

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

IA(I.B.C)/2321(PB)2023

In

CP (IB)/933(PB)/2019

Order under section 60(5) of the Insolvency and Bankruptcy Board Code 2016.

IN THE MATTER OF: IA(I.B.C)/2321(PB)2023

M/S INDO RAMA SYNTHETICS (INDIA) LIMITED

... APPLICANT

VERSUS

SUBHASH KUMAR KUNDRA
RESOLUTIONAL PROFESSIONAL
CLC INDUSTRIES LIMITED & ANR.

...RESPONDENT

IN

IN THE MATTER OF: CP (IB)/933(PB)/2019

EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED

....FINANCIAL CREDITOR

VERSUS

M/S CLC INDUSTRIES LIMITED

....CORPORATE DEBTOR

Order Pronounced On: 11.06.2026

CORAM:

**SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

Appearances:

For the Applicant : Mr. Siddhant Kant, Mr. Nikhil Mathur, Ms.
Shailee Basu, Advs

For the Respondents : Mr Karan Luthra, Mr. Piyush Tanvi, Advs.

ORDER

This application has been filed on 17.04.2023 under section 60(5) of the Insolvency and Bankruptcy Code, 2016. read with rule 11 of the National Company Law Tribunal Rules, 2016, with the following prayer:

- (a) Set aside the without jurisdiction decision of the Committee of Creditors of the Corporate Debtor rejecting the inclusion of the Occupational Charges for the housing colony for staff and workers of the Corporate Debtor located at Indo Rama Housing Colony No. 1 & 2, A-31, MIDC Industrial Area, Butibori, Nagpur Maharashtra as CIRP Costs;*
- (b) Direct the Resolution Professional of the Corporate Debtor to include the amounts payable towards the Occupational Charges for the housing colony for staff and workers of the Corporate Debtor located at Inda Rama Housing Colony No. 1 & 2, A-31, MIDC Industrial Area, Butibori, Nagpur Maharashtra as CIRP Costs and ensure payment of the same in priority in accordance with the mandate of Section 53 of the Code;*
- (c) Direct the Resolution Professional to release the Occupational Charges due to the Applicant (being a part of CIRP Costs of the Corporate Debtor), including recurring monthly costs incurred by the Applicant as deposited in the Escrow Account upon the successful completion of the CIR Process of the Corporate Debtor or upon the approval of the resolution plan by this Hon'ble Tribunal.*
- (d) Pass such other and further reliefs that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case.*

Submissions made by the Applicant:

- 2. The Applicant herein is the owner of housing colony located at Indo Rama Housing Colony No. 1 & 2, A31, MIDC Industrial Area, Butibori, Nagpur

Maharashtra (**Premises**). The housing society comprises of workers' quarters and staff quarters.

3. The said premises is being utilized by the Corporate Debtor (**CD**) for residential purpose of its workers and staff members during the corporate insolvency resolution process (**CIRP**).
4. The Applicant and Indo Rama Textiles Limited (**IRTL**), which later merged into CLC Industries Limited (**Erstwhile IRTL**) were demerged into two distinct entities by virtue of the approval of a scheme of arrangement by the Hon'ble High Court of Delhi by order dated 27.02.2003 in CP No. 04/2003 and by the Hon'ble High Court of Madhya Pradesh vide order dated 24.03.2003 in CP No. 29/2002. Vide the demerger a textile unit of CLC & Sons Pvt. Ltd was separated as "Apro Biochem & Er. Ltd. Post demerger, ownership over premises in question was retained by the Applicant, as per the scheme of demerger.
5. Despite above, the premises continued to be utilised by erstwhile IRTL and subsequently by the CD.
6. A memorandum of understanding dated 28.07.2005 was executed between the Applicant and erstwhile IRTL for sharing of the common facilities for a period of 5 years upon payment of actual costs by erstwhile IRTL to the Applicant.
7. Despite the ownership of the housing colony and common facilities being with the Claimant under the scheme of arrangement, the above was disputed by the Corporate Debtor (earlier known (IS Spentex Industries Limited) vide Company Application No. 762 of 2009 before the Hon'ble High Court of Delhi inter alia claiming ownership of the certain workers

Quarters and certain staff Quarters occupied by them in housing colony and common utilities. The Hon'ble High Court of Delhi vide its judgment dated 23 July 2012 disposed of the said application with the following directions:

7. *"In fact. upon reading the Scheme of Arrangement m its entirety, in particular Clauses 1.1 (vii), 3, 6, 24 alongwith the Schedules and map annexed to it, this Court has no hesitation in concluding that the Housing colony as well as common utilities were specifically agreed to be retained and owned by the respondent-IRSL. The properties, buildings and assets that there transferred to IRSL under the Scheme of Arrangement were specifically mentioned in its schedule 1 and 2."*

8. The above judgement dated 23 July 2012 was challenged by the Corporate Debtor (earlier known as Spentex Industries Limited) before the Division Bench of the Hon'ble High Court of Delhi vide Company Appeal bearing no. 85/2012. The Hon'ble High Court of Delhi (Division Bench) by virtue of its judgement dated 21 May 2013 was pleased to dismiss the Company Appeal filed by Spentex and also *inter-alia* held that the appeal lacked bonafides while imposing a cost of Rs. 50,000/- which were directed to be paid by Corporate Debtor towards the Claimant.
9. On account non-payment of the dues by the Corporate Debtor (earlier known as Spentex Industries Limited in terms of the Memorandum of Understanding dated 28 July 2005, the Claimant invoked the arbitration clause. The Ld. Arbitrator by virtue of an award dated 09.08.2012 while *inter alia* holding that the Claimant is the owner of the housing colony and

common facilities, and directed the Corporate Debtor (earlier, Spentex Industries Limited) to pay the due amounts to the Claimant.

10. The CD then known as Spentex Industries Limited, failed to abide by the terms of the 2005 MoU. Pursuant to failure disputes arose between the CD and the Applicant which further culminated in another settlement between the parties and was recorded into a memorandum of understanding dated 24.02.2015 (**2015 MoU**). Salient features of the 2015 are as follows:

- i. CD shall vacate the staff quarters (premises) within six months of this MoU and provide vacant possession within 3 years.
- ii. CD continues to pay on timely basis consolidated occupational charge at Rs.1,91,368/- (Rupees One Lakh Ninety One Thousand Three Sixty Eight) per month for 178 worker quarters and 36 staff quarters.
- iii. CD shall pay security charges to the Applicant on actual basis.
- iv. Electricity and water consumption will be charged on an actual basis.

11. Pursuant to the aforesaid terms of the Memorandum of Understanding, from the period from the date of the Memorandum of Understanding i.e., 24.02.2015 till March 2019, there were no outstanding dues payable by the Corporate Debtor towards the Claimant as the outstanding payables towards occupational charges were being set off through certain sale purchase transactions.

12. However, since April 2019, no such sale purchase transactions were entered into between the parties and therefore, debit notes raised towards occupational charges by the Claimant upon the Corporate Debtor.
13. Thus, the CD committed a default in payment from April 2019 onwards, and a sum of Rs. 58,76,513/- (Rupees Fifty-Eight Lakh Seventy-Six Thousand Five Hundred Thirteen only) became due and payable by the Corporate Debtor to the Applicant.
14. In the meantime, the CIRP with respect to the Corporate Debtor commenced vide order dated 03.01.2020 passed by the Adjudicating Authority (**AA**). The Applicant filed a claim in Form F dated 26.05.2020 for INR 58,76,513/- (Rupees Fifty-Eight Lakh Seventy-Six Thousand Five Hundred Thirteen only) towards Occupational Charges with respect to the workers' and staff quarters owned by the Claimant and being utilized by the workmen of the CD for the period starting from April 2019. Summary of claim is as follows:

DATE OF DEBIT NOTE	PERIOD FOR WHICH PAYMENT IS DUE	AMOUNT (IN RS.)
28.05.2019	April 2019	6,31,955/-

24.06.2019	May 2019	6,25,116/-
17.07.2019	June 2019	6,81,301/-
19.08.2019	July 2019	6,72,468/-
25.09.2019	August 2019	6,58,296/-
30.10.2019	September 2019	8,49,113/-
22.11.2019	October 2019	6,85,708/-
06.01.2020	November 2019	6,29,615/-
21.01.2020	December 2019	6,18,182/-

Further, Applicant also wrote that the Premises should not be included within the assets of the Corporate Debtor for the purposes of the CIRP and dues payable by the CD to Applicant for duration since commencement of the CIRP, must be treated as CIRP Cost.

15. Pursuant to the above, an application bearing IA No. 2334 of 2021 was filed by the Applicant herein. The Application was disposed by this AA vide order dated vide order dated 03.02.2023. Relevant portion of the order dated 03.02.2023 reads as follows:

This application has been filed for seeking following reliefs:

“a. Pass an order directing the Resolution Professional of the Corporate Debtor to ensure that the amounts payable under the debit notes issued by the Applicant towards occupancy, electricity, water and security charges for the housing colony for staff and workers of the Corporate

Debtor located at Indo Rama Housing Colony No. 1 & 2, A-31, MIDC Industrial Area, Butibori, Nagpur Maharashtra are a part of the CIRP Costs in terms of Section 5(13) of the Code;

b. Pass an order setting aside the without jurisdiction decision of the Committee of Creditors to not include the amounts payable under the debit notes issued by the Applicant towards occupancy, electricity, water and security charges for the housing colony for staff and workers of the Corporate Debtor located at Indo Rama Housing Colony No. 1 & 2, A-31, MIDC Industrial Area, Butibori, Nagpur Maharashtra as a part of the CIRP Costs in terms of Section 5(13) of the Code;

c. Pass an order directing the Resolution Professional to confirm that the housing colony for staff and workers of the Corporate Debtor located at Indo Rama Housing Colony No. 1 & 2, A-31, MIDC Industrial Area, Butibori, Nagpur Maharashtra has not been included as an asset of the Corporate Debtor for the purposes of the CIR Process of the Corporate Debtor;

d. Pass an order directing the Resolution Professional to provide a vacant and peaceful handover of the housing colony for staff and workers of the Corporate Debtor located at Indo Rama Housing Colony No. 1 & 2, A-31, MIDC Industrial Area, Butibori, Nagpur Maharashtra to the Applicant upon the conclusion of the CIR Process of the Corporate Debtor;

e. Pass an order directing the Resolution Professional to accept the entire claim of the Applicant amounting to Rs. 58,76,513/- (Rupees Fifty Eight Lakh Seventy Six Thousand Five Hundred Thirteen);

f. Pass such other and further reliefs that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case”

With respect to prayers 'c & d', in terms of the reply filed by the RP as stated in para 6(m) (at page 12) and in accordance with the law, the **Prayers "c & d" are hereby allowed.**

With respect to prayer 'e', in terms of the reply filed by the RP as stated in para 6(k) (at page 12) and in accordance with law, the **Prayer "e" is hereby allowed.**

With respect to prayers 'a & b', all the amounts payable in terms of the said prayers will be kept separately in an interest-bearing escrow account to be maintained with the Corporate Debtor in State Bank of India, Shashti Bhawan, New Delhi - 110001.

In this view of the matter, IA-2334/2021 stands **disposed of** in the above terms with the liberty to file a fresh application in relation to prayers 'a & b' with more clarity.

Pursuant to the same, total claim has been admitted by the RP in full. However, the RP failed to either accept, acknowledge or reject the claim of the Applicant with respect to treatment of charges due and payable by the CD to Applicant during CIRP as the CIRP Cost.

16. Resolution Professional had preferred an appeal bearing CA(AT)(Ins) No. 458/2023 before the Hon'ble National Company Law Appellate Tribunal (**NCLAT**). The Hon'ble NCLAT has vide order dated 21.04.2023 refused to interfere with the order of this AA.
17. The RP only after a period of approximately one year informed the Applicant vide email dated 17.05.2021 that it's request to treat the Occupational Charges payable for CIRP period by the Corporate Debtor to the Applicant as a part of CIRP Costs had been rejected by the Committee of Creditors.
18. It has been submitted that there is no reasoning behind the above rejection to pay the occupation charges incurred during CIRP as CIRP cost

to the Applicant. The Committee of Creditors has wrongly assumed the a power to determine the costs as CIRP Costs.

19. Essential services such as providing quarters, electricity, water & Security to the workers and staff of the Corporate Debtor is critical to ensure that the Corporate Debtor continues as a going concern and therefore, the Occupational Charges for the usage of the Premises fall squarely within the CIRP Costs.
20. The current state of affairs regarding the dispute are as follows:
 - a. The Premises is under the ownership of the Applicant and is being utilised by the Corporate Debtor
 - b. The obligation to pay the occupational charges for the Premises in terms of the 2015 MoU is on the Corporate Debtor
 - c. The 2015 MoU continues to be in operation till the vacant possession of the Premises is given by the Corporate Debtor to the Applicant.
 - d. The Resolution Professional could not get the Premises vacated inter alia on account of the fact that during the CIR Process, the Corporate Debtor is required to remain as a going concern and removing the workers / employees from the Premises would not be in consonance with the spirit of the Code.
21. Hence, this Application has been filed seeking directions from this AA to release the amount due and payable to the Applicant (including recurring monthly costs incurred by the Applicant during the CIRP) and held in an Escrow Account.

22. The Applicant in support of the prayer has relied upon the judgment of the Hon'ble NCLAT in the matter of *Prerna Singh. V Committee Of Creditors M/s Xalta Food And Beverages Pvt. Ltd.*, Contempt Case (At) No. 03 Of 2020 in Company Appeal (AT) (Insolvency) No. 104 Of 2019, to submit that a lessor is entitled to recover amounts towards rent which have been affected on account of moratorium as part of CIRP costs in Section 5(13)(e) of the Code.

Submissions made by the Respondent No. 1 – RP

23. In the housing society in question, there are total 178 workers quarters and 36 staff quarters. In terms of the claim form and the documents attached therewith and as informed to the Applicant by the executives of the Corporate Debtor, the Corporate Debtor has not vacated 34 Staff Quarters and 167 Workers Quarters till date and are under possession of the staff and workers of the Corporate Debtor.

24. As per 2015 MoU, the CD agreed to start vacating the Staff Quarters within 6 months from the date of execution of the said MOU and it was agreed that the Corporate Debtor shall complete the same within a period of 3 years. So far as Workers Quarters are concerned, the CD shall provide a mutually agreed action plan within 6 months from the execution of MoU. Further an addendum to the MoU was executed on 14.04.2015.

25. The CD and Applicant did not decide upon any action plan for vacation of the premises.

26. Further as per the 2015 MoU CD had agreed to pay occupation charges until vacant possession of staff and worker quarters are handed over to the Applicant.
27. CD had been adjusting occupational charges, water and security charges, of unvacated quarters with sale and purchase transactions between the parties.
28. The Applicant has raised debit notes for the month of April to December 2019.
29. Subsequently also debit notes were raised along with the representation and occupation charges with effect from January 2020 to be treated as CIRP cost.
30. The claim to the tune of INR 58,76,513/- was fully admitted pursuant to directions received from this AA. However, so far as claim for CIRP cost is concerned, since the plants of CD were not operational either before the CIRP commencement or thereafter, no cost was incurred to run the CD as a going concern. Since it is another cost requiring approval from the CoC, the agenda was placed before the CoC in 11th meeting convened on 08.02.2021 wherein proposal to treat the admitted dues of the CD as CIRP cost was rejected. The decision of CoC was communicated to the Applicant vide email dated 17.05.2021.
31. Since, Resolution Plan in the meantime was approved by this AA, monitoring committee has kept aside the requisite amount from the resolution plan value in a separate escrow account maintained with State Bank of India till disposal of the present application.

32. Further, it has been submitted that the RP has only performed his duty in seeking approval of CoC who shall ratify the CIRP Cost.
33. Furthermore, first explanation to section 14 of the IBC only grants benefit to dues on account of a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, during CIRP and as such does not cover any dues to a 3rd private party, which has been consciously omitted.
34. Thus in view of the above, it has been pleaded that dues payable by the CD to Applicant for a period during CIRP is to be treated as claim on account of operational debt only and not as CIRP cost.

Submissions made on behalf of Respondent No. 2 - CoC

35. Respondent No. 2 – CoC has adopted the reply made on behalf of the Resolution Professional as above. It has been submitted that the plants of the CD were not operational and therefore the dues cannot be considered as CIRP cost.

Findings and Analysis

36. Heard Ld. Senior Counsel appearing for the Applicant and Ld. Counsel for the Respondents.
37. Written Submission have been filed on behalf of the Applicant on 14.04.2026. A composite written submission has been filed by the

Respondent No. 1 on 01.05.2026. Additional Written Submissions has been filed by Respondent No. 2 on 17.04.2026.

38. Relevant portion of 2015 MoU is extracted hereinafter:

2. Post settlement obligation of Spentex:

- a. Spentex shall start to vacate the Staff Quarters within 6 months from the date of execution of this MoU and shall provide vacant possession immediately thereafter, as and when any Staff Quarter is vacated. Further, Spentex shall complete the vacant possession of the Staff Quarters within a period of 3 years. In the case of

Workers Quarters, Spentex shall provide mutually agreed action plan within a period of six months from the execution of this MoU and shall ensure the peaceful vacant possession as per plan.

Subject to the terms of vacation of quarters (staff and workers), Spentex shall continue to pay on timely basis the consolidated occupational charges at the monthly rate of Rs.1,91,368/- (Rupees One Lac Ninety One Thousand Three Hundred and Sixty Eight Only) for 178 workers Quarters and 36 staff Quarters as per the detailed summary attached as Annexure-'C'. However, aforesaid amount shall be reduced proportionately for the quarters for which the vacant possession has been handed over to Indo Rama from time to time.

Security charges shall be paid by Spentex to Indo Rama on actual basis.

Electricity and water consumption will be charged on actual consumption basis. Electricity will be charged as per MSEB/Power Exchange Rate, without giving any free electricity units. Further, Indo Rama shall ensure to replace faulty electricity meters, if any, from time to time.

Similarly, water will be charged on actual consumption basis as per municipal rate. Spentex shall install water meters in all quarters occupied by them. Till the time the new meters are installed by Spentex (within a maximum period of 3 months), the water consumption shall be charged at the existing municipal rate presently in-practice between the parties after giving a benefit of 20% discount towards club house & gardening.

...

5. That the present MoU is being executed to record the understanding within which of the parties that they have decided to settle their dispute out of court and same has been arrived with sole motive of promoting their business interest and mitigate their further legal expenses however settlement is without prejudice to the respective contentions of the parties in their respective legal cases or respective legal defenses.

39. It is an admitted case that as per above arrangement, CD neither handed over the vacant possession nor paid the complete dues for usage of the premises. Further, usage of the premises by staff and workers of the CD continued during CIRP. It is an admitted obligation that the CD has to return the vacant premises once CIRP comes to an end is admitted and the same can be derived from the reply filed by the RP in IA-2334/2021, relevant portion of which is extracted below:

d. That it is not denied that the Applicant has the right to take possession of the quarters. However, the action plan for vacating the workers quarters was not made available by the Applicant in terms of the said MOU. It is further submitted that post approval of the Resolution Plan, the moratorium under Section 14 of the Code shall cease to have effect; and

e. With regard to the claim, it has been submitted that the total claim of the Applicant was partially rejected with an amount of Rs. 5,87,552/- (Rupees Five Lakh Eighty Seven Thousand Five Hundred Fifty Two) as per the accounting data made available by the Corporate

Debtor. It is submitted that the same has been reverified, and I am willing to admit the entire claim amount with the permission of this Hon'ble Tribunal.

40. The Applicant has raised a contention at earlier occasion that the Applicant ought to have presented with a plan for vacation of the premises. This contention cannot be accepted for a reason that 2015 MoU categorically casts the burden for vacation of premises upon the CD (earlier Spentex), as also extracted above.
41. The Resolution Professional vide email dated 17.05.2021 refused to accept the Applicant's dues as CIRP cost on the ground that CoC has rejected the proposal. The email is extracted hereinafter:

From: CLC Ind (Primus) <clc@primusresolutions.in>
Sent: Monday, 17 May 2021 7:50 PM
To: Ashish Sindhu
Cc: Vishal K Sharma; Kant, Siddhant; sk kundra; Honey Satpal
Subject: Re: Provision to be made in insolvency resolution process costs in the CIR Process of the Corporate Debtor

Dear Sir,

This is in reference to your below mail with respect to debit notes raised on the Corporate Debtor for Housing Colony/Staff and Workers Quarters as well as common utilities located at Indo Rama Housing Colony No. 1 & 2, A-31, MIDC Industrial Area, Butibori, Nagpur, Maharashtra.
In respect to the aforesaid, please note that the agenda to include the cost of housing facilities located at the subject property in the Corporate Insolvency Resolution Process was placed for approval by the Committee of Creditors and the same has been rejected.
This is for your information.

42. Further in view of order was passed by this AA on 03.02.2023 in IA-2334/2021 as noted in submissions made by the Applicant above, there is no doubt and it remains undisputed that the premises in question belongs to the Applicant.
43. Therefore, the issue to be adjudicated by us is that whether dues of the Applicant payable by the CD during CIRP towards occupation charges of the premises is to be treated as CIRP Cost or not.
44. It is pertinent to highlight stand of the CoC recorded in the minutes of 11th CoC meeting convened on 08.02.2021 and the same is extracted hereinafter:

"The Chairperson apprised the CoC that Indo Rama Synthetic India Private Limited (Indo Rama) has submitted claim in Form-F towards the occupancy charges in the housing facilities in the colony 1 & 2 of Butibori Plant, Nagpur along with electricity, water and security charges based on an MOU dated 24.02.2015 between Indo Rama and Corporate Debtor wherein the Corporate Debtor had agreed to continue to pay occupational charges till the vacant possession is handed over to Indo Rama. The Corporate Debtor was required to vacate the housing facility within a period of three years and in default, the IRSL could take a legal action. The Chairperson apprised that the CD was in default however, no legal action has been taken by IRSL till date against CD.

The Chairman further stated that the CoC was apprised of the cost of the occupation of the housing facility in the 2nd meeting of CoC. The Chairperson further apprised that IRSL Claim has been admitted post verification. Indo Rama has been raising debit notes since January, 2020 towards the dues of occupancy of 34 Staff Quarters and 167 Workers

Quarters, water, electricity and security charges per month. Indo Rama has claimed the charges, getting due from commencement of CIRP, to form part of CIRP Cost and stated that they are not taking any legal action since the CD is required to remain a going concern during the period of CIRP. He further informed that Indo Rama has raised debit notes for the same belatedly.

The Chairperson stated that, in terms of Section 5(13) of the Code read with Regulation 31(e) of the IBBI (CIRP) Regulations, 2016, placed the debit notes raised for the period commencing from January 3rd, 2020 till date (within the CIRP Period) to take necessary approval from the COC if to include the same as part of the CIRP cost in order to pay in priority to the other debts.

The representative of ARCIL asked Mr. Mukund Choudhary, member of the suspended board to throw some light on the agreement entered between Indo Rama and CD. Mr. Mukund Choudhary, member of the suspended board said that in the year 2006 all the workers/ employees (99% consist majorly workers) were staying in the township which was owned by Indo Rama Synthetics. Thereafter, the employees were transferred to another company called Indo Rama Textiles with an understanding and an agreement between by the companies i.e., Indo Rama Synthetics and Indo Rama Textiles that these workers will continue to enjoy all the facilities thereafter. As on now, the quarters have been occupied by the workers not by the CD.

The question arises who is liable to pay the electricity charges and rent. The Corporate Debtor used to recover the expenses from the workers who used to stay in the colony and then make the payment to the

Indo Rama every month according to the agreement.
The legal counsel to RP read the operative part of the
Agreement and opined that the obligation to pay the
occupational charges in terms of the Agreement is on
CD and not the workers/ employees. Secondly, the
Agreement is not expired till the vacant possession is
given.

The Representative of ARCIL questioned the RP as
to why this issue wasn't brought to the notice of CoC
Members earlier except for some passing reference
in the 2nd CoC Meeting. The Chairperson stated that
in the 2nd CoC Meeting held on February 20th,
2020, a proper per month computation table stating
the CIRP Cost at an average that is getting accrued
was presented before the CoC Members that
included the details of housing facilities however,
received no instructions from COC.

The representative of ARCIL also questioned as to why RP hasn't got the quarters vacated till date from the workers. The Chairperson stated that while he had taken handover of the plant, he had faced strong and aggressive resilience from the workers staying at the townships and after series of meetings and with the help of local police they could enter the premises; it would have been practically impossible to get the same vacated from such workers considering we didn't pay any salaries/ wages after persistent requests from them during COVID-19 pandemic. He added that otherwise also, the CD is required to remain a going concern and removing the workers/ employees from the housing facilities at the plant would have not be in consonance of the spirit of the Code.

The representative of Edelweiss stated that it would have been difficult to vacate the premises but some notice could have been sent to them.

The CoC members present at the meeting stated that these expenses cannot be part of the CIRP Cost. ”

45. The above makes it clear that vacant possession of housing society was neither handed over to the Applicant nor dues were paid to the Applicant. Further no reasons have been recorded for not treating the dues of the Applicant as CIRP Cost, while it is an admitted case that dues are payable

to the Applicant as per the 2015 MoU, as possession of staff and workers' quarters have not been handed over to the Applicant.

46. CRP cost has been defined under section 5(13), which is further magnified by Regulation 31 of the CIRP Regulations 2016.
47. Section 5(13) has been reproduced below:

(13) “insolvency resolution process costs” means—

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;

(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and

(e) any other costs as may be specified by the Board;

48. The definition is inclusive of a cost directly linked to running the CD as a going concern.
49. In the present case, the facts are undisputed that housing colony in question is being owned by the Applicant, however that remained in possession of CD despite settlement agreement and subsequent 2015 MoU. CD has admittedly failed to deliver the possession and also payments in lieu of usage of the housing colony as per the 2015 MoU. The same also has been acknowledged by the CoC in its 11th meeting as discussed above. Further, the CoC discussion above makes it clear that the Applicant despite having a legal remedy as per the 2015 MoU did not initiate the same, having due regard to the CIRP and the necessity to maintain the CD as a going concern. In this context, it is mandatory to quote what section 14(1) mandates:

Section 14: Moratorium.

**14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—*

(a) the institutionJ2 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.

Clause (d) of section 14(1) expressly bars the Applicant from initiating any action for recovery of the property. For this reason, the Applicant could not invoke remedy available to him for breach of 2015 MoU.

50. Only after receiving a refusal on the treatment of dues as CIRP Cost, the Applicant had chosen to file an application bearing IA No. 2334 of 2021 and subsequently the present Application. The fact at hand cumulatively supports the case of the Applicant that Applicant was prejudicially affected because of CIRP and moratorium in force. The Applicant has in its bona

fides not invoked legal remedies as per 2015 MoU and as such positively contributed towards maintaining the CD as a going concern by allowing the premises to be utilized by the CD during CIRP, however it ought to have been paid in lieu thereof in accordance with the 2015 MoU. The payment towards occupation of such premises by the CD during CIRP thus amounts to CIRP cost.

51. It is recorded in the minutes of the CoC that the legal counsel to the RP read the operative part of the agreement and opined that the obligation to pay the occupation charges, in terms of the agreement, was upon the Corporate Debtor and not upon the workers or employees. It was further recorded that the agreement would continue to remain valid until vacant possession of the premises was handed over.
52. Further, the minutes also record that since the salaries and wages of the workers had not been paid despite persistent requests during the COVID-19 pandemic, the RP considered it necessary to allow the workers to continue occupying the quarters so as to maintain the Corporate Debtor as a going concern. Removal of the workers and employees from the housing facility situated at the plant would not have been in consonance with the spirit of the Code.
53. Therefore, it is evident that during the CIRP period, the RP never offered to hand back vacant and peaceful possession of the premises to the Applicant and, on the contrary, continued to occupy and utilise the same for maintaining the Corporate Debtor as a going concern. The property, therefore, continued to remain in possession and use of the Corporate Debtor.

54. Further, no material has been produced by the Respondent to demonstrate that the RP had taken any steps whatsoever to hand over vacant and peaceful possession of the premises. Since the property continued to be utilised by the Corporate Debtor during CIRP, the occupation charges/rent are liable to be paid.
55. The essential supplies and services included electricity, water, and other incidental expenses. The workers continued to reside in the quarters, and the debit notes raised by the Applicant pertained not only to rent but also to electricity, water, and other related charges. Admittedly, the RP never directed the workers to vacate the premises, as the same was necessary for keeping the Corporate Debtor as a going concern. Even as on date, the premises continue to remain in possession of the Corporate Debtor.
56. Hence, the claim of the Applicant is a legitimate and admitted claim. The only issue that remains for consideration is whether the expenses pertaining to the CIRP period are to be treated as CIRP costs. In our considered view, since it is an admitted position, as recorded in the CoC meetings, that the premises were continuously used by the Corporate Debtor during CIRP and that the RP did not take any steps to return vacant possession, coupled with the admitted fact that the agreement had not expired until vacant possession was handed over, the Applicant is fully entitled to claim the said amounts as CIRP costs. Merely because the CoC did not approve the same cannot defeat the legitimate entitlement of the Applicant, particularly when the ultimate beneficiary of such continued occupation was the Corporate Debtor itself. Accordingly, such costs cannot be denied recognition as CIRP costs.

57. In view of the above, we are inclined to allow the prayer made by the Applicant. We direct Resolution Professional to treat the admitted dues of the Applicant arising on account of usage of premises for staff and workers' quarters (being Indo Rama Housing Colony number 1 & 2, A-31, MIDC Industrial Area, Butibori, Nagpur Maharashtra) during CIRP, as CIRP cost, and pay to the Applicant out of the escrow account maintained with the SBI, Shashti Bhawan, New Delhi - 110001.

IA(I.B.C)/2321/2023 is ALLOWED to an extent of directions given above.

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)