


**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI K ANANTHA PADMNABHA 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. 173,207,364,402,408,517&661/2018 & IA NO. 01,325,&538/2019 in CP (IB) NO. 282/7/HDB/2017
NAME OF THE COMPANY	Sevenhills Healthcare Private Limited
NAME OF THE PETITIONER(S)	Axis Bank Limited
NAME OF THE RESPONDENT(S)	Sevenhills Healthcare Private Limited
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Siddharth Ranade	Adv for RP	9833723589	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Ch. Sunjayarao D.V. Srinivas Prasad	Advocate for respondent		
Sreedhar M K.V. Raman Gr. Sai Pradeep	Adv		

For App
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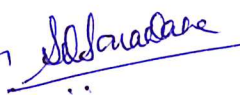
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IA No.173, 207, 364, 402, 408, 517 & 661/2018 &
IA No.01, 325, & 538/2019 in
CP (IB) No.282/7/HDB/2017

ORDER

IA No.207/2018 & IA No.408/2018

Disposed of vide separate order.

IA No.173/2018

Disposed of vide separate order.

IA No.364/2018 & IA No.402/2018

Disposed of vide separate order.

IA No.517/2018

Disposed of vide separate order.

IA No.01/2019

Disposed of vide separate order.

IA No.325/2019 & IA No.538/2019

Disposed of vide separate order.

All the pending applications if any, stands closed.



MEMBER JUDICIAL

AS

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No. 408/2018
In CP (IB) No.282/7/HDB/2017

In the matter of
SEVENHILLS HEALTHCARE PRIVATE LIMITED

Mr. Abhilash Lal, Resolution Professional
Registered address at C 192,
Belvedere Towers, DLF Phase II,
Gurgaon – 122002.

... Applicant

Axis Bank Limited
Regd. Office at Tribhuli, 3rd Floor,
Near Law Garden Ellisbridge,
Ahmedabad – 380006.

...Petitioner

Versus

Sevenhills Healthcare Private Limited
11-4-4/A, Rockdale Layout,
Waltair Main Road, Vishakapatnam,
Andhra Pradesh – 530002.

...Respondent

And

IA No.207/2018
In CP (IB) No.282/7/HDB/2017

Between:

Municipal Corporation of Greater Mumbai (MCGM).
Office of Ch.M.S. & H.O.D., Secondary Health Care Services
K.B.Bhabha Hospital Bldg., 7th floor,
R.K. Patkar Marg, Bandra (W),
Mumbai – 400 050.

Represented by its Chief Medical Superintendent
& Head of Dept. (CMS & HOD)

Secondary Health Care Services, MCGM,
Dr. Shashikanth Raghunath Wadekar,
Age: 56 yrs, CMS & HOD,
2nd Floor, Bandra Bhabha Hospital,
Water Field Road, Bandra (West),
Mumbai – 400 050.

...Applicant/Original Respondent No.2

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And

Axis Bank Limited
Regd. Office at Tribhuli, 3rd Floor,
Near Law Garden Ellisbridge,
Ahmedabad – 380006.

...Respondent No.1/
Original Petitioner

Sevenhills Healthcare Private Limited
11-4-4/A, Rockdale Layout,
Waltair Main Road, Vishakapatnam,
Andhra Pradesh – 530002.

...Respondent No.2/
Original Respondent No.1

Date of order: 26.07.2019

Parties/Counsels present:

For the Resolution Professional/Applicant in IA No. 408/2018:

Mr. S. Ravi, sr. counsel and Mr. R. Raghunandan Rao, sr. counsel
along with Mr. Sitesh Mukherjee, Mr. Siddharth Ranade, Ms. Manini
Bharathi, and Mr. Ram Babu, Advocates.

For Committee of Creditors:

Mr. Avinash Desai, Mr. TPS Harsha and Ms. Sindhura C, Advocates

For Municipal Corporation of Greater Mumbai/Applicant in IA No.
207/2018:

Mr. Kevic Setalwad, sr. counsel along with Ms. Surekha Sonawane,
Mr, Pralhad Paranjape and Ms. Sneha Prabh. u, Advocates

Per: K. ANANTHA PADMANABHA SWAMY,
MEMBER JUDICIAL

ORDER

1. The Application bearing IA No. 408/2019 is filed by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board

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of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 inter-alia seeking approval of the Resolution Plan.

2. The brief facts of the Application bearing IA No. 408/2018 are as follows:

- A. That the CIRP was commenced vide orders dated 13.03.2018,
- B. That the Applicant herein who was appointed as IRP was confirmed as RP at the 1st CoC meeting held on 12.04.2018.
- C. That the Publication for Invitation for Expression of Interest (EOI) was issued in Newspapers on 14.05.2018.
- D. That the Request for Proposal (RFP) and the evaluation criteria was approved by the CoC in its meetings dated 25.06.2018 and 16.07.2018 and Pursuant there to, a Resolution Plan from Dr. Bavaguthu Raghuram Shetty (B.R. Shetty) through his business entity Dr. Shetty's New Medical Center Private Limited (herein after to be referred as 'SNMC') was placed before CoC.
- E. That in the meetings dated 10.08.2018 & 22.08.2018 the CoC deliberated and discussed upon the Resolution Plan proposed by the Resolution Applicant and the suggestions of the CoC were incorporated and a revised Resolution Plan was submitted by the said Resolution Applicant.
- F. That the revised Resolution plan was deliberated upon by the CoC in their 9th meeting dated 03.09.2018, subsequently, by electronic voting held from 04.09.2018 to 05.09.2018, Resolution Plan was approved by the members of CoC with 100% votes cast in favour of Approval of Resolution Plan on 05.09.2018 as tabulated under Page 4 of IA 408/2018.

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3. The Resolution Plan placed for consideration is approved unanimously by CoC.
4. The Resolution Plan placed for consideration before this Adjudicating Authority, inter-alia, provides for :
 - I. Writing off the issued and paid up share capital followed by infusion of ₹1002.54 Crores towards subscription of Equity shares of the Corporate Debtor. The source for the aforesaid INR 1002.54 Crores shall be raised by the Resolution Applicant through a third party lender in the following manner:
 - a) Through raising of Debt in the books of the Company or otherwise which may be secured by way of hypothecation or mortgage over the land, building and other assets of the Company or
 - b) Through infusion of shareholders fund by way of Debt or Equity or such form as may be permissible under the applicable law or
 - c) Combination of (a) & (b) above.
 - II. Payment of CIRP cost, Liquidation value due to Operational Creditor and Liquidation value due to dissenting Financial Creditor to be made in priority to other payments being made in the Plan. (Section 2.2.3 of the Resolution Plan).
 - III. The Plan Contains statements as to how it has dealt with the interest of the various stakeholders of the Corporate Debtor as required under Reg. 38(1A) of the CIRP regulations (Pages 57 to 60 of the Resolution Plan).

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- IV. The term of the Resolution Plan and its implementation schedule addressing the Regulation 38(2)(a) of the CIRP Regulations are set out at Page 53 of the Resolution Plan.
- V. The management and Control of the business of the Corporate Debtor during its term is set out in Section 1.2.2 of the Resolution Plan. The Board of Directors of the Company shall become effective upon approval of Adjudicating Authority, comprising of Dr. B.R. Shetty, Dr. C.R Shetty and Mr. Binay Shetty as its Directors.
- VI. Once the Plan is approved, the Resolution Applicant shall be entitled to exercise sole and absolute control over the affairs of the Corporate Debtor in terms of Reg. 38(2)(b) of the CIRP Regulations.
- VII. Section 1.4.2 (page 54) of the Resolution Plan provides for the management and the control of the Corporate Debtor during the term of the said Resolution Plan in terms of Reg. 38(2)(c) of the CIRP regulations through a monitoring agency consisting of senior management of SNMC and/or such other senior members as may be nominated by the Resolution Applicant. The CoC shall be entitled to appoint one member on the monitoring agency as its representative till the date of payment of settlement of amounts to financial Creditors as per the Resolution Plan, following which, the representative of CoC shall automatically cease to be a member of the monitoring agency.
- VIII. The monitoring agency shall be responsible inter-alia for the following:
- To oversee and supervise the Resolution Plan as approved by the Adjudicating Authority within the defined time lines.

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- To provide regular updates to the CoC as per the directions of Adjudicating Authority as may be applicable.
 - To provide updates to IBBI as and when required.
 - To oversee and supervise the disbursement of dues to the Creditors as per the approved Resolution Plan.
- IX. The Resolution Plan as required under Reg. 38(3) Of the CIRP Regulations discloses the details of Resolution Applicant as well as other connected persons at Section 2.1(i), Part - B with Annexure 6A and 6B of the Resolution Plan.
- X. As directed in the admission order, the plan provides for top priority to the claims raised by the doctors in accordance with Law. Approx. around 75% of the admitted claim amounts would be paid to all the doctors irrespective of whether they have submitted their claims in correct forms or not.
- XI. That at Section 2.2.3(f), of the Resolution Plan, the proposal from the Resolution Applicant proposes to settle the Corporate Debtor's disputes with MCGM.
- XII. In view of the above, CoC in accordance with section 30(4) of the Code and Reg. 39(4) of the CIRP Regulations has approved the Resolution Plan by a vote of 100% of the CoC members.
5. The Resolution Applicant herein is Dr. B.R. Shetty through its business entity M/s. Dr. Shetty's New Medical Center Private Limited (SNMC).
6. The identity of the Resolution Applicants have been duly verified by the RP and affidavit as per section 30(1) of the Code has been obtained from

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the Resolution Applicants stating that it is not ineligible U/s 29A of the IB Code, 2016.

7. The Resolution Plan provides for a payout to all the stakeholders which is well in excess of the Liquidation value aggregating to 75% of the total admitted debt of the Corporate Debtor. The payout as set out in Clause 2.2.3 (page 229) of the Resolution Plan is summarized below:

- Payment of CIRP Cost at actual in priority to payments to other creditors within 30 days from the date of Approval of the Resolution Plan.
- An upfront payment of INR 1,000 Crores would be made to the Financial Creditors within 30 days from the date of Approval of the Resolution Plan.
- Dissenting Financial Creditor would be paid Liquidation Value as per Section 52 & 53 of the Code.
- As per Reg. 38(1) of the CIRP regulations, minimum Liquidation value, if any, would be paid to the operational creditors in priority to any financial Creditors within 30 days from the date of Approval of the Resolution Plan.
- The Resolution Plan proposes to settle the admitted claim of INR 10.39 Crore of the Employees and Workmen @ 75% of the admitted amount based on their criticality and continuity taking into account the order of priority specified by the RP.
- The plan proposes to settle the claims of doctors submitted in incorrect forms amounting to INR 2.54 Crores @ 75% of the amount. i.e., 1.90 Crores. In accordance with the priority.

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- Operational Creditors (other than employees and workmen dues & Doctors dues filled in incorrect forms) would be paid 75% of the admitted claim amount of INR 62.2 Crores i.e., INR 46.67 Crores (other than amounts claimed by statutory authority).
 - The plan proposes a sum of Rs. INR 102.03 Crores as against the claim of INR 140.88 Crores to be paid to MCGM based on mutual agreement (Annexure - 19 to the Resolution Plan) the Resolution Applicant undertakes to comply with the MCGM agreements for 20% reservation for Yellow and Orange Card holder.
8. The financial Proposal made by the Applicant as narrated above, in Section 2.2.3 of the Resolution Plan (page 229 to 233) has been perused.
 9. The implementation of the Resolution Plan as set out in Section 1.4 (page No. 222 & 223 of the Resolution Plan) has been perused. The Resolution Applicant seeks for a time period of 45 days from date of approval of Resolution Plan for obtaining all the necessary approvals from various authorities required for implementation of the Resolution Plan. During the said period, the operations of the Company would be monitored by the monitoring agency appointed under the Resolution Plan.
 10. The Net worth Certificate dated 12.05.2018 of the Resolution Applicant (placed at page 257 & 258 of the Resolution Plan), issued by M/s Arun and Ramadas, Chartered Accountants, Kochi has been perused. It has been certified that the Resolution Applicant is a non-resident Indian with an approx Net worth of Rs. 1,36,30,13,74,164/- (Rupees Thirteen Thousand Six Hundred Thirty Crores Thirteen Lakhs Seventy Four Thousand One

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Hundred Sixty Four only) based on the information gathered, verification of records and explanations received from the sources.


11. The proposal for funding by the Resolution Applicant as set out in Section 2.3 of the Resolution Plan (Page 234 & 235) has been perused and is reproduced below:

A summary of utilization of the funds that are proposed to be infused by the Resolution Applicant in the Company is set out in the table below:

2.3. Proposal for funding by the Resolution Applicant

Sr. No.	Particulars	Amount (INR Cr.)
1	Payment of CIRP Cost (including interim finance)	At actuals up to the effective date or any other date falling within 30 days of the Effective Date as agreed between the RA and the Resolution Professional
2	Payment to Financial Creditors	1000.00
3	Payment to Workmen and Employees (including doctors filing in incorrect forms)	9.70
4	Payment to Operational Creditors – Other than workmen and employees	46.67
5	Payment to MCGM	As per impending MCGM approval (estimated 102.03 Cr)
6	Fresh Infusion (Capex + WC)	As per requirement, subject to a minimum of 250 Cr.

The Resolution Applicant shall implement the Resolution Plan through its business entity Dr. Shetty's New Medical Centre Private Limited ("SNMC") in India.



The source of funds as well as methodology of the proposed infusion of funds into the Corporate Debtor is described below:

a) Step 1: Writing Off the Issued and Paid-up Share Capital

On the Effective Date, the entire issued and paid-up share capital of the Company shall be written off and consequently all the Equity Shares issued to the Existing Equity Shareholders shall be cancelled.

b) Step 2: Infusion of Contribution towards Payment to Creditors and CIRP Costs

(a) Through raising of debt in the books of the Company or otherwise, availed from third party lenders, which may be secured by way of hypothecation or mortgage over the land, buildings and other assets of the Company; or

(b) Through infusion of shareholder funds, by way of debt or equity or such form as may be permissible under the Applicable Laws; or

(c) Combination of (a) and (b);

Further, on and from the Effective Date and before implementation of the plan and simultaneously with Step 1, the Company shall issue and SNMC shall subscribe to new shares of the Company towards equity share capital infused by SNMC into the Company resulting in 100% of the paid up share capital of the Company being held by SNMC.

12. From the above, the proposal provides for fresh infusion of funds as per requirement subject to a minimum of Rs. 250 Crores.

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13. The Plan provides for keeping the Company as a going concern and operate in its normal course of business upon implementation of Resolution Plan. The plan also provide for retention of existing employees of the Corporate Debtor.
14. The Resolution plan provides for settlement of all the claims within 30 days from the date of Approval of Resolution Plan by this Adjudicating Authority.
15. It is also observed that the Resolution professional in terms of the Judgement rendered by Hon'ble Supreme Court in the matter of *Vijay Kumar Jain Vs Standard Chartered* has shared the Resolution plan with the suspended Board of Directors of the Corporate Debtor, obtained their comments with regard to the Resolution Plan and discussed the same in the 12th CoC meeting and the CoC unanimously re-affirmed the Resolution Plan dated 05.09.2018.
16. This Adjudicating Authority perused the Resolution plan and on perusal of the Resolution plan, this Adjudicating Authority vide its order, dated 02.07.2019 has sought for some clarifications such as, Sources of funds (clause 2.3 of the Resolution Plan) , submission of Form-H i.e., Liquidation value of the Corporate Debtor, Resolution Professional not being a member of the Monitoring Agency, etc., and the matter was adjourned for reply of RP regarding the clarifications on very next day i.e., on 03.07.2019.
17. During the hearing on 03.07.2019, the Counsel for R.P. stated that they are going to file their submissions during the course of the day in the registry in relation to clarifications sought in IA No. 408/2018 in response

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to the clarifications sought by this Adjudicating Authority and the matter was posted for hearing on 10.07.2019.

18. During the hearing held on 10.07.2019, the Counsel representing Resolution Professional was present and made submissions regarding the clarifications sought by this Adjudicating Authority and while making the submissions, the Resolution Professional undertook to file the following:

- 1) Liquidation value in a sealed cover;
- 2) Form-H;
- 3) Letter of sanction issued by Yes Bank in relation to the proposed loan and undertaking in relation to the performance bank guarantee for implementation of the Resolution Plan;

The Counsel representing MCGM was also present and made submissions in relation to the reply given by Resolution Professional. Counsel for MCGM and Counsel for Resolution Professional were directed to place their submissions in writing. Matter was adjourned to 15.07.2019.


19. The counsel for RP made clarifications sought by this Adjudicating Authority and inter-alia stated that the Resolution Applicant has received a sanction letter from the third party lender for infusion of INR 990 crores in the form of debt in the Corporate Debtor and that the Resolution Applicant would provide his personal guarantee to the new lender. It was stated that the Resolution Applicant has already incorporated intermediate entities in order to infuse Shareholder's funds in the Corporate Debtor. It was further stated that the Resolution Applicant has also provided an unequivocal, irrevocable and unconditional

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performance bank guarantee for successful bid value as part of the Resolution Plan. It was contended that though the court nor the CIRP Regulations required Resolution Professional to be a member of the Monitoring Committee, it would be agreeable for the Resolution Applicant to appoint Resolution Professional as a member of the Monitoring Agency in the interest of an expeditious decision on the approval Application.

20. During the hearing on 15.07.2019, the counsel for RP was present and prayed time till next day for filing required information in sealed cover. Mr. Kevic setalwad, Sr. Counsel representing MCGM made some objections in relation to the IA No.408 of 2019, filed documents and sought a day's time for filing written submissions. Mr. Niranjan Reddy, Sr. Counsel representing one of the shareholders (Airro Mauritius (I) Holdings) also prayed time for making reply submissions. The matter was adjourned for hearing on 16.07.2019.

21. During the hearing held on 16.07.2019, the Counsel for MCGM made further submissions and filed its written submissions. Mr. Niranjan Reddy, Sr. Counsel representing one of the shareholders (Airro Mauritius (I) Holdings) made reply submissions. Counsel for RP placed a sealed cover stating that they furnished the following documents:

- 1) Original Form-H along with liquidation value;
 - 2) Copy of Letter of Comfort issued by Yes Bank;
 - 3) Copy of Facility Letter and Addendum Facility Letter issued by Yes Bank;
 - 4) Copy of Financial Guarantee;
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IA No. 207/2018

22. Earlier, MCGM filed I.A.No.207 of 2018 with the following prayer:
- (a) The Applicants be declared as a Financial Creditor and a Member of the Committee of Creditors.
 - (b) The Applicants be also declared as Operational Creditors.
23. The contentions of MCGM in the said Application are as under:
- a) That an amount of any Liability in respect of any lease is included in the Definition of a Financial Debt.
 - b) That since the land is being leased to the Corporate Debtor with all risk and reward (except ownership), the said lease is a Financial Lease and as such, any debt of the amount of consideration of lease would be covered by Section 5(8)(d) of IBC.
 - c) That MCGM also relied on the observation made in para 5.2 of the Mobilox Judgment of Hon'ble Supreme Court stating*that does not differentiate between a Financial Capital lease, a Financial Lease and a Capital lease.*
 - d) That its claims of Municipal Taxes be classified as Operational Debt and claim against lease be classified as a Financial Lease.
24. Further, MCGM has also filed written submissions dated 28th November, 2018 before this Adjudicating Authority. In the said written submissions, MCGM submitted that the approval by MCGM to the Resolution Plan is acceptable subject to the following conditions:
- I. "20% Scheme:



(a) The Resolution Applicant shall reserve 20 % of the total beds and out-patient department facilities in the hospital (as defined below) for employees of MCGM, Municipal Councilors and citizens of Mumbai having yellow and Orange ration cards and provide all benefits to such persons ("20 % Scheme") as identified in and in accordance with the terms of the Contract Agreement and the MoU.

(b)The 20% Scheme shall be executed in the following manner:

	Current	Proposed				
	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Operational Bed	306	823	1122	1272	1346	1500
Percentage of beds Reserved for MCGM	20%	20%	20%	20%	20%	20%
Number of beds reserved for MCGM	61	165	224	254	269	300

(c) This 20 % Scheme shall be applicable to operational beds as provided above and will also be applicable for the 'out patient department' (OPD) of the Hospital. The Resolution Applicant shall comply with all conditions specified in the Existing Arrangements and the MoU with respect to the 20 % Scheme.

II. Timely Completion of Project:

(a)The Resolution Applicant shall ensure that the number of operating beds in the said Hospital facility will be increased from the current 306 beds (with 61 beds reserved for MCGM) to 1500 beds (with 300 beds reserved for MCGM) by March 2024.

III. Compliance with Contract Agreement:

(a) The Resolution Applicant shall comply with all the terms of the Contract Agreement and the MOU, read with the NOC, including the

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period of lease granted by MCGM to SHPL, in relation to the subject land located at Marol, Andheri East, Mumbai ("Project Land") without any deviation from, during the tenure of the Contract Agreement.

(b) The Resolution Applicant shall take all necessary steps to obtain the occupation certificate in relation to the buildings forming part of the Hospital.

(c) The lease period granted with respect to the Project Land shall continue to be for a period of 60 (Sixty) years commencing from the date of completion of the construction of Hospital as envisaged under the Contract Agreement.

(d) The Resolution Applicant shall take all necessary steps to execute a duly registered and stamped lease agreement, with the MCGM for the Project Land, immediately upon approval of the Resolution Plan, by the National Company Law Tribunal, However, please note Hyderabad Bench, ("NCLT") is not the empowered authority to reduce, remit or waive of any stamp duty payable with respect to the lease agreement.

e) The Resolution Applicant shall pay lease rentals and all other dues, including statutory dues in relation to the Project Land as provided in the Contract Agreement and other Existing Arrangements executed in this regard to MCGM, in accordance with the terms thereof.

IV Pending Payments to/ Claims of MCGM:

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- (a) Upon approval of the Resolution Plan by the NCLT the Resolution Applicant shall forthwith pay to MCGM the aggregate amount of Rs. 140,88,00,000 (Rupees One Hundred and Forty Crore and Eighty Eight Lakh) towards the following dues of SHPL to MCGM:

Sl. No.	Particulars of dues/payments	Amounts (₹Cr)
(a)	Lease Rent for past 5 years = Advance Rent for Apr 2018-19	54.06
(b)	Municipal Tax = Octroi Bank Guarantee Charges	47.97
(c)	Penalty for non-completion of project	13.51
(d)	Accrued interest at the rate of 15% per annum	25.34
	Total Claims	140.88

- (b) Such payment shall be made in full to MCGM prior to or along with the payments being made to secured financial creditors pursuant to the CIR Process.

V Creation of Mortgage:

- (a) The Resolution Applicant agrees, acknowledges and confirms that MCGM is the absolute owner of the Project Land. Any mortgage/ security interest on the Project Land and structures thereon shall be created only with the prior written approval of MCGM. The procedure for obtaining such approval shall be as specified in the Contract Agreement.
- (b) The Resolution Applicant acknowledges, agrees to and confirms the conditions stipulated for creation of any security interest on the Project Land and structures thereon, as specified in the Contract

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Agreement read with the NOC. The Resolution Applicant agrees that any mortgage to be created over the Project Land and structures thereon, In favour of prospective financial creditors will be in compliance with the terms and conditions stated in the NOC. It is hereby clarified that in the event of any conflict between the terms of the Contract Agreement and the NOC, the terms stated in the NOC shall prevail.

- c) However, please note that the previous NOC was issued the circumstances and conditions as prevalent on the date of issuance of the NOC. The draft and process prescribed in the NOC may vary. Therefore, in the event of the Resolution Applicant seeking permission for creation of a mortgage on the Project Land and/or structures thereon in favour of any financial entity, we shall issue a no objection certificate to the relevant financial entity from time to time. However, at this stage, we can confirm that we will consider issuing such no objection. Kindly provide us with the details of the new lender with an acceptance from such lender that the conditions specified by MCGM in the NOC with respect to creation of mortgage are acceptable to them, and we shall accordingly process the continuance of the NOC with respect to the mortgage to created in favour of such new lender.
- (d) Notwithstanding the above, MCGM shall not at all incur any responsibility and/or liability whatsoever, particularly any financial liability whatsoever, towards anybody whomsoever, on account of any security interest created on the Project Land/ any part thereof.

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- VI. Please note that the approvals on the Prospective Proposal and the Resolution Plan are being provided subject to and based on inter alia the review of the letter of commitment dated 23 July 2018 issued by Yes Bank and the net worth certificate dated 13 June 2018 issued by HLB Hamt, Chartered Accountants.
- VII. In the event all the conditions specified as above, are satisfied by the Resolution Applicant and we reach a mutually feasible proposal, kindly confirm that the Resolution professional and the committee of creditors shall ratify the Prospective Proposal and the conditions specified herein and update the Resolution Plan accordingly. Further, an amendment to the Resolution Plan reflecting the revised understanding should be filed in the NCLT.
- VIII. Please note that the approval provided by MCGM to the to the resolution applicant in relation to the Prospective proposal and the terms of the resolution plan are subject to the aforementioned conditions and in case such conditions are not met, the MCGM reserves the right to take all such actions as are available to it in Law.
24. MCGM reiterated the above submissions in the written submissions dt.14th May, 2019 filed by it in I.A.No.01/2019.
25. Further, MCGM has also filed a memo dated 29.04.2019 in IA No.408/2018 stating that the Resolution Applicant accept all the terms and conditions conveyed by MCGM to Resolution Applicant and prayed that the plan of the resolution applicant be accepted.

26. In the Memo, dated 16th July, 2019, MCGM took a totally contrary stand and stated its objections for approval of the Resolution Plan by the Adjudicating Authority by giving the following reasons:

- a. MCGM is the undisputed owner of the Municipal Plot at survey NO.155(Pt.), 156(Pt.), 162(Pt.) to 168(Pt.) of Village Marol, at Marol, Andheri (E), Mumbai, which was handed over to Sevenhills Healthcare Pvt Ltd (hereinafter for the sake of brevity referred to as "SHPL") in order to carry out construction of Hospital Building and running the hospital activities on said plot under the Contract Agreement dated 20/12/2005 and In spite of being well aware of the same MCGM has been kept out of COC and has only been called as a "Special Invitee".
- b. The said contract agreement contemplates the execution of a lease deed subject to various obligations being first complied with by the corporate debtor. The contract agreement mandatorily provided for the corporate debtor to complete the construction of the respected building (i.e., with 1500 bed Hospital with OPD, ICU etc.,) within the project period of 60 months (excluding monsoon). This was a condition precedent for the lease deed (format annexed at Annexure II to the contract agreement) being executed. The said condition precedent were not complied with and no lease deed has been executed.
- c. The said mandatory project period of 60 months (excluding monsoon) expired on 24/4/2013. As per clause 15(g) of the Contract Agreement, the lease deed was to be executed within one month from 24/4/2013. The said period is now over and the contract agreement stands terminated

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under clause 26(K). No leasehold right ever came into existence in favour of the Corporate Debtor. However, the COC has incorrectly proceeded on the basis that such rights were created.

- d. It is submitted that the Hon'ble NCLAT in the Judgment of *Rajendra K Bhuta, Resolution Professional vs Maharashtra Housing and Area Development Authority (MHADA)*, reported in *2018 SCC Online NCLAT 850*, has held that if the ownership of the land has not transferred in favor of the Corporate Debtor then the asset cannot be treated as the asset of the 'Corporate Debtor' for application of provisions of Section 14 (1) (d) of the I&B Code. Thus, applying the said principle, it is clear that the land in question cannot be termed as an asset of the 'Corporate Debtor' notably the SCN for termination dated 23/1/2018 (Served on 24/1/2018) has resulted in the contract agreement being terminated upon non – compliance of the requisites contained therein not being complied with, and MCGM is entitled to repossession of the Municipal plot of land
- e. That MCGM had entered into the Contract Agreement dated 20/12/2005 under which SHPL was to pay an amount of Rs.10,41,04,000/- to the MCGM per year and an MOU dated 13/12/2013 for seeking 20% of the beds and that right from the incept SHPL has defaulted in the said payments and nor has it provided the said 20% beds to MCGM.
- f. That due to failure of SHPL in performing its obligations, MCGM had issued a SCN notice to SHPL on 23/1/2018 for termination of the said contract agreement.
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- g. It is important to note that there is no Lease Deed entered into between MCGM and SHPL due to various defaults committed by SHPL and what has been entered into is merely a Contract Agreement without a Lease Deed and thus in the absence of the said Lease Deed the rights of MCGM cannot be done away with. The NCLT, Mumbai Bench in case of *State Bank of India v/s Monnet Ispat & Energy Limited* reported in *2018 SCC Online NCLT 514*, has clearly held that a vesting order under the Coal Mines Development and Production Agreement in the absence of a mining lease would not aid the Resolution Professional to take shelter under Section 14 (1) (d) of the I&B Code.
- h. Before the notice period could expire, Axis Bank filed the present CP and order dated 13/3/2018 was passed under which the CP was admitted, and moratorium came into operation.
- i. That the constitution of the COC is improper as the MCGM is not a part of the COC and has only been invited as a special invitee to the various COC meetings held.
- j. That due to the pendency of the present CP and the actions of SHPL, the Corporation has been unable to provide 300 beds and other medical facilities to the public at large In spite of being owner of the said premises.
- k. In reference to letter dated 30/7/2018 and Resolution Plan dated 29/8/2018, submitted by BRSVIL, a meeting was called by MCGM on 27/9/2018. During the discussion which took place in the presence of RP and representative of RA- BRSVIL, the said RA-BRSVIL accepted to

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submit a Revised Proposal for resolution regarding disputed claims and other issues of MCGM.

- l. Accordingly, the RA-BRSVIL has submitted to MCGM through RP a revised proposal dated 9/10/2018 and received on 10/10/2018 via-email along with the letter of commitment. The submission of the said revised proposal after the decision of the COC on 3/9/2018, demonstrates that even the COC decision of 3/9/2018 is not a final Resolution Plan and therefore there is no question of same being considered favorably by this Adjudicating Authority.
- m. The said revised proposal dated 9/10/2018 was put up before the Municipal Commissioner (MC) and the Improvement Committee of MCGM under the provisions of the MMC Act, the said proposal was under consideration before MCGM. That accordingly Written Submissions were filed by MCGM on 28/11/2018 in IA 207 of 2018 filed by MCGM for being added as a Financial Creditor.
- n. MCGM further stated that on 02.07.2019 this Adjudicating Authority directed RP to give a clarification in relation to Resolution Plan and accordingly RP has submitted a memo on 3/7/2019 without acknowledging MCGM's interests.
- o. RP in its memo submitted on 3/7/2019, the RP has made various submissions which are contradictory to previous Written/Oral submissions of RP in relation to the interests of MCGM. In the said memo the RP has stated that,

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“The plan provided for raising of debts in the book of CD which may be secured by mortgage of land, assets and other assets or infusion of shareholders’ funds.”

- p. That the Adjudicating Authority had given various directions to RP to “submit a detailed and specific submission in relation to reliefs and prayers sought by the RA at page No.249 of Application (Part ‘E’)”.
- q. That in the IA No. 408/2018, MCGM has not even been a party inspite of the order of the Tribunal dated 13/3/2018. That MCGM in its Written Submissions has clearly sought a revised Resolution Plan which aspect has been ignored.

Reiterating above, MCGM stated its Conclusions as under:

- r. MCGM being a public body and planning authority, it is mandatory for MCGM to follow the provisions of the MMC Act and thus all actions have to be taken by the Improvement Committee of the Corporation.
- s. That Show Cause Notice (SCN) dated 23/1/2018 was already given by the MCGM for termination of the Contract Agreement and that there was no response and that in the absence of a lease, the provisions of Section 14 (1) (d) of the I&B Code will not stop the MCGM from terminating the Agreement.
- t. The period of CIRP in the case at hand began on 13/3/2018 when the Petition was admitted and 270 days expired on 8/9/2018; an extension of 90 days as provided in Section 12 (3) was granted by the Adjudicating Authority on 4/9/2018 and the extended period came to an end on 7/12/2018 and thus the CIRP has lapsed by efflux of time. Similar



situation was considered by the NCLAT in the case of the Judgment of *Rajendra K Bhuta, Resolution Professional vs Maharashtra Housing and Area Development Authority (MHADA)*, reported in *2018 SCC Online NCLAT 850*, wherein the NCLAT held that since the 270 day period had lapsed, the moratorium came to an end.

- u. The Resolution Plan does not contain any provisions in relation to the property taxes due and payable and thus the dues of the Operational Creditors have been excluded. In this regard, it is clear that the Resolution Plan has not given due consideration to the interests of all the stakeholders (i.e: MCGM as an Operational Creditor). It is not in dispute that property taxes from the year 2013, in the approx. sum of Rs 48 cr are outstanding and payable to MCGM, in this regard a warrant of attachment had been issued. Despite this no provision of whatsoever nature is made in the Resolution Plan for payment of the dues. As per the ratio of the Judgment in *Edelweiss Asset Reconstruction Company vs Bharati Defense and Infrastructure Limited* (See: At para 52, 56, 57, 75 and 79) the Resolution Plan ought not to be approved.
- v. That the Public Representatives have resolved to reconsider the contract agreement with SHPL and to take over land back so as to serve the public purpose and to serve the needs of the residents of Mumbai and to effectively provide state of art medical facilities and health care facilities and to collaborate with reputed government run medical institutes. The said resolution is under process of consideration of the

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MCGM due to the overwhelming and large public interest for providing medical services and facilities.

w. As a result, the following reliefs are prayed by MCGM:

- i. The Resolution Plan (dated 3/9/2018) be disapproved;
- ii. That as a consequence of the disapproval of the Resolution Plan, the order of liquidation of SHPL be passed.
- iii. For the CIR process, the hospitals/assets of SHPL at Mumbai and at Vishakhapatnam be separated and separate liquidation valuation of Hospital at Mumbai to be submitted to Hon'ble Tribunal as well as MCGM being the Land Owner.

27. In reply to submissions made by MCGM, the Counsel for RP stated as under:

MCGM ought to be permitted to oppose the Resolution Plan:

- a) MCGM cannot be permitted to make any submissions to oppose the Resolution plan at this belated for the following reasons: (a) Firstly, MCGM has only filed IA 207 of 2018 for being treated as a Financial Creditor under the resolution plan. The reliefs sought from the Tribunal cannot be extended to seeking rejection of the resolution plan based on written submission filed in IA 207 of 2018. The law is well settled by decisions of the Hon'ble Supreme Court that written submissions cannot travel beyond pleadings.
- b) Secondly, this objection especially cannot be entertained at the present stage once orders have been reserved in the application for approval of resolution plan, in the presence of MCGM. The application for approval of the resolution plan was only re-opened for 'suo-moto' for

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- clarifications sought by this Tribunal' and for no other objections by any third party.
- c) Thirdly, MCGM had sought to implead itself in the insolvency application prior to passing of the order dated 13.03.2018 (Admission order). The Adjudicating Authority permitted MCGM to be impleaded and disposed of such application directing in the Admission Order that the Resolution Professional shall take into account concerns of MCGM being the owner of the land on which the hospital has been operating;
- d) Fourthly, in public interest MCGM has been allowed to participate in all COC meetings on the resolution process and the resolution plan since the third meeting of the COC as it was permitted to attending such meetings as a participant and has never raised any objections to either the process or the resolution plan;
- e) Fifthly, MCGM has filed detailed written submissions dated 28.11.2018 (MCGM submissions) before this Tribunal wherein MCGM has unequivocally confirmed that it has accepted the terms of the resolution plan subject to certain conditions. The MCGM submissions relied on the proposal made in the letter dated 09.10.2018 from the resolution applicant to the MCGM (whereby 100% pay out i.e., ₹ 140.88 Crores was assured to MCGM). The proposal was accepted by MCGM at para 11 of the written submissions. The acceptance by MCGM was subject to conditions which were in line with provisions of the Contract Agreement between MCGM and the Corporate Debtor. On the date of filing, such conditions were already met in the resolution plan. This is because under the plan the resolution applicant had categorically

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agreed to abide by the terms of the Corporate Debtor's agreements with MCGM.

- f) Therefore, having placed its acceptance of the resolution plan on record. MCGM is therefore stopped from raising any pleas to the contrary.
- g) Further, the Corporate Debtor has paid an amount of ₹5 Crores as property tax to the MCGM, out of which ₹2 Crores was during the CIRP.
- h) In any event, none of the submissions of MCGM as set out below constitute objections within the limited scope of section 31 of the Insolvency and Bankruptcy Code, 2016.

In so far as the contention of MCGM that there exists no leasehold rights in favour of the corporate debtor, therefore, no such rights can be transferred through the Resolution Plan, it was submitted by the Counsel for RP that the same is incorrect for the following reasons:

- i. MCGM has categorically admitted in paragraph 4 of IA No.207/2018 that MCGM as owner of land bearing survey no.155 (pt), 156(pt), 162(pt) to 168(pt) of village Marol at Moral, Andheri East 400059 (said land) has leased said land to the Corporate Debtor.
 - ii. MCGM filed IA No.207/2018 claiming that the such lease was a capital or finance lease and the unpaid lease rentals were a financial debt within the meaning of the code.
 - iii. MCGM has filed a claim as a creditor seeking payment toward towards lease rentals since 2013.
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iv. MCGM has issued a show cause notice dated 23.01.2018 demanding payment towards lease rentals. The letter states as follows:

Sl.No.	Description	Rate	Amount
1	Lease rent of 5 years from 29.04.2013	₹ 9,00,97,685 per annum	₹ 45,04,88,425
2	Penalty for non-completion of project (for 5 years from 29.04.2013)	At the rate of 25% of lease rent of ₹9,00,97,685 per annum = ₹2,25,24,422	₹11,26,22,110
3	Interest @ 15% for non payment of lease rent		₹19,73,97,245
		Total amount	₹76,05,07,780

v. MCGM has been allowed to attend and participate in COC meetings due to its position as owner of the land on which the Mumbai Hospital of the Corporate Debtor is located.

vi. Assuming for the purpose of argument that no leasehold rights exist in favour of the Corporate Debtor, such a finding can only be rendered by a competent court after a civil trial.

vii. It is submitted that the MCGM has falsely contended in its memo dated 16.07.2019 (Memo) that it was excluded from financial discussions on the resolution plan. It is pertinent to note that this was not pressed by the MCGM during oral submissions on 16.07.2019.

viii. In any event, this is patently false because (i) MCGM's representative has attended each and every meeting of the COC starting from the third COC meeting as admitted at paragraph 19 of the Memo; (ii) MCGM had

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signed a confidentiality undertaking and pursuant to such confidentiality undertaking had access to all information shared with members of the CoC; (iii) MCGM has had access to all minutes of meetings from time to time as a participate in the COC which have been produced as part of its compilation of documents; (iv) MCGM has personally interacted with the potential resolution applicants from time to time including the successful resolution applicant. This was for the reason that the RFP clearly stipulated that the potential RA would have to settle all disputes independent of the resolution plan.

ix. In this context, the following are one of the excerpts of the minutes of various meetings of the COC which may be noted:

- Minutes of 4th Meeting of COC:

“... Dr. Maharudara Kumbhar from MCGM stated that a successful resolution applicant and plan be submitted to MCGM for timely permissions at their end. Dr. Kumbhar stated that any part settlement will require approval of the general body but a 100% settlement (which may be through a one time or a staggered payment) could be approved by the MCMG Commissioner without reference to the general body. He also mentioned that the MCGM would be willing to enter into discussions with multiple applicants to understand their plans in case of a shortlist of more than one applicant.”

- Minutes of 6th Meeting of COC



“...Dr. Maharudra Kumbhar from MCGM requested that senior officials from MCGM be present during the presentation of resolution plans, which the COC was fine with.”

- Minutes of the 8th meeting of the COC

“Conditionalities’ with the resolution plan: COC members advised BRS that the resolution plan must be unconditional and not subject to the outcome of negotiations with MCGM.

The Resolution Applicant’s team stated that discussions with MCGM are underway and MCGM has assured a fast turnaround time to complete the process on time.

- Minutes of 9th meeting of COC:

“The RP, mentioning that MCGM as the landlord of the Mumbai hospital and a stakeholder in the CIRP, noted that MCGM was invited to attend COC meetings on special approval from the COC. The RP has also facilitated, where requested, meetings between the potential and relevant officials at MCMG...”

- Reiterating above, counsel for RP prayed to allow Application for approval of Resolution Plan:

28. Heard both the sides and perused the record including the Resolution Plan and written submissions filed in both the Applications.

29. It may be relevant to note here that the Application for approval of the resolution plan was filed on 07.09.2018. The MCGM at a belated stage

has come up with its objections to the Resolution Plan with the contention that it is undisputed owner of the plot on which one of the hospitals of the Corporate Debtor in Mumbai is built. The various objections raised by MCGM as enumerated hereinabove at a belated stage are neither tenable nor acceptable. It is clear from the record that MCGM is taking a stand which is totally contrary to its own decisions and factual submissions. The final prayer of MCGM is to reject the 'resolution plan' and order for liquidation of the Corporate Debtor. The RP in his submissions has clearly pointed out as to why the averments of MCGM are erroneous and incorrect. For the sake of brevity, the submissions made by RP as stated supra are not discussed in detail once again. This Adjudicating Authority is of the view that the contentions raised by MCGM cannot be accepted due to the conflicting and contradictory stands taken by it in the course of hearings. Further, the contention of MCGM relating to expiry of the period of 270 days is untenable and unacceptable for the reason that the Application by the Resolution Professional for the approval of the Resolution Plan has been made well before the expiry of the period of CIRP and the same is in accordance with the provisions of the Code. Therefore, the objections raised by the MCGM are hereby rejected.

30. Further, though the Application for approval of the Resolution Plan was filed on 07.09.2018, but, due to multiple Interlocutory Applications being filed by one party or the other, and matter being contested before Hon'ble NCLAT and Hon'ble Supreme Court, the final hearing on IA

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408 of 2018 could not be taken up and concluded by this Adjudicating Authority.

31. The Preamble of the Code of the Insolvency and Bankruptcy Code provides as under:

'An Act to consolidate and amend the laws relating to re-organisation 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.....'

32. The 'Resolution Plan' filed along with the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A and unanimously approved by COC.
33. The Resolution Plan provides for 78.07% of payment to Financial Creditors and 75% of payment to Operational Creditors including doctors irrespective of claims in incorrect forms. Further, the Resolution Applicant is also addressing the dues payable to MCGM and has agreed to abide by the conditions stipulated by the MCGM as stated in the Resolution Plan.
34. On comparison of the amount offered in resolution plan with Form-H submitted by RP it is seen that the amount proposed in the Resolution plan is more than that of the value of liquidation of the present Corporate Debtor.


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35. The Resolution Applicant to the satisfaction of this Adjudicating Authority regarding sources of funds for the implementation of the Resolution Plan, has stated that they have been adequately tied-up. In this regard, the Resolution Applicant has filed a copy of the Letter of Comfort issued by Yes Bank and copy of Addendum Facility Letter issued by Yes Bank. The Resolution Applicant has also submitted a Financial Guarantee issued by First Energy Bank BSC, Bahrain which has been accepted by the CoC. However, it is noticed by this Adjudicating Authority that the said bank guarantee is valid only upto 30th June, 2019. It is directed that the validity period of the bank guarantee be extended till the complete implementation of the Resolution Plan.
36. Further, this Adjudicating Authority feels it proper to direct the Resolution Applicant to keep Resolution Professional also a member in the monitoring agency until the implementation of the resolution plan and Resolution Professional is further directed to file the status reports from time to time in the registry.
37. In the result, above, the 'Resolution Plan' annexed with IA No. 408 of 2018 filed in CP(IB) 282/7/HDB/2018 is hereby approved, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan including Resolution Applicant.
38. Accordingly, the MoA and AoA shall be amended and be filed with the RoC for information and record as prescribed. While approving the 'Resolution Plan', as mentioned above, it is clarified that the Resolution

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Applicant shall pursuant to the Resolution Plan approved under Sub-Section (1) of Section 31 of the I&B Code, 2016, obtain all the necessary approval as may be required under any law for the time being in force within the period as provided for in such law.

39. The order of moratorium dated 13.03.2018, passed by this Adjudicating Authority under Section 14 of the IB Code, 2016 shall ceased to have effect from the date of passing of this Order.
40. The Resolution Applicant shall be liable to pay all the statutory taxes and applicable stamp duty, if any.
41. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI, so that the Board may record the same on its data-base.
42. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.
43. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.
44. Accordingly, IA No.408/2018 and IA No.207/2018 are disposed of. Pending Applications, if any, stands closed.


K.ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD.

IA No.325/2019
In CP (IB) No.282/7/HDB/2017
Under section 60(5) of IB Code, 2016.

In the matter of
Sevenhills Healthcare Private Limited

Between:

Dr. Jitendra Das Maganti
R/o. 36, Balaji Baymount,
Taraknama Layout, Pedda Rushikonda,
Vishakhapatnam – 530 045.

...Applicant

And

Sevenhills Healthcare Pvt Ltd.
Rep. by Mr. Abhilash Lal
Resolution Professional
11-4-4/A, Rock Dale Layout,
Vishakhapatnam, Andhra Pradesh – 530002.

...Resolution Professional

In the matter of :-

1. M/s. Axis Bank Limited.
Regd. Office #Tribhili 3rd Floor,
Near Law Garden Ellis bridge,
Ahmedabad – 380 006.
2. Sevenhills Healthcare Private Limited
11-4-4/A, Rock Dale Layout,
Vishakhapatnam, Andhra Pradesh – 530002.

...Financial Creditor/
Proforma Party

...Corporate Debtor/
Proforma Party.

Date of Order: 26.07.2019.

Parties/Counsels are present:-

For the Applicant:

Mr. Challa Gunaranjan along with Mr. D.V.A.S. Ravi Prasad, Advocates.

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For the Resolution Professional:

Mr. S. Ravi, sr. counsel and Mr. R. Raghunandan Rao, sr. counsel along with Mr. Sitesh Mukherjee, Mr. Siddharth Ranade, Ms. Manini Bharathi, and Mr. Ram Babu, Advocates.

For Committee of Creditors:

Mr. Avinash Desai, Mr. TPS Harsha and Ms. Sindhura C, Advocates

**PER: K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL**

ORDER

1. The present Application bearing IA No. 325/2019 is filed by Mr. Jitender Das Maganti, Ex-Director/Promoter, U/s 60(5) of IB Code, seeking following prayers:
 - a. To Direct the RP to call for suggestion/views on the Resolution Plan from the suspended members of the Board of Directors and place the same before the COC, and consequently declare IA No.208/2018 to be infructuous.
 - b. Direct the RP to serve a copy of the Application to be filed under section 31 of the IB Code after the approval or rejection of the Plan by the COC after deliberating on the suggestions/views offered by the suspended members of the Board of Directors, to the Applicant.
 - c. Exclude a period of 20 days from the CIRP period of the Corporate Debtor so as to enable the suggestions on the plan to be put forward by the suspended Board of Directors and the CoC to deliberate on the same.
2. It is stated by the Applicant that, following the Judgement of the Hon'ble Supreme Court in the case of *Vijay Kumar Jain Vs Standard Chartered Bank (C.A No. 8430 of 2018)*, The RP convened the 11th CoC meeting on 20.02.2019, where at it was decided that CoC will share the



Resolution Plan with the members of the Suspended Board of Directors and that CoC will consider inputs of the Suspended directors and a fresh voting of the Resolution Plan would be conducted in the next CoC meeting.


3. The Applicant also stated that Copy of the Resolution Plan was made available to the Applicant and on request, unabridged minutes were also furnished.
4. It is stated that the 12th CoC meeting was held on 05.03.2019 and the RP sought to clarify certain views given by the suspended directors on the CIRP, and the manner in which the same was conducted. Even so, all the points regarding the financial eligibility of the Resolution Applicant were not clarified by the CoC. The RP also asked the suspended director to provide comments on the feasibility of the resolution plan so that the same could be deliberated by the CoC. The RP, on request also agreed to share certain documents such as the Letter of Commitment so that the Applicant could also go through the same. The RP further noted that the CoC would re-affirm itself to the financial position of the Resolution Applicant and take the same into account while voting on the plan. It was then decided that the CoC will revisit its earlier approval of the plan based on directions from the NCLAT and the comments by the members of the suspended Board. As such, no consideration or voting was conducted to approve the plan afresh.
5. It is stated that the Hon'ble NCLAT had set aside the Order dated 28.01.2019 of this Adjudicating Authority vide its Order dated 08.04.2019 with directions to this Adjudicating Authority to dispose of the matter preferably within 3 weeks. However, it is pertinent to note

that at the time the Hon'ble NCLAT was only on the Order of this Adjudicating Authority in IA No.409, 410 & 450/2018 and not on the compliance of the judgment in *Vijay Kumar Jain*. However, on the hearing before this Adjudicating Authority on 22.04.2019, the RP had insisted that IA No.408/2018 be heard, which IA was filed by the RP in September, 2018 based on the approval given by the COC at the time without the participation of the suspended directors. The fact of this approval at the time was not made known to the Applicant as the minutes of the 9th CoC meeting circulated to the Applicant at the time were abridged. As the RP had explicitly stated that a consideration of the Plan and voting thereof would be conducted afresh after deliberating on the view of the suspended directors, and in light of the Hon'ble Supreme Court's judgment in *Vijay Kumar Jain*, IA No.408/2018 has become infructuous as the same was approved without the participation of the suspended directors. If the said Application is heard or orders passed in the same, it would tantamount to a violation of the spirit of the Hon'ble Supreme Court's judgment as stated above. The RP and the COC are bound to consider the plan afresh after deliberating the views put forth by the suspended directors, and after giving such reasons as may be necessary as to why the plan is being approved or rejected.

6. It is stated that despite in the 11th and 12th COC meeting that the plan would be considered afresh, no further action on the same was forthcoming from the RP. Further, as stated above, IA No.408/2018 has become infructuous and can no longer be entertained, and it is imperative that the RP file a fresh application u/s. 31 of the Code after calling for suggestions on the resolution plan, and conducting voting

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afresh. As the CIRP period has ended, it may also be necessary to exclude a certain period from the CIRP period so as to ensure that the COC may deliberate on the suggestions/views put forth by the suspended directors, as once the CIRP period ends, the body of the COC would also cease to exist. Reiterating above, counsel for Applicant prayed to allow the present Application.

7. Respondent/RP Filed Counter. The Learned counsel for the Respondent stated that a CoC meeting was convened on 20.02.2019 where at the Members of CoC deliberated upon the issue of sharing the Resolution Plan with the Members of the Suspended board of Directors in order to elicit their comments as laid down in Hon'ble Supreme Court Judgment in *Vijay Kumar Jain Vs Standard Chartered Bank* and that the members of CoC unanimously agreed to share the Resolution Plan with the members of the suspended BoD. It is also stated that all the Members of the Suspended board of directors attended the said meeting. It is further stated that the Resolution Plan was shared with the suspended Board of Directors on 21.02.2019, it was submitted that on 01.03.2019, Dr. Maganti a member of Suspended Board of Directors addressed an email to the RP which contained some of his comments in relation to the eligibility of the Resolution Applicant (as opposed to commercial viability of the plan itself) and other issues related to the Resolution process. It was also stated that in the said email, Dr. Maganti reserved his rights to comment on the Resolution plan itself. The RP further contended that the Applicant never submitted any specific comment on commercial/Financial aspects of the Resolution Plan itself despite being ample opportunity provided.
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8. In the memo dated 26.04.2019, filed by RP, it is stated that on 05.03.2019, the CoC convened to discuss the comments of the Suspended BoD and also issues raised by Mr. Neeraj Gupta at the previous meeting. It is also stated that the members of the Suspended Board, except Mrs. Renukarani Maganti were present at the said meeting. It was submitted that a Resolution Plan submitted by B.R. Shetty through Dr. B.R. Shetty's New Medical Centre Pvt Ltd was unanimously approved by the CoC on 05.09.2018 and filed for Approval of Adjudicating Authority U/s 31 of IBC on 07.09.2018. It is stated that at the 12th CoC meeting held on 05.03.2019, the CoC considered and dealt with the comments of the Suspended BoD as mentioned above, it is stated that the Applicant never submitted any specific comments on the Commercial/Financial aspect of the Resolution Plan. It is stated that in the E-voting that followed, the members of the CoC voted and re-affirmed their approval accorded earlier to the single Resolution Plan which was tabled before them after duly considering the comments of the members of the Suspended BoD.
9. It is stated on 01.03.2019, Dr. Ashok Asthana (a member of the suspended board) addressed an email to the Resolution Professional stating that the resolution plan submitted by the resolution applicant is, in his view, a viable resolution plan for the Corporate Debtor.
10. It is stated that the e-voting portal for the voting items for the 12th CoC meeting was opened on 07.03.2019 and remained open till 08.03.2019 during which period the members of the CoC were requested to cast their e-vote and after considering the comments raised by members of the suspended board of directors, CoC unanimously re-affirmed their approval to the resolution plan as accorded on 03.09.2018.

11. Heard both the sides and perused the record.
12. On perusal of the documents it is observed that the Comments/suggestions/objections of the Directors were duly considered by the CoC and eventually the proposed Resolution Plan dated 05.09.2018 is reaffirmed by the CoC.
13. Further, it has come to light of this Adjudicating Authority that pursuant to the Judgment rendered by Hon'ble Supreme Court in the matter of *Vijay Kumar Jain Vs Standard chartered Bank*, the entire Resolution Plan and particulars relating to the same have been shared with the erstwhile members of the board including the Applicant herein and were invited to offer their comments on the proposed Resolution Plan. Though the Applicant herein on 01.03.2019 addressed an email to the RP that contained some of his comments relating to the eligibility of the Resolution Applicant and other issues relating to Resolution Process, he reserved his rights to comment on the Resolution plan itself.
14. After duly considering whatever comments/objections that were received from the Suspended board of Directors, the CoC has reaffirmed the Resolution Plan dated 05.09.2018.
15. In view of the above, Prayers 9(A) & 9(B) of the Application are already met with and are found to be made available to the Applicant by RP himself in line with the Decision rendered by Hon'ble Supreme Court in the matter of *Vijay Kumar Jain Vs Standard chartered Bank*.
16. In relation to the prayer made in para 9(c), this adjudicating Authority finds no merit to exclude 20 days period from the CIRP as neither any valid ground has been made nor any specific period of 20 days is mentioned in the Application that has delayed or effected the CIRP.

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17. Accordingly, this Application bearing IA No.325/2019 is hereby disposed of.



K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

Rathi/Rk

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD.

IA No.173/2018
In CP (IB) No.282/7/HDB/2017
Under section 60(5) of IB Code, 2016.

In the matter of
Seven Hills Healthcare Private Limited

Between:

Mr. Abhilash Lal
Resolution Professional
Seven Hills Healthcare Private Limited
11-4-4/A, Rock Dale Layout,
Waltair Main Road,
Vishakhapatnam, Andhra Pradesh – 530002..

...Applicant

And

M/s. Axis Bank Limited.
Regd. Office #Tribhili 3rd Floor,
Near Law Garden Ellis bridge,
Ahmedabad – 380 006.

... Respondent/
Original Petitioner

Date of Order: 26.07.2019.

Parties/Counsels are present:-

For the Applicant:

Mr. Sitesh Mukherjee, Mr. Siddharth Ranade, Ms. Manini Bharathi, and
Mr. Ram Babu, Advocates.

For the CoC:

Mr. Avinash Desai, Mr. TPS Harsha and Ms. Sindhura C, Advocates

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PER: K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

ORDER

1. The Present Application is filed by the Resolution Professional u/s. 60(5) of the IB code, 2016 inter-alia seeking to direct that a sum of ₹17,51,197/- being the PF dues for the months of January 2018, February 2018 & 1 to 13 March 2018 be released by the Applicant in compliance with the Show Cause Notice.
2. The present Application is filed by the Resolution Professional consequent to the Show Cause Notice dated 26.03.2018 issued by the Assistant PF Commissioner, RO, Kandivali (PF Authorities) to deposit PF Dues within 7 days for the period of December, 2017 to January, 2018 i.e., pertaining to a period prior to initiation of CIRP against the Corporate Debtor.
3. It is stated that the Applicant has enquired about the Provident Fund dues payable by the Corporate Debtor. Subsequently, the Corporate Debtor settled PF dues worth ₹7,49,441/- for the month of December 2017. The Applicant submits that the total provident fund dues for the month of January 2018, February 2018 and 01st March 2018 to 13th March 2018 amounts to ₹17,51,197/- (PF dues)
4. It is stated that the Applicant has issued a reply to the office of the PF Authorities informing them about the ongoing Corporate Insolvency Resolution Process of the Corporate Debtor. The Applicant has further informed the PF Authorities that the Applicant will seek appropriate directions from this Adjudicating Authority regarding the deposit of the PF dues which are the subject

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matter of the show cause notice. In furtherance of such intimation to the PF Authorities, the Applicant is approaching this Adjudicating Authority for necessary directions in relation to the show cause notice.

5. It is stated that this Adjudicating Authority supervising the resolution process, has the powers to pass necessary directions under section 60(5) of the code in order to resolve the present situation and ensure due compliance with the show cause notice.
6. It is stated that the PF dues are required to be released in order to ensure compliance with the show cause notice.
7. The RP in the instant Application sought appropriate directions to be issued to the Applicant for release of PF dues. The RP has also made an alternative prayer to declare that there shall be no prosecution under the provision of PF Act, or the PF scheme in respect of the subject matter of the Show Cause Notice.
8. This Adjudicating Authority while hearing the Application on 05.06.2018 ordered *status quo* as regard payment of PF amount to the PF Authorities to be maintained.
9. Heard both the sides. Respondent/CoC reported no counter and no representation on behalf of PF department.
10. The question that arises for consideration is whether the PF dues pertaining to a period prior to the Commencement of CIRP can be ordered to be paid by the Applicant/RP as prayed in the Application?

As per the provisions contained in Section 5(21) of IB Code,
'.....dues arising under any Law from the time being in force and

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payable to the Central Govt. ,State Govt. or any Local Authority would fall within the meaning of Operational Debt.'

11. While considering a similar question as to whether the statutory dues such as Income Tax dues and Value Added Tax dues would fall within the meaning of Operation Debt, The Hon'ble NCLAT in the matter of *Pr. Director General of Income Tax (Admn. & TPS) Vs. M/s. Synergies Dooray Automotive Ltd. & Ors.* In Appeal (AT) (Insolvency) No. 205 of 2017, inter-alia observed that "*.....For the said reason also, we hold that all statutory dues including 'Income Tax', 'Value Added Tax' etc. come within the meaning of 'Operational Debt'.*
12. Upon an analysis of the Definition of Operation Debt as defined under Section 5(21) of IB Code and on a conjoint reading of the same with the order of the Hon'ble NCLAT cited supra, it is clear that payment of dues arising under any Law for the time being in force and payable to the Central Government would squarely fall within the meaning of Operational Debt.
13. In the instant case, the PF dues payable to the EPFO are statutory dues payable by the Corporate Debtor pertaining to a period prior to initiation of CIRP and would certainly fall under the ambit of the Operational Debt.
14. In these Circumstances, this Adjudicating Authority is of the view that the prayer made by the RP to direct him to release the PF dues would tantamount to payment of an Operational Debt pertaining to a period prior to Commencement of CIRP. Accordingly, the RP is directed to include the PF dues under the head of Operational Debt



and bring the same to the notice of the CoC & the Resolution Applicant.

15. Interim orders, if any, stands vacated. Accordingly this Application bearing IA No. 173/2018 is hereby disposed of.



K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

Rathi/Rk

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD.

IA No.01/2019
In CP (IB) No.282/7/HDB/2017
Under section 60(5) of IB Code, 2016.

In the matter of:
M/s. SEVENHILLS HEALTHCARE PRIVATE LIMITED

Airro (Mauritius) Holdings I
Having its Office at Temple Court II,
Labourdonnais Street, Port Louis,
Mauritius.

...Applicant.

Versus

1. Mr. Abhilash Lal
Resolution Professional
C/o. Alavarez & Marsal India Pvt. Ltd
Unit 703/704, 7th floor, Tower A,
Peninsula Corporate Park,
G.K. Marg, Lower Parel,
Mumbai – 400 013.
2. Committee of Creditors
Sevenhills Healthcare Private Limited
Ramky House, Somajiguda,
Rajbhavan Road, Hyderabad,
Telangana – 500 082.
- 2(a). JM Financial Asset Reconstruction Co. Ltd
7th Floor, Energy, Prabhadevi,
Appasaheb Marathe Marg,
Mumbai – 400 025.
- 2(b). State Bank of India
Stressed Assets Magmt,
Branch-I, The Arcade, 2nd Floor,
World Trade Centre, Cuffe Parade,
Mumbai – 400 005.
- 2(c). Punjab & Sind Bank
101, Shaheed Bhagat Singh Colony,
Adjoining Sangam Big Cinemas,
Andheri-Kurla Road, Andheri (East),
Mumbai – 400 059.
- 2(d). UCO Bank
Asset Magmt Branch,
4th Floor, 359 UCO Bank Building,
Dr. D.N. Road, Fort,

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Mumbai – 400 001.

- 2(e). Central Bank of India
Andheri (East) Branch,
Central Bank of India, 1st Floor,
Vastu Darshan, 'B' Wing,
Near BMC Office, Andheri (East),
Mumbai – 400 069.
- 2(f). Union Bank of India,
Industrial Finance Branch,
239, Union Bank Bhavan, 1st Floor,
Vidhan Bhavan Marg, Nariman Point,
Mumbai – 400 021.
3. Municipal Corporation of Greater Mumbai
Head Quarter, 2nd Floor, Annexe Building,
Mahapalika Marg, Fort,
Mumbai – 400 001.
4. NMC Healthcare
31st Floor, Etihad Tower 3,
Corniche West Street,
Opposite Emirates Palace Hotel –
Abu Dhabi (U.A.E).
- 4(a). Mr. B.R.Shetty
Joint Non-Executive Chairman of
NMC Healthcare,
31st Floor, Etihad Tower 3,
Corniche West Street,
Opposite Emirates Palace Hotel
Abu Dhabi (U.A.E).

...Respondents

And

Sevenhills Healthcare Private Limited
11-4-4/A, Rock Dale Layout,
Vishakhapatnam, Andhra Pradesh – 530002.

...Corporate Debtor.

Date of Order: 26.07.2019.

Parties/Counsels are present:-

For the /Applicant:

Mr. Niranjana Reddy, Sr. counsel along with Ms. Rubaina S Khatoon,
Mr. Rusheek Reddy K.V. and Mr. L. Aravid Reddy. Advocates.

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For the Resolution Professional:


Mr. S. Ravi, sr. counsel and Mr. R. Raghunandan Rao, sr. counsel along with Mr. Sitesh Mukherjee, Mr. Siddharth Ranade, Ms. Manini Bharathi, and Mr. Ram Babu, Advocates.


For Committee of Creditors:

Mr. Avinash Desai, Mr. TPS Harsha and Ms. Sindhura C, Advocates

**PER: K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL**

ORDER

1. The present Application is filed by one of the shareholder holding 49.9% of the Equity Share capital of the present Corporate Debtor against the Resolution Professional U/s 60(5) of the IBC praying following:
 - a) To direct Respondent No.1 to 4 to place the entire correspondence, discussions, minutes of meeting, documents exchanged between MCGM on one hand and COC, RP & Resolution Applicants including Respondent No.4 & 4(a) on the other before this Adjudicating Authority.
 - b) That the MCGM & the remaining Respondents should place before this Adjudicating Authority the Revised offer/Resolution plan dated 09.10.2018 which is under consideration by the MCGM.
 - c) That the Applicant be provided with complete copies of the correspondence, discussions, minutes of meetings, documents exchanged between MCGM on one hand and COC, RP & Resolution Applicants including Respondent No.4 4(a);
 - d) That the Applicant be provided with a copy of the revised offer/Resolution plan dated 09.10.2018, which is under consideration by the MCGM;
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- e) That Respondent No.1 to 4 be directed to file affidavits and provide reasons for concealing and not placing the revised Resolution plan before this Adjudicating Authority.
1. Brief facts of the present application are as follows:
- i. It is stated that during the pendency of IA filed by RP for approval of the Resolution Plan, MCGM made a statement before this Adjudicating Authority on 28.11.2018 & 05.12.2018 that a revised Resolution Plan was provided to them on 09.10.2018 and that the said revised Resolution Plan was under consideration by MCGM for its approval. As such a revised Resolution Plan dated 09.10.2018 was neither disclosed nor was it placed before this Adjudicating Authority. It is stated that even this Adjudicating Authority has been kept in the dark about the supposed changes made in the Resolution Plan by way of a revised Resolution Plan. It is further stated that, in view of the above, it is clear that the Resolution Plan placed before this Adjudicating Authority for its approval is not the final Resolution plan.
 - ii. It is stated that on perusal of some of the Notices and Minutes of meetings including abridged minutes of the CoC, shows that MCGM though not being a Financial Creditor has not only been given notice of the CoC minutes as an invitee but has also participated in the CoC meetings, especially when confidential matters were being discussed. This special treatment being given to MCGM is undoubtedly suspicious. MCGM was invited by the RP & CoC (without voting rights) in the 4th to 10th CoC meetings. From a perusal of the 9th CoC meetings, it appears that the members of Respondent No.4 met the relevant officials of MCGM
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to understand their perspective and requirements for the Resolution Plan. The Resolution Plan was also shared with the representatives of MCGM relating to the Mumbai Hospital. However, there is no requirement under the Code, to share the Resolution Plan with any of the Operational Creditors of the Corporate Debtor.

- iii. It is stated that, this clearly a case of preferential treatment to one Operational Creditor over the others without any legal basis to the same. The Code does not recognize any preferential treatment and same class of creditors have to be treated on parity. The RP is in clear violation of its statutory obligations under the Code. Reiterating the above, counsel for the Applicant prayed to allow the application.
2. On 26.04.2019, the RP in IA 408/2018, has submitted a detailed memo narrating the subsequent events that took place with regard to CIRP after the interim order passed by Hon'ble NCLAT, on 11.04.2018, staying the Common order dated 23.01.2019 passed by this Adjudicating Authority.
3. In the said memo, RP has stated:
 - a) That a meeting of CoC was convened on 20.02.2019, with the purpose of discussing the judgment of Hon'ble Supreme Court in *Vijay Kumar Jain Vs Standard Chartered'* and to deliberate upon the further steps to be taken in the light of the Said decision of the Hon'ble Supreme Court.
 - b) That on the Unanimous agreement of the Members of the CoC, the Resolution plan was shared with the members of the Suspended Board of Directors with a request to provide their

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comments on the Resolution Plan submitted by Dr. B.R.Shetty through Dr. Shetty's New Medical Centre Private Limited, at this meeting, Mr. Neeraj Gupta and Mr. Tanmaya Gupta, Nominee Directors appointed by AIRRO Mauritius holdings I (Applicant in IA No. 01/2019) tendered there duly executed confidentiality undertakings.

- c) That the Resolution Plan was shared with the Members of Suspended Board of Directors on 21.02.2019. On 01.03.2019, Dr. Maganti, one of the Suspended Board of Directors, addressed an email to the RP on behalf of himself, Mr. Vankineni Kuchela Babu and Ms. Renukarani Maganti with some comments in relation to the eligibility of the Resolution Applicant and other issues related to Resolution Process he also reserved his comments on the Resolution Plan itself. On 01.03.2019, Dr. Ashok Asthana, a member of the Suspended Board sent an e-mail to the RP that the Resolution Plan for the Corporate Debtor is a viable one in his view.
- d) That on 05.03.2019, 12th CoC meeting was held to discuss the comments of members of the suspended Board of Directors on the Resolution Plan and to discuss the issues raised by Mr. Neeraj Gupta in the previous meeting. The said CoC meeting was attended by all the suspended directors of the Board barring M/s Renukarani Maganti. The RP proceeded to discuss comments on Resolution Plan as requested by Dr. Maganti, letter of commitment issued by the Bank in favour of Resolution Applicant was uploaded on the virtual data room.
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- e) That Mr. Neeraj Gupta and Mr. Tanmaya Misra, Nominee Directors of Applicant in IA No. 01/2019 had no comments except to say that they are in agreement with the comments of Dr. Maganti.
- f) That the suspended Board of Directors were asked whether they had any comments on the commercial viability of the Resolution Plan to which they did not offer any comments except Dr. Asthana who had earlier stated that the plan is viable vide his email dated 01.03.2019.
- g) That the e-voting portal for voting items for 12th CoC remained open on 07.03.2019 and 08.03.2019 for the CoC members cast their votes.
- h) That the CoC members after considering the Comments raised by suspended Board of Directors, in line with the decision of Hon'ble Supreme court in Vijay Kumar Jain Vs Standard Chartered, unanimously reaffirmed their approval to the Resolution plan as accorded on 03.09.2018.
4. Heard both the sides and perused the record including the written submissions.
5. The main prayer in the present Application is with regard to the entire dealings with MCGM, CoC, RP & the Resolution Applicants.
6. As of now, the challenges that have been made by various parties in NCLT, Hon'ble NCLAT have attained a finality.
7. On 29.04.2019, MCGM has filed a memo expressing No objection to the proposed Resolution Plan submitted by the Resolution Applicant provided the Conditions stipulated in para 11 of the Written

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Submissions of MCGM are incorporated in the Resolution Plan, although at this juncture, the MCGM took a contradictory stand, the same has no relevance in the present Application. Furthermore, it has come to light of this Adjudicating Authority that pursuant to the Judgment rendered by Hon'ble Supreme Court in the matter of *Vijay Kumar Jain Vs Standard chartered Bank*, the entire Resolution Plan and particulars relating to the same have been shared with the erstwhile members of the board including the nominee directors Namely Mr. Neeraj Gupta and Mr. Tanmay Mishra of the Corporate Debtor appointed by the Applicant herein.

8. The Comments/suggestions/objections of the said Nominee Directors were also duly considered by the CoC and eventually the proposed Resolution Plan dated 09.09.2018 was reaffirmed by the CoC.
 9. It is appropriate to bear in mind the Law laid down by Hon'ble NCLAT that once an Application for Approval of a Resolution Plan is filed before the Adjudicating Authority, Applications that do not allege that the Resolution plan approved by the CoC contravenes section 30 of IBC are not maintainable. In the present case on hand, except a bald allegation that Section 30(2)(e) of IBC, 2016 has not been followed, No material evidence is placed before this Adjudicating Authority to substantiate such claim.
 10. In view of the above discussion, the present Application containing prayers with regard to the claim of the MCGM and its connected papers is found to be irrelevant at this juncture since, the vital information have been shared to the Applicant through its nominee directors of the Corporate Debtor.
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11. Since in the 12th CoC meeting, the entire Resolution plan was made available to the all the stake holders, including the nominee directors appointed by the Applicant, and their comments/objections were duly considered by the CoC, the objections of the Applicant to the Resolution plan is found to be unsustainable.
12. It is the well settled position of law as laid down by Hon'ble NCLAT as under:

‘.....that Once the ‘resolution plan’ is approved by the ‘Committee of Creditors’ and has been placed before the Adjudicating Authority, the determination of the Adjudicating Authority can be challenged before the Appellate Adjudicating Authority or before the Hon’ble Supreme Court under Section 62 of the I&B Code, if the question of law arises out of such order.’
13. In view of the aforesaid, this Adjudicating Authority is of the view that the Applicant has no *locus standi* to seek such prayers and even otherwise, there are no merits in the Instant Application which warrant the indulgence of this Adjudicating Authority for granting the reliefs prayed therein.
14. With the above observation, the present Application bearing IA No. 01/2019 is hereby disposed of.



K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL