**BEFORE THE HON'BLE COMPANY LAW TRIBUNAL,**
**PRINCIPAL BENCH, NEW DELHI**

**I.A. NO. OF 2022**
**IN**
**C.P. NO. (IB)- 1082 (PB)/2018**

**IN THE MATTER OF:**
**KIRAN MALHOTRA** **...FINANCIAL CREDITOR**

**VERSUS**

**ALCHEMIST TOWNSHIP INDIA LIMITED**
**...CORPORATE DEBTOR**

**AND IN THE MATTER OF:**
**DEVENDRA SINGH** **...APPLICANT**

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**THROUGH**

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**PLACE: NOIDA**
**DATED: 27.10.2022**

## SYNOPSIS

The instant application is being filed by the Applicant (Resolution Professional) under Section 12(3) r/w Section 60 (5) of Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 11 of the NCLT, Rules, 2016 and Regulation 40 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 seeking exclusion of 161 days from the total CIRP period (ending on 28.10.2022) as approved by 99.82% majority of the members of the Committee of Creditors ('CoC') in the 13th meeting of the CoC held on 15.10.2022. The aforementioned exclusion is being sought on account of failure of the Directorate of Enforcement (ED) to provide the copies of the documents seized by it from the office of Corporate Debtor during the raid conducted on 19.09.2019. It is pertinent to mention that the documents seized by the Enforcement Directorate are necessary for successful culmination of Corporate Insolvency Resolution Process (CIRP) of Corporate Debtor. Aside from addressing this Hon'ble Tribunal under Section 60(5) of the Code, PMLA and Hon'ble High Court under Section 226 of the Constitution, the Applicant also filed an Application under Section 207 of the Cr.P.C. read with Section 46 of the PMLA, 2002 before the Ld. Additional Sessions Judge, Hon'ble Special Court, Rouse Avenue Courts, seeks instructions from the ED for the provision of the copy of the data and documents obtained by the ED during the raid on the Corporate Debtor's office which were confiscated on 19.09.2020. The Ld. ASJ, in its Order, dated 07.09.2022, recognized the Applicant's right to request a copy of documents and data seized during the search conducted by the ED on 19.09.2019, however, the Ld. ASJ wrongly disposed off the applicant's application without allowing the prayer. The Applicant herein has challenged the Order of Ld. ASJ, dated 07.09.2022, before the Hon'ble High Court of Delhi in Crl. M.C. No.5231/2022 filed under Section 482 of Cr.P.C.

In view of the same the CIRP of Corporate Debtor is still continuing and the Applicant seeks kind indulgence of this Hon'ble Tribunal to grant exclusion of 161 days on account of delay caused by ED in providing the data and documents seized during the raid.

Since the corporate debtor's CIRP period was ending on 07.02.2022, the applicant herein filed applications with IA No. 640/2022 and IA No. 1239/2022 seeking exclusion of 161 Days from the Corporate Debtor's CIRP period due to time lost in compiling and verifying an additional 70,000 claims and time lost due to PMLA's failure to comply with the claimant's request to provide relevant Corporate Debtor documents and data. This Hon'ble Tribunal allowed IA No. 640/2022 and IA No. 1239/2022, vide order dated 20.05.2022 and the time period from 31.08.2021 to 20.05.2022, from the CIRP of the Corporate Debtor was excluded.

In view of the aforementioned reasons, the Applicant is seeking exclusion of following time period from the CIRP period:

| S. No. | REASON FOR EXCLUSION | DATES | TIME PERIOD |
|---|---|---|---|
| 1. | Time lost in seeking documents from ED and filing Petitions/applications before | 21.05.2022 (Date of filling of letter) | 156 Days |

| | | | |
|---|---|---|---|
| | PMLA/Ld. Special Court/Hon'ble High Court of Delhi | To 22.10.2022 (last day of CIRP) | |
| 2. | Time lost in seeking record /data / documents from the suspended management | 21.05.2022 To 27.10.2022 | 161 Days |
| 3. | Due to Order of Hon'ble High Court of Calcutta, dated 16.09.2021, vide which this Hon'ble Tribunal has been directed to not to pass any final Order in the instant matter | 21.05.2022 To 27.10.2022 (date of filing of instant Application) | 161 Days |

The Applicant is seeking exclusion of the aforementioned period on the following grounds:

a) Time lost in seeking documents from ED and filing Petitions/applications before PMLA/Ld. Special Court/Hon'ble High Court of Delhi for direction to ED for supplying the copy of record/data/software of the Corporate Debtor seized during the raid conducted on 19.09.2019 at the office of Corporate Debtor,

b) Time lost in seeking record /data / documents from the suspended management and pursuing Application under Section 19(2) and (3) of the Code before this Hon'ble Tribunal being IA No.5324/2020 for direction to the suspended management to provide the data/documents sought by the Applicant, and

c) Further in the instant case the Hon'ble High Court of Calcutta, vide its order dated 16.09.2021, in WPA No.1389/2017 has directed this Hon'ble Tribunal to not pass any final Order in the instant matter.

It is submitted that in the instant case, the Corporate Debtor is a Company in which there are larger number of claimants, to the tune of several lakhs, who have filed their claim before the Applicant. Further, the Applicant has circulated the final list of PRA and a Resolution Plan is also likely to be received in the instant case as the last date of submission of is 15.11.2022. However, if the instant Application is not allowed, the instant CIRP proceedings shall be required to be terminated and the Corporate Debtor shall be relegated to liquidation proceedings, which may prejudice the interest of numerous stakeholders and defeat the objective and purpose of the IBC. Thus, the instant Application.

## LIST OF DATES

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| DATE | EVENTS |
|---|---|
| 28.10.2022 | Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Hon'ble Tribunal and Mr. Pramod Goel was appointed as the IRP. |
| 19.09.2019 | The IRP effected public announcement and also proposed the names of the three Insolvency Professionals to act as the Authorized Representatives of the Financial Creditors in a class. |
| 12.02.2019 | An appeal was preferred by Alchemist Infra Ventures Limited, shareholder of the Corporate Debtor, challenging the admission order. The Hon'ble NCLAT observed that as the Financial Creditor has no objection with the settlement being proposed, the IRP is to not proceed any further in the ongoing CIRP. |
| 16.09.2021 | The Hon'ble NCLAT vide its order set aside the admission order on account of cheques being handed over in terms of settlement. However, liberty was granted to the Financial Creditor to revive the caption application, upon failure of the encashment of the cheques. |
| 19.09.2019 | Enforcement Directorate (ED) conducted a search on the premise of the Corporate Debtor and thereafter seized the books of account/records of the Corporate Debtor. The ED also seized the software which contained the complete information about the stakeholders of the Corporate Debtor. |
| 01.10.2020 | Upon failure of the encashment of the cheques, an application was preferred by the Financial Creditor for revival of the captioned application. This Hon'ble Tribunal was pleased to allow the application and re-commence the CIRP proceedings of the Corporate Debtor. |
| 09.10.2020<br>12.10.2020 | The IRP made a general public announcement in the Financial Express, Jansatta in Delhi NCR Edition and Chandigarh Edition and Daily Chardikhala in Punjabi Edition about the re-commencement of the CIRP proceedings. |
| 23.10.2020 | In the first meeting of the COC, the Applicant was appointed as the Resolution Professional of the Corporate Debtor. |
| 03.12.2020 | The appointment of the Applicant as the Resolution Professional was confirmed by this Hon'ble Tribunal on 24.11.2020. However, the copy of the order, confirming the appointment of the Applicant was received later in time. |
| 11.12.2020<br>14.01.2021 | The Applicant on learning about the documents being seized by the Enforcement Directorate preferred a letter and an email in order to handover the said |

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| | documents to the Applicant on account of CIRP proceedings being initiated of the Corporate Debtor. |
| 25.12.2020 | The Applicant published FORM-G in the Business Standard, New Delhi thereby inviting Expression of Interest from Prospective Resolution Applicants, with last date for receipt of EOI being 09.01.2021. |
| 07.01.2021 | On account of exceptionally large number of stakeholders being involved in the CIRP of the Corporate Debtor, the Resolution Professional established a Stakeholder Data Management Cell. |
| 16.01.2021 | As the Applicant had received total of two Expression of Interest, the members of the COC in order to provide opportunity for the other interested parties, advised the Applicant to re-publish Form-G. Therefore, Form-G was again published in Business Edition (All Editions- English & Hindi), with the last date for submission of the EOI being 31.01.2021. |
| 03.02.2021 | This Hon'ble Tribunal on an application preferred by the Applicant was pleased to exclude the time period from 25.01.2019 to 09.10.2020, out of the total CIRP period of the Corporate Debtor, which was lost on account of disposal of appeal and in revival of the CIRP proceedings. |
| 25.02.2021 | In pursuance of the re-publication of FORM-G on 16.01.2021, the Applicant received 2 EOIs. The said EOIs were perused, verified and vetted and thereafter the final list of PRAs was issued. However, no Resolution Plan was received. |
| 27.07.2021 | The Applicant was constrained to prefer an application bearing IA No.1398/2021 before this Hon'ble Tribunal seeking directions to the ED to release and handover the documents seized during the search conducted on 19.09.2019. This Hon'ble Tribunal vide its order was please to issue notice. |
| 10.04.2021 | The Applicant thereafter again published Form G with the last date for submission of Resolution Plan being 25.05.2021. |
| 13.04.2021 | This Hon'ble Tribunal vide its order in IA no. 1747/2021 was pleased to extend the CIRP proceedings of the Corporate debtor by 90 days. |
| 20.04.2021<br><br>25.04.2021,<br>01.05.2021<br>16.05.2021<br>23.05.2021 | A week-long lockdown/curfew was imposed by the State Government of Delhi due to the rising Covid-19 cases, which kept on extending further in terms of the notification issued. |
| 07.06.2021 | In pursuance of the re-publication of FORM-G on 10.04.2021, the Applicant received 1 EOI. The said EOI was perused, verified and vetted and thereafter the final list of PRAs was issued. |

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| 24.06.2021 | The Applicant received an email from the PRA wherein it requested to grant an extension of time period for submission of the Resolution Plan as it was unable to carry out due diligence, on account of the restrictions imposed by the Government of NCT of Delhi and by other states, due to rising Covid-19 cases. |
| 19.07.2021 | The Applicant pursuant to the Lockdown/Curfew imposed by the government of NCT due to sudden outbreak of Second Wave of Covid 19, approached this Hon'ble Tribunal to seek exclusion of 48 days lost due to which CIRP could not be completed. This Hon'ble Tribunal vide its order dated 19.07.2021 allowed the exclusion application IA No.2988 of 2021 and excluded 48 days from the CIRP period. |
| 27.07.2021 | The Applicant convened 4th CoC meeting and apprised the members about the ongoing litigations before this Hon'ble Tribunal and also the submission of voluminous claims. The CoC considered the peculiar situation and recommended the Applicant to file an appropriate Application before this Ld. Tribunal seeking exclusion of time period lost due to ongoing litigation due to which the CIRP could not have been completed. |
| 27.07.2021 | This Ld. Tribunal disposed of the IA No.1398 of 2021 and granted the liberty to the Applicant to approach the Adjudicating Authority under PMLA for seeking necessary directions. |
| 02.08.2021 | The Ld. Coordinate Bench vide its order in CP No.103/74(3)/ND/2019 directed the Creditor (Kusum Lata) to file its claims before the Applicant within 1 month. |
| 16.09.2021 | Hon'ble High Court of Calcutta, Kolkata vide its Order, in WPA No.1389/2017, directed this Hon'ble Tribunal to not to pass any final order in the instant matter of Corporate Debtor. |
| 08.10.2021<br>12.01.2022 | Applicant filed letter before PMLA seeking release of documents which were seized by ED during the raid on 19.09.2019. |
| 20.11.2021 | The Applicant received 7,86,647 claims from the stakeholders of the Corporate Debtor herein and verified and admitted claims. |
| 07.02.2022 | Additional 70,000 Claims were received by the Applicant. |
| 25.12.2021 | Form G was published by Applicant. |
| 22.03.2022 | The counsel for Applicant sent reminder to PMLA seeking release of documents as per letter dated 08.10.2021. |
| 11.07.2022 | The Applicant filed a Writ Petition No. 10566/2022 under Article 226 of the Constitution seeking direction |

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| | against ED to provide record/data of the Corporate Debtor. |
| 13.07.2022 | The ED during the course of hearing before the Hon'ble High Court of Delhi in Writ Petition No. 10566/2022, submitted that the documents and material which were seized during the course of the search have since and upon confirmatory steps having been taken under Section 17 of the Prevention of Money Laundering Act, 2000 been transmitted to this Ld. Special Judge, Rouse Avenue Court. |
| 13.07.2022 | Applicant herein approached the Ld. Special Court before whom the Complaint Case No.02/2021 titled as *'Directorate of Enforcement vs M/s Alchemist Township India Limited & Ors'* was pending. |
| 07.09.2022 | The Ld. ASJ in its Order, recognised the right of the Applicant to seek copy of documents and data as seized during search conducted on 19.09.2019 by the ED. However, the prayers of the Applicant were not allowed by the ld. ASJ. |
| 07.10.2022 | The Applicant herein challenged the Order of Ld. ASJ dated 07.09.2022, before the Hon'ble High Court of Delhi under Section 482 of Cr.P.C. being Crl. M.C. No.5231/2022. |
| 13.10.2022 | The Hon'ble High Court was pleased to issue notice to the ED in Crl. M.C. No.5231/2022, vide its Order |
| 15.10.2022 | CoC in its 7th meeting approved the resolution seeking exclusion of 161 days from the total CIRP period. Voting of the CoC on the resolution concluded on 22.10.2022, passing the resolution with 99.82% majority. |
| 27.10.2022 | Hence, the instant application. |

**BEFORE THE HON'BLE COMPANY LAW TRIBUNAL,**
**PRINCIPAL BENCH, NEW DELHI**

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**I.A. NO. OF 2022**
**IN**
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**IN THE MATTER OF:**
**KIRAN MALHOTRA** **...FINANCIAL CREDITOR**

**VERSUS**

**ALCHEMIST TOWNSHIP INDIA LIMITED**
**...CORPORATE DEBTOR**

**AND IN THE MATTER OF:**
**DEVENDRA SINGH** **...APPLICANT**

**MEMO OF PARTIES**

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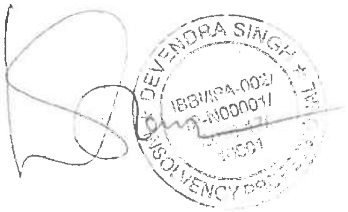
**PLACE: NOIDA**
**DATED: 27.10.2022**



**BEFORE THE HON'BLE COMPANY LAW TRIBUNAL,**
**PRINCIPAL BENCH, NEW DELHI**

8

**I.A. NO. OF 2022**
**IN**
**C.P. NO. (IB)- 1082 (PB)/2018**

**IN THE MATTER OF:**
**KIRAN MALHOTRA** **...FINANCIAL CREDITOR**

**VERSUS**

**ALCHEMIST TOWNSHIP INDIA LIMITED**
**...CORPORATE DEBTOR**

**AND IN THE MATTER OF:**
**DEVENDRA SINGH** **...APPLICANT**

**APPLICATION UNDER SECTION 12(3) R/W SECTION 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 R/W RULE 11 OF NCLT, RULE 2016, REGULATION 40 IBBI (INSOLVENCY OF CORPORATE PERSON) REGULATIONS, 2016 SEEKING EXCLUSION OF PERIOD OF 161 DAYS.**

**MOST RESPECTFULLY SHOWETH:**

1. The instant application is being filed by the Applicant (Resolution Professional) under Section 12(3) read with Section 60 (5) of Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 11 of the NCLT, Rules, 2016 and Regulation 40 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 seeking exclusion of 161 days from the total Corporate Insolvency Resolution Period (CIRP) in the case of the Corporate Debtor herein. It is submitted that the CIRP in the instant case is ending on 28.10.2022 and 99.82% of the members of the Committee of Creditors ('CoC') in the 13th meeting of the CoC held on 15.10.2022 have passed a resolution for the purposes of seeking exclusion of period of 161 days. Copies of Minutes of the 13th CoC meeting, dated

15.10.2022, alongwith summary record of e-voting is being annexed herewith and marked as **ANNEXURE A-1 (COLLY)**.

2. The aforementioned exclusion is being necessitated on account of failure of the Directorate of Enforcement (ED) to provide the data, record and the copies of the documents seized by the Department from the office of Corporate Debtor during the raid conducted on 19.09.2019. It is pertinent to mention here that the date and the documents as seized by the ED are necessary for successful culmination of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor.

3. Apart from approaching this Hon'ble Tribunal under Section 60(5) of the Code, the Adjudicating Authority under PMLA and the Hon'ble High Court under Section 226 of the Constitution, the Applicant had also filed an Application under Section 207 of Cr.P.C. read with Section 46 of PMLA, 2002 before the Ld. Additional Sessions Judge of Hon'ble Special Court, Rouse Avenue Courts, seeking directions to the ED for providing the copy of the data and documents seized by the ED during the raid conducted at the office of the Corporate Debtor on 19.09.2020.

4. The Ld. ASJ vide its Order, dated 07.09.2022, recognised the right of the Applicant to seek copy of documents and data as seized during search conducted on 19.09.2019 by the ED, however, the Ld. ASJ erroneously disposed of the application of the Applicant without allowing the prayer.

5. The Applicant herein has challenged the Order of Ld. ASJ, dated 07.09.2022, before the Hon'ble High Court of Delhi in Crl. M.C. No.5231/2022 filed under Section 482 of Cr.P.C. The Hon'ble High Court was pleased to issue notice to the ED in Crl. M.C. No.5231/2022, vide its Order, dated 13.10.2022. Copies of the Application filed under Section 207 of Cr.P.C (without annexures) alongwith Order of Ld. ASJ, dated 07.09.2022, are being annexed herewith as **ANNEXURE A-2 (COLLY).** Copies of the Crl. M.C. No.5231/2022 (without annexures) are being annexed herewith as **ANNEXURE A-3**

6. In view of the aforesaid, the Applicant as the Resolution Professional has not been able to obtain the data and record of the Corporate Debtor and therefore the Applicant herein seeks kind indulgence of this Hon'ble Tribunal to grant exclusion of 161 days from the CIRP of the Corporate Debtor herein.

7. It is submitted that in the instant case the CIRP of the Corporate Debtor was initiated by this Hon'ble Tribunal on 01.10.2020, upon an application filed by the Financial Creditor praying for recommencement of CIRP of the instant Corporate Debtor. However, it is pertinent to note here that prior to recommencement of CIRP of the Corporate Debtor, the ED conducted a search on the premise of the Corporate Debtor on

19.09.2020 and thereafter, seized the books of account, documents, data, software, etc. of the Corporate Debtor.

8. In order to obtain a copy of the record/data of the Corporate Debtor seized by the ED, the Applicant had filed an application before this Hon'ble Tribunal being I.A. No. 1398 of 2021 in C.P. (IB) No. 1082 of 2018, seeking direction against the ED to release and handover the copy of documents and data of the Corporate Debtor seized during the raid on 19.09.2019. This Hon'ble Tribunal vide its Order, dated 27.07.2021, disposed off the said Application by directing the Applicant to approach the PMLA for release of such documents. Copy of the Order, dated 27.07.2021, is being annexed herewith as **ANNEXURE A-4**.

9. Pursuant to the directions of this Hon'ble Tribunal, the Applicant vide its letter, dated 08.10.2021, approached the PMLA and sought release of the documents, however, till date no document has been supplied to the Applicant and Applicant is still trying to get the necessary documents as they are crucial for the CIRP of Corporate Debtor.

10. The Applicant herein also approached the Ld. Adjudicating Authority under PMLA by way of an application u/s 21 of PMLA however, the registry informed that proceedings under section 17(1) of the Prevention of Money Laundering Act, 2002 (PMLA) in ECIR/09/DLZO-I/2018s dated 11.07.2018s in the matter of Deputy Director, Enforcement Directorate vs.



Alchemist Township India Ltd and others has been disposed off and no Application can be entertained. 12

11. The Applicant vide his letters, dated 08.10.2021 and 12.01.2022, requested the Ld. Adjudicating Authority under PMLA to release the copies of the documents seized from the premises of Corporate Debtor and other relevant documents forming part of the Original Application No.356 of 2019.

12. On 12.03.2022, the Petitioner received certified copies of Application filed by the ED before the Ld. Adjudicating Authority under PMLA and the orders passed by the Ld. Adjudicatory Authority. A bare perusal of the Application clearly shows that the ED seized various documents during the raid, however, the same are not the part of the Original Application No.356 of 2019 filed by ED before Ld. Adjudicating Authority under PMLA, therefore, the Applicant was once again unsuccessful in obtaining the relevant record of the Corporate Debtor.

13. The Applicant herein being unable to proceed with CIRP due to non-availability of documents, again approached the ED vide letter, dated 22.03.2022 and requested the Respondent to release documents at the earliest. The ED acting malafidely, did not respond to the request of the Applicant herein. Copy of letter, dated 22.03.2022, is annexed herewith and marked as **ANNEXURE A-5.**



14. In the interim, due to CIRP period of the Corporate Debtor coming to an end on 07.02.2022, the Applicant herein filed Applications, being IA No.640/2022 and IA No.1239/2022, before this Hon'ble Tribunal, seeking exclusion of 161 days from the CIRP period of Corporate Debtor on account of time lost in collating and verifying additional 70,000 claims and time lost due to failure of PMLA to adhere to the request of the Applicant for providing relevant document and data of the Corporate Debtor.

15. This Hon'ble Tribunal was pleased to allow the above Applications of the Applicant being IA No.640/2022 and IA No.1239/2022, vide Order, dated 20.05.2022 and excluded the time period from 31.08.2021 to 20.05.2022, from the CIRP of the Corporate Debtor. Copy of Order, dated 20.05.2022, is annexed herewith and marked as **ANNEXURE A-6.**

16. Despite several requests including letter, dated 22.03.2022, the ED did not provide any response or documents/data to the Applicant for verifying the claims received. Thus, aggrieved by the inaction on the part of ED, upon reopening of the Hon'ble High Court of Delhi after summer vacation, the Applicant herein approached the Hon'ble High Court of Delhi under Article 226 of the Constitution of India in Writ Petition No. 10566/2022. Copy of Writ Petition No.10566 of 2022 (without annexures) is annexed herewith and marked as **ANNEXURE A-7.**



17. The ED during the course of hearing held on 13.07.2022 before the Hon'ble High Court of Delhi in Writ Petition No. 10566/2022, submitted that the documents and material which were seized during the course of the search have since and upon confirmatory steps having been taken under Section 17 of the Prevention of Money Laundering Act, 2000 been transmitted to this Ld. Special Court which is in seisin of proceedings. In view of the same, the Hon'ble High Court disposed off the Writ Petition vide Order, dated 13.07.2022, providing the Applicant herein the liberty to approach the Ld. Special Court/ Ld. ASJ. Copy of Order, dated 13.07.2022, of the Hon'ble High Court of Delhi is annexed herewith and marked as **ANNEXURE A-8.**

18. Pursuant to the Order of Hon'ble High Court of Delhi, dated 13.07.2022, the Applicant herein approached the Ld. Special Court before whom the Complaint Case No.02/2021 titled as *'Directorate of Enforcement vs M/s Alchemist Township India Limited & Ors'* was pending. The Applicant filed an Application, dated August, 2022, under Section 207 of Cr.P.C. read with Section 46 of PMLA, 2002 before the Ld. Additional Sessions Judge of Hon'ble Special Court, Rouse Avenue Courts seeking direction to the ED for providing copy of the data and documents seized by it during the raid conducted at the office of the Corporate Debtor on 19.09.2020. The relevant part of

the prayer as sought before the Ld. ASJ is being reproduced herein for the convenience of this Hon'ble Tribunal:

> *"(a). Allow the present application;*
>
> *(b). Direct the Respondent/Non-Petitioner herein to release and handover the documents and data seized during the search on 19.09.2019 from the premise of Corporate Debtor to Petitioner herein as requested vide letter/email dated 11.12.2020, 14.01.2021, 13.02.2021 & 22.03.2022."*

Copy of the Application of the Applicant, dated August, 2022 (without annexure) filed before the Ld. ASJ has been annexed herewith as **ANNEXURE A-12**

19. The Ld. ASJ in its Order, dated 07.09.2022, recognised the right of the Applicant to seek copy of documents and data as seized during search conducted on 19.09.2019 by the ED, however, the Ld. ASJ wrongfully disposed of the Application of the Applicant without allowing the prayer. The Applicant herein has challenged the Order of Ld. ASJ, dated 07.09.2022, before the Hon'ble High Court of Delhi in Crl. M.C. No.5231/2022, filed under Section 482 of Cr.P.C. The Hon'ble High Court was pleased to issue notice to the ED in Crl. M.C. No.5231/2022, vide its Order, dated 13.10.2022.

20. It is further submitted that the Hon'ble High Court of Calcutta, Kolkata vide its Order, dated 16.09.2021, in WPA No.1389/2017, has also directed this Hon'ble Tribunal to not



to pass any final order in the instant matter of Corporate Debtor. The Applicant has filed an Application before Hon'ble High Court of Calcutta seeking modification of the Order, dated 16.09.2021 and the same is still pending. The next date of hearing in the WPA No.1389/2017 is 31.10.2022. Copy of the Order, dated 16.09.2021, in WPA No.1389/2017, is being annexed herewith as **ANNEXURE A-9**

21. Further, the Applicant has also demanded the data and record of the Corporate Debtor from the suspended management. However, the suspended management has taken a stand that the records have been seized and thus, the same is not readily available with them. Due to non-cooperation by the suspended management, the Applicant herein had also filed an Application under Section 19(2) and (3) of the Code against the suspended management being IA No.5324/2020, which has been allowed by this Hon'ble Tribunal vide Order, dated 19.09.2022. Pursuant to Order, dated 19.09.2022, the Applicant herein vide email, dated 07.10.2022, requested the suspended management to provide the record and data of the Corporate Debtor. However, despite direction from this Hon'ble Tribunal, the suspended management has not provided any data / record to the Applicant herein. Copies of the Order, dated 19.09.2022, and email, dated 07.10.2022, is being annexed herewith as **ANNEXURE A-10(COLLY).**



22. In view of the aforementioned reasons, the Applicant is seeking exclusion of following time period from the CIRP period: 17

| S. No. | REASON FOR EXCLUSION | DATES | TIME PERIOD |
|---|---|---|---|
| 1. | Time lost in seeking documents from ED and filing Petitions/applications before PMLA/Ld. Special Court/Hon'ble High Court of Delhi | 21.05.2022 to 22.10.2022 (date of passing of the resolution for seeking exclusion from this Hon'ble Tribunal) | 156 Days |
| 2. | Time lost in seeking record /data / documents from the suspended management | 21.05.2022 To 27.10.2022 (date of filing of instant Application) | 161 Days |
| 3. | Time period during which the interim order of the Hon'ble Calcutta High Court has been in force (W.e.f 16.09.2021) | 21.05.2022 To 27.10.2022 (date of filing of instant Application) | 161 Days |
| | TOTAL | **Overlapping period from 21.05.2022 to 22.10.2022.** | 161 Days |

The Applicant is seeking exclusion of the aforementioned period due to the following:

a) Time lost in seeking documents from ED and filing Petitions/applications before PMLA/Ld. Special Court/Hon'ble High Court of Delhi for direction to ED for supplying the copy of record/data/software of the



Corporate Debtor seized during the raid conducted on 19.09.2019 at the office of Corporate Debtor, 18

b) Time lost in seeking record /data / documents from the suspended management and pursuing Application under Section 19(2) and (3) of the Code before this Hon'ble Tribunal being IA No.5324/2020 for direction to the suspended management to provide the data/documents sought by the Applicant, and

c) Further in the instant case the Hon'ble High Court of Calcutta, vide its order dated 16.09.2021, in WPA No.1389/2017 has directed this Hon'ble Tribunal to not pass any final Order in the instant matter.

23. It is submitted that in the instant case, the Corporate Debtor is a Company in which there are larger number of claimants, to the tune of several lakhs, who have filed their claim before the Applicant. The said list of a class of creditors is being updated continuously. Further, the Applicant has circulated the final list of the Prospective Resolution Applicant (PRA) and a Resolution Plan is also likely to be received in the instant case. The PRAs have also demanded complete record/data of the Corporate Debtor for submitting a Resolution Plan and also sought for further time for submission of the Resolution Plan on account of pendency of proceedings before the Hon'ble Calcutta High Court and this Hon'ble Tribunal. It is evident that the Applicant in the instant case has been running from



pillar to post for obtaining the record/data of the Corporate Debtor from the suspended management as well as from ED. 19 The exclusion of time period shall provide an opportunity for resolution of the Corporate Debtor as against Liquidation which is in line with the object and purpose of IBC.

24. That considerable time has been consumed in approaching different forums/Courts/Tribunals in order to obtain the record/data of the Corporate Debtor from the suspended management as well as from ED, therefore, the Applicant is preferring the instant Application. However, if the instant Application is not allowed, the instant CIRP proceedings shall be required to be terminated and the Corporate Debtor shall be relegated to liquidation proceedings, which may prejudice the interest of numerous stakeholders and defeat the objective and purpose of the IBC, which is to achieve resolution of the Corporate Debtor. If the instant application is allowed, it shall result in grant of adequate time in the ongoing insolvency resolution process of the Corporate Debtor herein and in accordance with the spirit of IBC i.e. finding a resolution to a distressed Company rather than putting the same into liquidation.

25. It is noteworthy that the CoC in its meeting dated 15.10.2022 has also subject to exclusion of time approved by this Hon'ble Tribunal duly extended the last date of submission of Resolution Plan to 15.11.2022.



26. It is pertinent to mention that the documents seized by the Enforcement Directorate are necessary for successful culmination of Corporate Insolvency Resolution Process (CIRP) of Corporate Debtor. Despite repeated requests and efforts, till date no response or document/data has been received by the Applicant. In view of the same the CIRP of Corporate Debtor is still continuing and the Applicant seeks kind indulgence of this Hon'ble Tribunal to grant exclusion as prayed hereunder for the reasons stated in the preceding paras.

27. It is submitted that due to reasons which were beyond the control of the Applicant, the instant Application is being preferred.

28. In view of the aforementioned reasons the Applicant is not able to conclude the CIRP process within the specific time frame which will expire on 28.10.2022.

29. In this regard the Applicant would like to rely upon the order of Hon'ble NCLAT dated 08.05.2018 in the case of *Quinn Logistics India Pvt. Ltd. v. Mack Soft Tech Pvt. Ltd. (Company Appeal (AT)(Insolvency) No. 185 of 2018)* wherein it was observed that the Adjudicating Authority is empowered to exclude certain period for the purpose of counting the total period of 270 days if the facts and circumstances justify such exclusion. In this matter a total of 166 days were allowed to be excluded. The relevant para is hereby reproduced:



*"... it is clear that if an application is filed by the 'Resolution Professional' or the 'Committee of Creditors' or 'any aggrieved person' for justified reasons, it is always open to the Adjudicating Authority/Appellate Tribunal to 'exclude certain period' for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances."* 21

30. In the light of above facts and circumstances and power conferred upon this Hon'ble Adjudicating Authority, the instant case is also a fit case for exclusion of time period lost due to adjudication of the instant application which was required to be decided to proceed with the CIRP.

31. That this Hon'ble Tribunal has appropriate jurisdiction to grant reliefs as sought by the Applicant herein.

32. That grave and irreparable harm, loss and prejudice shall be caused to the stakeholders if the reliefs as prayed for are not granted by this Hon'ble Tribunal. The balance of convenience lies entirely in favour of the Applicant.

33. The instant applicant is bonafide and being filed in the interest of justice, and to advance the objectives of the Code.

**PRAYER**

In the aforesaid facts and circumstances, it is most humbly and respectfully prayed that this Hon'ble Bench may graciously be pleased to:

a) Allow the instant application;



b) Pass an order excluding a period 161 days i.e. w.e.f. 21.05.2022 to 27.10.2022 in the ongoing insolvency resolution process of the Corporate Debtor herein; 22

c) Pass an order for excluding the time spent in adjudication of the instant application w.e.f. 28.10.2022 till the date of pronouncement of the order in the instant application;

d) Pass such other or further order and other relief(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.




**APPLICANT**

**THROUGH**

**VARSHA BANERJEE, KARAN GROVER**
**DHIR & DHIR ASSOCIATES**
**ADVOCATES FOR RESOLUTION PROFFESIONAL**
**D-55, DEFENCE COLONY**
**NEW DELHI 110 024**
**TEL: 011- 4241000**
**FAX: 011-42410091**
**E-MAIL: varsha.banerjee@dhirassociates.com**

**PLACE: NOIDA**
**DATED: 27.10.2022**

# INDIA NON JUDICIAL

## Government of Uttar Pradesh

सत्यमेव जयते

**e-Stamp**

Signature .....
Name : Rahyan Singh, Age: Code : UP14016904
Ace Add : Sub-Registrar, Noida, Mob : 9654476914
License No : 202/2021-2022, Tehsil & Distt : Dadri G.B. Nagar

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| | | |
|---|---|---|
| Certificate No. | : | IN-UP28990532369188U |
| Certificate Issued Date | : | 19-Oct-2022 06:27 PM |
| Account Reference | : | NEWIMPACC (SV)/ up14016904/ GAUTAMBUDDH NAGAR 17/UP-GBNagar |
| Unique Doc. Reference | : | SUBIN-UPUP14016904507353196523 59U |
| Purchased by | : | DEVENDRA SINGH |
| Description of Document | : | Article 4 Affidavit |
| Property Description | : | Not Applicable |
| Consideration Price (Rs.) | : | |
| First Party | : | DEVENDRA SINGH |
| Second Party | : | NA |
| Stamp Duty Paid By | : | DEVENDRA SINGH |
| Stamp Duty Amount(Rs.) | : | 100 (One Hundred only) |

NOTARY PUBLIC GOVT OF INDIA
Narendra Narayan Agnihotri
G.B. NAGAR
NOTARIAL NOTARIAL

This is an integral part of Affidavit.

DEVENDRA SINGH
IBBI/IPA-002/IP-N000001/2016-17/10001
INSOLVENCY PROFESSIONAL

NOTARY PUBLIC
Narendra Narayan Agnihotri
G.B. NAGAR
U.P.
R.No.
GOVT. OF INDIA

Statutory Alert:
1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
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**BEFORE THE HON'BLE COMPANY LAW TRIBUNAL,**
**PRINCIPAL BENCH, NEW DELHI**

24

**I.A. NO. _____ OF 2022**
**IN**
**C.P. NO. (IB)- 1082 (PB)/2018**

**IN THE MATTER OF:**
**KIRAN MALHOTRA** **..... FINANCIAL CREDITOR**

**VERSUS**

**ALCHEMIST TOWNSHIP INDIA LIMITED**

**.... CORPORATE DEBTOR**

**AND IN THE MATTER OF:**
**DEVENDRA SINGH** **...APPLICANT**

**AFFIDAVIT**

I, Devendra Singh, S/o. Late Shri Daryao Singh, aged about 56 years, having office at Assotech Business Cresterra, Office No. 216, 2nd Floor, Sector-135, Noida, Uttar Pradesh-201305, do hereby solemnly affirm and declare as under:

1. I am the Resolution Professional of Alchemist Township India Ltd. (Under CIRP) as appointed by this Hon'ble Tribunal vide its order dated 24.11.2020 and as such well conversant the facts of the case. Hence, I am competent to swear this Affidavit.

2. That I have read and understood the contents of the accompanying Application and have understood the contents of the same.

That I state that the accompanying Application has been drafted under my instructions. The contents of the same are true and correct to my own knowledge.

NOTARY PUBLIC ★ GOVT. OF INDIA ★

**DEPONENT**

## VERIFICATION

25

I, the deponent hereinabove, do hereby verify and state that the contents of the paras 1 to 3 of the Affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

Verified and signed at Noida on this the 27th October, 2022.

DEVENDRA SINGH
IBBI/IPA-002/
IP-N00001/
2.6-17/
...001
PROFESSIONAL

**DEPONENT**

NOTARY PUBLIC
GOVT. OF INDIA

ATTESTED

Narendra Narayan Agnihotri
Advocate (Notary)
R.No-2320
Noida G.B.Nagar

27 OCT 2022