



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
[Through Physical hearing/ VC Mode (Hybrid)]

ITEM No.01
I.A.No.433/2024 in
C.P. (IB)No.199/BB/2018

IN THE MATTER OF:

M/s. ICICI Bank Ltd.	...	Petitioner
Vs.		
M/s. Opto Circuits (India) Ltd.	...	Respondent

Order under Section 7 of IBC, 2016

Order delivered on: 29.07.2025

CORAM:

SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant in I.A.636/2023	:	Shri Sangamithra T.
For the Applicant in I.A.433/2024	:	Ms. Aneeta Mathew

ORDER

1. Heard the Ld. Counsels appearing for the parties.
2. I.A.No.433/2024 is allowed vide separate order.

C.P. (IB)No.199/BB/2018:

List the case on **18.09.2025.**

-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

Shruthi



IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

I.A. No. 433 of 2024 IN C.P. (IB) No. 199/BB/2018
[Application under Rule 11 of National Company Law Tribunal Rules, 2016]

AND IN THE MATTER OF:

HDFC Bank Limited

...Applicant

Versus

Opto Circuits (India) Ltd.

Through its Resolution Professional of Sh. Pankaj Srivastava, ...Respondent/RP

In the matter of:

ICICI Bank Limited

...Financial Creditor

Versus

Opto Circuits (India) Ltd.

...Corporate Debtor

Last date of hearing: 23.07.2025

Order delivered on: 29.07.2025

Coram: **Hon'ble Shri Sunil Kumar Aggarwal, Member (Judicial)**
 Hon'ble Shri Radhakrishna Sreepada, Member (Technical)

O R D E R

1. The present Application has been filed by the Applicant, under Rule 11 of the NCLT Rules, 2016 with following prayers:
 - a. *conducting a fresh valuation of the subsidiaries and step-down subsidiaries of the Corporate Debtor; and*
 - b. *deferring the consideration of the approved resolution plan pending the said valuation.*
2. **Facts of the case:**
 - a. The Corporate Debtor, incorporated on 08.06.1992, is engaged in the manufacture of medical devices and has its registered office at Plot No. 83,



Electronics City, Bengaluru –560100. As part of its business model, it made substantial investments in various domestic and overseas subsidiaries and step-down subsidiaries which hold valuable intellectual property rights (IPRs).

- b. Pursuant to a petition filed by ICICI Bank Ltd. under Section 7 of the Insolvency & Bankruptcy Code, CIRP was initiated against the Corporate Debtor by an order dated 16.11.2022, and Sh. Pankaj Srivastava was appointed its Interim Resolution Professional (IRP). Subsequently, the Respondent was confirmed as the Resolution Professional (RP) in the 1st CoC meeting of corporate debtor held on 03.01.2023.
- c. The Information Memorandum (IM) and an Addendum thereto were issued by the RP, disclosing investments in subsidiaries and IPRs. Two Registered Valuers were appointed in the 2nd CoC meeting for determining fair and liquidation values. The Applicant's claim for ₹267.53 crores was partly admitted for ₹179.03 crores, and it was inducted into the CoC with a 7.40% voting share.
- d. The Suspended Board of Directors failed to provide necessary information and documents, particularly regarding subsidiaries and step-down subsidiaries. The RP filed an I.A. 260/2023 under Section 19(2) of the Code, and by order dated 01.05.2023 the Suspended Directors were directed to cooperate and provide all requisite documents to RP (hereinafter "19(2) Order").
- e. The Suspended Directors did not fully comply with the 19(2) Order. The RP received two resolution plans from Prospective Resolution Applicants (PRAs), namely Mr. Navneet Garg and Agam Pulp & Paper Pvt. Ltd. but these were affected by the lack of data regarding subsidiaries.
- f. Subsequent CoC meetings recorded the persistent non-cooperation by Suspended Directors and the consequent inability of PRAs to value the subsidiaries. A White Paper prepared by the RP acknowledged the non-availability of data and the resultant undervaluation of assets. The CoC resolved to appoint an External Valuer (Priyanka Sharma & Associates) in its 12th meeting.



- g. The final report submitted by the Valuer placed the Fair and Liquidation Values of subsidiaries of corporate debtor at ₹13.35 crores and ₹9.35 crores respectively, but noted major limitations due to lack of financial statements and projections.
- h. Despite discussions across multiple CoC meetings and resolutions to initiate contempt against the Suspended Directors, no such application was filed by the RP. The CoC, in the 26th Meeting, approved the resolution plan of Mr. Saikam Sivachaitanya by a 66.53% majority. The Applicant HDFC Bank had abstained from voting.

3. Submissions of the Petitioner/Applicant:

The application has been filed on the following grounds:

- a. the valuation of the Corporate Debtor, pegged at a mere INR 40 crores against an admitted debt of approximately INR 2300 crores, is premised on incomplete information. This undervaluation has materially prejudiced the insolvency resolution process, particularly when the statutory mandate under Section 25(2)(a) of the IBC, 2016, required the RP to take control and custody of all the assets of the Corporate Debtor, including its shareholding in subsidiaries and step-down subsidiaries. The failure to secure and incorporate critical financial information, especially from the Suspended Directors who had withheld cooperation, has led to a valuation exercise that is neither holistic nor representative of the Corporate Debtor's true worth.
- b. The RP's inability to effectively take control of relevant assets and information despite having obtained an order under Section 19(2) of the Code has undermined the fairness and transparency of the valuation process. It is now well-settled that valuation forms the very basis of commercial decision-making under the Code, and any such exercise, if tainted by material deficiencies or lack of data, must be re-evaluated in the interest of justice and the objectives of the Code.
- c. The central objective of the Code, i.e., maximization of the value of assets of the Corporate Debtor, stands defeated in the present matter. The lack of



requisite financial details led to low-value bids from PRAs, some of whom either opted out or undervalued the assets of the Corporate Debtor. The resolution plan approved by the CoC offered merely INR 51 crores against claims exceeding INR 2300 crores resulting in an alarming haircut of approximately 97%.

- d. It was submitted that, as of 31.03.2020, the Corporate Debtor's assets were valued at approximately INR 643.91 crores, but the valuation reports failed to reflect this due to lack of information about subsidiaries. The valuers even acknowledged latent value in the subsidiaries but were unable to assign a fair value due to insufficient data. This directly affects the creditors' recovery and is inconsistent with the object of the CIRP. A comprehensive revaluation, including intangibles such as IPRs and equity investments in subsidiaries, is thus essential to correct this distortion.
- e. The RP, though empowered under Sections 18 and 25 of the Code, failed to take necessary and effective measures against the Suspended Directors who deliberately withheld material information in violation of 19(2) Order. Despite repeated discussions in CoC meetings, no contempt proceedings were filed against them by the RP. This omission not only reflects inaction in enforcing compliance but has also directly contributed to an incomplete valuation process.
- f. In view of the above, the RP ought to have initiated appropriate action to compel compliance with the 19(2) Order and gather complete data necessary for an accurate and legally compliant valuation of the Corporate Debtor's assets.

4. Submissions by the Respondent:

The respondent/RP filed its reply dated 04.10.2024 stating:

- a. This application has been filed with the sole intention of challenging the commercial wisdom of the CoC, which is impermissible under the settled position of law. The Respondent emphasized that the jurisdiction of the Adjudicating Authority is confined to verifying whether the Resolution Plan approved by the CoC meets the requirements of Section 30(2) and



Section 30(4) of the Insolvency and Bankruptcy Code, 2016 ("Code"), and not to reassess commercial considerations such as valuation or feasibility of the plan.

- b. The Applicant has no locus standi to challenge the valuation reports. The purpose of valuation is solely to assist the CoC in evaluating and approving a Resolution Plan. Once the Resolution Plan has been approved by the CoC, the scope of interference by the Adjudicating Authority is limited to checking compliance with statutory requirements under Sections 30 and 31. The Hon'ble Supreme Court in ***Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh & Ors.*** (AIR 2020 SC 3779) has clearly held that the resolution plan need not match the liquidation value and that the valuation exercise is only for the guidance of the CoC. The court further observed that judicial review is not warranted over such commercial decisions once the CoC has exercised its discretion in good faith and in accordance with the Code.
- c. The valuation is a question of fact, and courts are traditionally reluctant to interfere with factual findings unless they are shown to be perverse or unsupported by material evidence. In ***Duncans Industries Ltd. v. State of U.P.*** (AIR 2000 SC 355), the Hon'ble Supreme Court held that unless prejudice or arbitrariness is established in the process of valuation, the court cannot intervene merely based on conjecture. In the present case, valuation was conducted by Registered Valuers as required under the Code, and no material irregularity has been shown by the Applicant.
- d. In ***Ramkrishna Forgings Ltd. v. Ravindra Loonkar & Anr.*** (2023 SCC OnLine SC 1490), the Hon'ble Supreme Court reiterated that where two Registered Valuers have submitted fair and liquidation value reports and no objections have been raised before the approval of the Resolution Plan by the CoC, courts should not interfere in the absence of compelling evidence. The Court cautioned that such belated challenges obstruct the Code's objective of expeditious insolvency resolution. The Applicant's demand to defer approval of the plan pending revaluation of subsidiaries and step-subsiaries is contrary to this principle and would only cause unwarranted delays.



- e. The Respondent further pointed out that under Section 18(1)(f) of the Code, the assets of subsidiaries and step-subsubsidiaries are explicitly excluded from the definition of “assets” of the Corporate Debtor. The Explanation to this section clarifies that assets owned by Indian or foreign subsidiaries of the Corporate Debtor do not form part of the assets of the Corporate Debtor for the purposes of CIRP. This interpretation has been affirmed in *Embassy Property Developments Pvt. Ltd. v. State of Karnataka (2019)* and in *GNIDA v. Roma Unicorn Designex Consortium*, where it was held that in the CIRP of a holding company, the assets of subsidiaries cannot be considered, given that both entities have separate legal personalities.
- f. Consequently, the prayer for revaluation of subsidiary and step-subsubsidiary companies is not only barred under Section 18(1)(f) but also unjustified considering the CoC’s independent commercial assessment. Allowing such revaluation would effectively mean re-opening a resolution process that has already culminated in a duly approved plan. This would defeat the object of timely resolution under the Code. In *Jaypee Kensington Blvd. Apartments Welfare Association v. NBCC (India) Ltd. (2022) 1 SCC 401*, the Hon’ble Supreme Court reiterated that the Adjudicating Authority’s jurisdiction is narrowly confined to ensuring compliance with statutory conditions and not to scrutinize the commercial aspects of the resolution plan approved by the CoC.
- g. In para-wise response, the respondent denied the contents of para 1 to 11 of the application as false and baseless except where they are matters of record. With respect to Paras 12 to 14, the Respondent states that IA No. 260/2023 was filed under Section 19(2) seeking cooperation from suspended directors, and was duly allowed on 01.05.2023. Paras 15 to 21 are denied for want of material particulars and documentation. It is reiterated that the subsidiaries’ valuation has no bearing on CIRP of the Corporate Debtor.
- h. The respondent/RP further denied the issues raised in para 22 to 30 of the application. It is reiterated that the relief sought regarding revaluation is untenable, especially after CoC’s approval of the Resolution Plan based on



existing valuations. The Applicant's request would essentially mean remanding the matter and reopening concluded proceedings. The contentions in Paras 31 to 36 are also refuted, particularly in light of the statutory bar under Section 18(1)(f) and the ratio of the Hon'ble Supreme Court in *Roma Unicorn (supra)*. Paras 37 to 45 are also denied as misleading, and it is emphasized that the CoC, after proper deliberation, has approved the Resolution Plan. It is categorically denied that the Resolution Professional failed to manage the assets of the Corporate Debtor.

- i. The statements in Paras 46 to 56 of application are denied for the reasons already addressed in the preliminary objections. These are nothing but reiterations of contentions which have already been refuted. Para 57, being the relief clause, warrants no specific response but is denied in its entirety as the reliefs prayed for are contrary to the statutory provisions and judicial dicta.
- j. In conclusion, the Respondent submitted that the Application is misconceived, legally untenable, and deserves to be dismissed with costs. It is stated that the entire Application is an attempt to interfere with the CoC's domain and delay the resolution process and asserted that the Applicant has failed to establish any procedural infirmity or statutory violation, and the Resolution Plan, having been approved by the CoC in exercise of its commercial wisdom, deserves to be approved without further delay.

5. Rejoinder filed by the Petitioner/Applicant:

The applicants filed a rejoinder dated 03.12.2024 stating:

- a. The Applicant denied all contentions, statements, and allegations in the said reply unless specifically admitted and reiterated all submissions made in its original Application. The Applicant sought to reserve the right to supplement or amend its submissions at an appropriate stage. It is clarified that the Application is not an attempt to challenge the commercial wisdom of the CoC rather to support and enable it by ensuring a fair, complete, and



accurate valuation of the Corporate Debtor's assets in order to achieve maximum recovery for all stakeholders.

- b. The valuation exercise conducted was fundamentally flawed and incomplete due to the non-cooperation of the Suspended Directors, who failed to furnish essential financial information despite the binding directions issued under Section 19(2) of the Code. This critical lapse was neither cured nor acted upon by the RP, who failed to initiate contempt proceedings or take effective steps to secure compliance. Consequently, the lack of financial data concerning the subsidiaries and step-down subsidiaries led to undervalued resolution plans being submitted by PRAs, thereby defeating the object of maximization of value.
- c. It was further submitted that the RP's own White Paper had acknowledged the potential value inherent in the subsidiaries and step-down subsidiaries, particularly noting the substantial investments around **INR 448 crores** made by the Corporate Debtor in those entities. The RP had also admitted that lack of essential data from the Suspended Directors had hindered proper valuation. However, in contradiction to this, the RP in his reply now seeks to discredit the need for such valuation. This inconsistency further reinforces the Applicant's contention that the valuation process was unreliable and must be revisited in the interest of fairness and value realization.
- d. The Applicant clarified that it does not claim the assets of the subsidiaries to be treated as part of the Corporate Debtor's direct assets. Instead, the Corporate Debtor's shareholding in these subsidiaries' forms part of its asset base and should have been appropriately valued. The RP's suggestion to the contrary is erroneous in law. As per Sections 18 and 25 of the IBC, the RP is under a statutory duty to take custody and control of all assets owned by the Corporate Debtor, including its shareholding in subsidiaries. A comprehensive valuation of these shares was necessary to properly reflect the Corporate Debtor's financial position.
- e. The consequences of the incomplete valuation are stark. **The resolution plan approved by the CoC offers a mere INR 51 crores against admitted claims of approximately INR 2,300 crores translating into a**



haircut of nearly 97% for creditors. This is directly linked to the limited information available to PRAs, which deterred meaningful bidding and prevented fair competition. It is a settled legal position that if a valuation adversely impacts stakeholder interests due to incomplete or flawed methodology, it must be re-examined and, if required, discarded.

- f. Several CoC meetings, specifically the 7th, 8th, 12th, 13th and 18th recorded the lack of cooperation by Suspended Directors, which repeatedly hindered the valuation exercise. The RP, despite being aware of such non-compliance, failed to act decisively or pursue enforcement of the 19(2) Order. The Valuer, too, observed that some subsidiaries, especially in Europe, held positive net worth, but accurate financial data was unavailable, and hence valuation remained incomplete.
- g. The prayer in the Application, therefore, was squarely aimed at rectifying the outcome of a flawed process. The Applicant is seeking a fresh and detailed valuation particularly of the Corporate Debtor's investments in subsidiaries and other valuable intangible assets so as to enable informed commercial decisions by the CoC, and to protect the rights of all creditors. This is well within the statutory mandate of the Code and in furtherance of its primary object: maximization of asset value.
- h. The Application thus is urged to be allowed and the Resolution Professional directed to undertake a fresh and complete valuation of the Corporate Debtor, factoring in its investments and shareholding in subsidiaries and step-down subsidiaries.

ANALYSIS:

- 6. We have heard the learned counsel for the Applicant and the Respondent/RP and perused the record in detail. The main issue before us is whether a fresh valuation, particularly of the Corporate Debtor's investments in subsidiaries and step-down subsidiaries, is warranted at this stage of the CIRP.
- 7. Upon thorough consideration it is culled that the Applicant's grievance is not directed towards the commercial wisdom of the CoC but towards the quality and completeness of information based on which such commercial wisdom was exercised. It is well settled that while judicial review of commercial wisdom is limited, such limitation does not preclude the Adjudicating



Authority from intervening where the statutory process leading up to that decision is materially flawed.

8. In the present case, the admitted position is that the Suspended Directors failed to provide financial information relating to the subsidiaries and step-down subsidiaries despite a binding order passed under Section 19(2) of the Code. The RP had himself projected that full data necessary for a comprehensive valuation of such subsidiaries was not obtained. In fact, the Valuer appointed by the CoC has acknowledged in his report that critical financial information was unavailable, and had to assign no value to subsidiaries for lack of data. This evidently vitiates the accuracy of the valuation exercise. The CoC itself had repeatedly voiced concern over the lack of financials, and the same is evidenced in the recorded minutes.

In the 12th CoC Meeting dated 13.09.2023,

“The Chairperson informed that for conducting the exercise of valuation of subsidiaries, financials were the basic document and lack of its availability was hindering the process. It was further stated that Hon'ble NCLT, Bengaluru Bench had vide Order dated 01.05.2023 directed the suspended board of directors to extend all assistance and co-operation to RP and requested to provide the same.

Continued non-adherence to the said Order would tantamount to contempt of Court, in which case the Chairperson proposed to take appropriate legal actions in consultation with the CoC members.”

9. The issue of non-availability of critical financial data relating to subsidiaries was not limited to isolated instances but recorded consistently across several CoC meetings.

In the 9th CoC Meeting held on 31.07.2023, it was recorded that the RP informed the CoC that “only partial information” regarding the foreign subsidiaries had been received, and reiterated that “the data available is insufficient to assess the value of investments made by the Corporate Debtor. The minutes of the 9th CoC Meeting dated 31.07.2023 are extracted below:



“Moreover the absence of information w.r.t. the subsidiaries and step-down subsidiaries due to which couldn't assign a value to these subsidiaries and step-down subsidiaries. Had the information been available, he could have enhanced the value of the Corporate Debtor. He further added that the valuation would have been different if the relevant information was available. Mr. Garg also added that in his proposal the entire Resolution Plan value shall be paid upfront to the Creditors and that he had also offered equity stake in the Corporate Debtor in addition to the stake in the new entity as he believed it was possible to turn around the Corporate Debtor and the Financial Creditors could benefit after the Corporate Debtor achieves desired profitability future.

The representative of HDFC inquired whether the Resolution Applicant will increase the plan value on receipt of information w.r.t. subsidiaries and step-down subsidiaries and whether he had considered the goodwill of the Corporate Debtor. To this Mr. Garg responded that he may consider improving the Resolution Plan value upon receipt of the requisite information of these subsidiaries. He further informed that he had not carried out valuation of goodwill of Corporate Debtor as based on his evaluation the FDA approval for the manufacturing facility had expired and needs to be renewed. However, he is hopeful that the old customers of the Corporate Debtor may contribute to revive the business opportunities with the Corporate Debtor. The CoC members then suggested that all these concerns as highlighted in the meeting shall be sent by way of email to the Resolution Applicant and that the Resolution Applicant can address suitably before the next round of discussions. The Resolution Applicant agreed with the same.”

10. This Tribunal also takes note of the detailed proceedings recorded in the **13th Meeting of the Committee of Creditors held on 06.10.2023**, wherein the Resolution Professional apprised the CoC that Mr. Somdas, one of the Suspended Directors, had assured during the 11th CoC meeting held on 23.08.2023 to provide audited and provisional financial statements of the subsidiaries by 28.08.2023. However, he failed to do so, initially citing power disconnection, and later, despite restoration of power on 12.09.2023, no



documents were provided. The RP further informed the CoC that multiple written reminders had been sent to Mr. Somdas and the erstwhile statutory auditors, but no cooperation was extended. Even in the 13th meeting, Mr. Somdas again cited personal health reasons and sought further time till 15.10.2023. This pattern of repeated assurances followed by non-compliance clearly reflects deliberate delay and non-cooperation, in breach of the binding order. The minutes of the 14th CoC meeting held on 18.10.2023 are extracted below:

“The representative DBS of enquired whether there were any liabilities w.r.t. the two European companies as only assets were shown in the report and the approximate realizable value for each company. To this, Mr. Ahuja replied that the liabilities of these companies were less than the assets and as such these companies had positive Net worth. He mentioned that some companies were active and were carrying on business and also presented a latest export/import report of one of the subsidiaries doing certain trade transactions. Further, based on the additional information from the Promoters, would it be possible to assign values to the same.

The representative SCB enquired whether Mr. Somdas, suspended Director, had provided any information subsidiaries on repeatedly as assured by him during the previous meetings.

To this the Chairperson responded that despite rigorous follow ups no information was forthcoming from him.”

11. We have also perused the minutes of the **15th Meeting of the CoC held on 02.11.2023**, wherein serious concerns were again raised regarding the lack of accurate and timely financial data in relation to the subsidiaries and step-down subsidiaries of the Corporate Debtor. The Representative of Standard Chartered Bank specifically questioned how value in such subsidiaries could be unlocked. The RP further admitted that the absence of subsidiary-related data had materially hampered the interest of potential Resolution Applicants during the first round of EOI, including the inability of marquee applicants to proceed further. During the said meeting, the RP and



his appointed Valuer explicitly sought cooperation from the suspended Director, Mr. Somdas, for submission of relevant financials, who again promised compliance but failed to act promptly. The minutes of the 15th CoC meeting are extracted below:

“The representative Standard of Chartered Bank (SCB) enquired how the value in the said subsidiaries could be unlocked. To this the Chairperson presented either of the options viz., change in the management/shareholders or appointing a local administrator by or calling for a fresh round of EoI, if agreed by the CoC members and sharing the valuation of subsidiaries with the potential bidders who can factor the same while submitting the Resolution Plan. He also highlighted that lack of availability of this data during first round of EOI has severely hampered the ability to explain the status of subsidiaries and value therein to the Final list of PRA's and which was one reason why some of the marquee PRA's could not move forward to submit a resolution plan.

The representative SCB took note of the same.

CA Madan Ahuja thereafter explained the rationale for valuation of subsidiaries arrived at by his firm. He stated that the products of subsidiaries were backed by requisite governmental approval for the current financial year, the subsidiaries were active and they had verified local presence etc.

The Chairperson thereafter urged Mr. Ahuja to seek the clarification from Mr. Somdas, suspended Board of Director who was also present in the meeting. To this, Mr. Ahuja requested Mr. Somdas to provide the financials of subsidiaries to conclude the report based on the authentic data. Mr. Somdas cited power issues which had prevented him earlier from responding to the requests of the Chairperson and his team members and once again assured to provide the same shortly. The Chairperson therefore requested Mr. Somdas to share the information latest by Monday, 06.11.2023.

CA Madan Ahuja also enquired from Mr. Somdas about approximate value attributable to the subsidiaries considering the present status of the



subsidiaries and step-down subsidiaries. To this, Mr. Somdas estimated that in his opinion and on a conservative basis the subsidiaries may fetch up to USD 5 Million.”

This proceeding only reinforces the Tribunal’s finding that despite being aware of such critical valuation gaps and repeated assurances by the suspended directors, the RP failed to take any enforcement or coercive measures under Section 19(2) of the Code. The failure to secure this data proactively undermined the CIRP’s integrity and impeded maximization of value.

12. We further note the RP’s own admission in the White Paper that substantial investments, amounting to approximately INR 448 crores, had been made by the Corporate Debtor in its subsidiaries and step-down subsidiaries. However, for CIRP purposes, Section 18(1)(f) of the Code expressly excludes the subsidiaries’ underlying assets from the “assets” defined therein, limiting the RP’s custody during resolution to the Corporate Debtor’s shareholding interests alone. While Section 36(3)(d) indeed includes such shareholding interests within the liquidation estate, this inclusion is triggered only upon the commencement of liquidation, not during the resolution phase. Therefore, any valuation exercise under CIRP must adhere to the statutory estate-stage distinction: the RP may commission a valuation of the Corporate Debtor’s equity shareholding in its subsidiaries and step-down subsidiaries as a financial security and intangible asset, but must not attempt to value or include the subsidiaries’ underlying assets until the liquidation stage.
13. While the explanation to Section 18(1)(f) excludes the *underlying assets* of subsidiaries from the CIRP estate of the Corporate Debtor, the Corporate Debtor’s *equity shareholding* in such subsidiaries is a distinct financial asset belonging to the Corporate Debtor itself. Such shareholding must therefore be valued as part of the Corporate Debtor’s asset base during CIRP. Section 36(3)(d) of the IBC 2016 considers shares held in subsidiaries as part of the liquidation estate. The Section 36(3)(d) of the Code is reproduced below:



36. (3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following: -

(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

14. Applying the same, the present valuation reports, which assign no value to equity investments in subsidiaries due to lack of information, cannot be relied upon without a fresh and complete assessment. The valuation of such equity holdings, being integral to the overall asset base of the Corporate Debtor, cannot be rendered nugatory merely on account of non-cooperation by the Suspended Directors.
15. This Tribunal notes with grave concern that despite repeated non-compliance by the Suspended Directors with the binding direction under Section 19(2) of the Code, the Resolution Professional did not initiate any proceedings for contempt nor did he take any steps for coercive enforcement. He also did not deem it necessary to approach this Authority to seek further directions for compliance. This inaction is particularly glaring considering that the representative of the Suspended Directors, Mr. Somdas was present in the 13th CoC meeting, and the RP could have used that opportunity to raise and pursue the issue. The failure to act cannot be justified merely on the plea that information was not forthcoming.
16. The IBC, 2016, imposes positive obligations upon the RP under Sections 18 and 25 to preserve and maximize the value of the assets of the Corporate Debtor, including its investments in subsidiaries. In this regard, the conduct of the RP falls short of the statutory mandate. It is not sufficient for the RP to passively record non-cooperation; proactive and legally sanctioned steps needed to be taken to enforce compliance with the orders of this Tribunal.
- 17. This failure to act has materially prejudiced the CIRP in the present matter. The inaction of the RP in the face of deliberate and continuing defiance of a binding Section 19(2) Order raises serious concerns about**



the diligence and responsibility expected from an insolvency professional under the scheme of the Code.

18. This Authority is of the considered view that the conduct of the RP warrants a reference to the IBBI for further scrutiny under its disciplinary framework. It is also pertinent to note that disciplinary proceedings are already pending against the same RP in another matter. This lends further credence to the need for regulatory intervention to examine whether the RP remains fit and proper to discharge duties and responsibilities under the Code. **In view of this, it is directed that a Copy of this Order be forwarded to the IBBI for necessary action.**
19. This Tribunal is also of the considered view that maximization of value is the cardinal objective of the Code, and any process tainted by incomplete or inaccurate valuation runs contrary to this object. The CoC must be afforded an opportunity to exercise its commercial wisdom based on complete and reliable financial information. It is only upon such foundation that a viable and just resolution plan can be formulated and approved.

DECISION:

20. Considering the above factual position, the minutes of the meeting recorded of the Various meetings of the COC, this Authority comes to the Conclusion that the non-consideration of Value of the Investments made in Subsidiaries and Stepdown subsidiaries has led to Incorrect Valuation of the Corporate Debtor and has materially prejudiced the CIRP process. Hence, in the interests of justice and in furtherance of the objectives of the IBC, 2016, the **I.A. No. 433 of 2024 is required to be allowed and We order accordingly.**
21. Before parting with the Order, We direct that
- (1) The RP to cause a fresh and independent valuation of the Corporate Debtor's equity shareholding in its subsidiaries and step-down subsidiaries, taking into account all available financial, legal, and market data, and in compliance with the provisions of Regulation 35 of the CIRP Regulations and Section 36(3)(d) of the Code;



(ii) The Suspended Directors to fully cooperate with the RP and the appointed valuers by providing all relevant documents, data, and clarifications as may be required, failing which, the RP is at liberty to file appropriate proceedings for contempt or coercive directions for enforcement of the earlier 19(2) Order.

-Sd-

**RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)**

-Sd-

**SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)**