/2018:

Mr. R. Raghunandan Rao, Sr. Counsel along with Mr. G. Kalyan Chakravarthy, Advocate.

For the CoC:

Dr. K.V. Srinivas, Advocate.

PER: K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

COMMON ORDER

IA No.544/2018:

1. Application bearing IA No.544/2018 is filed by Resolution Professional U/s 33 of the IB Code, 2016, against which Application bearing IA No.680/2018 in IA No.544/2018 is filed seeking intervention and other prayers as against the decision of the CoC in rejection of the Resolution Plan submitted by the Prospective Resolution Applicant. As both the Applications are filed on same set of facts, therefore, same are disposed of by this common order.

2. The Application bearing IA No.544/2018 in CP (IB) No.294/7/HDB/2017 is filed seeking following prayers:-

   (a) To pass an order under section 33 (1) of the Code allowing the liquidation of the Corporate Debtor;

   (b) To pass an order for restraining the invocation of any bank guarantees which have been extended by the Corporate Debtor;

   (c) To allow the Applicant to continue as a liquidator for undertaking the liquidation process of the Corporate Debtor as going concern having same fee structure as it has been for Resolution Professional, as per the provisions of the Code and its support team comprising professional advisory support, or any other advisors

being provided by Insolvency Professional Entity of which he is a partner, legal counsel and industry expert team as per the provisions of the Code along with all the powers to engage, appoint, replace such advisors or any other advisors as he may deem fit in order to ensure that the business of the Corporate Debtor is sold as a going concern.

3. Brief facts of the CIRP of Corporate Debtor as stated by RP are as follows:-

4. It is stated that the Application U/s 7 of IBC was filed by State Bank of India as against the Corporate Debtor herein i.e., IVRCL Limited and the same was admitted for CIRP on 23.02.2018 and IRP was appointed.

5. It is stated that the appointment of IRP was confirmed as Resolution Professional by the Committee of Creditors of the Corporate Debtor in accordance with the provisions of the Code.

6. It is stated that the Public Announcement for inviting Expression of Interest to submit the Resolution Plan for the Corporate Debtor from the potential Resolution Applicants was issued on May 9, 2018 with the last date of submission of EOI on May 24, 2018. Further, the Resolution Professional by way of a Public Announcement had extended the last date for submission of EOI to June 4, 2018 on May 28, 2018. The Resolution Professional had issued Evaluation Matrix and Bid process memorandum with last date of submission of Resolution Plan by July 11, 2018 on June 11, 2018.

7. It is stated that pursuant to the First EOI, there were total 7 prospective Resolution Applicants who had submitted their expression of interest, however, 2 Resolution Applicants did not submit any formal applications for submission of their Resolution Plans. Therefore, the

Resolution Professional had considered the remaining 5 (five) Resolution Applicants, out of which one Resolution Applicant was First Global Finance Private Limited along with others as group of persons. However, none of the qualified Resolution Applicants submitted their Resolution Plans before the last day of the submission of the Resolution Plan. Hence, the members of the CoC had agreed for the issuance of 2nd process of EOI.

8. It is stated that, the Resolution Professional issued a second invitation for EOI to submit Resolution Plan for the Corporate Debtor on August 14, 2018. Second EOI specified that the qualified Resolution Applicants during the First EOI process were entitled to submit their Resolution Plan in the Second EOI process. The Resolution Professional states that no Resolution Plan was submitted by First Global Finance Private Limited independently, however, they intended to submit a Resolution Plan in the Second EOI Process. Therefore, a Resolution Plan was submitted by First Global Finance Private Limited, Mr. Shankar Sharma, Ms. Devina Mehra along with Phoenix ARC Private Limited ("Original Consortium"). First Global Finance Private Limited, Mr. Shankar Sharma, Ms. Devina Mehra are collectively referred to as ("First Global") and Phoenix ARC Private Limited is referred to as ("Phoenix").

9. It is stated that subsequently the Resolution Professional issued a Bid Process Memorandum and Evaluation Matrix to submit the Resolution Plan for the Corporate Debtor on September 4, 2018 ("Process Memorandum") inviting the Resolution Plan from the person who submitted expression of interest in response to the EOI.

10. It is stated that the Original Consortium submitted a Resolution Plan on October 4, 2018 and the First Global has submitted its updated

Resolution Plan on November 5, 2018 along with Phoenix ARC as financial sponsor for the said Resolution Plan. Thereafter, the CoC was informed that Phoenix did not want to be categorised as a Resolution Applicant along with First Global. First Global did not qualify as per the criteria specified in the EOI. In order to include a fresh Resolution Applicant or make any deviations in the EOI, the CoC was required to approve the deviation in the EOI and restart the EOI process.

11. It is stated that in the 14th CoC meeting held on November 12, 2018, the CoC has rejected the deviations of certain terms and conditions of the EOI and the Process Memorandum in relation to the Resolution Plan received from First Global.

12. Thereafter, on November 16, 2018 First Global submitted a revised Resolution Plan along with Mr. Ravindra Deol, Mr. Shankar Sharma and Ms. Devina Mehra as Resolution Applicants ("Reconstituted Consortium").

13. It is further stated that the members of CoC had rejected the Resolution Plan submitted by Original/Reconstituted Consortium due to the following reasons:

(a) Deviation to the EOI was rejected by the CoC, therefore, reconstituting the Original Consortium by the Reconstituted Consortium as Resolution Applicants is in violation of the EOI and the provisions of IBC;

(b) Original Consortium had not placed the Ernest Money Deposit (EMD) along with submitting the Resolution Plan on October 4, 2018 as required by the Bid Process Memorandum;

(c) Original Consortium was not in compliance of the minimum qualification criteria as defined in the EOI published on August 14, 2018; and

(d) Resolution Plan submitted by Reconstituted Consortium was not commercially acceptable by the members of CoC and despite various requests made by the members of CoC to improve the commercial and technical aspects of the Resolution Plan, Reconstituted Consortium was unable to do so.

14. It is stated that the 270 days for the completion of the CIRP Period was initially ending on November 20, 2018. Thereafter, the Applicant applied for exclusion of the period and the CIRP Period was extended for 7 days viz., the CIRP ended on November 27, 2018 ("CIRP End Date").

15. It is stated that due to the reasons mentioned hereinabove and in absence of any Resolution Applicant meeting with the criteria of the EOI and the Bid Process Memorandum documents, no valid Resolution Plan is accepted by the members of CoC, present Application under Section 33(1) of the Code is filed inter-alia seeking directions for allowing the initiation of liquidation process of the Corporate Debtor and for directing the appointment of the Applicant as the liquidator of the Corporate Debtor.

16. It is further stated that in the 16th CoC meeting a representative of lender informed the RP that in certain cases the Bank Guarantees of the Corporate Debtor were renewed because of the orders passed by various courts. It was further informed that the Courts have also directed to renew the BG's until final judgement is passed by the said Courts However, the members discussed in the meeting that assuming but not admitting that this Adjudicating Authority does not pass an order for refraining any third party from invoking the outstanding BG's, at least this Adjudicating Authority ought to consider giving

order for not invoking BG's which are issued/covered as per Court orders.

17. It is further stated that members of CoC in the 16th CoC meeting had discussed that under law BGs extension would occur only due to non-performance of the parties. One of the representatives of member stated that the Corporate Debtor would realize better Liquidation value if it is liquidated on a going concern basis and therefore it is imperative for this Tribunal to grant a restraining order from invocation of any BG's of the Corporate Debtor as the date on which a liquidation order is passed by this Tribunal, all customers, contractors having contracts with the Corporate Debtor would come forward for invoking their BG's.

18. Reiterating above, the Counsel for the RP prayed to allow the Application as prayed for.

IA No.680/2018

19. Aggrieved by the decision of the Rejection of Resolution Plan by CoC on the above stated grounds, the unsuccessful Resolution Applicant filed the Application bearing IA No. 680/2018 in IA No. 544/2018 seeking following prayers:

a) Leave be granted to the Applicant to intervene in the present proceedings, being IA No.544/2018 filed by the RP in CP (IB) No.294/7/HDB/2018, titled as State Bank of India vs. IVRCL Limited, and

b) Dismiss the said IA No. 544/2018 filed by the RP for passing of orders for liquidation of the Corporate Debtor and further setting aside the minutes of the CoC meeting dated 20.11.2018 resolving to liquidate the Corporate Debtor, and

c) Set aside the resolutions passed in the CoC meetings to the extent that the same decide the issue of eligibility against the Applicant`s consortium in terms of the EOI issued by the RP, and

d) Set aside the communication dated 21.11.2018 issued by the RP to the Applicant informing about the rejection of the Resolution Plan (s) submitted by the Applicant, and

e) Declare that the consortium consisting of the Applicant as a resolution applicant and Phoenix ARC Private Limited acting as a 'financial sponsor' is duly eligible for submitting the Resolution Plan for the Corporate Debtor in terms of the EOI dated 14.08.2018 issued by the RP of the Corporate Debtor, or

f) In the alternative direct the Respondents to take steps for fresh assessment of the eligibility criteria of the Applicant for submission of a Resolution Plan for the Corporate Debtor taking into consideration any individual/company/partnership/any other entity that the Applicant may propose to be a part of the consortium, including First Global Stockbroking Pvt. Ltd., the holding company of the Applicant, and if that be so, the turnover of First Global Stockbroking Pvt. Ltd. shall be taken into consideration for assessment of the eligibility criteria, and

g) After granting the prayer (e) or (f) above, as the case may be, direct the CoC to objectively consider the 5th Resolution Plan submitted by the Applicant on 16.11.2018, in accordance with the provisions of the Code, and

h) Exclude the time period between 21.11.2018 and the date when the 5th Resolution Plan submitted by the Applicant herein is considered/voted upon by the CoC, from the 270 day time period specified under the Code for completion of the CIRP process of the Corporate Debtor, and/or

20. Brief facts of the Application bearing IA No. 680/2018 regarding rejection of Resolution Plan are as follows:

21. It is stated that the Resolution Plan submitted on 04.10.2018 (and as amended from time to time on the basis of discussions with the CoC) has been rejected on the following grounds:

A. Non-Compliance with the minimum qualification criteria as defined in the EOI dated 14.08.2018.

B. Non-submission of the EMD along with the submission of the Resolution Plan application dated 04.10.2018 as required by the Bid Process Memorandum.

C. Constitution of the Resolution Applicants as per the Resolution Plans being different from the constitution of the Resolution Applicants as per the EOI submitted earlier.

22. With respect to each of the aforesaid grounds for rejection of the Resolution Plan(s), the counsel for the Applicant stated as under:

A. <u>Non-Compliance with the minimum qualification criteria as defined in the EOI dated 14.08.2018.</u>

It is stated that the RP has not informed the RA in the e-mail dated 21.11.2018 as to the exact eligibility criteria on which the RA has been found to be lacking. However, since in the e-mails sent by the BPA to the Applicant, certain queries had been put forth in respect of the parameters on the basis of which the Applicant`s competence and capability had to be established, the Applicant believes that it has been non-suited on the grounds of competence/capability only which had to be established broadly by the following parameters as per the EOI dated 14.08.2018

1. Business Capacity
2. Financial Capacity
3. Provisions of section 29A of the Code:

In this regard, it is stated that:

i. In the EOI dated 14.08.2018, the following criteria was stipulated:

Head	Criteria

Business Capacity	Minimum Turnover of INR 500 crores at the group level as per the last available audited financial statements.
Financial Capacity	Net Worth: ***For Body Corporate: INR 125 crores*** ***For Investment Companies/FIs/Fund Houses/PE Investors:*** Minimum Assets under management of INR 500 crores at the group level as per the last available audited financial statements. ***For Sole Individual Investor/Consortium of Sole Individual Investor:*** Minimum consolidated net worth of INR 100 crores at sole or the consortium level. Good Financial Health and Repute
Provisions of section 29A of IBC	As per the Code.

ii. It is stated that pursuant to the submissions of the 1st Resolution Plan and the 2nd Resolution Plan by the Resolution Applicant, the BPA vide the e-mail, sent a query to the Resolution Applicant regarding qualification of the EOI conditions by the Consortium. Vide e-mail dated 30.10.2018, it was submitted/declared to the BPA by the Resolution Applicant on behalf of the Consortium that:

a. As per the last audited financial statements, duly certified by the Chartered Accountant, the turnover for the consortium was Rs. 2081.63 crores. Thus, the Business Capacity Eligibility Criteria was fulfilled.

b. As certified by the Chartered Accountant, the net worth of the Consortium was Rs.463.83 crores and the total Assets Under Management (AUM) was Rs. 6788.00 crores. Thus, the Net worth Eligibility Criteria was also duly fulfilled.

c. Resolution Applicant further stated in the e-mail that the Consortium had already submitted the details pertaining to compliance with Section 29A of the Code.

iii. It is stated that the CoC however subsequently insisted on 06.11.2018 in the meeting that in the event that Phoenix ARC would not agree to be described as a Resolution Applicant formally (though it would continue to a 'financial sponsor'), the Applicant would fall short of the eligibility criteria stipulated in the EOI. Though not in concurrence with the view of the CoC, the Applicant again put forth the suggestion to consider the Applicant along with its holding company, First Global Stockbroking Pvt. Ltd., and Mr Shankar Sharma and Ms. Devina Mehra as the consortium members and gave following particulars of Turnover and Net Worth:

S. No.	Name of Entity	Turnover (Rs.Crs.) FY18	Networth (Rs.Crs.) 31.3.2018	Asset Under Management (Rs.Crs.)

1	First Global Stockbroking Pvt. Ltd. (100% Holdco of First Global Finance Pvt. Ltd.	1,902.65	27.41	0.00
2	First Global Finance Pvt. Limited.	1.98	20.61	0.00
3	Mr. Shankar Sharma	0.00	43.81	0.00
4	Ms. Devina Mehra	0.00	34.00	0.00
	Total	1,904.63	125.83	0.00

iv. It is stated that the CoC arbitrarily rejected the contention of the Applicant herein on the ground that the said turnover was not proprietary turnover only as it included client turnover also despite the fact that the Turnover figures were certified by the Stock Exchange and also by a qualified Chartered Accountant.

v. It is stated that as an alternative and seeing that the CoC was unrelenting, the Applicant in the same CoC meeting of 06.11.2018 even offered to bring in another person as a consortium member in place of Phoenix ARC/First Global Stockbroking Pvt. Ltd. with a stupendous net worth (in excess of 450 crores) whose credentials could be taken into account for the purposes of deciding upon the eligibility. The Applicant had been in constant discussions with the said individual, who was their business associate and who had expressed his readiness and willingness to join the consortium, if required. None of this was considered by the CoC and the Applicant was informed vide e-mail dated 21.11.2018 about the Resolution Plan submitted by the Resolution Applicant. Though an e-mail dated 21.11.2018 was sent by the RP to the Resolution Applicant stating that the resolution plan submitted on 04.10.2018, along with the subsequent modified Resolution Plans dated 05.11.2018 and 16.11.2018, were rejected, the Applicant believes that no voting has been held on the 5th Resolution Plan submitted on 16.11.2018. As per the 5th Resolution Plan submitted by the Applicant, the eligibility criteria was shown to be fulfilled as under:

Name	NW Rs. Cr	Proposed shareholding among Consortium %	Wtd Avg Net worth of Consortium Rs. Cr
FGFPL	20.00	10.00%	2.00
Mr. Shankar Sharma	43.81	40.00%	17.52
Ms. Devina Mehra	34.00	34.00%	11.56
Mr. Ravindra Deol	464.00	16.00%	74.24

Total	561.81	100.00%	105.32

vi. It is stated that as per the above table, the Applicants were totally eligible as per the conditions laid down in the EOI document and even met the weighted average net worth criteria.

vii. It is stated that the BPA are the authorized consultants / advisors to the RP, for the evaluation of the expression of interest / Resolution Plans submitted by the Resolution Applicants in the CIRP of the Corporate Debtor and therefore, the email dated September 04, 2018 tantamount to a deemed acceptance of the EOI submitted to the RP, as per the terms and conditions of the fresh 'Invitation for EOI' issued/published on 14.08.2018. Therefore, the rejection of the Resolution Plan submitted by the Applicant on such technical grounds is a mere afterthought.

B. NON-SUBMISSION OF THE EMD ALONG WITH THE SUBMISSION OF THE RESOLUTION PLAN DATED 04.10.2018 AS REQUIRED BY THE BID PROCESS MEMORANDUM.

a. It is stated that while the discussions were taking place with the RP in respect to the submission of the Resolution Plan, the Resolution Applicant, which was the only shortlisted and qualified RA, on behalf of the Consortium had put in a specific request through e-mails for waiver of the EMD of Rs. 5 crores. In an e-mail written to the Applicant on 03.10.2018, the RP accordingly asked the Applicant to make a specific request to that effect along with the Resolution Plan, so that the same could be placed before the CoC. Accordingly, at the time of submission of the 1st Resolution Plan through the e-mail sent

to the RP on 04.10.2018, the Applicant on behalf of the Consortium requested for waiver of the condition regarding the deposit of Rs. 5 crores in the form of EMD on the ground that the Consortium was of the view that it should be asked to part with any money only if their plan was approved by the COC. However, the said request was not acceded to by the CoC and the Applicant was directed by the CoC to deposit the EMD of Rs. 5 crores. Accordingly, the Resolution Applicant undertook to deposit the EMD of Rs. 5 crores on or before 05.11.2018, vide its e-mail dated 26.10.2018. The Applicant then deposited the amount of Rs. 2 crores on 31.10.2018 in the designated account and in the e-mail dated 31.10.2018 sent to the RP, for seeking confirmation regarding the said payment of Rs. 2 crores, further requested that it only needed 3-4 days to transmit the outstanding EMD of Rs. 3 crores. On 01.11.2018, the RP thereafter sent an e-mail to the Applicant informing that the residual EMD should be deposited on or before 05.11.2018 and the Resolution Plan should also be submitted by 05.11.2018. Complying with the directions of the CoC, the Applicant thus deposited the balance EMD of Rs. 3 crores in the designated account on 05.11.2018. As the compliance with the directions of the CoC had been made into, no discussions whatsoever took place between the Applicant and the RP/CoC between 05.11.2018 and 20.11.2018. The Applicant was thus appalled to discover that in the e-mail dated 21.11.2018 sent by the RP to the Applicant, one of the grounds that had been cited by the RP for rejection of the Resolution Plan was that EMD had not been deposited along with it.

b. It is stated that the instant ground for rejection is thus completely baseless and non-existent as it is apparent from the e-mails exchanged between the Applicant and the RP, that the deposit of

EMD was not a condition in the original Invitation for EOI but was subsequently introduced in the 'Bid Process Memorandum' and hence could not be insisted upon in any case.

c. It is stated that on 01.11.2018, the RP also sent an e-mail to the Applicant stating that the CoC on 31.10.2018 in its meeting *inter-alia* permitted the Applicant to deposit the balance EMD of Rs. 3 crores by 05.11.2018. That before the submission of the 3rd Resolution Plan, the payment of the balance EMD (Rs. 3 crores) was also duly made by the Applicant. It is further stated that, the email dated 01.11.2018 by the RP for extension of the timelines for submission of the balance EMD tantamount to a waiver and acceptance on the part of the RP and the CoC in case the balance EMD is submitted prior to the expiry of such revised timelines and such ground for rejection of the Resolution Plan submitted by the Applicant at a later date, is a mere afterthought.

C. Constitution of the Resolution Applicants as per the Resolution Plans being different from the constitution of the Resolution Applicants as per the EOI submitted earlier.

a. It is stated that the Resolution Applicant has not mentioned different constitution of the consortium in the EOI and the Resolution Plans submitted. All the constituents of the consortium continue to remain associated with the consortium even as on date. One of the consortium members, Phoenix ARC, merely requested that it intended to be described as a 'financial sponsor' instead of a Resolution Applicant, though it had no objection to continue being a part of the consortium and even signed the Resolution Plan submitted on 05.11.2018. However, at the end of the CIRP, the CoC

started objecting to it even though no objection whatsoever was raised between 04.10.2018 (date of submission of the 1st Resolution Plan) and the last week of October, 2018. Though it was clear from the outset that Phoenix ARC wanted its description to be that of a 'financial sponsor'. It is stated that, in the CoC meeting held on 06.11.2018, once it was insisted upon by the CoC that in the event Phoenix ARC would not be a Resolution Applicant, its credentials could not be considered while deciding the eligibility, the Applicant put forth the suggestion of including its own holding company in the consortium whose turnover was about Rs. 1902. 65 crores and net worth was about Rs. 27.41 crores while Phoenix ARC would continue to be associated as a 'financial advisor'. However, this was not found to be acceptable by the CoC leading to the Applicant advancing the proposal to include an individual business associate in the consortium whose net worth was about Rs. 450 crores- Rs. 500 crores, which proposal was also not found in favour with the CoC and instead the Resolution Plan submitted by the Resolution Applicant was mechanically rejected. The Applicant in this regard further stated the following:

i. That the Applicant did not submit any fresh EOI pursuant to the Invitation for EOI issued/published by the RP on 14.08.2018 as the Applicant was permitted by the RP to participate in submitting the Resolution Plan for the Corporate Debtor without submitting the fresh EOI application. In the EOI submitted by the Applicant, as a part of the Consortium, on 03.06.2018, the constitution of the members of the consortium included Phoenix ARC.

ii. That subsequent to the Applicant submitting the 1st Resolution Plan with the RP on 04.10.2018, discussions were held on various aspects of the said plan in the COC meetings held on 10.10.2018, 16.10.2018 and 23.10.2018 which were attended by the Applicant and Phoenix ARC. The said discussions included the role to be played by Phoenix ARC as a 'Financial Sponsor'. Thereafter, the Applicant submitted the 2nd Resolution Plan on 26.10.2018 and pursuant to that the Applicant received an e-mail from the RP on 27.10.2018 seeking completion of pending actions, including inclusion of Phoenix ARC as a Resolution Applicant in the proposal. In response to the said e-mail dated 27.10.2018, the Applicant *inter-alia* reiterated vide the e-mail dated 31.10.2018 that Phoenix ARC was fully supporting the consortium as a 'financial sponsor' and will accordingly be putting in Rs. 200 crores as a loan in the Corporate Debtor besides arranging Rs. 100 crores as a priority loan in the new company to be formed for taking over the non-core assets and investments of the Corporate Debtor. Vide e-mails dated 01.11.2018, the RP proceeded to inform the Applicant that the CoC had permitted the balance EMD to be deposited by 05.11.2018.

iii. It is stated that after making the balance payment of Rs. 3 crores towards the EMD, the Applicant on 05.11.2018 submitted the 3rd Resolution Plan, (signed by Phoenix ARC) with the RP reiterating that Phoenix ARC, a member of the consortium, submitting the said plan, was acting as a 'Financial Sponsor' for the said plan. Immediately after the submission of the 3rd Resolution Plan, the RP made certain observations and sought some clarifications. The said concerns were duly addressed by

the Resolution Applicant on 06.11.2018 wherein the Resolution Applicant sent an e-mail to the RP annexing a list containing query wise responses.

iv. That there was also a CoC meeting held on 06.11.2018, which was attended by the Applicant and Phoenix ARC wherein the CoC insisted for an undertaking from the Phoenix ARC to act as the RA whose proposal was not acceptable to it as from the outset Phoenix ARC intended to act as the 'financial sponsor' though it was indeed a member of the consortium. Eventually, this created a situation wherein the CoC insisted that the credentials of Phoenix ARC could not be taken into reckoning for the purposes of deciding the eligibility of the consortium. In order to resolve the intertwined issues, the Applicant again put forth the suggestion to consider the Applicant along with its holding company, First Global Stockbroking Pvt. Ltd., and Mr Shankar Sharma and Ms. Devina Mehra as the consortium members. Both the companies were 100% beneficially owned by Mr. Shankar Sharma and Ms. Devina Mehra.

v. That the CoC however arbitrarily rejected the contention of the Resolution Applicant herein on the ground that the said turnover was not proprietary turnover only as it included client turnover also. As an alternative, the Resolution Applicant in the same CoC meeting of 06.11.2018 even offered to bring in another associate person as a consortium member in place of Phoenix ARC/First Global Stockbroking Pvt. Ltd. with a stupendous net worth (in excess of Rs. 450 crores) whose credentials could be taken into account for the purposes of deciding upon the eligibility. Even this proposal did not find any favour with the

CoC on 06.11.2018 and the Applicant was informed that the CoC might be voting on the eligibility criteria.

vi. That on 12.11.2018, the Resolution Applicant however received further e-mails from the RP requiring the Resolution Applicant to incorporate the suggested changes in the updated Resolution Plan. None of the changes that were suggested therein, were related to any of the eligibility criteria discussed in the CoC meeting held on 06.11.2018 leaving the Resolution Applicant with a notion that the CoC was still actively considering the 3rd Resolution Plan submitted on 05.11.2018 and was merely asking for the updates. The updated Resolution Plan (4th Resolution Plan) was accordingly submitted to the RP by the Applicant on 13.11.2018. However, subsequently, the Applicant learnt that in the e-voting held between 09.11.2018 and 11.11.2018, the CoC had voted against the eligibility criteria.

vii. That, in line with the discussions held with the CoC on 13.11.2018, the Resolution Applicant submitted the final Resolution Plan ("5th Resolution Plan") to the BPA through e-mail on 16.11.2018. In less than a week however, the Applicant received the e-mail dated 21.11.2018 from the RP informing that the Resolution Plan submitted on 04.10.2018 along with the Resolution Plans submitted on 05.11.2018 and 16.11..2018 were rejected.

viii. It is stated that on 06.11.2018, in the meeting of the CoC, the members of the CoC sought certain clarifications from the Applicant and insisted that if Phoenix ARC would not be a Resolution Applicant formally and would insist on being a 'financial sponsor, its credentials could not be accounted for

ruling upon the eligibility criteria of the consortium. On the basis of the aforementioned discussions and in good faith the Applicant decided to alter the constitution of the consortium, so that its Resolution Plan be approved by the CoC. Therefore, the rejection of the Resolution Plan submitted by the Resolution Applicant on such technical grounds, is a mere afterthought. Therefore, the CoC are in breach of fiduciary duty under the Code to uphold and protect the interests of all stakeholders / creditors of the Corporate Debtor since such actions by the CoC have directly resulted in the Corporate Debtor being pushed into liquidation and the loss of livelihood of the employees and workmen of the Corporate Debtor even when there is a financially viable insolvency Resolution Plan being available, which is completely antithetical to the objectives of the Code.

5. It is further stated that the CoC, has been grossly unfair towards the Applicant and has arbitrarily and capriciously rejected a commercially viable and sound Resolution Plan without any cogent reason. It remains a matter of record that after submitting the 1st Resolution Plan (on 04.10.2018) and till the date when the 5th Resolution Plan was submitted (on 16.11.2018), the RP/BPA sent several e-mails from time to time for seeking clarifications from the Applicant, which were duly addressed by the Applicant and wherever necessary, requisite amendments were also carried out in the interest of the whole CIRP process, by the Applicant.

6. It is stated that the CoC has in fact rejected the Resolution Plan (s) submitted by the Applicant as a complete after-thought and at the fag end of the CIRP process even though for about two months since the time when the Resolution Plan was first submitted by the Applicant,

it continued to engage with the Applicant and even invited it for the CoC meetings on several occasions. The CoC however lost sight of the objectives of the Code at the last moment and rejected the Resolution Plan on erroneous and baseless reasoning.

7. It is stated that the CoC's actions in the present case are not at all in consonance with the objectives of the Code. The CoC has rejected a viable and feasible Resolution Plan purely on technical grounds without adequate application of mind and have blatantly breached their fiduciary duty to uphold the overall objectives of the Code. It is further stated that in the recent case of Binani Industries Limited vs. Bank of Baroda and Another, Company Appeal (AT) (Insolvency) No. 82 of 2018, the Hon`ble NCLAT *inter alia* opined that the objectives of the Code are firstly, insolvency resolution of a corporate debtor; secondly, the maximization of the value of the assets of the corporate debtor; and lastly, to promote entrepreneurship, availability of credit and to balance interests of all stakeholders. The CoC in the present case thus failed to consider that the primary objective of the Code is to promote resolution of the Corporate Debtor over liquidation and not vice versa. The CoC also failed in ensuring that the interest of all stakeholders who are not members of the CoC and hence do not have any voting power are also duly protected and balanced.

D. VIABILITY OF THE RESOLUTION PLAN (S) SUBMITTED BY THE APPLICANT AND INTEREST OF STAKEHOLDERS

a. It is stated that the 5th Resolution Plan submitted by the Applicant, which was prepared and submitted after considerable negotiations and modifications to accommodate the demands of the CoC, it is apparent that the said plan was not only commercially attractive for the creditors but it had successfully managed to balance the interest

of all the stakeholders in the CIRP process, however it was not voted upon as the Applicant has been given to understand that the CoC only voted upon the eligibility criteria as decided in the CoC meeting on 06.11.2018. The Applicant in this context draws the kind attention of this Hon`ble Tribunal to the following for the kind consideration of the Adjudicating Authority:

i. The plan envisaged a two-fold approach for value maximization for the stakeholders of the Corporate Debtor. The said approach involved:-

I. **Monetization of non-core real assets (under a new company);**

II. **Achieving a turnaround in the core (EPC/BOOT) business of the Corporate Debtor.**

b. It is stated that the Resolution Plan i.e. 5th Resolution Plan submitted by the Resolution Applicant for the Corporate Debtor is in complete conformity with Section 30 of the Code and duly satisfies the requirements of Regulation 38 of the CIRP Regulations, 2016, including furnishing of a statement regarding dealing with the interest of all stakeholders of the Corporate Debtor. Also, it is apparent that in terms of Regulation 37 of the CIRP Regulations, 2016, the instant Resolution Plan aims at maximization of the value of the assets of the Corporate Debtor.

8. It is further stated that the court in the case of 'Arcelor Mittal India Pvt. Ltd. vs. Satish Kumar Gupta and Ors.', Civil Appeal Nos.9402-9405 of 2018 observed as under:

"We must not forget that the corporate debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the corporate insolvency resolution process. 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."

9. It is stated that moreover, liquidation may also result in immediate additional liability of Rs. 1140 crores to the secured financial creditors on account of likely invocation of outstanding Bank Guarantees (BGs) as the Corporate Debtor shall loose its "on- going concern" status and therefore increase the overall outstanding debt position of the Corporate Debtor even when there is a financially viable insolvency Resolution Plan being available to the CoC.

10. It is stated that as such it is necessary fit and appropriate that the Resolution Plan which was submitted by the Applicant by e-mail on 16.11.2018 may be taken on record and be placed before the members of CoC by the RP for their kind consideration in accordance with law. It is also pertinent to note that the corporate insolvency resolution process period has been extended by the Adjudicating Authority *vide* its order dated 21.08.2018 in accordance with the requirements of Section 12 of the Code and therefore the liquidation proceedings are sought to be commenced only due to the rejection of the Resolution Plan on the aforementioned technical grounds. It is further stated that if reliefs prayed for by the Resolution Applicant are granted, the overall insolvency resolution of the Corporate Debtor within the timelines specified under Section 12 of the Code are still feasible and viable and this in turn, will ensure that the overall objectives of the Code i.e., balancing the interests of all stakeholders / creditors (even those creditors who are not members of the CoC), 'value maximization' of the stakeholders of the Corporate Debtor and giving priority to insolvency resolution vis-à-vis liquidation of the Corporate Debtor, will be duly protected.

11. It is further stated that the above facts evince that the present Applicant has a prima facie case for intervention and is justified in placing the objections before this Adjudicating Authority.

12. Reiterating above, the Counsel for the Applicant prayed to allow the Application as prayed for.

13. In response to the contentions of the Applicant in IA No. 680/2018 in IA No. 544/2018, the Resolution Professional filed a short reply and stated as under:

A. It is stated that the members of CoC had informed the Resolution Professional for the rejection of the Resolution Plan submitted by Original/Reconstituted Consortium due to the following reasons:

i. Deviation to the EOI was rejected by the CoC, therefore, reconstituting the Original Consortium by the Reconstituted Consortium as Resolution Applicants is in violation of the EOI and the provisions of IBC;

ii. Original Consortium had not placed the Ernest Money Deposit (EMD) along with submitting the Resolution Plan on October 4, 2018 as required by the Bid Process Memorandum;

iii. Original Consortium was not in compliance of the minimum qualification criteria as defined in the EOI published on August 14, 2018; and

iv. Resolution Plan submitted by Reconstituted Consortium was not commercially acceptable by the members of CoC and despite various requests made by the members of CoC to improve the commercial and technical aspects of the Resolution Plan, Reconstituted Consortium was unable to do so to the satisfaction of the members of the CoC.

c. Subsequently, due to the reasons mentioned hereinabove and in absence of any Resolution Applicants meeting with the criteria of the EOI and the Bid Process Memorandum documents, no valid Resolution Plan was accepted by the members of CoC. Therefore, the Resolution Professional, as per the instructions of the members of CoC, had filed the Liquidation Application for seeking directions from this Adjudicating Authority for allowing the initiation of liquidation process of the Corporate Debtor.

d. The Resolution Professional had acted as per the directions and the instructions of the members of the CoC in rejecting the Resolution Plan submitted by the Intervenor and had taken rightful decision in relation to the eligibility criteria set out in EOI and he Bid Process memorandum documents.

e. Therefore, the allegations raised by the Intervenor in the Intervention Application are baseless and are made to delay the liquidation process of the Corporate Debtor.

14. State Bank of India has filed its written submissions on behalf of the Committee of Creditors and inter-alia stated as under:

a) It is stated that the Resolution Plan submitted by Reconstituted Consortium was not commercially acceptable to the members of CoC and despite various requests made by the members of the CoC to the 'Reconstituted Consortium' to improve the commercial and technical aspects of the Resolution Plan, Reconstituted Consortium did not do so. Therefore, the Financial Creditor submitted that the decision of the CoC was a well-informed, well thought of business and commercial decision taken considering all the options available to it in the interest of all the stake holders

and was taken keeping in view the spirit of the Insolvency and Bankruptcy Code, 2016. It is further stated that the position of the law is that the decision of the CoC is final and should not be subjected to judicial scrutiny.

b) The Financial Creditor stating above, relied on the case of K.Sashidhar Vs. Indian Overseas Bank and Ors, [2019] 148 LA 497 (SC) or MANU/SC/0189/2019, that 0the Apex Court has ruled that, in par 33:

> *33. Upon receipt of a "rejected" resolution plan, the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under section 33(1) of the I & B code.* ***The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors.***

c) It is further stated that in view of the Reconstituted Consortium not being eligible as per the eligible criteria laid down by the CoC, there was no valid Resolution Plan before the CoC and hence there was no question of the CoC voting on any Resolution Plan as such.

d) The CoC has not considered the Resolution Plan submitted by the Applicant and the decision being a majority decision of the CoC taken on a prudent business and commercial propositions, this Adjudicating Authority maybe pleased to reject the IA No.680/2018 imposing exemplary costs.

15. Counsel for the Respondent filed Rejoinder reiterating the averments made in the Application, denying the allegations made in the Application bearing IA No. 680/2018 in IA No. 544/2018 and further prayed to allow the Application

16. Heard both the sides and perused the record including written submissions filed by concerned parties.

17. The facts stated above in IA No. 544/2018 are not in dispute. Further, on 4th October, 2018, pursuant to the 2nd EOI, a Resolution Plan was submitted by the First Global Finance Pvt Ltd along with Mr. Shankar Sharma, Ms. Devina Mehra and Phoenix ARC Private Limited. Subsequently, on 5th November, 2018, the original Consortium submitted an updated Resolution Plan with Phoenix ARC Private Ltd as a financial sponsor. It was informed to CoC that Phoenix did not wanted it to be categorized as a Resolution Applicant along with the original Consortium. Consequently, according to the CoC, the original Consortium did not qualify under the criteria contained in the process Memorandum. At the 14th CoC meeting held on 6th November, 2018, pursuant to e-voting, the CoC directed the Resolution Professional to file an Application for liquidation before this Adjudicating Authority. On 16th November, 2018, the Resolution Applicant/ First Global Finance Pvt Ltd submitted a Revised Resolution Plan along with Mr. Ravindra Deol, Mr. Shankar Sharma and Ms. Devina Mehra as Resolution Applicants. At the 16th CoC Meeting held on 20th November, 2018, the members of the CoC rejected the Revised Resolution Plan submitted by the Reconstituted Consortium citing that there is an EOI deviation, non-fulfilment of eligibility criteria and also it was not commercially acceptable to the members of the CoC and also that the original

Consortium has not placed the EMD of Rs.5 crores along with the Resolution Plan on 4th October, 2018.

18. The Resolution Applicant in the Application bearing IA No.680/2018 on the contrary has submitted that the EMD of Rs.5 crores has been eventually paid on 5.11.2018 by depositing the balance EMD of Rs.3 crores in addition to the sum of Rs.2 crores which was paid on 31.10.2018 in the designated account and that the eligibility criteria as laid down in the EOI and Process Memorandum has also been fulfilled. As per the 5th Resolution Plan submitted by the Applicant, the eligibility criteria was shown to be fulfilled as under:

Name	NW Rs. Cr	Proposed shareholding among Consortium %	Wtd Avg Net worth of Consortium Rs. Cr
FGFPL	20.00	10.00%	2.00
Mr. Shankar Sharma	43.81	40.00%	17.52
Ms. Devina Mehra	34.00	34.00%	11.56
Mr. Ravindra Deol	464.00	16.00%	74.24
Total	561.81	100.00%	105.32

19. The objective of the Insolvency & Bankruptcy Code 2016 as stated in its preamble is

'An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders……'

20. It is pertinent to note that the word 'Liquidation' does not appear anywhere in the stated objectives of the Code. However, if no viable Resolution Plan is received by the CoC, the only alternative left is liquidation.

21. In the present case, it is observed that the CoC has rejected the 5th Revised Resolution Plan considering both on technical and commercial aspects. The Hon'ble Supreme Court in *K. Shashidhar v. IOB* as also in *Swiss Ribbons v. Union of India* has categorically held that the commercial wisdom of the CoC cannot be questioned or intervened either by the Adjudicating Authority.

22. Once the CoC has exercised its commercial wisdom in rejecting the Revised Resolution Plan submitted by the Resolution Applicant and has taken such decision after much discussion and deliberation, it is not open for the Adjudicating Authority to intervene and impose its wisdom or supplement the wisdom of the CoC. If the CoC has come to a conclusion that the Resolution Plan submitted by the Resolution Applicant is commercially not viable and does not fulfill the eligibility criteria and consequently issued direction to the Resolution Professional to file an Application before the Adjudicating Authority for passing an order of liquidation, the Adjudicating Authority is bound to pass an order of liquidation unless it is shown that the decision of the CoC in seeking liquidation is arbitrary and contrary to the extant provisions of the Insolvency and Bankruptcy Code and the Regulations made thereunder. In view of the aforesaid, IA No.680/2018 is dismissed.

23. On a combined reading of Sections 12, 31 and 33 of the Code, it is clear that if the Adjudicating Authority does not receive a Resolution Plan approved by the CoC within 180 days or 270 days, as the case may be, or where the CoC resolves to refer the Corporate Debtor into liquidation,

the Adjudicating Authority shall accordingly pass an order liquidating the assets of the Corporate Debtor.

24. Further, in Application bearing IA No. 544/2018 RP along with prayer of order of Liquidation has prayed to pass an order restraining the invocation of any bank guarantees which have been extended by the Corporate Debtor. However this Adjudicating Authority is not inclined to grant any such prayer as the same would affect the rights and interest of the various stake holders of Corporate Debtor.

25. Therefore, in exercise of powers conferred under Sub-Clauses (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, I proceed to pass Order as follows:—

(i) I hereby order for Liquidation of M/s. IVRCL Limited, which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;

(ii) Written consent in Form-AA is filed by Resolution Professional vide separate memo, thus Adjudicating Authority in accordance with Sec.34 r/w relevant Regulations, this Adjudicating Authority deems it fit to appoint Resolution Professional as the Liquidator of the present Corporate Debtor.

(iii) This Adjudicating Authority hereby Appoint Mr. Sutanu Sinha, as Liquidator, who shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;

(iv) The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of Liquidation;

(v) Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by

the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.

(vi) I make it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

(vii) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the Liquidation process by the Liquidator.

(viii) All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Company Liquidator viz., Mr. R. Ramakrishna Gupta in addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(ix) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

(x) The Company Liquidator shall be entitled to charge such fee for the conduct of the Liquidation proceedings in such a proportion to the value of the Liquidation estate assets as may be specified by the Board. Accordingly, the fees for conducting the Liquidation proceedings shall be paid to the Company Liquidator from the

proceeds of the Liquidation estate as provided under Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016.

(xi) Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz., Mr. Sutanu Sinha for information and compliance.

(xii) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.

(xiii) In terms of the above, IA No. 544 of 2018 filed in CP(IB) No. 294/7/HDB/2017 by the RP under Section 33(2) of the I&B Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., M/s. IVRCL Limited, stands **disposed off.**

K.ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL