



**V SURANA & SURANA AND UPES SCHOOL OF LAW  
NATIONAL INSOLVENCY LAW MOOT COURT  
COMPETITION, 2022.**

**14<sup>th</sup> - 16<sup>th</sup> October, 2022**



**Surana & Surana  
International Attorneys**



**UPES School of Law  
Dehradun  
Virtual Rounds  
(Online)**

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**MOOT PROPOSITION**

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## MOOT PROPOSITION

1. Venus Ventures Limited (“VVL”), is a listed company incorporated under the provisions of the Companies Act, 1956 and has its registered office in Mumbai, Maharashtra. VVL is engaged in the business of developing infrastructure projects such as highways, airports, roads, tunnels, ports, bridges, renewable and non-renewable energy projects.
2. Initially, on 24 September 1980, VVL was incorporated as a private limited company by its promoters i.e. Mr. Sanjay Malhotra and Mr. Mahesh Saxena (“Promoters”). After its incorporation, between 1980 - 1990, VVL participated in various tender processes conducted by various State Governments and the Central Government for development of highways and roads and was awarded contracts spanning across different states of the country. VVL was able to complete the development of all these contracts efficiently on time, owing to the efficient management of VVL by its Promoters.
3. Later, in the year 1991, with the introduction of economic reforms (i.e. liberalisation, globalisation and privatisation) in the country, leading to influx of foreign investments in the infrastructure sector, VVL’s potential to expand its business increased drastically. Capitalising on such a potential, in the year 1992, VVL got converted from private limited company to a public company and subsequently a public listed company with its shares being listed on the Bombay Stock Exchange (“BSE”) and National Stock Exchange (“NSE”).
4. With VVL’s conversion from a private limited company to a public listed company and due to its strong business credentials and bright business projections, the subscription to VVL’s shares on BSE and NSE by the public shareholders, increased drastically. Resultantly, amidst strong support of public shareholders and impressive business credentials, VVL ventured to

expand its business by undertaking development of bigger projects such as development of ports, airports and thermal power projects, etc.

5. In the year 1998, VVL incorporated two special purpose vehicles to channelise its business operations: (i) Atlanta Infrastructure Private Limited (“**AIPL**”) and (ii) Crescent Infrastructure Private Limited (“**CIPL**”). Both AIPL and CIPL had their registered office in Mumbai, Maharashtra. VVL incorporated: (i) AIPL to undertake development of infrastructure projects in relation to roads, highways and bridges and (ii) CIPL to undertake development of infrastructure projects related to airports, ports, renewable and non-renewable energy projects.
6. Between 2000-2015, the business of AIPL and CIRPL flourished, and both these companies had generated substantial profits. AIPL and CIPL utilised certain portions of their respective profits to purchase 500 acres of land (“**AIPL Land**”) and 550 acres of land (“**CIPL Land**”), respectively, in Alibaug (Maharashtra).
7. Thereafter, in January 2015, AIPL participated in the e-tender process conducted by the National Highways Authority of India (“**NHAI**”) for development of 800-km stretch of national highway passing through the States of Maharashtra, Madhya Pradesh, Gujarat and Rajasthan (“**Road Project**”). AIPL proposed a bid amount of INR 2000 crores for the development of the Road Project which was accepted by NHAI. Later, a concession agreement dated 1 February 2015 was executed between NHAI and AIPL in relation to development of the Road Project. Subsequently, to meet the project cost for development of the Road Project, AIPL on 4 February 2015 availed a term loan facility of INR 1500 crores (“**AIPL Facility**”) from the following consortium of lenders (“**AIPL Lenders**”) and created

security for their benefit in favour of Axis Trusteeship Services Limited (“**Axis Trusteeship**”) which was appointed by AIPL Lenders as their trustee:

<b>Lenders</b>	<b>Amount (INR Crores)</b>	<b>Security created in favour of Axis Trusteeship for the benefit of the CIPL Lenders</b>
IDBI Bank	1000	<ul style="list-style-type: none"> <li>• First ranking pari-passu charge all the current assets and receivables of AIPL.</li> <li>• First ranking pledge over the shareholding of VVL in AIPL.</li> </ul> <p>(collectively referred to as the “<b>AIPL Security</b>”)</p> <p><i>Note: Pertinently, no charge was created over any of the fixed assets of AIPL except the AIPL Land as stated below.</i></p>
Punjab National Bank	200	
Axis Bank	200	
UCO Bank	100	
<b>Total</b>	<b>1500</b>	

8. In addition to the AIPL Security and for the comfort of the AIPL Lenders, VVL executed a sponsor support undertaking dated 4 February 2015 in favour of Axis Trusteeship acting for the benefit of AIPL Lenders (“**Sponsor Support Undertaking**”). The relevant extract of the Sponsor Support Undertaking reads as follows:

*“In the event AIPL fails to discharge its payment obligations towards its creditors, VVL shall arrange the infusion of funds into AIPL so that AIPL is in a position to meet its payment obligations.”*

9. Separately, on 4 February 2015, AIPL also availed a term loan of INR 500 Crores from the Canara Bank and on the same date created an exclusive security charge (*by registered mortgage*) over the AIPL Land in favour of the Canara Bank.
  
10. Later, in September 2016, VLL acting through CIPL participated in the e-tender process conducted by the Airports Authority of India (“AAI”) for development of the airport at Ujjain, Madhya Pradesh (“**Airport Project**”) and submitted a bid of INR 5000 Crores. The bid submitted by CIPL being the highest was accepted by AAI and tender was awarded in CIPL’s favour for the development of the Airport Project. To meet the cost of developing the Airport Project, CIPL on 1 October 2016 took term loan of INR 4000 Crores (“**CIPL Facility**”) from the below consortium of lenders (“**CIPL Lenders**”) and created security for their benefit in favour of IDBI Trusteeship Services Limited (“**IDBI Trusteeship**”) which was appointed by CIPL Lenders as their trustee:

Lenders	Amount (INR Crores)	Security created in favour of IDBI Trusteeship for the benefit of the CIPL Lenders
Bank of Maharashtra	2000	

ICICI Bank	500	<ul style="list-style-type: none"> <li>• First ranking pari-passu charge all the current assets and receivables of CIPL;</li> <li>• First ranking pari-passu charge over all the current and fixed assets of VVL; and</li> <li>• First ranking pledge over the shareholding of VVL in CIPL.</li> </ul>
Axis Bank	500	
UCO Bank	500	
Bank of India	500	
Total	4000	

11. Separately, on 1 October 2016, CIPL availed a separate term loan facility of INR 1000 Crores (“**SBI Facility**”) exclusively from the State Bank of India (“**SBI**”) and on the same date created an exclusive security charge (*by registered mortgage*) over the CIPL Land in favour of the SBI.

12. Till January 2019, both AIPL and CIPL regularly repaid their dues in relation to the AIPL Facility and CIPL Facility. Later, due to change in the business conditions, increase in the project costs and certain external factors, both AIPL and CIPL, started experiencing financial stress. The financial condition of AIPL and CIPL worsened due to Covid-19 and the restrictions created thereto. Resultantly, both AIPL and CIPL failed to generate cashflows from their existing projects to make repayment of their respective repayment obligations arising out of AIPL Facility and CIPL Facility. Further, VVL also failed to infuse necessary funds in AIPL so as to improve the position of AIPL to make repayments to the AIPL Creditors.

13. Accordingly, the AIPL Lenders acting through Axis Trusteeship on 14 January 2021 filed an application under Section 7 of the IBC before the National Company Law Tribunal, Mumbai (“**NCLT Mumbai**”) for initiation of corporate insolvency resolution process (“**CIRP**”) against VVL for failing to infuse necessary funds in the AIPL (“**VVL CIRP Application**”). It was the case of AIPL Lenders, that the Sponsor Support Undertaking is a ‘guarantee’ and should be treated as a ‘financial debt’ as per Section 5(8)(i) of the IBC. However, VVL submitted that: (a) the obligation of VVL under the Sponsor Support Undertaking is not a guarantee; and (b) even in the event it is a guarantee, VVL is otherwise a solvent company which has been generating positive EBITDA, and it is not in the interest of any of its stakeholders to initiate the CIRP of VVL.
14. The NCLT Mumbai vide order dated 20 January 2021 rejected the VVL CIRP Application and held that the Sponsor Support Undertaking is not a guarantee under Section 126 of the Contract Act, 1872 (“**NCLT VVL Order**”). Later, Axis Trusteeship filed an appeal before the National Company Law Appellate Tribunal, New Delhi (“**NCLAT**”) against the NCLT VVL Order. Later, the NCLAT vide order dated 1 February 2021 dismissed the appeal and upheld the NCLT VVL Order (“**NCLAT VVL Order**”). Subsequently, Axis Trusteeship filed an appeal before the Supreme Court against the NCLAT VVL Order (“**VVL SC Litigation**”).
15. At the same time, on 14 January 2021, AIPL Lenders acting through Axis Trusteeship also filed an application before the NCLT Mumbai under Section 7 of the IBC for initiation of the CIRP against the AIPL (“**AIPL CIRP Application**”). The NCLT Mumbai vide order dated 28 January 2021 accepted the AIPL CIRP Application and initiated CIRP against AIPL.

16. Later, the CIPL Lenders acting through IDBI Trusteeship filed an application on 25 January 2021 under Section 7 of the IBC before the NCLT Mumbai for initiation of the CIRP against the CIPL (“**CIPL CIRP Application**”). The NCLT Mumbai vide order dated 2 February 2021 accepted the CIPL CIRP Application and initiated CIRP against CIPL.
17. The details of the events following the commencement of CIRP against AIPL and CIPL are set out below.

#### **A. CIRP of AIPL**

18. Pursuant to initiation of CIRP against AIPL, Mr. Kamal Taneja, was appointed as the interim resolution professional of AIPL (“**AIPL IRP**”). On 30 January 2021, the IRP issued a public announcement in terms of Section 15 of the IBC, calling the creditors of the AIPL (“**AIPL Creditors**”) to submit their claims against AIPL. Subsequently, basis the claim received from the AIPL Creditors; the AIPL IRP constituted the committee of creditors (“**AIPL CoC**”) in terms of Section 22 of the IBC. In the first meeting of the AIPL CoC, held on 27 February 2021, Mr. Kamal Taneja was confirmed as the resolution professional (“**AIPL RP**”) as per Section 22(2) of the IBC.
19. Thereafter, on 16 April 2021, the AIPL RP issued a Form- G and invitation for expression of interest under Regulation 36A of the IBBI (Insolvency Resolution Process for Corporate Persons), 2016 (“**CIRP Regulations**”), for inviting prospective resolution applicants to submit their expression of interest for submitting a resolution plan for AIPL, on or before 3 May 2021. Based on the expressions of interest received, AIPL RP shortlisted 10 (ten) entities in the final list of eligible prospective resolution applicants (“**PRAs**”) in terms of Regulation 36A of the CIRP Regulations (“**PRAs**”). Further, pursuant to executing the requisite

confidentiality undertakings as stipulated in Section 29 of the IBC by the PRAs, the AIPL RP provided access to the information memorandum and other relevant information/documents pertaining to AIPL through a virtual data room to the PRAs. Additionally, in terms of Regulation 36B of the CIRP Regulations, the PRAs were provided access to request for resolution plans (“**RFRP**”). The RFRP stipulated for the detailed terms and conditions for submission of the resolution plans by the PRAs for AIPL.

20. During course of the CIRP of AIPL, the AIPL RP and the AIPL CoC realised that there was no encumbrance whatsoever created over the fixed assets of AIPL apart from the AIPL Land. Furthermore, there was a sudden and exponential upswing in the real estate market in Mumbai, Maharashtra. Accordingly, between 10 April 2021 and 21 July 2021, in the interest of maximisation of value to the creditors of the Corporate Debtor, the AIPL RP after obtaining requisite approvals from the AIPL CoC, effected a sale of substantial fixed assets of the Corporate Debtor, in terms of Regulation 29 of the CIRP Regulations. The proceeds of such sale were appropriated towards the claims of the financial creditors of AIPL.
21. Additionally, during the CIRP of AIPL i.e. on 21 July 2021, the Canara Bank released its exclusive security interest over AIPL Land and made it an unencumbered asset of AIPL. Subsequently, on 25 July 2021, the AIPL RP issued an advertisement in the Mumbai edition of the Economic Times and Mint calling upon prospective bidders to submit a bid to acquire the AIPL Land. One of the operational creditors of AIPL i.e., Mercury Logistics Private Limited (“**Mercury Logistics**”) came across the aforementioned advertisement. Additionally, on making further enquiries Mercury Logistics realised that the AIPL RP and the AIPL CoC have effected a sale of many valuable assets of AIPL outside the CIRP of AIPL. While it is not in dispute that the book value of these assets did not exceed 10% of the

total admitted claims admitted against AIPL, Mercury Logistics felt that the nature of the assets sold were such that they are crucial for the continued existence of AIPL as a going concern. Accordingly, the sale of such assets would stand disincentive PRAs from submitting a resolution plan or in the alternative prompt the PRAs to provide a resolution plan with a low financial offer for the Appellant.

22. In view of the above, on 27 July 2021, Mercury Logistics filed an application under Section 60(5) of the IBC before NCLT-Mumbai for seeking a stay on the sale of the AIPL Land and reversal of the sale of all the fixed assets sold by AIPL RP and to include them in the insolvency estate of AIPL (“**Mercury Logistics Application**”). The NCLT Mumbai on 5 August 2021 (“**NCLT Mercury Order**”), dismissed the Mercury Logistics Application and denied to stay the sale of AIPL Land. Further, the NCLT Mumbai denied reversing the sale of fixed assets of AIPL and held that it was done in the ordinary course of business and in accordance with the Regulation 29 of the CIRP Regulations. Furthermore, the NCLT Mumbai held that the AIPL CoC in its commercial wisdom can decide whether or not unencumbered assets are to be sold during the CIRP of the AIPL. On appeal, the NCLAT vide order dated 16 August 2021 upheld that the NCLT Mercury Order (“**NCLAT Mercury Order**”). Accordingly, on 19 August 2021, Mercury Logistics filed a further appeal before the Hon’ble Supreme Court to dismiss the NCLAT Mercury Order (“**Mercury SC Litigation**”).

23. In the meanwhile, on 21 August 2021, out of the 10 (ten) PRAs, 4 (four) resolution applicants submitted their resolution plans for AIPL namely (i) Jupiter Constructions Private Limited (“**Jupiter Constructions**”); (ii) Sai Constructions Limited; (iii) Tak Infrastructure Limited and (iv) Phantom Limited. Pursuant to negotiations and assessment of the feasibility and

viability of all the 4 (four) resolution plans, the AIPL CoC, in terms of Section 30(4) of the IBC, approved the resolution plan submitted by Jupiter Constructions. Subsequently, the AIPL RP filed an application under Section 30(6) of the IBC before NCLT-Mumbai seeking approval of the resolution plan submitted by Jupiter Constructions (“**Approval Application**”).

24. While the Approval Application was *sub-judice* before NCLT-Mumbai, Neptune Developers Private Limited (“**Neptune Developers**”) intervened in the Approval Application and submitted that on 10 December 2017 i.e., approximately 3 years prior to the commencement of the CIRP of AIPL, Neptune Developers had filed a civil suit before the District Court, Alibaug (Maharashtra) against AIPL, claiming that they are the rightful owners of AIPL Land. The Hon’ble District Court, Alibaug (Maharashtra) had passed an order dated 10 December 2019 directing the parties to maintain status quo until the final disposal of the matter and that AIPL shall not dispose, transfer, encumber the AIPL Land (“**District Court Order**”).

25. On making further enquires, the AIPL RP realised that the certified copy of the District Court Order was hand delivered to the erstwhile management of AIPL. The same was deliberately not disclosed by the erstwhile management to the AIPL RP. In view of the deliberate and mala fide conduct of the erstwhile management of AIPL, the *AIPL RP was genuinely unaware of the District Court Order. Accordingly, the PRAs were not provided with any information/documents in relation to the District Court Order.*

26. In view of the interim application filed by Neptune Developers, Jupiter Constructions submitted before NCLT-Mumbai that AIPL Land is an extremely valuable asset of the

Corporate Debtor which is crucial for the going concern status of the Corporate Debtor. Considering the District Court Order and the fact that that the AIPL's very title to AIPL Land is disputed, the fundamental commercial understanding with which Jupiter Constructions submitted their resolution plan stood altered. Furthermore, these facts which are crucial for any prospective resolution applicant was not disclosed by the AIPL RP in the virtual data room. In light of these events, Jupiter Constructions filed an interlocutory application under Section 60(5)(c) of the IBC and sought leave of the NCLT-Mumbai to withdraw their resolution plan without any adverse or penal consequences ("**Jupiter Constructions Application**").

27. On 21 October 2021, the NCLT-Mumbai passed an order dismissing the Jupiter Constructions Application on the ground that once a resolution plan is approved by the committee of creditors, then the same cannot be withdrawn/modified by the successful resolution applicant. Further, vide the said order, NCLT-Mumbai approved the resolution plan submitted by Jupiter Constructions ("**NCLT Jupiter Order**").
28. Aggrieved by NCLT Jupiter Order, Jupiter Constructions preferred an appeal before the NCLAT. The NCLAT vide order dated 15 November 2021 upheld the NCLT Jupiter Order ("**NCLAT Jupiter Order**"). Accordingly, against the NCLAT Jupiter Order, Jupiter Constructions filed an appeal before the Hon'ble Supreme Court ("**AIPL SC Litigation**").

## **B. CIRP of CIPL and Subsequent Liquidation**

29. Pursuant to initiation of CIRP against CIPL, Mr. Rahul Bajaj, was appointed as the interim resolution professional of CIPL ("**CIPL IRP**"). On 4 February 2021, the CIPL IRP issued a public announcement in terms of Section 15 of the IBC, calling the creditors of the CIPL

(“**CIPL Creditors**”) to submit their claims against CIPL. Subsequently, basis the claim received from the CIPL Creditors; the IRP constituted the committee of creditors (“**CIPL CoC**”) in terms of Section 22 of the IBC. In the first meeting of the CIPL CoC, Mr. Rahul Bajaj was confirmed as the resolution professional (“**CIPL RP**”) as per Section 22(2) of the IBC.

30. Thereafter, on 18 April 2021, the CIPL RP issued Form - G and invitation for expression of interest under Regulation 35A of the CIRP Regulations, for inviting prospective resolution applicants to submit their expression of interest to submit a resolution plan for CIPL on or before 3 May 2021. However, the CIPL RP did not receive any expression of interest for submission of the resolution plan till 3 May 2021. Accordingly, the RP further extended the last for submission of EoI first till 19 May 2021 and then till 1 June 2021 (“**Last Date**”). However, CIPL RP did not receive any resolution plans till the Last Date. Accordingly, the CIPL CoC in its meeting held on 10 June 2021 unanimously decided to liquidate CIPL under Section 33 of the IBC. In the said meeting the CIPL CoC recommended the sale of CIPL as a going concern in terms of Regulation 39(c) of the IBBI (Liquidation Process) Regulations, 2016 (“**Liquidation Process**”).

31. Accordingly, the CIPL RP filed an application under Section 33(2) of the IBC (“**CIPL Liquidation Application**”) before the NCLT Mumbai intimating the CIPL CoC’s decision to liquidate the CIPL as a going concern. Pursuant, to the CIPL Liquidation Application, the NCLT Mumbai vide order dated 1 August 2021 (“**CIPL Liquidation Order**”) initiated liquidation of CIPL and appointed Mr. Rahul Bajaj as the liquidator of CIPL (“**Liquidator**”).

32. Thereafter, on 30 August 2021, the Liquidator published invitation for expression of interest under Regulation 32A of the Liquidation Regulations, for inviting prospective bidders to submit their expression of interest for purchase of CIPL as a going concern in its totality the (“**IEOI**”). Pursuant to the IEOI, 3 (three) bidders namely: (a) Jupiter Infrastructure Private Limited (“**JIPL**”), (b) Star Power Infrastructure Limited (“**SPIL**”), (c) Lucent Infrastructure Private Limited (“**LIPL**”) (collectively the “**Bidders**”) submitted their expression of interest (“**EoIs**”). Based on the expression of interest received by the Bidders, the liquidator published the process document for sale of CIPL on a going concern basis (“**Process Document**”).
33. As per terms of the Process Document, the sale of CIPL was conducted by the Liquidator on 15 September 2021 in which all the Bidders participated and submitted their bids. Amongst the bids received from all the Bidders, JIPL emerged as the highest bidder for submitting a bid of INR 700 Crores for purchase of CIPL as a going concern (“**Bid Amount**”). Thereafter, on 18 September 2021 the Liquidator issued the letter of intent to JIPL. In the said letter, the Liquidator confirmed JIPL as the highest bidder and requested it to make payment of the entire Bid Amount by 30 September 2021.
34. Accordingly, JIPL made payment of the Bid Amount to the Liquidator on 30 September 2021. Upon receiving the Bid Amount, the Liquidator issued a sale certificate dated 1 October 2021 in favour of JIPL (“**Sale Certificate**”). The Sale Certificate issued by the Liquidator to JIPL, stated that CIPL was sold to JIPL on an ‘*as is where is Basis*’ and ‘*no recourse basis*. On the date of the issuance of the Sale Certificate, JIPL took charge of the business of CIPL, and the Liquidator distributed the same amongst the secured creditors, on a pro-rata basis, as per the admitted claims (stated below) and notwithstanding the ranking of any charge of the secured creditor on any asset of CIPL:

<i>S. No</i>	<i>Creditors</i>	<i>Admitted Claim (INR Crores)</i>	<i>Percentage of the total claims</i>
<i>1.</i>	<i>Insolvency resolution process costs and liquidation costs</i>	<i>5</i>	<i>0.13</i>
<i>2.</i>	<i>Workmen dues for period of 24 months preceding the liquidation commencement date</i>	<i>10</i>	<i>0.27</i>
<i>3.</i>	<i>Secured creditors who relinquished their security interest</i>	<i>-</i>	<i>-</i>
	<i>a. State Bank of India</i>	<i>500</i>	<i>13.8</i>
	<i>b. Bank of Maharashtra</i>	<i>1000</i>	<i>27.7</i>

	<i>c. ICICI Bank</i>	<i>500</i>	<i>13.8</i>
	<i>d. Axis Bank</i>	<i>500</i>	<i>13.8</i>
	<i>e. UCO Bank</i>	<i>250</i>	<i>6.94</i>
	<i>f. Bank of India</i>	<i>250</i>	<i>6.94</i>
<i>4.</i>	<i>Wages and unpaid dues owed to employees other than workmen for period of 12 months preceding the liquidation commencement date</i>	<i>100</i>	<i>2.7</i>
<i>5.</i>	<i>Unsecured creditors</i>	<i>100</i>	<i>2.7</i>
<i>6.</i>	<i>Statutory dues</i>	<i>55</i>	<i>1.52</i>
<i>7.</i>	<i>Secured creditors who had enforced their security interest under</i>	<i>250</i>	<i>6.94</i>

	<i>Section 52 of the IBC</i>		
8.	<i>Any remaining debts and dues</i>	<b>60</b>	<b>1.66</b>
9.	<i>Preference shareholders</i>	<b>10</b>	<b>0.27</b>
10.	<i>Equity shareholders</i>	<b>10</b>	<b>0.27</b>
<b>Total</b>		<b>3,600</b>	

35. However, the SBI contested the mode and manner of distribution mechanism adopted by the Liquidator. The SBI had submitted to the Liquidator that since it was the lender holding exclusive security charge over the CIPL Land, the Liquidator was required to first satisfy the entire claim of the SBI and then proceed with the distribution of the balance amount, if any, to the other secured creditors. However, the objections of the SBI were not sustained by the Liquidator. Accordingly, the SBI filed an application before the NCLT, Mumbai, under Section 60(5) of IBC, challenging the distribution mechanism followed by the Liquidator in distributing the Bid Amount.

36. The NCLT- Mumbai vide its order dated 30 October 2021 rejected the application filed by the SBI and held that the distribution mechanism adopted by the Liquidator was valid and in accordance with the principle laid down in the case of *Technology Development Board v. Mr. Anil Goel and others, Company Appeal (AT) (Insolvency) No.731 of 2020* (“**NCLT SBI**

**Order**”). On further appeal filed by the SBI, the NCLAT vide order dated 30 November 2021 dismissed appeal and upheld the NCLT SBI Order (“**NCLAT SBI Order**”). Accordingly, the SBI filed an appeal before the Supreme Court to set aside the NCLAT SBI Order.

37. During, this time, Mr. Mahesh Saxena, the promoter of VVL and ex-director of CIPL, had filed a petition under Article 32 read with Article 136 of the Constitution of India, 1950 (“**Petition**”). Pursuant to the Petition, Mr. Mahesh Saxena has challenged the manner of sale conducted by the Liquidator before the Supreme Court under Article 136 read with 32 of the Constitution of India, 1950 (“**CIPL SC Litigation**”). It is the contention of Mr. Mahesh Saxena, that the sale of corporate debtor as a ‘going concern’ in liquidation is not envisaged in the IBC. Under the IBC, there are no enabling provisions which provides Insolvency and Bankruptcy Board of India (“**IBBI**”) any explicit authority to frame regulations for conducting sale of the corporate debtor on a ‘going concern’ basis. The IBC under Section 35(1)(f) read with Section 54 only provides that the Liquidator can sell the movable and immovable properties of the corporate debtor and then seek its dissolution. Accordingly, Mr. Mahesh Saxena challenged the validity of the sale of corporate debtor on a going concern basis in liquidation under Regulation 32(e) & (f) and Regulation 32A of the Liquidation Regulations, which was inserted by IBBI vide notification no. IBBI/2018-19/GN/REG037, dated 22 October 2018 (w.e.f. 22 October 2018) and Notification No. IBBI/2019-20/GN/REG047 dated 25 July 2019 (w.e.f. 25 July 2019) (collectively the “**Notifications**”), respectively, directly before the Supreme Court.

38. Further, pursuant to the Petition, Mr. Mahesh Saxena had prayed before the Hon’ble Supreme Court that the sale conducted by the Liquidator of CIPL should be set aside since the IBBI has acted beyond the scope of the delegated legislation in notifying vide the Regulation 32(e)

& (f) and Regulation 32A of the Liquidation Regulations, without any enabling provisions under the IBC.

39. Lastly, pursuant to the Petition, Mr. Mahesh Saxena had also prayed before the Hon'ble Supreme Court that CIPL SC Litigation, VVL SC Litigation, Mercury SC Litigation and AIPL SC Litigation are *sub-judice* before the 2- judge bench of Hon'ble Supreme Court and while there have been decisions of the Hon'ble Supreme Court on some of the issues being dealt with in these litigations, it is imperative that all these issues are examined afresh by a constitutional bench of the Hon'ble Supreme Court. On 8 August 2022, the Learned Chief Justice of India had admitted the Petition and constituted a 7-member bench presided by the Hon'ble Chief Justice of India to examine all the issues being dealt with in the CIPL SC Litigation, VVL SC Litigation, Mercury SC Litigation and AIPL SC Litigation afresh.

40. Based on the foregoing, the Hon'ble Supreme Court after due deliberation has agreed to decide the following issues associated with the CIRP of AIPL and Liquidation of CIPL and initiation of CIRP against VVL:

- (i) Whether VVL's obligation to infuse funds into AIPL under the Sponsor Support Undertaking can be considered as a 'guarantee' under Section 5(8)(i) of the IBC for the purpose of initiating CIRP against VVL?
- (ii) Does the AIPL RP has the power to effect sale of unencumbered assets of AIPL under Regulation 29 of the CIRP Regulations when such assets are crucial for the going concern status of AIPL? Can the Adjudicating Authority/NCLT exercise jurisdiction to reverse the sale of such assets and direct the inclusion of such assets in the insolvency estate of the Corporate Debtor?

- (iii) Whether Jupiter Construction is entitled to withdraw its resolution plan from the CIRP of the AIPL?
- (iv) Whether the Notifications issued by IBBI for sale of corporate debtor as a going concern are valid? Can the Liquidator's action to distribute the sale proceeds of INR 700 Crores equally amongst all the secured creditors, on a pro-rata basis is correct?

