

# Mr. Farooq Ali Khan vs Punjab National Bank on 22 April, 2024

**Author: M. Nagaprasanna**

**Bench: M. Nagaprasanna**

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Reserved on : 14.03.2024

Pronounced on : 22.04.2024

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.483 OF 2023 (GM-RES)

BETWEEN:

MR. FAROOQ ALI KHAN  
S/O GULZAR ALI KHAN  
AGED ABOUT 56 YEARS  
RESIDING AT: NO.21  
BENSON 'A', CROSS ROAD  
BENSON TOWN POST  
BENGALURU - 560 046.  
PROMOTER AND SUSPENDED DIRECTOR  
ASSOCIATE DECOR LIMITED.

... PETITIONER

(BY SRI. S.BASAVARAJ, SENIOR ADVOCATE FOR  
SRI. SIVARAMAKRISHNAN M. S., ADVOCATE)

AND:

1. PUNJAB NATIONAL BANK  
(FORMERLY KNOWN AS  
ORIENTAL BANK OF COMMERCE)  
HAVING ITS CORPORATE BANKING  
BRANCH AT: MAKER TOWER  
'F' WING, CUFFE PARADE  
MUMBAI - 400 005.

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REPRESENTED BY ITS DGM.

2. UNION BANK OF INDIA  
STRESSED ASSETS MANAGEMENT  
VERTICAL BRANCH:  
THE EAGLE'S FLIGHT  
3RD FLOOR, 301-302  
SUREN ROAD  
ANDHERI-KURLA ROAD  
ANDHERI (EAST)  
MUMBAI - 400 093.  
REPRESENTED BY ITS DGM.
3. BANK OF BARODA  
STRESSED ASSETS  
MANAGEMENT BRANCH  
1ST FLOOR, 17/B  
HORNIMAN CIRCLE  
FORT, MUMBAI - 400 001.  
REPRESENTED BY ITS DGM.
4. MR. ALOK KAILASH SAKSENA  
RESOLUTION PROFESSIONAL OF  
ASSOCIATE DECOR LIMITED  
(COMPANY UNDER CORPORATE  
INSOLVENCY RESOLUTION PROCESS)  
C/O DESAI SAKSENA AND ASSOCIATES  
CHARTERED ACCOUNTANTS  
HAVING ITS OFFICE AT: 1ST FLOOR  
LAXMI BUILDING, SIR PHIROZSHAH  
MEHTA ROAD, FORT  
MUMBAI - 400 001.
5. MOHAMMED ENTERPRISES  
(TANZANIA ) LTD.,  
SUCCESSFUL RESOLUTION APPLICANT (SRA)  
OF ASSOCIATE DECOR LTD.,  
HAVING ITS REGISTERED OFFICE AT:

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TEXTILE HOUSE, MOROGORO  
ROAD/INDIRA GANDHI STREET  
GROUND FLOOR, ILALA DISTRICT  
P.O BOX 20660, DAR ES SALAAM  
TANZANIA, REP. BY ITS  
AUTHORIZED SIGNATORY.

6. INSOLVENCY AND BANKRUPTCY  
BOARD OF INDIA (IBBI)  
HEAD OFFICE AT: 7TH FLOOR

MAYUR BHAWAN, SHANKAR MARKET  
CONNAUGHT CIRCUS  
NEW DELHI - 110 001.  
REP. BY ITS CHAIRPERSON.

7. INDIAN INSTITUTE OF INSOLVENCY  
PROFESSIONALS OF ICAI  
HEAD OFFICE AT: ICAI BHAWAN  
8TH FLOOR, HOSTEL BLOCK, A - 29  
SECTOR - 62, NOIDA, U.P - 201 309.  
REP. BY ITS CHAIRMAN.
8. MINISTRY OF COMMERCE AND INDUSTRY  
THROUGH DEPARTMENT FOR PROMOTION  
OF INDUSTRY AND INTERNAL TRADE (DPIIT)  
HEAD OFFICE AT: UDYOG BHAWAN  
NEW DELHI - 110 011.  
REP. BY ITS SECRETARY
9. COMPETITION COMMISSION OF INDIA (CCI)  
HEAD OFFICE AT: 9TH FLOOR  
OFFICE BLOCK - 1, KIDWAI NAGAR  
(EAST) NEW DELHI - 110 023.  
REP. BY ITS CHAIRPERSON.

... RESPONDENTS

(BY SRI. S.S.NAGANAND, SENIOR ADVOCATE FOR  
SRI. LOMESH KIRAN N., ADVOCATE FOR R1 TO R3;

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SMT. LAKSHMY IYENGAR, SENIOR ADVOCATE FOR  
SRI. AJAY RAO, ADVOCATE FOR R4;  
SRI. SAJJAN POOVAYYA, SENIOR ADVOCATE FOR  
SRI. M.NIKILESH RAO, ADVOCATE FOR R5;  
SRI. TUSHAR MEHTA, SOLICITOR GENERAL OF INDIA  
REPRESENTING THE UNION OF INDIA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND  
227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH AND  
SET ASIDE THE MINUTES OF THE 2ND (SECOND) ADJOURNED 19TH  
(NINETEENTH) MEETING OF THE COMMITTEE OF CREDITORS OF  
ASSOCIATE DECOR LIMITED HELD ON 11.02.2020 AT MUMBAI,  
MAHARASHTRA (AT ANNEXURE-F) AS NON-EST AND ILLEGAL IN  
EYES OF LAW AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED  
FOR ORDERS ON 14.03.2024, COMING ON FOR PRONOUNCEMENT  
THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court seeking a slew of prayers and in effect seeking to quash minutes of the 22nd meeting of the Committee of Creditors of Associate Décor Limited held on 21-12-2022 as non est and illegal and other prayers are sequel to the said prayer. This Court, accepting certain of the prayers of the petitioner had allowed the writ petition in part, in terms of its order dated 21-11-2023. Subsequent developments took place and while answering review petitions, this Court recalled the order so passed on 21-11-2023 in Review Petition No.573 of 2023 c/w 574 of 2023 in terms of its order dated 28-02-2024. Therefore, the matters are heard afresh, in the light of the order passed in the review petitions on 28-02-2024.

2. Heard Sri S. Basavaraj, learned senior counsel for Sri Sivaramakrishnan M.S., learned counsel for the petitioner; Sri S.S.Naganand, learned senior counsel for Sri Lomesh Kiran N., learned counsel for respondent Nos.1 to 3; Smt. Lakshmy Iyengar, learned senior counsel for Sri Ajay Rao, learned counsel for respondent No.4; Sri Sajjan Poovayya, learned senior counsel for Sri M. Nikilesh Rao, learned counsel for respondent No.5 and Sri Tushar Mehta, learned Solicitor General of India for respondent Nos.6 to 9.

3. The facts, in brief, adumbrated are as follows:-

Between 2007 and 2011 a Company in the name and style of Associate Décor Limited (hereinafter referred to as 'the Company' for short) is established to be in the business of manufacture of wood products, particle boards, laminates and other wood panel products. Between 2010 and 2015 the Company requested the 1st respondent/Punjab National Bank to grant a term loan and other several credit facilities for the purpose of meeting its capital expenses and working capital requirement. The consortium of Banks i.e., respondents 1, 2 and 3/Punjab National Bank, Union of Bank of India and Bank of Baroda granted about 582 crores to the Company to which the petitioner had executed further term loan agreements by offering huge collaterals as security in favour consortium of Banks. In the year 2016 various disputes arose inter se between the promoters of the Company on account of unexpected changes in the market and Company's operations resulting in irregular loan repayments and categorization of account of the Company in the Banks as a Non Performing Asset ('NPA' for short).

4. The Banks then instituted recovery proceedings against the Company before the Debt Recovery Tribunal 1 & 2 at Bengaluru. Simultaneously, the 1st respondent/Punjab National Bank files a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code' for short) before the National Company Law Tribunal ('NCLT' for short) seeking initiation of Corporate Insolvency Resolution process ('CIR' for short) against the Company on account of default in repaying the term loan. The application was entertained on the file of NCLT, Bengaluru Bench.

5. During the pendency of proceedings before the NCLT, the Company's operations had picked up significantly and monthly turnover in the range of `30/- crores was generated. Therefore, the Directors of the Company began to negotiate with the consortium of Banks for regularization and

restructuring of the loan account of the Company. The Corporate Debtor i.e., the Company filed an interlocutory application seeking adjournment of proceedings before the NCLT on the ground that certain amounts had to be realized by the Company which would far exceed the liabilities of the Company to the consortium of Banks. Pending the application, the NCLT appointed an Interim Resolution Professional for the Company under the Code and the petitioner then ceased to be the Director of the Company as respondent No.4 who is appointed as Interim Resolution Professional took over the affairs of the Company. Thereafter, the 4th respondent made it public that the CIR process had commenced with regard to the Company.

6. Pursuant to all the aforesaid, a Committee of Creditors of the Company came to be constituted wherein the 1st respondent had 24.16% voting share and 2nd and 3rd respondents had 41.18% and 34.66% voting share respectively. The first meeting of the Committee of Creditors was held on 26-12-2018. The Committee of Creditors then appointed the 4th respondent as a Resolution Professional of the Corporate Debtor, him already being appointed as Interim Resolution Professional. The Resolution Professional issues Form-G through which he invites expression of interest for submission of resolution plans in respect of the Corporate Debtor. Things go on in this manner.

7. On 09-10-2019 the 4th respondent in the 11th meeting of the Committee of Creditors reveals that about 22 prospective resolution applicants had confirmed their interest and draws a provisional list of resolution applicants. Thereafter the 4th respondent issues a request for resolution plan along with updated information memorandum to the prospective resolution applicants. The resolution plans submitted by two of the resolution applicants were discussed and further negotiated in the 19th meeting of the Committee of Creditors. The 19th meeting was originally convened to be held on 07-02-2020. The agenda for the said meeting was also set out for discussion. On 10-02-2022 resolution plans of both resolution applicants were discussed and further negotiated. The resolution plans were scored on evaluation matrix with Archidplay receiving a total score of 57.20 and respondent No.5 receiving 72.64. The next day i.e., 11-02-2020 an e-mail is sent communicating that the 2nd meeting of 19th Committee of Creditors which was sought to be adjourned on 10-02-2020 is scheduled on the same day i.e., 11-02-2020 at 3.00 p.m. The mail was received at 12.20 p.m. Though the earlier resolution resulted in adjournment of proceedings, this was varied at and directed to be done on 11.02.2020 at 3.00 p.m. Respondents 1 to 3 on the said day approved the resolution plan dated 10-02-2020. On 13-02-2020 during the period of CIR process, the petitioner addresses a letter to respondents 1 to 4 expressing the intention to pay `250 crores to clear the outstanding loan amount of the Company if re-structuring or settlement proposal in order to revive the Company would be accepted.

8. Pending all the aforesaid process, the Resolution Professional marches ahead and seeks to recover the assets of the Company. It is then the petitioner knocks at the doors of this Court in the subject petition calling in question certain decision of the Resolution Professional and orders passed by the NCLT accepting the resolution process initiated by respondents 1 to 3 without reconsidering the case of the petitioner.

**SUBMISSIONS:**

**PETITIONER:**

9. The learned senior counsel appearing for the petitioner would urge the following contentions; that the petitioner had offered `280 cores as payment to the Committee of Creditors as opposed to `243 crores by the 5th respondent. The petitioner later offered to settle the statutory dues in full amounting to `40 crores as opposed to `40 crores offered by the 5th respondent. The petitioner also offered to settle the dues of operation creditors in full amounting to `60 crores as opposed to `60 crores offered by the 5th respondent, as also, the dues of the workmen in full which was approximately `1 crore which was the same offered by the 5th respondent.

10. The Committee of Creditors rejected the offer of the petitioner without any reason and notified the petitioner that since the offer of the 5th respondent had already been approved, no opportunity can be given for considering the proposal of the petitioner is the submission of the learned senior counsel. It is his emphatic submission that the proposal of the 5th respondent was approved in the meeting of the Committee of Creditors held on 11-02-2020 wherein only three hours notice was given to the petitioner in complete contravention of Section 24 of the Code and Regulation 19 of the IBBI Regulations. It is his submission that on 10-02-2020 deliberation on approval of a particular resolution plan of the 5th respondent was in place. Deliberations happened. The deliberations did not conclude on the said day. There was an amendment to the agenda. Therefore, the matter was taken up on the next day i.e., 11-02-2020 at 3.00 p.m. to discuss the amended agenda. Therefore notice was issued to the petitioner three hours before the said time of the meeting. This is contrary to the Code and the Regulations. It is here the learned senior counsel for the petitioner would submit that there is violation of the principles of natural justice. He would therefore, contend that the said resolution dated 11-02-2020 must be annulled and all the subsequent actions taken must be set at naught, as everything has sprung from the approval of the resolution plan of the 5th respondent. **RESPONDENTS 1 TO 3/COMMITTEE OF CREDITORS:**

11. Respondents 1 to 3 would vehemently contend that what the petitioner is now wanting is putting the clock back, which cannot be allowed, as much water has flown beneath the bridge after declaration of the 5th respondent's plan to be an approved resolution plan. The learned senior counsel would submit that after the resolution plan of the 5th respondent was approved, one Svamitva Landmarks had approached the NCLT seeking its plan also to be taken into consideration. The NCLT had allowed the petition filed by Svamitva Landmarks. This was challenged by the Committee of Creditors before the National Company Law Appellate Tribunal ('Appellate Tribunal' for short). The Appellate Tribunal sets the order aside and directs the resolution plan of the 5th respondent to be approved without any loss of time, but within 4 weeks. This was challenged by Svamitva Landmarks before the Apex Court in a civil appeal arising from the order of the Appellate Tribunal. The Apex Court rejected the civil appeal. Therefore, the learned senior counsel would submit that there is merger of the order passed by the Appellate Tribunal with the order of the Apex Court. How the petitioner is affected is that the petitioner had filed an application seeking to implead himself into the proceedings before the Appellate Tribunal. The said impleading application comes to be rejected. Therefore, the learned senior counsel would submit that there is tacit approval and tacit rejection of the claim of the petitioner. Therefore, he would submit that going back to the date of the resolution is impermissible in the light of the proceedings having attained finality by the

dismissal of the civil appeal before the Apex court.

5th RESPONDENT:

12. The learned counsel representing the 5th respondent would toe the lines of the Committee of Creditors to contend that it is the commercial wisdom of the Committee of Creditors to approve the resolution plan of the 5th respondent. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not entertain a petition, which is a commercial wisdom of approval of resolution plan. Insofar as the opportunity not being granted to the petitioner, the learned senior counsel would contend that the petitioner was represented on 10-02-2020 on which day the meeting was adjourned to 11-02-2020. It was not a meeting on a new agenda. The agenda was the same. Since the petitioner had already represented on 10-02-2020 and all the deliberations had happened on 10-02-2020 in the presence of the petitioner, the petitioner cannot complain of violation of principles of natural justice. On 11-02-2020 notice was given to the petitioner and he has also appeared through video conferencing which was always available to him. The learned senior counsel would struck to the stand that it was only an adjourned meeting and there can be no question of another notice being issued for an adjourned meeting. THE 4TH RESPONDENT / THE RESOLUTION PROFESSIONAL:

13. The learned senior counsel representing 4th respondent/Resolution Professional would vehemently contend that the writ petition is not maintainable against the proceedings upnder the Code. The petitioner is trading on two jurisdictions. On the ground that the petitioner is not being afforded an opportunity inter alia had filed an application to implead himself before Appellate Tribunal. He fails. He keeps quiet and files I.A.No.10 before the NCLT, Bangalore. During the pendency of hearing on I.A.No.10 he approaches this Court in the subject petition suppressing the fact that he had preferred an application before the NCLT in I.A.No.10. She would further contend that the petitioner should not be shown any sympathy on imaginary violation of principles of natural justice and would also contend that any order passed in favour of the petitioner would straight away run foul of the order passed by the Appellate Tribunal, which is affirmed by the Apex Court. She would reiterate the submission that it was only an adjourned meeting adjourned from 10-02-2020 to 11-02-2020 and if it is an adjourned meeting, there can be no question of grant of any opportunity to the petitioner. The learned senior counsel would submit that the resolution plan of the 5th respondent comes to be approved in the Committee of Creditors and such a decision is not amenable to judicial review under Article 226 of the Constitution of India and would seek dismissal of the petition. RESPONDENTS 6 TO 9/LEARNED SOLITICITOR GENERAL OF INDIA:

14. The learned Solicitor General of India representing respondents 6 to 9 would lend his support to the contentions of the Committee of Creditors/respondents 1 to 3 in reiterating that the agenda that approved the resolution plan of the 5th respondent was an extended meeting or an adjourned meeting at best and cannot by any way be construed to be a new meeting on a new agenda. Therefore, the requirement of issuance of notice to the petitioner, again for an adjourned agenda, would not be required. He would submit that the petitioner's rights have been determined to his detriment by the Tribunal, while it rejected the impleading application on whatsoever ground it could be. The whole hog of the proceedings are affirmed by the Apex Court and therefore, the

petitioner cannot now iterate the contentions that he has lost. He would also seek dismissal of the petition.

15. In reply to all these submissions, the learned senior counsel for the petitioner would again take this Court through the documents appended to the petition to demonstrate that, if it was not an amended agenda, there was no question of issuance of notice at all. But, notice is issued to the petitioner and if it is issued then they will have to follow the rigour of the Code and the Regulations. He would further contend that the Resolution Professional has shown interest more than what is necessary. The Resolution Professional ought to have been neutral, as the role of the Resolution Professional is limited to the conduct of proceedings and not to show any partisan attitude towards anybody. The submissions that are made by the Resolution Professional before this Court are clearly an act of overstepping the jurisdiction.

16. I have given my anxious consideration to the submissions made by the learned senior counsel for the respective parties, other counsel and have perused the material on record.

17. The afore-narrated facts are all a matter of record, they would require no reiteration. The Company - Associate Décor Limited was established between 2007 and 2011; it consisted of a Board with 9 Directors. The 9 Directors which form the Board of Directors are as follows:

"Members of the Board of Directors (Suspended) of Associate Décor Limited  
(Corporate Debtor)

1. Mohamed Farouk Suleman Darvesh
2. Srichand Satramdas Agicha
3. Ebrahim Suleman Darvesh
4. Manoharlal Satramdas Agicha
5. Sidarrtha Agicha
6. Farooq Ali Khan
7. Nooruddin Khan
8. Himayath Ali Khan
9. Yahya Mohamed Farouk Darvesh"

(Emphasis added) The petitioner is at Sl.No.6. The Company went into default. Proceedings were brought against the Company as observed hereinabove, by filing a petition under Section 7 of the Code before the NCLT, Bengaluru in C.P.(IB)No.51 of 2018. Several directions were sought in the



prayer of the Application. Admitting the Application of the Financial Creditor, the NCLT appoints an interim Resolution Professional, the 4th respondent, in terms of its order dated 26-10-2018. The directions issued on 26-10-2018 read as follows:

"15. In the result, by exercising powers conferred on this Adjudicating Authority, U/s 9(5) (a) IBC 2016, we hereby admitted C.P (IB) No.51 of 2018, by initiating CIRP in respect of M/s. Associate Décor Limited, the Corporate Debtor, with the following consequential directions:

1) We hereby appointed Shri Alok K. Saxena, Insolvency Professional, having IBBI Registration No. IBBI/IPA-001/IP-P00056/2017-18/10134 as Interim Resolution Professional, in respect of the Corporate Debtor to carry on the functions as mentioned under the Insolvency & Bankruptcy Code.

2) The following moratorium is declared prohibiting all of the following, namely:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(e) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.

(h) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the

Tribunal from time to time.

3) The Board of Directors and all the staff of Corporate Debtor are hereby directed to extend full co-operation to the IRP in carrying out his functions as prescribed under the Code and Rules made thereunder by IBBI.

4) IRP is further directed to strictly adhere to time schedule as mentioned under the Code. And he is directed to file progress report from time to time to the Tribunal.

5) 1.A No. 335/2018 in C.P (IB) No.51/2018 is rejected.

6) Post the case on 03.12.2018 for submission of report of IRP."

(Emphasis added) It appoints the 4th respondent as Resolution Professional among other directions supra. The Resolution Professional invites expression of interest for submission of resolution plans. Two entities come forward - one Archidply Industry and the 5th respondent. The resolution process then steps into deliberation. On 10-02-2020 the proposals submitted by the 5th respondent and the other entity were taken up for deliberations by the Committee of Creditors and the petitioner being a suspended Director was entitled to be present and was represented. The agenda for the meeting on 10-02-2020 is as follows:

"To approve the resolution plan of Mohammed Enterprises (Tanzania) Limited and direct RP to file the same before Hon'ble NCLT Abstained Sl. Name of Voting Voted Voted By By not No. Member Share For Against Voting Voting 1 Corporation 41.18% 41.18% - - -

Bank 2 Bank of 34.67% 34.67% - - -

Baroda 3 Oriental Bank 24.16% 24.16% - - -

of Commerce					
Total	100%	100%	0.00%	0.00%	0.00%"

The deliberations on 10-02-2020 did not get concluded. It was

adjourned to 11-02-2020. The petitioner was issued notice on 11-02-2020 as well and the notice so issued reads as follows:

"From: Desai Saksena <cirpadi@dsaca.co.in> Sent: 11 February 2020 12:31 To: fsd@fsd-co.com; Cmd.info@esdgroup.in;

esd@esdgroup.in; NOORUDDIN KHAN;

himayath-ali Khan; manohar.agicha @ jawahar.in;srie.agicha@jawahar.in;  
yahya.darvesh@associategroup.in; Sidarrtha Agicha Subject: Second Adjourned 19  
COC Meeting Associate Decor Ltd.

Attachments: Second Adjourned\_Notice and Agenda for 19 CoC Meeting - ADL.pdf  
Dear All Enclosed herewith notice of second adjourned 19th meeting of COC of  
Associate Decor Limited to be held on 11th February, 2020 at 3.00 PM at IMC  
Building, Bhagwandas Thakker Room, Third Floor, IMC Marg, Churchgate, Mumbai  
- 400 020.

Kindly make it convenient to attend the meeting.

Thanks & Regards Alok Saxena"

(Emphasis added) The agenda for 11-02-2020, for voting reads as follows:

"B. List of Issues to be voted upon after  
discussions.

1. To approve the resolution plan of Mohammed Enterprises (Tanzania) Limited and direct RP to  
file the same before Hon'ble NCLT.

The matter was discussed, and the following resolution was put to vote.

"RESOLVED THAT the Resolution Plan dated February 11, 2020 submitted by  
Mohammed Enterprises (Tanzania) Limited and that was placed by the Resolution  
Professional before the CoC meeting held on 11th February 2020 under Section 30(3)  
of the Insolvency and Bankruptcy Code, 2016 be and is hereby approved RESOLVED  
FURTHER that upon approval of the Resolution Plan dated February 11, 2020  
submitted by Mohammed Enterprises (Tanzania) Limited. Mr. Alok K Saxena, the  
Resolution Professional of Associate Décor Limited is hereby authorized to file an  
application with the Hon'ble Adjudicating Authority in accordance with the  
provisions of the Insolvency and Bankruptcy Code, 2016"

Since the members decided to put the matter to vote through e-voting, the same shall be put to vote  
through e-voting."

(Emphasis added) The summary of decision and voting that happened on 11-02-2020 what emerged  
was the resolution on 11-02-2020 which reads as follows:

"The following resolution is therefore approved as 100% voted in favor "RESOLVED  
THAT the Resolution Plan dated February 11, 2020 submitted by Mohammed  
Enterprises (Tanzania) Limited and that was placed by the Resolution Professional  
before the CoC meeting held on 11th February 2020 under Section 30(3) of the

Insolvency and Bankruptcy Code, 2016 be and is hereby approved RESOLVED FURTHER that upon approval of the Resolution Plan dated February 11, 2020 submitted by Mohammed Enterprises (Tanzania) Limited, Mr. Alok K Saxena, the Resolution Professional of Associate Décor Limited is hereby authorized to file an application with the Hon'ble Adjudicating Authority in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016"

(Emphasis added) Thus, the resolution plan of the 5th respondent was approved on 11-02-2020. The said deliberation which approves the resolution plan on 11-02-2020 is projected to be an adjourned meeting and nothing new in the meeting. This would be belied by two circumstances. If it were to be an adjourned meeting, there was no warrant for issuance of notice to the petitioner, as notice is contemplated on every agenda brought before it. But, notice is issued. The notice is quoted supra. The notice is sent through e- mail at 12.31 p.m. and the meeting was slated to be held at 3.00 p.m. Therefore, the time is two hours and thirty minutes. These are facts; stubborn facts.

18. What has happened on 11-02-2020 has led to the entire litigation later. After 11-02-2020, on 13-02-2020 the petitioner communicates a letter to respondents 1 to 4 expressing his intention to pay ` 250 crores and revive the Company. Again the petitioner revises the assurance of proposing payment of maximum amount towards discharge of the outstanding loan amount. The Committee of Creditors reject the said proposal on 07-03-2020. The rejection is as follows:

"RECORD OF SUMMARY OF DECISION OF E-VOTING The Nineteenth Meeting of Committee of Creditors of Associate Decor Limited (under Corporate Insolvency Resolution Process) under the provision of Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was held on Friday, 07th February, 2020 at 2.30 P.M. at IMC Building, Bhagwandas Thakker Room, Third Floor, IMC Marg, Churchgate, Mumbai - 400 020 which was adjourned to Monday, 10th February, 2020 at 5.30 P.M. at IMC Building, Bhagwandas Thakker Room, Third Floor, IMC Marg, Churchgate, Mumbai - 400 020 which was again adjourned to Tuesday, 11th February, 2020 at 3.00 P.M. at IMC Building, Bhagwandas Thakker Room, Third Floor, IMC Marg Churchgate, Mumbai - 400 020.

The items listed for voting were put to vote through e- voting. The voting period started on 13th February, 2020 at 4.00 PM and ended on 6th March 2020 at 6.00 PM.

Please find enclosed record of summary of decision taken on a relevant agenda items along with names of the members who voted for or against the decision, or abstained from voting as per Regulation 26 (4) and (5) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Sd/-

Alok Saxena Resolution Professional In the matter of Associate Decor Limited  
E m a i l : c i r p a d l @ d s a c a . c o . i n R e g i s t r a t i o n n o .  
IBBI/IPA-001/IP-P00056/2017-18/10134 Date: 07th March, 2020 Place: Mumbai"

(Emphasis added) The rejection does not record any reason. It only records that the items were put to vote; voting concluded on 11-02-2020 and the plan of the 5th respondent is approved and therefore, nothing could be done. Therefore, what would unmistakably emerges is that for the meeting of 11-02-2020 the petitioner was not notified as required in law.

19. The contention of the respondents is that it was only an adjourned meeting and there was nothing new for the petitioner to know and, therefore, there is no violation of the Code or the Regulations. The respondents have caught themselves in contradiction. The 5th respondent's plan is approved is a admitted fact. The 5th respondent files its statement of objections. In the statement of objections, the 5th respondent admits that it was an amended resolution plan. The averment of the 5th respondent in the statement of objections is as follows:

"6.5. Pursuant to the discussions held with the members of the CoC at the 19th CoC meeting on 10 February 2020, Respondent No.5 submitted the Amended and Restated Resolution Plan dated 11 February 2020. At the 19th CoC Meeting, as adjourned to 11 February 2020, the members of the CoC assessed the feasibility and viability of the resolution plan submitted by one Archidply Décor Limited and the METL Resolution Plan. Thereafter, the resolution plans were put up for e-voting wherein METL Resolution Plan was approved by the members of the CoC with 100% voting share upon conclusion of the e-voting on 6 March 2020."

(Emphasis added) The 5th respondent categorically avers that discussion was held on 10-02-2020. The 5th respondent submitted an amended and re- stated resolution plan on that day and it was taken up for deliberation on 11-02-2020. The plan was approved on the said date. Therefore, it is the candid admission on the part of the 5th respondent itself that it was amended and restated resolution plan. This would stand to reason, for the Resolution Professional issues a notice to the petitioner as required in law. While it is a short notice, but nonetheless, the notice supra is issued. If it were to be adjourned meeting there was no necessity for issuance of notice. It is, therefore, the respondents are caught in contradiction. Whether it is in tune with law or contrary is what is necessary to be noticed.

20. Section 24 of the Code deals with meetings of Committee of Creditors. It reads as follows:

"24. Meeting of committee of creditors.--(1) The members of the committee of creditors may meet in person or by such electronic means as may be specified.

(2) All meetings of the committee of creditors shall be conducted by the resolution professional.

(3) The resolution professional shall give notice of each meeting of the committee of creditors to--

(a) members of committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6-A) of Section 21 and sub-section (5);

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt.

(4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings:

Provided that the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

(5) Subject to sub-sections (6), (6-A) and (6-B) of Section 21, any creditor who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors:

Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.

(6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.

(7) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

(8) The meetings of the committee of creditors shall be conducted in such manner as may be specified."

(Emphasis supplied) Sub-section (2) of Section 24 deals with all meetings of the Committee of Creditors shall be conducted by the Resolution Professional. Sub-section (3) mandates that the Resolution professional shall give notice of each meeting of the Committee of Creditors. The obligation does not end here. The section does not depict the manner in which notice should be given. It only indicates that notice shall be given of each meeting to the Committee of Creditors. In the considered view of this Court, 'each' would mean each and every. The notice to be given is regulated under Chapter- VI of the Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016 ('the Regulations' for short) which is notified in furtherance of the provisions of the Code. Regulation 19 reads as follows:

"19. (1) Subject to this Regulation, a meeting of the committee shall be called by giving not less than five days' notice in writing to every participant, at the address it has provided to the interim resolution professional or the resolution professional, as the case may be, and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means in accordance with Regulation 20.

(2) The committee may reduce the notice period from five days to such other period of not less than twenty-four hours, as it deems fit:

Provided that the committee may reduce the period to such other period of not less than forty-eight hours if there is any authorised representative."

(Emphasis supplied) Regulation 19 mandates that subject to the Regulations, a meeting of the Committee shall be called by giving not less than 5 days notice in writing to every participant at the address it has provided to the Resolution Professional and such notice may be sent by hand delivery or by post and can also be served by electronic means in terms of Regulation 20, which permits service of notice by electronic means. Sub-Regulation (2) of Regulation 19 mandates notice period to be 5 days prior to the said meeting which can also be reduced to 24 hours as it would deem fit. It further provides that the Committee may reduce the period to such other period of not less than 48 hours if there is any authorized representative. It is not that the Resolution Professional was not aware of the mandate of the statute as quoted supra, nor the Committee of Creditors. Certain issues were voted upon after discussion. One of the issues voted upon was, empowering the Resolution Professional to reduce the time of issuance of notice to 48 hours. The discussions voted upon is as follows:

"B. List of issues to be voted upon after discussions

18. To authorize Resolution Professional to hold subsequent meetings at a shorter notice period of not less than two working days.

The Chairman informed the members that as per Regulation 19, Notice for meetings of the committee, of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016- (1) Subject to this regulation, a meeting of the committee shall be called by giving not less than five days' notice in writing to every participant, at the address it has provided to the resolution professional and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means in accordance with regulation (2) The committee may reduce the notice period from five days to such other period of not less than twenty-four hours, as it deems fit.

Provided that the committee may reduce the period to such other period of not less than forty-eight hours if there is any authorised representative The following resolution was proposed:

"RESOLVED THAT pursuant to Regulation 19 and other applicable provisions, if any, of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and in accordance with rules and regulations made there-under, approval of committee of creditors be and is hereby accorded for reduction in the notice period of not less than two working days for holding all future meetings of the CoC."

Since the members decided to put the matter to vote through e-voting the same shall be put vote through e-voting."

21. What would emerge from Regulation 19 is mandatoriness of serving of notice of each and every meeting 5 days prior to the said intended date of meeting which is undoubtedly reducible, if the Committee of Creditors through the Resolution Professional, deems it fit to 24 hours. The issue is whether this mandate has been followed or otherwise. As observed hereinabove, on 10-02-2020 the meeting had been adjourned with a specific agenda. On 11-02- 2020 the meeting is scheduled to be held at 3.00 p.m. This is the notice received by the petitioner on electronic mail. It is a matter of record and not in dispute. The hue and cry of the respondents is that it is a carried forward meeting from 10-02-2020. The 5th respondent itself admits that it is an amended and re-stated agenda. Therefore, it becomes a new agenda on the next day. The Resolution Professional also has thought that it is a new agenda and issues a notice. But, the notice falls completely foul of the Regulations and the Code, and his own mandate of 48 hours prior notice supra. Therefore, the Resolution Professional has acted contrary to what is the mandate under the statute and the resolution quoted supra.

22. The time limit for issuance of notice of meeting was also reducible to 24 hours. This, should be in the considered view of the Court, for reasons to be recorded in writing, as the words used are 'as it deems fit'. The deeming fitness would only to be discerned in an order reducing the notice period from 5 days to 24 hours, if it is in writing. No document of that kind is placed on record for having reduced it from 5 days to 24 hours. What has been done in the case at hand is, it is reduced to 2½ hours, which is on the face of it contrary to Regulation 19 of the Regulations r/w Section 24(3) of the Code. If the petitioner is not given adequate notice or the notice that is given is completely contrary to the Code and the Regulations, the resolution of the day would be rendered unsustainable. Therefore, the resolution of the day, I mean, 11-02-2020, is undoubtedly unsustainable and non est in the eye of law. Non estness of the resolution dated 11-02-2020 would lead to all consequential action taken becoming a nullity. Several contentions are urged qua the illegality of proceedings held on 10- 02-2020 as well. This Court is not considering the illegality though, in the first blush it would seem so only on the ground that the challenge is only to the resolution dated 11-02-2020 and not to the resolution dated 10-02-2020. There is absolute violation of the rigour of the statute and the principles of natural justice.



23. Several submissions are made with regard to the proceedings ending before the Apex Court. What went before the Apex Court is not what the petitioner had initiated. What went before the Apex Court was of the Svamitva Landmarks. After the plan of the 5th respondent was approved by the Committee of Creditors the same was placed before the NCLT by the Resolution Professional by way of I.A.No.161 of 2020. Svamitva Landmarks also preferred an application in I.A.No.227 of 2020 before the NCLT venting out several grievances and the main grievance of Svamitva Landmarks was non-consideration of the resolution plan submitted by it. The delay in submitting the plan was explained on account of failure of the Resolution Professional to provide Svamitva Landmarks audited balance sheets of the Corporate Debtor, the Company for the financial year 2015-19. Svamitva Landmarks has averred in the application that those balance sheets would have played a crucial role. NCLT accepted the plea of Svamitva Landmarks and in terms of its order dated 28-05-2021 allowed I.A.No.227 of 2020 and directed the Resolution Professional to condone the delay and place the resolution plan submitted by Svamitva Landmarks before the Committee of Creditors. According to the NCLT, the Resolution Professional had acted in breach of Regulation 36(2)(b) of the Regulations and therefore, the application was to be allowed.

24. In respect of I.A.No.161 of 2020 which was filed by the Resolution Professional, the NCLT observes that it is deemed to be disposed of and restored to the Resolution Professional for being reconsidered by the Committee of Creditors along with the resolution plan submitted by Svamitva Landmarks. It is in this petition, the petitioner had preferred I.A.No.248 of 2020 to implead himself contending that he also has an offer or a proposal. The said application comes to be disposed of as having become infructuous in the light of the order dated 28-05-2021. The order passed by the NCLT is as follows:

#### "V. Directions

1. In view of the foregoing, in accordance with the provisions of section 60(5)(o) of I&B code read with Rule 11 of NCLT Rules 2016 this Adjudicating Authority passes the following orders and directs the Resolution Professional as under:

(1) IA 85 of 2021 C.P. (IB) No.51/BB/2018 is disposed of with the directions that the claim filed by the Applicant, the State of Karnataka, Department of Industries & Commerce as a Financial Creditor, in Form C, shall be put up by the RP to the CoC for its consideration/acceptance, in the light of our findings and decision in the foregoing paragraphs. Reconstitution of the CoC will also be considered by the RP.

(2) IA 227 of 2020 C.P. (IB) No.51/BB/2018 is disposed of with the directions that the Resolution Plan submitted by Swamitva Landmark, Shankeshwar Landmarks LLP and Shankeshwar Landmarks, shall be placed before the CoC along with the Resolution Plan filed by METL and submitted for our approval in IA 161, for the CoC's evaluation and approval, strictly keeping in mind the objects of the Code, and superior commercial viability.

The Resolution Plan approved out of the two by the CoC shall be submitted to us for our consideration and approval.

(3) IA 248 r/w IA 225 C.P. (IB) No.51/BB/2018 is disposed as infructuous as IA 225 has already been disposed of. However, the issues raised by the erstwhile Promoters shall be kept in view by the RP so as to attain the objects of the Code.

(4) IA 134 of 2020 is disposed with directions to the Commercial Taxes Dept to place before the RP only ascertained, crystallised demand that may have arisen from a regular assessment for the period under consideration. The RP shall place the same before the CoC/reconstituted CoC, for its consideration. (5) IA 161 of 2020 is deemed to be disposed of and restored to the RP, for being re-considered by the CoC along with the Resolution Plan submitted by Swamitva Landmark, Shankeshwar Landmarks LLP and Shankeshwar Landmarks.

(6) The directions at sl nos. 1), 2) and 4) shall be carried out within a period of 12 weeks from the receipt/uploading of this order. This period is considered appropriate considering the present Covid 19 pandemic situation and the ensuing lockdown in several states. The RP is granted liberty to bring an Application before this Adjudicating Authority for any further exclusion of time, if the same is for exceptional and justifiable reasons, and in the interest of completing the process and achieving the objects of the Code.

2. All IAs in C.P. (IB) No.51/BB/2018 are disposed of as above. No order as to cost

3. Post the case for report of the RP on 30th June 2021." This was called in question before the Appellate Tribunal by three separate appeals - one by the Committee of Creditors, the second by the 5th respondent and the other by the Resolution Professional. The appeal was allowed by the Appellate Tribunal by restoring I.A.No.161 of 2020 before the NCLT. I.A.No.161 of 2020 was the one filed by the Resolution Professional placing on record the approval of the resolution plan of the 5th respondent. The Appellate Tribunal passes the following order:

#### "Conclusion

43. Having analysed the facts, legal position and the precedents and viewed in that perspective, this 'Tribunal' unequivocally comes to a resultant conclusion that the 'impugned order', passed in I.A. No. 161 of 2020 in CP No. 51 of 2018 dated 28.05.2021 is per se 'illegal', 'without application of mind', the same is set aside, with the following directions to be complied with by the 'Adjudicating Authority' (National Company Law Tribunal, Bengaluru Bench).

#### Directions:

(i) I.A. No. 161 of 2020 in CP No. 51 of 2018 is restored to its original position on the file of the 'Adjudicating Authority', ('National Company Law Tribunal', Bengaluru Bench).

(ii) The 'Adjudicating Authority' is hereby directed to consider the plan of the 'Successful Resolution Applicant' / '5th Respondent' herein, i.e. Mohammed Enterprises Ltd. (Tanzania Ltd.) (in short METL) whose plan has been approved by the 'CoC' with 100% voting share, within 4 weeks from the date of receipt of copy of this Judgment, in accordance with 'Law'.

(iii) The interim order granted by this 'Tribunal' dated 03.08.2021 is made absolute.

44. In fine, the Company Appeal (AT) (CH) (Ins.) No. 172 of 2021 is 'allowed'. No order as to costs. The connected pending 'Applications', if any, stand 'closed'."

(Emphasis added) This was challenged by Svamitva Landmarks before the Apex Court. The Apex Court rejects the civil appeal. After rejection of the civil appeal, the petitioner prefers I.A.No.10 of 2021 before the NCLT with the following prayer:

"VII. RELIEFS SOUGHT:

WHEREFORE in light of the afore-mentioned facts and circumstances, it is most humbly prayed that this Hon'ble Adjudicating Authority may be pleased to:

- a. Declare that the Respondent No 1, ie, Mr. Alok Kailash Saksena as a Resolution Professional of the Corporate Debtor has acted in gross violation of law and refer to IBBI. Respondent No 7 and IIPCICAI, Respondent No 8 for initiation of action for Professional Misconduct for his act of violation of law and consequently to direct the Respondent No. 3, 4 and 5 to consider the replacement of Resciution Professional in the place of Respondent No. 1;
- b. Declare that the decision of COC, Respondent Nos 3, 4 and 5 in approving the Resolution Plan of the sole Resolution Applicant is not in accordance with law;
- c. Reject the Resolution Plan submitted by the Respondent No 6 as not in accordance with law d. Direct the 1st Respondent to suitably revise the Information Memorandum and the consequential Expression of Interest in the corporate insolvency resolution process of the 2nd Respondent company after taking into account the VAT Loan eligibility amount and to conduct a fresh valuation of the Corporate Debtor.
- and e. Pass any other/further order(s) as this Hon'ble Adjudicating Authority may deem fit and proper to secure the ends of justice."

(Emphasis added) The said application was preferred during the pendency of proceedings before the Apex Court. The Apex Court rejects the appeal filed by Svamitva Landmarks on 25-11-2022. On 7-12-2022 the petitioner communicates a letter for full and final restructuring of settlement proposal proposing to pay `280 crores as full and final settlement, as against the offer of the 5th respondent. The communication was in detail with the prayer sought in the communication reading:

"i. The Resolution Professional of the Corporate Debtor convening and holding the meeting of CoC members within 7 (seven) days from the date of receipt of this letter; and ii. The CoC member unanimously agreeing to accept the settlement proposal submitted hereunder and deciding to submit an application of withdrawal under Section 12 A in C.P(IB) No. 51/BB/2018 pending before the Hon'ble NCLT, Bengaluru Bench; and iii. The Hon'ble NCLT accepting and approving the Section 12A application and passing necessary orders thereto as prayed for by the CoC/Applicant; and iv. Submission of the certified copy of the order of withdrawal of the Section 7 petition with the Escrow bank within 7 (seven) days from the date of release of the said order; and v. issuing letter of satisfaction / full and final discharge towards all the charges / securities created by the Corporate Debtor with the Escrow bank within 7 (seven) days from the date of the Order of Hon'ble NCLT approving the Section 12A IB Code Application; and vi. issuing letter of satisfaction / No-due Certificate / full and final discharge of the personal guarantee furnished by the undersigned with the Escrow Bank within 7 (Seven) days from the date of the certified copy of Order of Hon'ble NCLT approving the Section 12A IB Code Application; and vii. production of the certified copy of the order of withdrawal of legal proceedings filed against Corporate Debtor as well as the undersigned, pending before various fora including pending legal proceedings against the Corporate Debtor before the Debt Recovery Tribunal 1 & 2, Bengaluru; legal proceedings filed against the undersigned pending before the Hon'ble NCLT, Bengaluru Bench in C.P (IB) No. 139/BB/2022 with the Escrow bank within 15 days of such respective order;

viii. production of letter of withdrawal of the communication dated 07.03.2022 issued by the Bank of Baroda regarding intimation given by the said bank to the Bureau of Immigration, Ministry of Home Affairs, Government of India, to the Escrow bank within 15 days of the Order of the NCLT approving the Section 12A IB Code Application; and ix. production of letter of intimation both to CIBIL and CRILC authority regarding the full and final settlement of the dues of the Corporate Debtor as well as the full and final discharge of the personal guarantee given by the undersigned, to the Escrow bank within 15 days of the Order of NCLT approving the Section 12A IB Code Application.

9. The undersigned earnestly hopes notwithstanding the lapses on part of the Resolution Professional of the Corporate Debtor in finalising the Information Memorandum ("IM") and other lapses in not following and adhering to the IB Code and its regulation thereof and notwithstanding the successful applicant's proposal keeping in view of that the undersigned is prepared and agreeing to undertake the interest of all the stakeholders of the Corporate Debtor including the dues of the operational Creditors, statutory dues of the Corporate Debtor and other financial obligations of the Corporate Debtor [other than the allege dues to the promoters and the transactions with the related parties of the directors], in full, which will be more beneficial to protect the interest of all stakeholders and undersigned humbly prays for acceptance of this proposal in its entirety.

10. The present communication is being issued by the undersigned promoter /suspended director/guarantor of the Corporate Debtor in absolute good faith and in bonafide. Nothing contained in the present communication should be deemed to be an admission of liability of the undersigned promoter /suspended director /guarantor of the Corporate Debtor, whether in terms of the personal guarantee so executed or otherwise. The undersigned promoter/suspended director/guarantor of the Corporate Debtor herein expressly denies any personal liability or any legally subsisting debt towards any of the creditors of the Corporate Debtor.

11. Looking forward to the pleasure of unanimous decision of the CoC/Consortium Banks in good faith and to enable the undersigned to comply with and arrange for the said consideration of Rs. 275 (Rupees Two Hundred and Seventy- Five Crores) crores as stated above. Thanking you."

(Emphasis added) What happens then is the 22nd meeting of Committee of Creditors on 23-12-2022 in which it rejects the restructuring proposal of the petitioner. The rejection reads as follows:

"MINUTES OF TWENTY SECOND MEETING OF COMMITTEE OF CREDITORS OF ASSOCIATE DECOR LIMITED ("CORPORATE DEBTOR") As per section 24 of Insolvency and Bankruptcy Code, 2016 read with Regulation 17(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Twenty Second Meeting of the Committee of Creditors of Associate Decor Limited was held on Wednesday, 21st December, 2022 at 4.00 P.M. via video conferencing.

Please find the enclosed minutes of the proceedings of the Twenty Second meeting of Committee of Creditors of Associate Decor Limited as per Regulation 24 (7) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016."

(Emphasis added)

25. The petitioner immediately rushes to this Court in the subject writ petition filing it on 04-01-2023. The prayers sought for by the petitioner in the subject petition are as follows:

i "Issue a writ of certiorari or any other writ(s), order(s), rule(s) or direction(s) to quash and set aside the Minutes of the 2nd (Second) Adjourned 19th (Nineteenth) Meeting of the Committee of Creditors of Associate Decor Limited held on 11.02.2020 at Mumbai, Maharashtra (at ANNEXURE 'F') as Non-Est and illegal in eyes of law;

ii. Issue a writ of certiorari or any other writ(s), order(s), rule(s) or direction(s) to quash and set aside the approval illegally and erroneously given by Respondent No.

1-3 / Committee of Creditors in its 2nd (Second) Adjourned 19th (Nineteenth) Committee of Creditors Meeting dated 11.02.2020 (at ANNEXURE 'F'), approving the illegal and erroneous resolution plan of Respondent No. 5 as Non-Est and illegal in eyes of law;

iii. Issue a writ of certiorari or any other writ(s), order(s), rule(s) or direction(s) to quash and set aside the Minutes of the 22nd (Twenty-Second) Meeting of the Committee of Creditors of Associate Decor Limited held on 21.12.2022 through video conference (at ANNEXURE 'X') as Non-Est and illegal in eyes of law;

iv. Issue a writ of certiorari or any other writ(s), order(s), rule(s) or direction(s) to quash and set aside the Letter of Intent dated 09.03.2020 (at ANNEXURE 'K') issued by the Respondent No. 4 / Resolution Professional to the Respondent No. 5, wherein the Respondent No. 4 as illegally and fraudulently declared the Respondent No. 5 as the Successful Resolution Applicant, as Non-Est and illegal in the eyes of law;

v. Issue a writ of mandamus or any other writ(s), order(s), rule(s) or direction(s) to the Respondents No. 1-4 herein to de novo consider the restructuring / settlement proposal of the Petitioner made vide Letter dated 07.12.2022 (at ANNEXURE 'W'), in accordance with law; vi. Issue a writ of mandamus or any other writ(s), order(s), rule(s) or direction(s) to the Respondents No. 1-4 herein to convene a Committee of Creditors Meeting within 14 days to consider the restructuring / settlement proposal of the Petitioner made vide Letter dated 07.12.2022 (at ANNEXURE 'W');

vii. Further issue a writ of mandamus or any other writ(s), order(s), rule(s) or direction(s) to the Respondent No. 4 / Resolution Professional of Associate Décor Ltd., to file an appropriate and necessary application under Section 12-A of the IB Code, 2016 and the regulations framed thereunder in C.P (IB) No. 51 / BB / 2018 pending on the file of the NCLT, Bengaluru Bench, to withdraw the entire proceedings in C.P (IB) No.51/BB/2018, upon the approval and acceptance of the restructuring / settlement proposal offered by the Petitioner herein vide Letter dated 07.12.2022 by the Respondents No. 1-3 / Committee of Creditors and consequentially, direct the Respondent No. 3 / Bank of Baroda to file a separate appropriate and necessary application/s in C.P (IB) No.139 of 2022 pending on the file of the NCLT, Bengaluru Bench, to withdraw the entire proceedings in C.P (IB) No. 139/BB/2022 and viii. Pass such other orders as this Hon'ble Court may deem just and expedient in the facts and circumstances of the present case including costs of the proceedings, in the interest of justice and equity."

What is called in question is the resolution dated 11-02-2020 and the subsequent rejection on 21-12-2022 as communicated on 23-12-2022 and other incidental reliefs.

26. In the entire narration what would unmistakably emerge is, no right of the petitioner is determined by any fora. The application of the petitioner initially filed was held to be infructuous as the application filed by Svamitva Landmarks was allowed. This was challenged by all the respondents before the Appellate Tribunal. The Appellate Tribunal allows the appeal, sets aside allowing of Svamitva Landmarks application. It is this that is confirmed by the Apex Court. It cannot

be said that the impleading application filed by the petitioner having been rejected and in the impleading application all the narration now made in the petition having been made, would not become an order against the petitioner. At best the impleading application is rejected; that cannot mean that the rights of the petitioner have been determined to his detriment before any fora.

27. All the aforesaid observations are made, as elaborate submissions are made on the issue. But what would cut at the root of the matter is the genesis of the problem. The genesis is the approval of the resolution plan of the 5th respondent and it being in violation of the principles of natural justice, the entire aftermath of 11-02-2020 resolution would become a nullity in law and the Committee of Creditors will have to reconsider the deliberations made on 10-02-2020, as from that stage this Court has noticed the violation of principles of natural justice.

28. The Apex Court has time and again held that a suspended Director has every right to participate in the proceedings. Therefore, it cannot be said that the suspended Director can be taken for a ride, without him being put on notice and resolving things that are detrimental to the said suspended Director. The Apex Court in the case of VIJAY KUMAR JAIN v. STANDARD CHARTERED BANK<sup>1</sup>, has held as follows:

"14. The relevant provisions of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 read as under:

(2019) 20 SCC 455 "7. Certificate of registration.--(1) \*\*\* (2) The registration shall be subject to the conditions that the insolvency professional shall--

\*\*\*

(h) abide by the Code of Conduct specified in the First Schedule to these Regulations; and \*\*\*"

"FIRST SCHEDULE [Under Regulation 7(2)(h)] CODE OF CONDUCT FOR INSOLVENCY PROFESSIONALS \*\*\*

21. Confidentiality.--An insolvency professional must ensure that confidentiality of the information relating to the insolvency resolution process, liquidation or bankruptcy process, as the case may be, is maintained at all times. However, this shall not prevent him from disclosing any information with the consent of the relevant parties or required by law."

(emphasis supplied)

15. The statutory scheme of the Code, insofar as the former members of the Board of Directors are concerned, is as follows : A Committee of Creditors is first constituted under Section 21 consisting only of all the financial creditors of the corporate debtor. Under Section 24, all meetings of this committee are to be conducted by the resolution professional who, however, does not happen to be part of this committee. Section 24(3)(b) is important in that, the resolution professional has to give

notice of each and every meeting of the Committee of Creditors, inter alia, to members of the suspended Board of Directors. Like operational creditors who may attend and participate in such meetings, provided the aggregate dues owing to them are not less than ten per cent of the total debt, both such operational creditors and erstwhile members of the Board of Directors have no vote. Sections 25(2)(f) and (i) are also important in that, once the resolution professional convenes meetings of the Committee of Creditors, he is to present all resolution plans at these meetings. Under Section 30, the resolution professional shall examine each resolution plan received by him in which he must confirm, inter alia, that such plan provides for the repayment of the debts of operational creditors which shall not be less than the amount to be paid to them in the event of liquidation of the corporate debtor. This plan is then submitted to the adjudicating authority if it is approved by the requisite majority of the Committee of Creditors. The adjudicating authority under Section 31(1), if satisfied that the plan passes muster, shall then, by order, approve such plan, which shall be binding on all stakeholders involved in the resolution plan, including guarantors.

16. This statutory scheme, therefore, makes it clear that though the erstwhile Board of Directors are not members of the Committee of Creditors, yet, they have a right to participate in each and every meeting held by the Committee of Creditors, and also have a right to discuss along with members of the Committee of Creditors all resolution plans that are presented at such meetings under Section 25(2)(i). It cannot be gainsaid that operational creditors, who may participate in such meetings but have no right to vote, are vitally interested in such resolution plans, and must be furnished copies of such plans beforehand if they are to participate effectively in the meeting of the Committee of Creditors. This is for the reason that under Section 30(2)(b), repayment of their debts is an important part of the resolution plan qua them on which they must comment. So the first important thing to notice is that even though persons such as operational creditors have no right to vote but are only participants in meetings of the Committee of Creditors, yet, they would certainly have a right to be given a copy of the resolution plans before such meetings are held so that they may effectively comment on the same to safeguard their interest.

17. However, it was argued before us that the Notes on Clauses to Section 24 make it clear that the erstwhile members of the Board of Directors are participants in these meetings only so that the Committee of Creditors and the resolution professional may seek information from them. The Notes on Clauses, heavily relied upon by the learned counsel for the respondents, read as follows:

"Clause 24 prescribes the modalities for the meeting of the Committee of Creditors. The meetings are conducted by the resolution professional and may be attended by the members of the Board of Directors or partners of the corporate debtor. This gives an opportunity for the Committee of Creditors and the resolution professional to seek information that they may require to assess the financial position of the corporate debtor and prepare a resolution plan."

(emphasis supplied)

18. This Court in *Mobilox Innovations [Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.]*, (2018) 1 SCC 353 : (2018) 1 SCC (Civ) 311 stated : (SCC pp. 380 & 396, paras 27 & 38) "27. The



notes on clauses annexed to the Bill are extremely important and read as follows:

(28)-(37) \*\*\*

38. It is, thus, clear that so far as an operational creditor is concerned, a demand notice of an unpaid operational debt or copy of an invoice demanding payment of the amount involved must be delivered in the prescribed form. The corporate debtor is then given a period of 10 days from the receipt of the demand notice or copy of the invoice to bring to the notice of the operational creditor the existence of a dispute, if any. We have also seen the notes on clauses annexed to the Insolvency and Bankruptcy Bill of 2015, in which "the existence of a dispute" alone is mentioned. Even otherwise, the word "and" occurring in Section 8(2)(a) must be read as "or" keeping in mind the legislative intent and the fact that an anomalous situation would arise if it is not read as "or".

19. There is no doubt whatsoever that Notes on Clauses are an important aid to the construction of sections of the Code as they show what the Drafting Committee had in mind when such provisions were drafted. However, a closer look at the Notes on Clause 24 makes it clear that the third sentence of the Notes on Clause 24 is itself problematic.

19.1. First and foremost, it speaks of the resolution professional seeking information. The resolution professional does not seek information at a meeting of the Committee of Creditors, which is what Section 24 is all about. The resolution professional only seeks information from the erstwhile Board of Directors under Section 29 before preparing an information memorandum, which then includes the financial position of the corporate debtor and information relating to disputes by or against the corporate debtor, etc. All this has nothing to do with Section 24 of the Code which deals with meetings of the Committee of Creditors.

19.2. Secondly, the resolution professional does not prepare a resolution plan as is mentioned in the Notes on Clause 24; he only prepares an information memorandum which is to be given to the resolution applicants who then submit their resolution plans under Section 30 of the Code. The Committee of Creditors, in turn, gets information so that they can assess the financial position of the corporate debtor from various sources before they meet. It is, therefore, difficult to understand the Notes on Clause 24.

19.3. Even assuming that the Notes on Clause 24 may be read as being a one-way street by which erstwhile members of the Board of Directors are only to provide information, we find that Section 31(1) of the Code would make it clear that such members of the erstwhile Board of Directors, who are often guarantors, are vitally interested in a resolution plan as such resolution plan then binds them. Such plan may scale down the debt of the principal debtor, resulting in scaling down the debt of the guarantor as well, or it may not. The resolution plan may also scale down certain debts and not others, leaving guarantors of the latter kind of debts exposed for the entire amount of the debt.

19.4. The Regulations also make it clear that these persons are vitally interested in resolution plans as they affect them. Thus, under Regulation 36 of the CIRP Regulations, the information memorandum that is given to each member of the CoC and to any potential resolution applicant, will contain details of guarantees that have been given in relation to the debts of the corporate debtor [see Regulation 36(2)(f) of the CIRP Regulations]. Also, under Regulation 37(d) of the CIRP Regulations, a resolution plan may provide for satisfaction or modification of any security interest. "Security interest" is defined by Section 3(31) of the Code as follows:

"3. Definitions.--In this Code, unless the context otherwise requires--

\*\*\* (31) "security interest" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:

Provided that security interest shall not include a performance guarantee;"

This would certainly include a guarantor who may be a member of the erstwhile Board of Directors.

19.5. Further, under Regulation 37(1)(f), a resolution plan may provide for reduction in the amount payable to the creditors, which again vitally impacts the rights of a guarantor. Last but not the least, a resolution plan which has been approved or rejected by an order of the adjudicating authority, has to be sent to "participants" which would include members of the erstwhile Board of Directors -- vide Regulation 39(5) of the CIRP Regulations. Obviously, such copy can only be sent to participants because they are vitally interested in the outcome of such resolution plan, and may, as persons aggrieved, file an appeal from the adjudicating authority's order to the Appellate Tribunal under Section 61 of the Code. Quite apart from this, Section 60(5)(c) is also very wide, and a member of the erstwhile Board of Directors also has an independent right to approach the adjudicating authority, which must then hear such person before it is satisfied that such resolution plan can pass muster under Section 31 of the Code.

20. It is also important to note that every participant is entitled to a notice of every meeting of the Committee of Creditors. Such notice of meeting must contain an agenda of the meeting, together with the copies of all documents relevant for matters to be discussed and the issues to be voted upon at the meeting vide Regulation 21(3)(iii). Obviously, resolution plans are "matters to be discussed" at such meetings, and the erstwhile Board of Directors are "participants" who will discuss these issues. The expression "documents" is a wide expression which would certainly include resolution plans.

21. Under Regulation 24(2)(e), the resolution professional has to take a roll call of every participant attending through videoconferencing or other audio and visual means, and must state for the record that such person has received the agenda and all relevant material for the meeting which would include the resolution plan to be discussed at such meeting. Regulation 35 makes it clear that the

resolution professional shall provide fair value and liquidation value to every member of the committee only after receipt of resolution plans in accordance with the Code [see Regulation 35(2)]. Also, under Regulation 38(1-A), a resolution plan shall include a statement as to how it has dealt with the interest of all stakeholders, and under sub-regulation (3)(a), a resolution plan shall demonstrate that it addresses the cause of default. This Regulation also, therefore, recognises the vital interest of the erstwhile Board of Directors in a resolution plan together with the cause of default. It is here that the erstwhile Directors can represent to the Committee of Creditors that the cause of default is not due to the erstwhile management, but due to other factors which may be beyond their control, which have led to non-payment of the debt. Therefore, a combined reading of the Code as well as the Regulations leads to the conclusion that members of the erstwhile Board of Directors, being vitally interested in resolution plans that may be discussed at meetings of the Committee of Creditors, must be given a copy of such plans as part of "documents" that have to be furnished along with the notice of such meetings.

22. As a result of the aforesaid discussion, the arguments of the respondents that "committee" and "participant" are used differently, which would lead to the result that resolution plans need not be furnished to the erstwhile members of the Board of Directors, must be rejected. Equally, the Regulations, far from going beyond the Code, flesh out the true intention of the Code that is achieved by reading the plain language of the sections that have already been adverted to. So far as confidential information is concerned, it is clear that the resolution professional can take an undertaking from members of the erstwhile Board of Directors, as has been taken in the facts of the present case, to maintain confidentiality. The source of this power is Regulation 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, read with Para 21 of the First Schedule thereto. This can be in the form of a non-disclosure agreement in which the resolution professional can be indemnified in case information is not kept strictly confidential."

(Emphasis supplied) The Apex Court in the judgment quoted supra holds that in the statutory scheme of the Code, members of the erstwhile Board of Directors are not members of the Committee of Creditors, yet they have a right to participate in each and every meeting held by the Committee of Creditors and also have a right to discuss along with the members of the Committee of Creditors all resolution plans that are presented. Therefore, when the Apex Court had recognized the right of members of the erstwhile Board of Directors, it naturally includes a suspended Director. In the light of what is analyzed hereinabove, the petitioner has a right to participate in the deliberations of 11-02-2020. Though notice was issued, it has fallen foul of law. Therefore, it is here the proceedings cut at the root of the matter.

29. The Resolution Professional, in the case at hand, appears to have involved himself more than necessary. The Resolution Professional does not participate in the meetings of the Committee of Creditors. It is important that the Resolution Professional has to give notice of each and every meeting of the Committee of Creditors to the suspended members of the Board of Directors also. This is also what is observed by the Apex Court in VIJAY KUMAR JAIN (supra). The notice that is given in the case at hand is only for the sake of giving notice. It is not in compliance with law. Therefore, the Resolution Professional has been in mortal hurry to conclude the proceedings

without adhering to the rigour of the Code and the Regulations quoted hereinabove. The Apex Court clearly holds that rigours under the Code or the Regulations cannot be given a go-bye. Therefore, the Resolution Professional has to be independent and need not be in a hurry to get any resolution plan concluded. His action should be just and fair, which does not appear to be the case in the case at hand. Be that as it may, the aforesaid observation is made only for the purpose that the matter is being sent back to the table of the Committee of Creditors in which the Resolution Professional will again play a role in issuance of notice to the suspended Director. Therefore, the 4th respondent/Resolution Professional shall strictly adhere to the afore-quoted mandate of the statute and the judgment of the Apex Court in the case of VIJAY KUMAR JAIN supra.

30. Several judgments are quoted at the bar by the learned counsel for the petitioner and the learned counsel representing the respondents. All of them need not bear consideration in the case at hand, as what is found fault with is violation of principles of natural justice. There is no law that is brought to the notice of this Court in which it is laid down that natural justice need not be complied with in any proceeding. In the case at hand, the statute itself imbibes rigours of following the principles of natural justice and as observed hereinabove, it is violated, the violation of which, would lead to obliteration of proceedings.

31. For the aforesaid reasons, the following:

#### ORDER

(i) Writ Petition is allowed in part.

(ii) The Resolution plan approved in the second adjourned meeting of Committee of Creditors dated 11-02-2020 stands quashed.

(iii) The matter is remitted back to the table of the Committee of Creditors, respondents 1 to 3 to redo the exercise from the stage of deliberations on 10-02-2020, bearing in mind the observations made in the course of the order.

(iv) The petitioner shall be entitled to all consequential benefits that would flow from quashment of the approval of the Resolution plan of the 5th respondent.

Sd/-

JUDGE Bkp/CT:SS