

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Interlocutory Applications:

I.A. (IB) No. 1573/KB/2023

I.A. (IB) No. 869/KB/2023

I.A. (IB) No. 813/KB/2023

I.A. (IB) No. 513/KB/2023

I.A. (IB) No. 510/KB/2023

In

Company Petition:

C.P. (IB) No. 588/KB/2020

IN THE MATTER OF:

Export-Import Bank of India

... Financial Creditor.

Verses

Eastern Silk Industries Pvt Ltd

... Corporate Debtor.

And

I.A. (IB) No. 1573/KB/2023

*An Application under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of the National Company Law Tribunal
Rules, 2016.*

IN THE MATTER OF:

Metro Infrastructure Development Limited

... Applicant.

Verses

**IN THE NATIONAL COMPANY LAW TRIBUNAL
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Eastern Silk Industries Pvt Ltd

- 1. Anil Kohli Resolution Professional of Eastern Silk Industries Pvt Ltd.**
- 2. Bauman Dekor Private Limited, Successful Resolution Applicant (SRA).**
- 3. ASREC (India) Limited.**
- 4. Export-Import Bank of India.**
- 5. Edelweiss Asset Reconstruction Company Limited.**
- 6. Kalpatru Fincap Limited.**
- 7. Omkara Asset Reconstruction Private Limited.**

... Respondents.

And

I.A. (IB) No. 869/KB/2023

An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

Mr. Sundeep Shah

... Applicant.

Verses

- 1. Anil Kohli Resolution Professional of Eastern Silk Industries Pvt Ltd.**
- 2. ASREC (India) Limited.**
- 3. Export-Import Bank of India.**
- 4. Edelweiss Asset Reconstruction Company Limited.**
- 5. Kalpatru Fincap Limited.**
- 6. Omkara Asset Reconstruction Private Limited.**
- 7. Metro Infrastructure Development Limited.**
- 8. Bauman Dekor Private Limited.**

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Eastern Silk Industries Pvt Ltd

... Respondents.

And

I.A. (IB) No. 813/KB/2023

An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

Mr. Sundeep Shah

... Applicant.

Verses

- 1. Anil Kohli Resolution Professional of Eastern Silk Industries Pvt Ltd.**
- 2. ASREC (India) Limited.**
- 3. Export-Import Bank of India.**
- 4. Edelweiss Asset Reconstruction Company Limited.**
- 5. Kalpatru Fincap Limited.**
- 6. Omkara Asset Reconstruction Private Limited.**
- 7. Metro Infrastructure Development Limited.**

... Respondents.

And

I.A. (IB) No. 513/KB/2023

An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

Mr. Sundeep Shah

... Applicant.

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Eastern Silk Industries Pvt Ltd

Verses

- 1. Anil Kohli Resolution Professional of Eastern Silk Industries Pvt Ltd.**
- 2. ASREC (India) Limited.**
- 3. Export-Import Bank of India.**
- 4. Edelweiss Asset Reconstruction Company Limited.**
- 5. Kalpatru Fincap Limited.**
- 6. Omkara Asset Reconstruction Private Limited.**
- 7. Metro Infrastructure Development Limited.**

... Respondents.

And

I.A. (IB) No. 510/KB/2023

An Application under Section 30(6) read with Section 31(1) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Mr. Anil Kohli,

Resolution Professional for Eastern Silk Industries Limited.

... Applicant.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant in

I.A. (I.B.C)/1573(KB)2023:

Ms. Manju Bhuteria, Adv.

Mr. Devansh Sonthalia, Adv.

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**For R-2 to R-6 in
I.A. (I.B.C)/869(KB)2023:** **Mr. Rishav Banerjee, Adv.
Mr. Rajarshi Banerjee, Adv.**

**For R-8 in
I.A. (I.B.C)/869(KB)2023:** **Mr. Jishnu Saha, Sr. Adv.
Mr. Ishaan Saha, Adv.
Mr. Aishwarya Kr. Awasthi,
Adv.**

For the Resolution Professional: **Mr. Abhishek Anand, Adv.
Mr. Karan Kohli, Adv.
Mr. Sajal Jain, Adv.
Mr. Supriyo Banerjee, Adv.**

**For the Suspended Board
of Directors:** **Ms. Sneha Singhania, Adv.
Ms. Sreenita Thakker, Adv.**

**For the Committee of Creditors
in I.A. (I.B.C)/1573(KB)2023:** **Mr. Rishav Banerjee, Adv.
Mr. Rajarshi Banerjee, Adv.**

**For the Suspended Board of
Directors in
I.A. (I.B.C)/513(KB)2023:** **Mr. Ratnanko Banerji, Sr. Adv.
Mr. K. Thaker, Adv.
Mr. S. Thaker, Adv.
Ms. Sneha Singhania, Adv.**

**For R-2 to R-8 in
I.A. (I.B.C)/513(KB)2023,
I.A. (I.B.C)/813(KB)2023 and
I.A. (I.B.C)/869(KB)2023:** **Mr. Rajarshi Banerjee, Adv.**

Date of Pronouncement: January 31, 2024.

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COMMON ORDER

Per: Bidisha Banerjee, Member (Judicial) and D. Arvind, Member (Technical)

1. This Court assembled through a blended mode.

I.A. (IB) No. 1573/KB/2023

2. This instant application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code” or “the Code” by **“Metro Infrastructure Development Limited”**, having registered office at 53, Sarat Bose Road, Kolkata – 25, hereinafter referred to as the **“Applicant”** who is an Unsecured Financial Creditor of the Corporate Debtor. The Applicant has sought the following reliefs:

- a.** *The Resolution Plan submitted by Respondent No. 2 (SRA) be rejected.*
- b.** *I.A. (I.B.C.)/510/KB/2023 filed by Respondent No. 1 for approval of the Plan submitted by Respondent No. 2 be dismissed.*
- c.** *Stay off all further proceedings in I.A. (I.B.C.)/510/KB/2023 till the disposal of the present application.*
- d.** *Ad interim orders in terms of prayers above.*
- e.** *Pass any other order or orders as this Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.*

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Brief Facts of the Case:

3. The Applicant herein is an Unsecured Financial Creditor of the Corporate Debtor whose claim of Rs. 15,69,13,000/- was admitted by the Resolution Professional, for brevity, “RP” and the Applicant has a 1.73% voting share in the Committee of Creditors, hereinafter referred to as “CoC”.
4. The Applicant is aggrieved by the decision of the CoC the allotment of NIL Payment against its admitted claim in the Resolution Plan though payments have been allocated to the Operational Creditors, against the Government Dues etc., in the Resolution Plan. The Applicant is also a Dissenting Financial Creditor, hereinafter referred to as “DFC” and has voted against the Resolution Plan. It is claimed that the Resolution Plan submitted by the SRA violates the provisions of the I&B Code, 2016. The Resolution Plan provides payment to the Operational Creditors who stand below the Applicant (unsecured financial creditor) in the order of priority in terms of Section 53 of the I&B code, but NIL to the Applicant.
5. The Resolution Plan, submitted by the SRA has been approved by the CoC in the 11th Meeting held on 03.03.2023 by 88.30% voting share.

Submissions made by the Learned Counsel Ms. Manju Bhuteria appeared for the Applicant herein:

6. That, the Resolution Plan as submitted by Bauman Dekor Private Limited, the Successful Resolution Applicant (for brevity “SRA”) is contrary to the provisions of the I&B Code, 2016 and is liable to be rejected.

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7. That, by an email dated 11.01.2023, annexed at Page 29 to the Application, issued by the RP, the claim of the Applicant was admitted in terms of Regulation 14 of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 as an “Unsecured, Unrelated Financial Creditor”.
8. That, the Applicant was given 1.7% voting rights in the CoC and the same would be evident from the minutes of the 10th meeting of the CoC annexed at Pages 56-80 to the Application (relevant at Page 58).
9. That, the Resolution Plan as submitted by the SRA is illegal, inequitable, null and void as the same is discriminatory. It is a settled position of law that DFC would be entitled to the same amount as they would have received in the event of the liquidation or more as per Section 30(2)(b) of the Code.
10. Further it is claimed that the Resolution Plan provides for NIL Payment to the Unsecured Financial Creditors but provides for payment to the Operational Creditors though the Operational Creditors rank lower in the waterfall mechanism under Section 53(1) of the I&B Code, 2016.
11. Thus, the Learned Counsel for the Applicant contends that the Resolution Plan is liable to be rejected as it is contrary to the Code and does not effectively deal with the interest of all stakeholders of the Corporate Debtor and as such does not comply with Section 30(2)(b) and Section 30(2)(f) of the Code.
12. The Learned Counsel for the Applicant also relied on following precedents to bolster be claim:
 - a. ***Suasth Healthcare Foundation***, decided on **December 18, 2023**, reported in **(2023) ibclaw.in 1000 NCLT**.

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“15. *Learned Sr. Counsel took us to **Para 32, 33, 34 and 35** of the said order which is reproduced verbatim from **Para 32:***

“What we infer from forgoing discussions is that

- i. IBC treats related parties as separate category for specific purpose so that they are excluded from the CoC and are as such not able to impede and interfere with the resolution process (Section 21) and are disqualified from being resolution applicants (Section 29A).*
- ii. However, there is nothing to show that Section 53 treats them as a different class and excludes them altogether from the ambit of its reach.*
- iii. None of the provisions whether it is regulation 38(1A) or the Section 32 of IBC specifically negates the claim of the related party, financial creditor who is not allowed a place in the CoC and is hence not allowed to vote.*
- iv. Admittedly the RP has treated the applicant as an unsecured financial creditor and in terms of distribution of assets under Section 33, the financial debts of unsecured creditor rank at 4th place.*

Para 33:

We are given to understand that the admitted claim of all the stake holders is 628.Crs. The amount proposed by SRA is 180 Crore. While the commercial wisdom of CoC is paramount, we are of the opinion that a balance is required to be struck amongst all the stake holders.

Para 34:

In the above said backdrop to ensure fairness qua of the stake holders we deem it appropriate to send the resolution plan back to CoC to review the distribution so as to balance the interest of all stake holders as required in Section 30(2) explanation 1 and see that a provision can be made for payment to the applicant from the proceeds.”

XXX

XXX

XX

“57. *In view of the above analysis, we are of the view that the code contemplates mandatory allocation to dissenting financial creditors and to operational creditors and the allocation would be the amount provided in the*

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plan or liquidation value whichever is higher and the contention that such creditors can be paid NIL value because liquidation value for them is NIL, would defeat the very purpose of the beneficial amendment made in Section 30(2) of the I&B Code. Such contention made by Ld. Senior Counsels, in our view, will not be correct proposition in a CIRP proceedings, though the same would be correct in a liquidation proceeding under Section 53(1) of the I&B Code.”

Submission made by the Learned Counsel, Mr. Abhisekh Anand appearing for the Resolution Professional of Eastern Silk Industries Pvt Ltd. (Corporate Debtor):

- 13.** Per contra the Learned Counsel for the RP submits that the issue of distribution to the Dissenting Unsecured Financial Creditor is no longer *res integra*. In the instant case, the total admitted claims of the Secured Financial Creditors is more than Rs. 839 Crore whereas, the Liquidation Value of the Corporate Debtor is only Rs. 79.14 Crore. Therefore, in the case of liquidation of the Corporate Debtor, the Applicant herein being an Unsecured Financial Creditor as per Section 53 of the Code, shall be entitled to NIL value and therefore, the arguments raised by the Learned Counsel for the Applicant have no legs to stand on.
- 14.** The gist of the precedents cited by the Learned Counsel in the course of arguments, to reinforce his submissions is reproduced herein below in a tabular form as under:

SN	Name of case	Decided by	Relevant Paras
i.	<i>Sahyog Mega Chits Pvt. Ltd. v. Mrs. Mandeep</i>	The Hon'ble NCLAT on 17.11.2023.	5. <i>The plan having approved by 92.3% voting share, we see no ground at the instance</i>

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	<p><i>Gujral Erstwhile RP of the CD & Anr.</i> [Company Appeal (AT) (Insolvency) No. 1455 of 2023 & I.A. No. 5206 of 2023]</p> <p style="text-align: center;">And</p> <p><i>Decent Securities Pvt. Ltd. v. Mrs. Mandeep Gujral Erstwhile Resolution Professional of the Corporate Debtor & Anr.</i> [Company Appeal (AT) (Insolvency) No. 1456 of 2023 & I.A. No. 5210 of 2023]</p>		<p><i>of the Appellant to challenge the approval of the Resolution Plan. <u>The fact that no amount has been proposed is due to the reason that Appellants are unsecured creditor and in the liquidation, they must not be getting any amount under Section 53. We, thus, are of the view that no ground has been made out to entertain this Appeal. Both the Appeals are dismissed.</u></i></p>
ii.	<p><i>Peter Beck and Partner Vermoögensverwaltung GMBH v. Sharon Bio-medicine Ltd. and Ors.</i> [Company Appeal (AT) (Insolvency) No. 912 of 2023]</p>	<p>The Hon'ble NCLAT on 14.08.2023.</p>	<p>14. <i>Learned Counsel for the Appellant has also relied on the judgment of this Tribunal in “Facor Alloys Limited and Anr. vs. Bhuvan Madan and Ors.” (supra) in which case this Tribunal had occasion to consider issue as to whether the Resolution Plan approved by the Adjudicating Authority which was under challenge is discriminatory since it gives differential treatment amongst the same class of the financial creditors merely based on assenting or</i></p>

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			<p>dissenting financial creditors. [...]</p> <p>20. From the above discussions, we are of the view that assenting financial creditors entitled for payment as proposed in the plan and <u>dissenting financial creditor is entitled as per the minimum entitlement as per Section 30(2)(b). There is no dispute that liquidation value of the Appellant in the present case is nil.</u> The submission of the Appellant that there is a discrimination between the payment of assenting unsecured financial creditor and <u>dissenting unsecured financial creditor cannot be accepted and on the ground, as urged by the Appellant in this Appeal, the Resolution Plan approved by the Adjudicating Authority cannot be held to be discriminatory.</u> We, thus, are of the view that there is no error in the order of the Adjudicating Authority approving the Resolution Plan.</p>
iii.	<i>Union Bank of India (earlier known as Corporation Bank) Through Sh. Pritpal</i>	The Hon'ble NCLAT on 20.07.2022.	<p><u>5. The decision of the CoC regarding the distribution of amount is in its commercial wisdom which we cannot question or be questioned by the</u></p>

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<p>Singh Vilkuh, Chief Manager v. Mr. Rajender Kumar Jain, Resolution Professional of M/s Kudos Chemie Ltd. & Ors.</p> <p>[Comp. App. (AT) (Ins.) No. 665 of 2022]</p>	<p><u>Appellant. The Adjudicating Authority has rightly referred the judgment of the Hon’ble Supreme Court in “India Resurgence Arc. Pvt. Ltd. Vs. M/s. Amit Metaliks Ltd. & Anr.- Civil Appeal No. 1700 of 2021” where in paragraph 13.1, the Hon’ble Supreme Court has held that what amount is to be paid to different classes or sub- classes of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest. Paragraph 13.1 of the judgment is as follows:-</u></p> <p><i>“13.1. Thus, what amount is to be paid to different classes or sub-classes of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with</i></p>
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			<p><i>reference to the value of the security interest.”</i></p> <p><i>6. The above judgment of the Hon’ble Supreme Court is fully attracted in the facts of the present case and we do not find any error in the order of the Adjudicating Authority rejecting the Application relying on the above judgment of the Hon’ble Supreme Court. There is no merit in the Appeal. The Appeal is dismissed.</i></p>
iv.	<p><i>Small Industries Development Bank of India (SIDBI) v. Vivek Raheja, RP, M/s. Gupta Exim (India) Pvt. Ltd.</i> [Company Appeal (AT) (Insolvency) No. 570 of 2022]</p>	<p>The Hon’ble NCLAT on 16.09.2022.</p>	<p><i>15. The Judgment of the Hon’ble Supreme Court in Civil Appeal No. 1700/2021 "India Resurgence" (supra) was a case where Hon'ble Supreme Court had occasion to consider where also the Financial Creditor has objected to distribution contending that distribution should be as per value of the security interest held by the financial creditor. Hon'ble Supreme Court after referring to Section 30(2) and submission of the Appellant that distribution ought to have been as per value of security interest expressly rejected the submission. In paragraph 13, 13.1 and 14.2, following was laid down:</i></p> <p><i>"13. The repeated submissions on behalf of the appellant with reference to the value of</i></p>

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			<p><i>its security interest neither carry any meaning nor any substance. What the dissenting financial creditor is entitled to is specified in the later part of sub-section (2)(b) of Section 30 of the Code and the same has been explained by this Court in Essar Steel as under:-</i></p> <p style="text-align: center;"><i>xxx xxx xxx</i></p> <p><i>13.1. Thus, what amount is to be paid to different classes or subclasses of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest.</i></p> <p style="text-align: center;"><i>xxx xxx xxx</i></p> <p><i>20. When we look into above statement of objects and reasons, it is made clear that financial creditors who do not vote in favour of the resolution plan shall receive an amount that is not less than the liquidation value of their debt. The above statement of objects and reasons also makes it clear that the entitlement of dissenting financial creditor is to receive liquidation value</i></p>
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		<p><i>of their debt and not the distribution as per their security value as is sought to be contended by the Learned Counsel for the Appellant before us. The statement of objects and reasons by which amendments in Section 30(2)(b) has been made, makes it clear that <u>entitlement of dissenting financial creditor is the liquidation value of their debt</u> which also clearly negate the submissions raised by the Learned Counsel for the Appellant before us.</i></p> <p style="text-align: center;">xxx xxx xxx</p> <p><i>25. In view of the foregoing discussion, we do not find any error in the Order dated 17.03.2022 of the Adjudicating Authority rejecting I.A. No. 581 of 2021 filed by the Appellant. The decision of the Committee of Creditors and the Adjudicating Authority deciding to distribute the proceeds of the plan value as per voting share of the secured creditor in no manner contravenes the provisions of Section 30(2)(b) of the Code. None of the submissions raised by the Learned Counsel for the Appellant has any substance. In result, the Appeal is dismissed.</i></p>
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15. Further, the Learned Counsel for the RP would claim that the Committee of Creditors of the Corporate Debtor herein has approved the Resolution Plan in its “commercial wisdom” and therefore, the present application seeking a direction against the business decision of the Committee of Creditors cannot be entertained.
16. It is asserted that the Resolution Plan even prior to approval of Adjudicating Authority is binding inter se the CoC and the SRA. The Learned Counsel for the RP has referred to the judgment passed by the Hon’ble Apex Court in ***Ebix Singapore Private Limited and Ors. v. Committee of Creditors of Educomp Solutions Limited*** [Civil Appeal No. 3224 of 2020] that:

“112. While the above observations were made in the context of a scheme that has been sanctioned by the Court, the Resolution Plan even prior to the approval of the Adjudicating Authority is binding inter se the CoC and the successful Resolution Applicant. The Resolution Plan cannot be construed purely as a ‘contract’ governed by the Contract Act, in the period intervening its acceptance by the CoC and the approval of the Adjudicating Authority. Even at that stage, its binding effects are produced by the IBC framework. The BLRC Report mentions that “[w]hen 75% of the creditors agree on a revival plan, this plan would be binding on all the remaining creditors”⁴⁹. The BLRC Report also mentions that, “the RP submits a binding agreement to the Adjudicator before the default maximum date”⁵⁰. We have further discussed the statutory scheme of the IBC in Sections I and J of this judgment to establish that a Resolution Plan is binding inter se the CoC and the successful Resolution Applicant. Thus, the ability of the Resolution Plan to bind those who have not consented to it, by way a statutory procedure, indicates that it is not a typical contract.’

“113. The BLRC Report, which furnished the first draft of the IBC and elaborated on the aims behind the overhaul of the insolvency regime, refers to a CoC-approved Resolution

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Plan as a 'binding contract' in one instance and refers to it as a 'binding agreement' in other instances. The report also refers to a CoC- approved Resolution Plan as a 'financial arrangement'⁵¹, 'revival plan'⁵² or a 'solution'⁵³. The interchangeability of the terms-'agreement', 'contract', 'financial arrangement', 'revival plan' and 'solution' indicates that there is no clear intention of the BLRC in characterizing the nature of the Resolution Plan as a contract. The binding effect of the Resolution Plan has the consequence of preventing the CoC or the Resolution Applicant to renege from its terms after the plan has been approved by the CoC through a voting mechanism. The fleeting mention of a 'binding contract' on one occasion in the BLRC Report (which was a pre-legislative text that underwent subsequent modifications by the Legislature) to indicate the binding nature of the Resolution Plan and the finality of negotiations once it is approved by the CoC, does not establish the legal nature of the document, especially when it is not complemented by the text and design of the IBC.”

- 17.** We have considered the submissions made orally and in writing by the Learned Counsel for both parties, analysed carefully the precedents cited by both parties and perused the documents placed before us.

Issue that cropped up before us:

- 18.** *Whether an Unsecured Financial Creditor being a dissentient to the Resolution Plan can be provided NIL amount against its admitted claim by the RP.*

Analysis and Findings:

- 19.** It is evident that vide an email dated 09.11.2022, the Applicant herein submitted its claim with the Resolution Professional for an amount consideration of Rs. 15,69,13,000/- as an unsecured

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financial creditor (“**Form C**” dated **03/11/2022** is annexed at Page 15 to the Application).

- 20.** Further, it is evident that vide an email dated 11.01.2023 (annexed at Page 29 to the Application), the RP admitted the claim of Applicant as per Regulation 14 of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 as an unsecured, unrelated financial creditor.
- 21.** It is noted that on the 11th CoC meeting held on 03.03.2023, the Resolution Plan submitted by one Ajay Bikram Singh through Bauman Dekor Pvt. Ltd., has been approved by 88.30% voting share, wherein, the Applicant, Metro Infrastructure Development Limited, having 1.73% voting right, voted against the Resolution Plan.
- 22.** It is further noted that in the approved Resolution Plan, NIL Payment has been allocated to the unsecured Financial Creditors against their claim provisionally admitted by the IRP of Rs. 4,068.13 Lakh and the same is evident from the Financial Proposal (Curated Resolution Plan) dated January 02, 2023, annexed at Pages 112 – 135 to the Application an Annexure “I”.
- 23.** Further, it is evident that the Operational Creditors, other than Government and Employees Dues have been allocated of Rs. 12.42 Lakh against their claim provisionally admitted by the IRP of Rs. 62.09 Lakh.
- 24.** To consider the issue whether an Unsecured Unrelated Financial Creditor who dissents to the Resolution Plan can be allocated NIL amount against its admitted claim by the RP in Plan, it would be appropriate to read the statutory provisions under the I&B Code as under:

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SN	Sections	Provisions
i.	30(2)(b) of the Code.	<p>Submission of resolution plan. –</p> <p style="text-align: center;">xxx xxx xxx</p> <p>(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—</p> <p style="text-align: center;">xxx xxx xxx</p> <p>[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than--</p> <p>(i) <u>the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53;</u> or</p> <p>(ii) <u>the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,</u></p> <p><u>whichever is higher and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.</u></p>

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ii.	53(1) of the Code.	<p>Distribution of assets. -</p> <p>(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely: —</p> <p>(a) the insolvency resolution process costs and the liquidation costs paid in full;</p> <p>(b) the following debts which shall rank equally between and among the following: —</p> <p>(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and</p> <p>(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;</p> <p>(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;</p> <p><u>(d) financial debts owed to unsecured creditors;</u></p> <p>(e) the following dues shall rank equally between and among the following: —</p> <p>(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of</p>
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		<p>India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;</p> <p>(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;</p> <p>(f) any remaining debts and dues;</p> <p>(g) preference shareholders, if any; and</p> <p>(h) equity shareholders or partners, as the case may be.</p> <p style="text-align: center;">xxx xxx xxx</p>
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25. The Learned Counsel, Mr. Anand appearing for the Resolution professional would in a bid to torpedo and pulverise the arguments of the DFC, would attempt to build up a case that if plan value is less than liquidation value, DFCs need not be made provision in the Plan.

26. Precedents which we would rely upon:

(a) In *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta* reported in (2020) 8 SCC 531: MANU/SC/1577/2019 passed by the Hon'ble Apex Court, that:

“80. When it comes to the validity of the substitution of Section 30(2) (b) by Section 6 of the Amending Act of 2019, it is clear that the substituted Section 30(2)(b) gives operational creditors something more than was given earlier as it is the higher of the figures mentioned in sub-clauses (i) and (ii) of Sub-clause (b) that is now to be paid as a minimum amount to operational creditors. *The same goes for the latter part of Sub-clause*

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(b) which refers to dissentient financial creditors. Mrs. Madhavi Divan is correct in her argument that Section 30(2)(b) is in fact a beneficial provision in favour of operational creditors and dissentient financial creditors as they are now to be paid a certain minimum amount, the minimum in the case of operational creditors being the higher of the two figures calculated under sub-clauses (i) and (ii) of Clause (b), and the minimum in the case of dissentient financial creditor being a minimum amount that was not earlier payable. As a matter of fact, pre-amendment, secured financial creditors may cramdown unsecured financial creditors who are dissentient, the majority vote of 66% voting to give them nothing or next to nothing for their dues. In the earlier regime it may have been possible to have done this but after the amendment such financial creditors are now to be paid the minimum amount mentioned in Sub-section (2). Mrs. Madhavi Divan is also correct in stating that the order of priority of payment of creditors mentioned in Section 53 is not engrafted in Sub-section (2)(b) as amended. Section 53 is only referred to in order that a certain minimum figure be paid to different classes of operational and financial creditors. It is only for this purpose that Section 53(1) is to be looked at as it is clear that it is the commercial wisdom of the Committee of Creditors that is free to determine what amounts be paid to different classes and sub-classes of creditors in accordance with the provisions of the Code and the Regulations made thereunder.”

(Emphasis Added)

The aforesaid extract categorically establishes the proposition that the DFCs are entitled to at least a minimum amount that was not payable earlier. The stand that DFCs are entitled to a minimum only if the plan value is more than to the liquidation value applicable to such Dissenting Financial Creditors is not substantiated.

27. In *India Resurgence Arc Private Limited vs. Amit Metaliks Limited* reported in [2021] 6 SCR 611: MANU/SC/0367/2021 the Hon’ble Apex Court propounded that:

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“13.1. Thus, what amount is to be paid to different classes or subclasses of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the Appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest.”

(Emphasis Added)

28. The decision establishes the proposition that a dissenting financial creditor is entitled to a minimum pay-out but not entitled to a sum equivalent to the value of its security interest.

29. *Indian Bank vs. Charu Desai, Erstwhile RP and Chairman of Monitoring Committee of GB Global Ltd.* reported in [2022] SCC Online NCLAT 190: MANU/NL/0309/2022, the Hon’ble NCLAT held:

“19. The provision which has been now incorporated by the Amendment Act of 2019 by sub-clause (b) was substituted is about the payment of debts of Financial Creditors who do not vote in favour of the Resolution Plan. The amendment which has been introduced by Amendment Act, 2019 came to be considered by the Hon’ble Supreme Court in “Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors.-MANU/SC/1577/2019 : (2020) 8 SCC 531.”

(Emphasis Added)

30. In very recent judgment passed by the Hon’ble Supreme Court of India in ***DBS Bank Limited, Singapore vs. Ruchi Soya Industries Limited*** [Civil Appeal Nos. 9133 of 2019 and 787 of 2020] reported in **MANU/SC/0012/2024**, the Hon’ble Apex Court has dealt with the issue,

“Whether Section 30(2)(b)(ii) of the Insolvency and Bankruptcy Code, 2016, as amended in 2019, entitles the dissenting financial creditor to be paid the minimum value of its security interest?”

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The Hon'ble Apex Court has observed that:

“44. We would, for the above reasons, reject the submission on behalf of the Respondents that Section 30(2)(b)(ii) is unworkable because it involves deeming fiction relating to liquidation, which is inapplicable during the CIRP period. This would be contrary to the legislative intent and is unacceptable.”

*“45. Respondent No. 2 - CoC has submitted that the Appellant has dissented because it did not approve the manner of distribution of the proceeds under the resolution plan. The Appellant did not dispute the resolution plan itself. Accordingly, Section 30(2)(b)(ii) is not applicable. The argument is fallacious and must be rejected. Section 30(2)(b)(ii) relates to the proportion of the proceeds mentioned in the resolution plan or the amount which the dissenting financial creditor would be entitled to in terms of the waterfall mechanism provided in Section 53(1), if the corporate debtor goes into liquidation. The dissenting financial creditor does not have any say when the resolution plan is approved by a two-third majority of the CoC. The resolution plan will be accepted when approved by the specified majority in the CoC. The dissenting financial creditor cannot object to the resolution plan, but can object to the distribution of the proceeds under the resolution plan, when the proceeds are less than what the dissenting financial creditor would be entitled to in terms of Section 53(1) if the corporate debtor had gone into liquidation. **This is the statutory option or choice given by law to the dissenting financial creditor. The option/choice should be respected.**”*

“46. Respondent No. 2 - CoC had referred to the objections referred to in the CoC meetings dated 15.04.2019 and 23.04.2019. We are of the view that the objections raised by the Appellant relate to the distribution of the proceeds in terms of the liquidation plan. According to them, they were entitled to money of value not less than the amount that they would have received Under Section 53(1) of the Code.”

“47. It is also argued that the NCLAT had rejected the first appeal on the ground that the Appellant had only challenged the distribution of the pay-out under the plan inter se the financial creditors of the corporate debtor and not the

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resolution plan. Accordingly, the amendment to Section 30(2)(b) vide the Amendment Act of 2019 was not applicable. We have already rejected this argument, for the reasons set out above. In our opinion, the contention that the Appellant is not the dissenting financial creditor is to be rejected.'

"48. The contention on behalf of the Respondent that there is conflict between Sub-section (4), as amended in 2019, and the amended Clause (b) to Sub-section (2) to Section 30 of the Code does not merit a different ratio and conclusion. Section 30(4) states that the CoC may approve the resolution plan by a vote not less than 66% of the voting share of the financial creditor. It states that the CoC shall consider the feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors Under Sub-section (1) to Section 53, including the priority and value of the security interest of the secured creditors, and other requirements as may be specified by the Board. These are the aspects that the CoC has to consider. It is not necessary for the CoC to provide each assenting party with liquidation value. However, a secured creditor not satisfied with the proposed pay- out can vote against the resolution plan or the distribution of proceeds, in which case it is entitled to full liquidation value of the security payable in terms of Section 53(1) on liquidation of the corporate debtor. **The conflict with Sub-clause (ii) to Clause (b) to Sub-section (2) to Section 30 does not arise as it relates to the minimum payment which is to be made to an operational creditor or a dissenting financial creditor. A dissenting financial creditor does not vote in favour of the scheme. Operational creditors do not have the right to vote."**

"49. In view of the aforesaid discussion, and as we are taking a different view and ratio from India Resurgence ARC Private Limited (supra) on interpretation of Section 30(2)(b)(ii) of the IBC, we feel that it would be appropriate and proper if the question framed at the beginning of this judgment is referred to a larger Bench. The matter be, accordingly placed before the Hon'ble the Chief Justice for appropriate orders."

(Emphasis Added)

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31. After careful examination and interpretation of the statutory provisions enshrined in the I&B Code, 2016 along with the leading judgments discussed above, we are of the considered view that:

33.1. Section 30(2)(b) of the Code envisages that the Resolution Professional shall examine the plan received by him to confirm that the resolution plan allocates the payment of debts of **Financial Creditors either secured or unsecured** in such manner as may be specified by the Board which **shall not be less than** the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; **or** the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the **order of priority in sub-section (1) of section 53, whichever is higher.**

33.2. Thus, the Committee of Creditors cannot turn volta face by allocating “No” payment towards the “Unsecured Financial Creditor” who is “not related party”, against its admitted claim by quoting a reason that the total admitted claims of the Secured Financial Creditors is more than the Liquidation Value of the Corporate Debtor and therefore, in the case of liquidation of the Corporate Debtor, the Applicant herein being an Unsecured Financial Creditor as per Section 53 of the Code, shall be entitled to NIL value.

32. In all the judgments rendered by the Hon’ble NCLAT relied by the Learned Counsel for the Respondent, the unsecured creditors were paid NIL value as the liquidation value was NIL for them and so is

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the case for operational creditors who were also paid nothing by quoting the same reason. But, in the case in hand, the Operational Creditors have been paid despite the fact that liquidation value is NIL even for the unsecured creditors, who stand higher in the pedestal under Section 53(1) of the I&B Code. This would mean only two things, i.e., if the liquidation value was available to the Operational Creditors, then it cannot be said that the same was not available to the DFC who rank above to the Operational Creditors under Section 53(1)(a) of the Code. If this inference is not correct, then the only other inference that could be drawn is an apparent discrimination and arbitrariness on the part of the CoC. Their conduct does not balance the interest of all the stakeholders enshrined under the objectives of the Code. Thus, the case laws relied by the Learned Counsel for the Respondent is distinguishable to the given the fact and circumstances of the case in hand. This view is further fortified by the observations made by the Hon'ble Apex Court in the ***Essar Steel (Supra)***.

- 33.** We are of the considered opinion that the unsecured financial creditor though dissentient to the plan cannot be paid NIL by quoting a reason that liquidation value is not available to them whereas the Operational Creditor has been provided certain amount who comes in the lower rank to the unsecured creditors in accordance with the waterfall mechanism provided under Section 53(1) of the Code.
- 34.** We have already expressed our view in the ***Suasth Healthcare Foundation*** [IVN.P (IBC)/34(KB)2023 In I.A. (IB) No. 1551/KB/2023 And IVN.P (IBC)/37(KB)2023 In I.A. (IB) No. 1381/KB/2022 In **C.P. (IB) No. 204/KB/2021**] reported in **(2023)**

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ibclaw.in 1000 NCLT upon examination of the implication of Section 30(2)(b) of the Code in the light of the decision of the Hon'ble Apex Court in ***Essar Steel (Supra)***. It is reproduced hereunder:

“53.1. Reference to Section 53(1) of the I&B Code is only for the purpose of calculating the amount payable to operational creditors and dissenting financial creditors. Otherwise, there is no place for Section 53 (1) when it comes to the resolution of a corporate debtor under the CIR Process.”

“53.2. The provision of some amount should be made for operational creditors as well as dissenting financial creditors, and the amount so provided cannot be NIL.”

*“54. This being a beneficial amendment as observed by the Hon'ble Apex Court, **in our view code contemplates a scenario where a provision made to an operational creditor or dissenting financial creditor in a Resolution Plan could be lesser than what they would have got in the event of liquidation in terms liquidation value as per section 53(1). In such a situation the code provides for provision as per liquidation value.**”*

“55. In fact, in the case of operational creditors the code says that they will have to be paid as per the value provided to them as per the resolution plan, or liquidation value or the amount that would have been paid to them in the plan as if the resolution plan value had been distributed in accordance with the order of priority mentioned in sub-section (1) of Section 53 whichever is higher.”

“56. Therefore, we are of the view, that is the reason for the word “not less than” used in Section 30(2)(b). If the legislature wanted to restrict the amount payable to them to liquidation value at the most, then the words “not more than liquidation value” would have been used.”

“57. In view of the above analysis, we are of the view that the code contemplates mandatory allocation to dissenting financial creditors and to operational creditors and the allocation would be the amount provided in the plan or liquidation value whichever is higher and the contention that such creditors can be paid NIL value because

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liquidation value for them is NIL, would defeat the very purpose of the beneficial amendment made in Section 30(2) of the I&B Code. Such contention made by Ld. Senior Counsels, in our view, will not be correct proposition in a CIRP proceedings, though the same would be correct in a liquidation proceeding under Section 53(1) of the I&B Code.”
(Emphasis Added)

- 35.** Hence, we are of the considered opinion that the provision of allocating “NIL” amount to a DFC is contrary to the true import of the ***Essar Steel (supra)*** judgment as well as the provisions of the Section 30(2)(b) of the Code. As such it is patently erroneous and grossly disproportionate vis-à-vis other stakeholders.
- 36.** We are conscious of the legal position that the “**Commercial Wisdom**” of the CoC is supreme and cannot be interfered with when it comes to approving a resolution plan, yet it is incumbent upon this Adjudicating Authority to restrict itself to the four corners of the statute keeping the legislative intent intact and not to render a decision contrary to the view and established as propounded by the Hon’ble Apex Court, when it comes to allocation of an amount to a particular class of creditor. We reiterate that the observation of the Hon’ble Apex Court in the ***Essar Steel (supra)*** and in ***DBS Bank Limited (supra)*** to frame our view.
- 37.** Therefore, this Adjudicating Authority disapproves an allocation of “NIL” amount to a Dissenting Financial Creditor (DFC) simply because the Plan value is way less than the liquidation value and the secured creditors are allocated way less than their claim or security interest.
- 38.** As allocation of an amount is not the task of this Adjudicating Authority, it leaves upon the CoC of Eastern Silk Industries

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Limited (Corporate Debtor herein) to take a rational and pragmatic view to allocate a reasonable amount within the realm of its “Commercial Wisdom” to **Metro Infrastructure Development Limited**, the Applicant herein, against its admitted claim.

- 39.** The entire exercise be completed in a week’s time, after receipt of a copy of this order.
- 40.** In terms of foregoing discussions and direction, this Application being **I.A. (IB) No. 1573/KB/2023** is **allowed** and **disposed of**.
- 41.** The Registry of this Adjudicating Authority is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.
- 42.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

I.A. (IB) No. 869/KB/2023

- 43.** This Application is preferred by one **Mr. Sundeep Shah**, residing at 55, Sarat Bose Road, Kolkata – 700025, who is a promoter and suspended managing director of Eastern Silk Industries Limited (Corporate Debtor herein). The Applicant has filed this application objecting to the Resolution Plan submitted by Bauman Dekor Private Limited (“BDPL”) which was approved by the Committee of Creditors (CoC) of the Corporate Debtor as the same is not compliant with the I&B Code and Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (hereinafter referred to as “CIRP Regulations”).

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- 44.** The Reliefs sought through this application are that:
- a.** *That this Adjudicating Authority be pleased to declare that the Resolution Plan submitted by the BDPL is in contravention to the provisions of the Code, and declare the same as null and void;*
 - b.** *That the act of the Respondent No. 1 (i.e., Resolution Professional) in knowingly tabling a palpably non-compliance Resolution plan, that violates the provisions of the Code and CIRP Regulations before the 11th CoC meeting to be an act ‘without jurisdiction’ and/ or an act of fraud on his part.*

Factual Matrix:

- 45.** The CoC in its meeting held on July 08, 2022, resolved to appoint Mr. Anil Kohli, as the Resolution Professional (RP) of the Corporate Debtor and pursuant to that, vide an order dated July 29, 2022, this Adjudicating Authority appointed Mr. Kohli as the RP of the Corporate Debtor.
- 46.** The Resolution Professional issued Form “G” under the Regulation 36A (1) of the CIRP Regulations, 2016, inviting the Expression of Interest for brevity “EoI” from the Prospective Resolution Applicants, for brevity “PRAs” on August 24, 2022.
- 47.** On March 03, 2023, in the 11th CoC meeting, the RP placed the Resolution Plan submitted by BDPL along with other Resolution Plans before the CoC wherein the CoC of the Corporate Debtor approved the Resolution Plan submitted by BDPL and declared BDPL as Successful Resolution Applicant (SRA).

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- 48.** On March 04, 2023, the Applicant sent revised the settlement proposal for the CoC to consider which was not put for voting by the RP.
- 49.** On March 06, 2023, the Applicant revised the settlement proposal put forth on March 04, 2023, by increasing the amount to Rs. 60 Crore.
- 50.** The voting on the Resolution plans was concluded by the members of the CoC on March 06, 2023.

Applicant's Submissions:

- 51.** The Learned Counsel for the Applicant has submitted that on August 24, 2022, the RP invited EoI from the PRAs and pursuant to that, the RP received three Resolution Plans from the PRAs including the Resolution Plan submitted by BDPL, a company promoted by one Mr. Ajay Bikram Singh.
- 52.** The Learned Counsel for the Applicant has further submitted that at the 11th CoC meeting held on march 03. 2023, the RP placed the Resolution Plans before the CoC which includes the Resolution Plan which was not compliant with the provisions of the Code and the CIRP Regulations. It is averred that the CoC of the Corporate Debtor with the voting concluding on March 06, 2023, has wrongly approved the plan submitted by BDPL. The approved Resolution Plan is not compliant with Section 30(2)(b) of the Code and other provisions of the CIRP Regulations including the mandatory payment to the Operational Creditors and the Dissenting Financial Creditors.
- 53.** Further, it is claimed that the Applicant vide an email dated March 04, 2023, sent a settlement proposal for the CoC to consider, and

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the same was not acknowledged by the RP addressing the concerns of the member of the CoC to the earlier settlement proposal. The proposal was also revised vide an email dated March 06, 2023, wherein the proposal amount was increased to Rs. 60 Crore. It is submitted that the settlement proposal submitted by the Applicant takes care of all the stakeholders of the Corporate Debtor and is in the best interest of the Corporate Debtor. It is claimed that the RP with an ulterior motive has placed the non-compliant Resolution Plan which is presumed not feasible and viable before the CoC in its 11th meeting for voting sans giving any opportunity to revise its settlement proposal.

- 54.** The Learned Counsel for the Applicant has averred that the Resolution Plan submitted by the BDPL (SRA) fails to provide priority in payment as well as a minimum payment under Section 30(2)(b) read with Section 53(1) of the Code to the dissenting financial creditor.
- 55.** Further, it is alleged that the Resolution Plan submitted by the BDPL (SRA) fails to provide payment toward the Employees Provident Fund (EPF) Dues. To strengthen its contention, the Learned Counsel has referred to the ratio of the Hon'ble NCLAT in the matter of ***Regional Provident Fund Commissioner v. Ashish Chhawchharia, Resolution Professional for Jet Airway (India) Limited and Another***, reported in **2022 SCC OnLine NCLAT 418** wherein the Hon'ble NCLAT has held that the Provident Fund dues under Section 11 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) must be paid in full by the RP. The decision of the Hon'ble NCLAT in the said matter was also upheld by the Hon'ble Apex Court vide an order dated

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January 30, 2023. It is claimed that the EPFO, Bangalore currently has claimed an amount of Rs. 1,01,47,933/- in which an amount of Rs. 2,68,110/- has been admitted and an amount of Rs. 98,79,823/- has been admitted as contingent claim.

- 56.** Further, it is alleged that as per note 2.1.5 of the Resolution Plan, out of the total admitted claims towards the Government Dues i.e., Rs. 20,05,68,655/-. The Resolution Plan only proposes to pay a meagre sum of Rs, 1,18,56,000/- towards the payment of all Government Dues proportional to their admitted claim. Referring to the judgments of the Hon'ble Apex Court in the matter of ***State Tax Officer v. Rainbow Papers Ltd.*** reported on **2022 SCC OnLine SC 1162** and of the NCLAT in the case of ***Principal Commissioner of Income Tax v. M/s. Assam Company India Limited in Company Appeal (AT) Ins. 241 of 2022***, the Learned Counsel for the Applicant has submitted that the Government or Governmental Authorities are secured creditors who are not to be paid the requisite minimum payment assured under Section 30(2)(b) of the Code.
- 57.** Further, it is claimed that the parent company of Respondent No. 8 (SRA), i.e., "Baumann Dekor" has undergone bankruptcy under Austrian Law, the promoter of the SRA, Mr. Ajay Bikram Singh who was the manager of "Baumann Dekor" when the company went into insolvency in Austria acquired the "Baumann Dekor" under liquidation as per the laws of Austria. It is claimed that as the parent company has a previous record of default and insolvency, this will cause grave uncertainty in the implementation of the Resolution Plan and will aftermath in injury to the Corporate Debtor and its stakeholders.

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- 58.** The Learned Counsel for the Applicant submits that the act done by the RP herein reflects a miserable failure on his part to conduct due diligence by acting in good faith in order to assure that the Resolution Plan is complying with all the requisite provisions before place it on the table of CoC.

Submissions made by Mr. Anil Kohli, the Resolution Professional of Eastern Silk Industries Limited, per contra:

- 59.** The Learned Counsel for the RP has asserted that as per Clause 2.1.6. and 2.1.2. of the Resolution Plan, the SRA provides the mandatory payment of Rs. 12.42 Lakh to the Operational Creditors (Other than workmen and Employees) and amount of Rs. 1.23 Crore to the Workmen and Employees which is 100% payment made to dues related to employees' salary and reimbursement, contribution to the provident fund, the Employee State Insurance Corporation, the Pension fund, leave encashment, the gratuity fund, group insurance of any other dues.
- 60.** Further, it is asserted that the allocation of payment towards the dissenting financial creditor has already been treated in the Resolution Plan in terms of Section 53 of the Code.
- 61.** Further it is submitted that allegation relating to the mandatory payment towards Government dues, and the same ought to be treated as Secured Creditors in terms of the judgment of Rainbow Papers (Supra). It is submitted that in recent judgment rendered by the Hon'ble Apex Court in ***Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Limited*** [CIVIL APPEAL NOS. 7976 OF 2019] judgment dated 17.06.2023, held that:

“49. Rainbow Papers (supra) did not notice the ‘waterfall mechanism’ under Section 53 – the provision had not been

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adverted to or extracted in the judgment. Furthermore, Rainbow Papers (supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the court in Rainbow Papers (supra) or was missed altogether. In any event, the judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to Central or State Government.

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“53. In view of the above discussion, it is held that the reliance on Rainbow Papers (supra) is of no avail to the appellant. In this court’s view, that judgment has to be confined to the facts of that case alone.”

(Emphasis Added)

- 62.** It is submitted that the principle laid down in the ***Rainbow papers (Supra)*** has been diluted by the Hon’ble Apex Court and any reliance placed by the Applicant upon the judgment passed in ***Rainbow papers (Supra)*** has wrongly been placed before this Bench, as the judgment rendered in ***Rainbow papers (Supra)*** is applicable to the facts and circumstances of that as the subsequent judgment of the Hon’ble Apex Court indicates.
- 63.** The Learned Counsel for the RP further claimed that the last date of submission of the revised settlement proposal was 11.02.2023. the Revised settlement proposal submitted by the Applicant was rejected by the members of the CoC in its 10th meeting dated 13.02.2023. The further settlement proposal dated 04.03.2023 and 06.03.2023 as submitted by the Applicant were after approval

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of the Resolution Plan by the member of the CoC. It is submitted that upon considering the legislative intent and the statutory scheme of the Code and the CIRP Regulations as well as the precedents of the Hon'ble Supreme Court of India in ***Essar Steel (supra)***, the approval of the Resolution Plan is solely within the ambit of "Commercial Wisdom" of the CoC and the CoC of the Corporate Debtor herein within the scope of commercial decision, has approved the plan submitted by the SRA. Thus, the instant application seeking a direction against the CoC cannot be entertained at this stage for consideration of any proposal under Section 12A of the Code.

Submissions made by Edelweiss Asset Reconstruction Company Limited, per contra:

- 64.** It is submitted that the Resolution Plan submitted by the SRA has been approved after examining all the statutory provisions and the members of CoC with a voting share of 88.30% approved the plan.

Analysis and Findings:

- 65.** It is evident that the Applicant is the erstwhile promoter and suspended managing director of the Corporate Debtor. We find that it is for the applicant to raise question regarding the distribution of proposed amount whether complies the provisions as provided under Section 30(2)(b) read with Section 53 of the Code. The CoC has approved the plan within its ambit of "Commercial Wisdom".

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66. We are of the view that the Committee of Creditors within its ambit of “Commercial Wisdom” has taken the decision and the Adjudicating Authority have very limited scope to interfere into their decision which is unanimously taken. In this context, we would refer the judgment of Hon’ble Apex Court in ***Kalpraj Dharamshi v. Kotak Investment Advisors Ltd.*** reported in **(2021) 10 SCC 401: MANU/SC/0174/2021** that:

“155. *It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided Under Sections 30 and 31 of the I&B Code.”*

(Emphasis Added)

67. Further, we would refer to the judgment of the Hon’ble Apex Court in ***Essar Steel (Supra)*** that:

*“We would like to draw your attention to Sections 30 and 31 of the Code which contain detailed provisions on submission and approval of the resolution plan. As per Section 31(1), once the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors meets the requirements of Section 30, it shall approve the resolution plan. The Insolvency and Bankruptcy Board of India has also prescribed Rules and regulations on mandatory requirements of resolution plan. The statute thus clearly empowers the committee of creditors to decide the distribution of funds. It also recognizes that as long as the resolution plan is in conformity with law, the Adjudication Authority must approve the resolution plan, as is evidenced by the usage of the word 'shall' in Section 31(1). In K. Sashidhar case the Supreme Court has clearly held that **commercial decisions of the committee of creditors are not open to judicial review.** We would like to clarify that the fundamental principle that there should be no discrimination between similarly situated creditors is not being questioned by the industry...”*

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(Emphasis Added)

- 68.** Furthermore, it is contended that the last date of submission of the revised settlement proposal was 11.02.2023. The Revised settlement proposal submitted by the Applicant was rejected by the members of the CoC in its 10th meeting held on 13.02.2023. We have examined the minutes of the 10th CoC meeting held on 13.02.2023. We have noted that all the members of CoC have participated and voted accordingly. We have noted that 60.99% of the total members of the CoC voted in favour of the Revised Settlement Proposal, dated 11.02.2023 of the Applicant whereas, rest 39.01% of members of the CoC voted against his Revised Settlement Proposal.
- 69.** On the 11th CoC meeting held on 03.03.2023, the CoC approved the Resolution Plan submitted by the BDPL with an 88.30% voting share. Thus, the Revised Settlement Proposal of the Applicant has failed to achieve the majority vote for its approval. The further settlement proposal dated 04.03.2023 and 06.03.2023 as submitted by the Applicant were after approval of the Resolution Plan by the members of the CoC. Accordingly, we find that the application is not maintainable at all.
- 70.** Further, we are conscious of the judgment of Hon'ble Supreme Court of India in ***Swiss Ribbons Pvt Ltd. vs. Union of India*** reported in **(2019) 4 SCC 17** and the recent decision of the Hon'ble NCLAT in ***Sandeep Gupta v. JM Financial Asset Reconstruction Company Ltd.*** reported in **(2024) ibclaw.in 16 NCLAT** that *if the Committee of Creditors arbitrarily rejects a just settlement and/or withdrawal claim, NCLT, and thereafter, NCLAT*

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can always set aside such decision under Section 60 of the Code.

We find that the CoC has allowed the applicant to submit the settlement proposal and also allowed to revise it on several occasions, and before rejecting the revised settlement proposal submitted by the applicant, the RP placed the same before the CoC and the CoC after long discussions and deliberations has rejected the revised settlement proposal in its 10th meeting held on 13.02.2023. Thus, we are of the considered opinion that the decision of the CoC is not arbitrary but is holistic and unanimous.

- 71.** In terms of foregoing discussions, we would infer that there is no merit in the application and accordingly, we do not have any hesitation to **dismiss** the application being **I.A. (IB) No. 869/KB/2023.**
- 72.** No Cost.
- 73.** The certified copy of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties, subject to compliance with all requisite formalities.

I.A. (IB) No. 813/KB/2023

- 74.** This application has been preferred under Section 60(5) of the I&B Code by Mr. Sundeep Shah, an erstwhile Promoter and managing director of the Corporate Debtor (“Applicant”) against the Resolution Professional (RP) Mr. Anil Kohli of Eastern Silk Industries Limited (Corporate Debtor) and the members of the CoC of the Corporate Debtor, seeking the following reliefs that:

a. *Direction to RP to place the Proposal of the Applicant herein submitted on March 04, 2023, and thereafter*

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revised on March 06, 2023, before the CoC of the Corporate Debtor for its consideration;

- b.*** *Direct the RP and the CoC of the Corporate Debtor to consider the Applicant's proposal submitted on March 04, 2023, and thereafter revised on March 06, 2023;*
- c.*** *During the pendency of this application, stay the proceedings in respect of the application filed for approval of the Resolution Plan by the RP before this Adjudicating Authority under Section 30(6) of the I&B Code, 2016.*
- d.*** *Passed any other Orders including interim orders as this Tribunal may deem fit under the facts and circumstances of the case.*

Brief facts in nutshell:

- 75.** This Adjudicating Authority vide an order dated June 10, 2022, admitted the Company Petition being C.P. (IB) No. 588 of 2020, filed by the Financial Creditor, Export – Import Bank of India and initiated CIRP in respect of Eastern Silk Industries Limited (Corporate Debtor). The Respondent No.1, Mr. Anil Kohli, was resolved to be appointed as the Resolution Professional on 8th July, 2022 by the CoC and on July 29, 2022, this Adjudicating Authority appointed Mr. Anil Kohli as the RP of the Corporate Debtor.
- 76.** The Applicant herein is an erstwhile Promoter and managing director of the Corporate Debtor. The Applicant through an e-mail on January 28, 2023, submitted a settlement proposal for withdrawal of the aforesaid company application under Section 12A of the Code read with Regulation 30A of the CIRP Regulations, 2016.

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- 77.** Based on the observations of the CoC members the Applicant revised a settlement proposal and revised settlement proposal was put to vote before the CoC in its 10th meeting on February 13, 2023.
- 78.** The Applicants revised settlement proposal was rejected with 60.99% vote in favour of the settlement proposal and 39.01% vote against the settlement proposal.
- 79.** The Applicant on 6th March, 2023, further resubmitted the proposal by increasing the total amount to Rs. 60 Crore whereas on the 6th March, the CoC approved the plan submitted by Bauman Dekor Pvt. Ltd. Hence, this application has been filed.

Submissions made by the Applicant:

- 80.** The Learned Counsel for the Applicant submits that his settlement proposal has been arbitrarily rejected, without proper discussion in the CoC, it is his contention that the proposal of a settlement was put to vote on 13th February, 2023 on 10th CoC meeting itself and the same was rejected.
- 81.** It is contended that the Applicants revised settlement proposal was rejected with 60.99% vote in favour of the settlement proposal and 39.01% abstaining from voting.
- 82.** It is submitted that a settlement proposal cannot be compared with a Resolution plan. The Reliance was placed by the Learned Counsel for the Applicant that the Hon'ble NCLAT held in ***Saravana Global Holdings Ltd. v. Bafna Pharmaceuticals Ltd.*** reported in **2019 SCC OnLine NCLAT 962**, that *in exceptional circumstances if the 'Corporate Debtor' is MSME, it is*

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not necessary for the Promoters to compete with other 'Resolution Applicants' to regain the control of the Corporate Debtor.

- 83.** It is further submitted that neither the RP nor the CoC of the Corporate Debtor have made any submission on the merits or demerits of the settlement proposal.
- 84.** The Learned Counsel for the Applicant further submits that the several judgments of the Hon'ble High Courts and the NCLAT on 'commercial wisdom' of CoC can be applied if the settlement proposal had been considered and then rejected for being inferior to the resolution plan of the SRA in the absence of consideration of the settlement proposal in detail by the CoC it cannot be said that CoC has exercised its commercial wisdom.
- 85.** The Learned Counsel for the Applicant also relies on the judgments rendered by the Hon'ble Supreme Court of India in the case of ***Swiss Ribbons Pvt Ltd. vs. Union of India*** reported in **(2019) 4 SCC 17**, wherein the Apex Court has held that if the CoC arbitrarily rejects a settlement and/or withdrawal claim NCLT and thereafter NCLAT can always set aside such decision under Section 60 of the Code.
- 86.** It is submitted that the judgment rendered by the Hon'ble NCLAT in ***Hem Singh Bharana v. Pawan Doot Estate Pvt. Ltd.*** in **Company Appeal (AT) (Insolvency) No.1481 of 2022** is distinguishable in the facts and circumstances and in that case settlement proposal was given, after the approved of resolution plan by CoC whereas in this case it was given before the Resolution Plans were put to vote. Secondly, in the *Hem Singh Bharana* case the issue of non-consideration of settlement proposal for CoC that wanted per deposit of the EMD which was one of the primary

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issues of that case which is not the case in hand and therefore, it is contended that the case Law laid down in *Hem Singh Bharana* is not applicable to the facts and circumstances of the current case. It is further contended that the case in hand is covered by the judgment of the Hon'ble NCLAT in ***Shaji Purushothaman v. Union Bank of India*** reported in **2019 SCC OnLine NCLAT 1151** where the NCLAT directed CoC to consider the settlement proposal which had not been considered before acceptance of the resolution proposal.

Respondent's (RP) submissions per contra:

- 87.** The Learned Counsel for the Respondent submits that the revised proposal submitted by the Applicant was rejected on 10th CoC meeting held on 13.02.2023 and on 11th CoC meeting convened on 03.03.2023, the plan submitted by the Baumann Dekor Private Limited (BDPL) was approved and accordingly, declared it as the Successful Resolution Applicant. However, in the 10th CoC meeting, a detailed discussion took place on the settlement proposal made by the Applicant which is reflecting in Item No. 6 of the 10th CoC minutes, annexed at Pages 153-177 to the Reply (Relevant Pages 163-169).
- 88.** It is further submitted that the settlement proposal submitted by the applicant has been considered deliberately and after long discussion and noting the opinions of all the members of the CoC, the same was rejected in its commercial wisdom. Therefore, relying on several judgments of the Hon'ble Supreme Court of Indian and the Hon'ble NCLAT, wherein it has been consistently held that the commercial wisdom of the CoC is paramount and the same cannot

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be questioned by the Adjudicating Authority as long as it is in compliance with the provisions under Section 30 of the I&B Code read with regulations under CIRP Regulations, 2016.

Analysis and Findings:

- 89.** We have noted that the plan value is Rs. 61.11 Crore, whereas the settlement proposal as proposed by the Applicant was that Rs. 60 Crore.
- 90.** The CoC has thoroughly deliberated and discussed on the proposal in question which is reflected on the minutes of 10th CoC meeting, which are reproduced in verbatim as below:

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Development Limited and accordingly, Mr. Vijay Kumar Makharia, Authorized Representative of Metro Infrastructure Development Limited was requested to wait in the waiting room of the Zoom Platform so that Valuation summary can be presented before the members.

The RP then presented before the COC the summary of Valuation conducted by all three Set of Valuers. It was further assured that the Valuation Reports and its summary shall be sent to COC members who have provided the Confidentiality Undertaking through email.

The members of the COC took note of the same.

Item No. 6

To discuss on the Revised withdrawal proposal received under Section 12 A of the Insolvency & Bankruptcy Code, 2016 and way forward-

The RP apprised the members of the COC that pursuant to the discussion held in the 9th COC Meeting, the RP had sent an email dated 30.01.2023 to Mr. Sundeep Shah, Promoter & Managing Director (power suspended) of the Corporate Debtor mentioning the observations of the COC members on the withdrawal proposal and few points to be considered and agreed upon in the Revised proposal to be submitted to EXIM Bank being the applicant in the matter, latest by 04.02.2023. The RP further apprised that he had received an email dated 03.02.2023 from Mr. Sundeep Shah- Managing Director of the CD (Powers of the Board Suspended) requesting to provide two more weeks for submitting a concrete OTS offer. The RP solicited the view of the members vide email dated 03.02.2023. Further, the RP provided one week

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time to Mr. Sundeep Shah to provide the revised proposal i.e. latest by 11.02.2023.

Furthermore, the RP informed the members that he had received the Revised Proposal vide email dated 11.02.2023 from Mr. Sundeep Shah.

Representative of EXIM Bank (being the Applicant in the matter) confirmed to the RP that they have not received any Revised Proposal under Section 12 A of the Code from the Directors of the CD (Powers of the Board Suspended) of the Corporate Debtor. It was checked during the meeting and confirmed that the said email was marked only to the RP. The RP further mentioned that as per the provisions of Section 12A read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (herein referred to as "**CIRP Regulations**"), FORM FA accompanied by Bank Guarantee has not been received by the RP.

The RP then presented the Revised proposal and Loan Sanction Letter by Samskar Financial Services Private Limited, NBFC. The RP and his team elucidated their observations on the NBFC and pointed out the following facts-

- (i) The RP informed that Pt 6 of the Revised proposal mentions that **an upfront of Rs. 11 Crores (20% of the amount offered) will be deposited in the Escrow account after getting the assurance that withdrawal application will be filed.** Hence, the Revised proposal is a proposal letter and after in-principle approval of this proposal by the COC, the funds will be deposited in the escrow account i.e. decision of

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the COC is required on the proposal before depositing the upfront amount in the Escrow account.

- (ii) The team of the RP made its efforts in digging out the details of the mentioned NBFC however the website of the said NBFC could not be found.;
- (iii) The said NBFC is registered with RBI as on 31.03.2022 having registration no. N-05.06994.
- (iv) Turnover of the NBFC as on 31.03.2022 is Rs. 2.60 Crores.
- (v) Out of Net worth of Rs. 84.06 crores, Unsecured loans and advances amounting to Rs. 78.42 Crores is appearing in the Financial Statements as on 31.03.2022.

The Revised proposal and the sanction letter of the mentioned NBFC was discussed in detail by the members and comments/observations of each COC Members are recorded as under-

S. No.	Particulars	Comments/Opinion
1	Edelweiss Asset Reconstruction Company Limited	Representative of EARC referred to the discussion held in the last COC Meeting wherein it was unanimously decided by the COC that 100% of the amount offered by Mr. Sundeep Shah be first deposited in the Escrow account as a commitment by Mr.

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	<p>Sundeep Shah and then a resolution for approval of the Withdrawal proposal in FORM FA accompanied by Bank Guarantee will be put to vote.</p> <p>It was further mentioned that the observations of the COC which were duly conveyed to Mr. Sundeep Shah have not been considered in the Revised Proposal and that one opportunity has already been given to Mr. Sundeep Shah and the same has not been considered by him. He concluded that the revised proposal does not seem to be feasible and hence prima facie not acceptable to them. It was further mentioned that the decision of higher authorities is required in the matter which requires at least a weeks' time and hence a resolution for in-principle approval of the proposal letter as mentioned under Pt. 6 of the Revised proposal be put before the COC so that decision can be conveyed to Mr. Sundeep Shah so that</p>
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		upfront amount can be deposited in the escrow account.
2	Omkara Assets Reconstruction Private Limited	Representative of OARC mentioned that the proposal is not received by the Applicant and does not include the points suggested by the COC in the last COC Meeting. The proposal shall be discussed internally with the higher authorities and the decision will be conveyed through e-voting.
3	Export Import Bank of India	<p>Representative of EXIM Bank stated that details pertaining to NBFC including but not limited to area of work/license be procured from Mr. Sundeep Shah.</p> <p>Further, he mentioned that as decided in the last COC Meeting, 100% of the proposed settlement amount should be deposited in an escrow account. The same has not been incorporated and offered in the revised proposal as received by the RP. He further mentioned that the said proposal is prima facie not acceptable to them.</p>

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		It was also informed to the RP that the power is not delegated to them to take any decision on the proposal and that the same will be discussed by the Committee which will require at least 15 days' time for decision. He further requested that E-Voting be opened for 15 days.
4	Kalpatru Fincap Ltd.	Representative of Kalpatru concurred with the views of the other members.
5	Asrec (India) Limited	Representative of ASREC also concurred with the views of other members and mentioned that the revised proposal is prima facie not acceptable to them however the said agenda be put to vote.

The members of the COC after detailed discussions and deliberations decided the way forward, which is as under-

- (i) a resolution for in-principle approval of the proposal letter as mentioned by Mr. Sundeep Shah in the Revised Proposal (refer to Pt no. 6), be put to vote before the COC so that decision can be conveyed to Mr. Sundeep Shah w.r.t depositing the funds in the escrow account.

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- (ii) The members further concluded that if the proposed Resolution is approved by requisite votes, then way forward in terms of FORM FA accompanied by Bank Guarantee as required under Section 12A read with Regulation 30A of CIRP Regulations be discussed in the next COC Meeting.
- (iii) On approval of this resolution, the RP shall proceed as per the provisions of law on receipt of FORM FA accompanied by Bank Guarantee.
- (iv) The RP to procure the documents of NBFC from Mr. Sundeep Shah.
- (v) The said e-voting will be opened till 28.02.2023 as requested by the members.

The RP apprised the members of the COC that the last date of CIRP, after taking into consideration the extension of 90 days granted by Hon'ble NCLT, is 07.03.2023.

The members of the COC took note of the same.

Item No. 7

To discuss on the Resolution Plan(s) received from Prospective Resolution Applicants (PRAs) and way forward-

The RP apprised that the observations of the COC members on the Resolution plan submitted by Baumann Dekor Pvt Limited was duly conveyed to them vide email dated 30.01.2023 and the RP further requested the said PRA to provide an addendum to the final Resolution plan incorporating the observations of the COC.

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RESOLUTION NO. 2						
TO APPROVE THE IN-PRINCIPLE APPROVAL OF THE PROPOSAL LETTER AS MENTIONED UNDER POINT 6 OF THE REVISED PROPOSAL LETTER DATED 11.02.2023						
<p><i>"RESOLVED THAT the consent of members of CoC, be and is hereby, accorded for in-principle approval of the proposal letter as mentioned under point no. 6 of the Revised Proposal dated 11.02.2023 required for depositing the upfront amount of 20% of the total amount offered in the escrow account by Mr. Sundeeep Shah".</i></p>						
S. No.	Name of Financial creditor	Voting Share (%)	Voted in Favour (%)	Voted Against (%)	Abstained from Voting (%)	Remarks
1	Asree (India) Limited	29.05	-	29.05	-	REJECTED
2	Edelweiss Asset Reconstruction Company Limited	29.49	29.49	-	-	
3	Export Import Bank of India	9.97	-	9.97	-	
4	Kalpatru Fincap Ltd	5.80	5.80	-	-	
5	Omkara Assets Reconstruction Private Limited	23.97	23.97	-	-	
	Metro Infrastructure Development Limited	1.73	1.73			
	Total	100	60.99	39.01	-	




Anil Kohli
Resolution Professional in the matter of Eastern Silk Industries Limited
Regd. No.: IBBI/IPA-001/IP-P00112/2017-18/10219
Regd. Office: 409, Ansal Bhawan, 16 KG Marg, Connaught Place, New Delhi-110001
Email: insolvency@arck.in
Date: 03.03.2023

91. The CoC in its commercial wisdom has decided to go ahead with the resolution plan of Baumann Dekor Private Limited. In all the CoC meetings, it is relevant to note that in both 10th and 11th CoC meetings convened on 13.02.2023 and 03.03.2023 respectively, the Applicant was present and there was no recording of any objection to the resolutions passed in such meetings by the Applicant.

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- 92.** We have already taken a view in **I.A. (IB) No. 869/KB/2023** that we are conscious of the judgment of Hon'ble Supreme Court of India in ***Swiss Ribbons Pvt Ltd. vs. Union of India*** reported in **(2019) 4 SCC 17** and the recent decision of the Hon'ble NCLAT in ***Sandeep Gupta v. JM Financial Asset Reconstruction Company Ltd.*** reported in **(2024) ibclaw.in 16 NCLAT** that *if the Committee of Creditors arbitrarily rejects a just settlement and/or withdrawal claim, NCLT, and thereafter, NCLAT can always set aside such decision under Section 60 of the Code.* We have noted that the CoC has allowed the applicant to submit the settlement proposal and also allowed to revise it on several occasions, and before rejecting the revised settlement proposal submitted by the applicant, the RP placed the same before the CoC and the CoC after long discussions and deliberations has rejected the revised settlement proposal in its 10th meeting held on 13.02.2023. Hence, we are of the considered opinion that the decision of the CoC is not arbitrary but is holistic and unanimous.
- 93.** Another argument which the Applicant took is that 39.01% of the CoC members abstained from voting when his settlement proposal was put to vote. We have thoroughly examined the minutes of the 10th CoC meeting held on 13.02.2023 and we have noted that this contention of the Applicant is factually incorrect. All the members of CoC have participated and voted accordingly. Out of which 60.99% of the total members of the CoC voted in favour of the Revised Settlement Proposal, dated 11.02.2023 of the Applicant whereas, rest 39.01% of members of the CoC voted against his Revised Settlement Proposal. Hence, we find no merit in this contention too.

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- 94.** Further, we have noted that on the 11th CoC meeting held on 03.03.2023, the CoC approved the Resolution Plan submitted by the BDPL with an 88.30% voting share within its 'commercial wisdom'. Thus, the Revised Settlement Proposal of the Applicant has failed to achieve the majority vote for its approval and thus, we find that the applicant is not maintainable.
- 95.** Accordingly, we **dismiss** the Application being **I.A. (IB) No. 813/KB/2023**.
- 96.** No Costs.
- 97.** The certified copy of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties, subject to compliance with all requisite formalities.

I.A. (IB) No. 513/KB/2023

- 98.** This application has been preferred under Section 60(5) of the I&B Code by Mr. Sundeep Shah, an erstwhile Promoter and managing director of the Corporate Debtor ("Applicant") against the Resolution Professional (RP) Mr. Anil Kohli of Eastern Silk Industries Limited and the members of the CoC, seeking the following reliefs that:
- a. The Applicant's withdrawal proposal along with its revision being "Annexure – A" and "Annexure – D" hereto be accepted;*
 - b. Order of injunction restraining the Respondent Nos. 2 to 7 from voting on any resolution plan till the disposal of the present application;*
 - c. Ad-interim order in terms of prayer (b) above;*
 - d. Any other orders as may be deemed fit and proper.*

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99. In terms of discussions and decisions taken in I.A. (IB) No. 869/KB/2023 and I.A. (IB) No. 813/KB/2023, we **dismiss** this application being **I.A. (IB) No. 513/KB/2023** as infructuous.

100. No Costs.

101. The certified copy of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties, subject to compliance with all requisite formalities.

I.A. (IB) No. 510/KB/2023 (Resolution Plan)

102. Now we would proceed to consider the Resolution Plan filed before this Adjudicating Authority through I.A. (IB) No. 510/KB/2023.

103. Heard the Learned Counsel, Shri Abhisekh Anand appearing on behalf of the Resolution Professional for Eastern Silk Industries Limited, Corporate Debtor herein and the perused the Resolution Plan as approved by the CoC of the Corporate Debtor.

Prologue

104. This instant application is filed under Section 30(6) read with Section 31(1) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by Mr. Anil Kohli, (Registration No. IBBI/IPA-001/IP-P00112/2017-2018/10219) Resolution Professional of Eastern Silk Industries Limited, Corporate Debtor herein, seeking approval and final sanction of the Revised Resolution Plan dated 02.01.2023 and addendums dated 04.02.2023 and 25.02.2023 from this Adjudicating Authority as approved by the CoC in the

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matter of Corporate Insolvency Resolution Process of the Corporate debtor.

105. The Learned Counsel, Mr. Anand appearing on behalf of the Resolution Professional of the Corporate Debtor contends that the Revised Resolution Plan dated 02.01.2023 and addendums dated 04.02.2023 and 25.02.2023, submitted by **Mr. Ajay Bikram Singh through Baumann Dekor Private Limited, (CIN: U17299DL2021PTC377816)** has been approved by the CoC of the Corporate Debtor by 88.30% voting share in its 11th meeting convened on 03.03.2023. the copy of the Revised Resolution Plan dated 02.01.2023 and addendums dated 04.02.2023 and 25.02.2023, is annexed at Page 350-446 as Annexure “A-21 (Colly)” to the Application, and subsequently **Mr. Ajay Bikram Singh the promoter of Baumann Dekor Private Limited** is declared as the **“Successful Resolution Applicant” for brevity “SRA”**.

106. It is submitted that e-voting on the Resolution Plans was conducted from 03.03.2023 at 11:45 P.M. till 06.03.2023 at 8:00P.M. wherein, the CoC of the Corporate Debtor approved the plan **Mr. Ajay Bikram Singh through Baumann Dekor Private Limited**.

107. It further submitted that the “Letter of Intent” for brevity “LoI” issued on March 07, 2023, by the RP as authorized by the CoC of the Corporate Debtor requested to provide performance security equivalent to 10% of the payment proposed to be made to the financial creditors amounting to Rs. 5,31,51,600/- post adjusting Rs. 50,00,000/- deposited as EMD, which has been unconditionally accepted by the SRA.

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Initiation of the CIR Process of the Eastern Silk Industries Limited

108. Export-Import Bank of India filed an application under Section 7 of the I&B Code against the M/s. Eastern Silk Industries Private Limited and on 10.06.2022 this Adjudicating Authority has admitted the application and Mr. Anil Agarwal was appointed as Interim Resolution Professional.

Public Announcement

109. Pursuant to the order dated 10.06.2022, the erstwhile IRP, Mr. Anil Agarwal, has made public announcement in Business Standard (English Language) in all India Edition, Hosadigatha-Bangalore Edition (Kannada Language) and Ekdin – Kolkata Edition (Bengali Language) on 13.06.2022 in FORM A, regarding the initiation of CIRP and of the Corporate Debtor and inviting the proof of claims from the various stakeholders.

Constitution of Committee of Creditors (CoC) and its Meetings

110. The Total number of meetings of CoC held is 11 (eleven). The extract of CoC meetings and decisions taken in gist are provided here under:

SN	CoC Meetings	Date of Meeting	Decision taken in gist
i.	1 st CoC Meeting	08.07.2022	a. The CoC was constituted. b. Mr. Anil Kohli was appointed as Resolution

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			Professional (RP) in place of erstwhile IRP.
ii.	2 nd CoC Meeting	20.07.2022	The erstwhile IRP apprised the members about the various steps and actions taken by IRP after 1 st meeting.
iii.	3 rd CoC Meeting	17.08.2022	<p>The eligibility criteria for the Prospective Resolution Applicants (PRAs) as mandated under 25(2)(h) of the Code was placed before the CoC and was unanimously approved same.</p> <p>Accordingly, Form G was published on 24.08.2022 in compliance with Regulation 36A of the CIRP Regulations, 2016.</p>
iv.	4 th CoC Meeting	14.09.2022	Pursuant to the Form G dated 24.08.2022, eleven (11) Expressions of Interest (EoIs) were received and same was apprised to the CoC by the RP.

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v.	5 th CoC meeting	20.10.2022	Final List of PRAs was made and extension of time for submission of Resolution Plan till 31.10.2022 was approved.
vi.	6 th CoC Meeting	03.11.2022	RP apprised that three (3) Resolution Plan along with requisite EMD have been received on 31.10.2022 and same were placed before CoC.
vii.	7 th CoC Meeting	01.12.2022	The RP apprised the CoC regarding the receipt of draft valuation report.
viii.	8 th CoC Meeting	03.01.2023	The last date for submission of Resolution Plan was extended till 26.12.2022 which was further extended till 02.01.2023 at request of the Resolution Applicants and pursuant to that, the RP presented and placed the Resolution Plans of all the Resolution Applicants.

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ix.	9 th CoC Meetings	30.01.2023	<p>a. The RP apprised the CoC that pursuant to the receiving of the revised Resolution Plans, the team of RP analysed and prepared documents for checking the compliances.</p> <p>b. RP informed the CoC regarding the settlement proposal submitted by the Mr. Sundeep Shah, Promoter and MD of the Corporate Debtor.</p>
x.	10 th CoC Meeting	13.02.2023	Discussions of Resolution Plans and settlement proposal were made.
xi.	11 th CoC Meeting	03.03.2023	CoC unanimously approved the Resolution Plan submitted by Mr. Ajay Bikram Singh through Baumann Dekor Private Limited by a voting share of <u>88.30%</u>.

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111.The list of the Financial Creditors of the Corporate Debtor being the members of the CoC and distribution of voting among them is as under:

SN	Name of Creditor	Voting Shares (%)
1	Asrec (India) limited	29.05
2	Edelweiss Asset Reconstruction Company Limited	29.49
3	Export Import Bank of India	9.97
4	Kalpatru Fincap Ltd.	5.80
5	Omkara Assets Reconstruction Private Limited	23.97
6	Metro Infrastructure Development Limited	1.73
	Total	100%

Appointment of Valuers

112.In terms of Regulation 27 of the CIRP Regulations, the RP appointed two registered valuers to determine the fair and liquidation value of the Corporate Debtor in accordance with Regulation 35 of the CIRP Regulations which are as follows:

- i.** Plant & Machinery: Valuation by Adroit Appraisers & Research Pvt. Ltd., Resurgent Valuers Pvt. Ltd. and Mr. Brahmpal Bharadwaj.
- ii.** Land & Building: Valuation by Adroit Appraisers & Research Pvt. Ltd., and Mr. Dhiraj Jaiswal.
- iii.** Securities & Financial Assets: Valuation by Mr. Brahmpal Bharadwaj, Mr. Dhiraj Jaiswal and Mr. Subodh Kumar.

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Collation of Claims

113. The Learned Counsel for the RP submits the amounts claimed and admitted are summarized below:

SN	Financial Creditors	Amount Claimed (in Rs.)	Amount Admitted (in Rs.)	Voting shares (%)
a.	Edelweiss Asset Reconstruction Company Limited (acting in capacity as trustee of EARC Trust SC-47)	Rs. 77,33,85,188/-	Rs. 77,33,85,188/-	8.50
b.	Edelweiss Asset Reconstruction Company Limited (acting in capacity as trustee of EARC Trust SC-214)	Rs. 100,78,13,356/-	Rs. 100,78,13,356/-	11.08
c.	Edelweiss Asset Reconstruction Company Limited (acting in capacity as trustee of EARC Trust SC-48)	Rs. 90,15,68,387/-	Rs. 90,15,68,387/-	9.91
d.	Omkara Assets Reconstruction Private Limited	Rs. 2,18,05,21,071/-	Rs. 2,18,05,21,071/-	23.97

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e.	Export Import Bank of India	Rs. 91,29,32,226/ -	Rs. 90,66,90,493 /-	9.97
f.	Kalpatru Fincap Ltd.	Rs. 52,79,24,141/ -	Rs. 52,71,43,999 /-	5.80
g.	Asrec (India) limited	Rs. 2,64,19,76,90 8.83	Rs. 2,64,19,76,9 08.83	29.05
h.	Metro Infrastructure Development Limited	Rs. 15,69,13,000/ -	Rs. 15,69,13,000 /-	1.73
	Total	Rs. 9,10,30,34,27 7/-	Rs. 9,09,60,12,4 02/-	100%

Corporate Insolvency Resolution Process and Compliance

114.It is submitted that in terms of the provisions of Section 25(2)(h) of the I&B Code read with regulation 36A (1) of the Insolvency and Bankruptcy Board, (Insolvency Resolution Process for Corporate Person) Regulations, 2016, the RP has published the invitation of for Expression of Interest (“EoI”) i.e., “Form G” on 24.08.2022. The CoC after discussions and deliberations resolved the format of Evaluation Matrix, Eligibility Criteria and FORM – G in 3rd meeting of the CoC on 17.08.2022. Last date of receipt of EoI was on 09.09.2022 and date of issuance of Information Memorandum, Evaluation Matrix, Request for Resolution Plan (RFRP) was 21.09.2022.

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115.It is submitted that the RP prepared the final list of Prospective Resolution Applicants (PRAs) as under:

- a.** Mr. Anil Khandelwal
- b.** Mr. Amrit Kumar Agrawal
- c.** Kundan Care Products Ltd.
- d. Mr. Ajay Bikram Singh through Baumann Dekor Private Limited**
- e.** Nakshatra Corporate Advisors Limited
- f.** Sipra Services & Investment Pvt. Ltd.
- g.** Techno Mercantile Private Limited
- h.** Shanti GD Ispat & Power Pvt. Ltd.

116.It is contended that Resolution Plans were only received from the following PRAs such as:

- a. Mr. Ajay Bikram Singh through Baumann Dekor Private Limited**
- b.** Techno Mercantile Private Limited
- c.** Kundan Care Products Ltd.

Evaluation and Voting

117.The Learned Counsel for the Resolution Professional submits that the RP presented the revised Resolution Plans of three PRAs before the members of the CoC of the Corporate Debtor in its 11th meeting held on 03.03.2023. The CoC after due discussion and deliberation decided that all the three revised plans be put for e-voting. The e-voting of the Plans was conducted from 03.03.2023 to 06.03.2023 wherein the rank of the PRAs in respect of their Plan was come as under:

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- a. Mr. Ajay Bikram Singh through Baumann Dekor Private Limited - H1**
- b. Techno Mercantile Private Limited - H2**
- c. Kundan Care Products Ltd. - H3**

118. The list of the Financial Creditors of the Corporate Debtor being the members of the CoC and distribution of voting among them in favour of the **Mr. Ajay Bikram Singh through Baumann Dekor Private Limited** is as under:

SN	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for /Dissented/ Abstained)
i.	Asrec (India) limited	29.05	Voted for
ii	Edelweiss Asset Reconstruction Company Limited	29.49	Voted for
iii.	Export Import Bank of India	9.97	<i>Dissented</i>
iv.	Kalpatru Fincap Ltd	5.80	Voted for
v.	Omkara Assets Reconstruction Private Limited	23.97	Voted for
vi.	Metro Infrastructure Development Limited	1.73	<i>Dissented</i>

119. Consequently, the CoC considered and approved the compliant Resolution Plan submitted by **Mr. Ajay Bikram Singh through Baumann Dekor Private Limited** by a voting share of 88.30%

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after considering its feasibility and viability and other requirements specified under the I&B Code and the CIRP Regulations and **Mr. Ajay Bikram Singh through Baumann Dekor Private Limited was declared as “Successful Resolution Applicant” (SRA) of the Corporate Debtor.**

120. Further, it is resolved that in accordance with Section 30(4) and 30(6) of the Code read with regulations, the approval of the members of the CoC be and was accorded to the curbed/amended/revised Resolution Plan submitted by **Mr. Ajay Bikram Singh through Baumann Dekor Private Limited** and the RP was authorized to issue Letter of Intent to the SRA and filed the CoC approved resolution plan before this Adjudicating Authority for its final approval and sanction.

Compliance of the Resolution Plan submitted by the SRA with various provisions

121. The Applicant has submitted that in terms of Regulation 39(4) of the Insolvency and Bankruptcy Code (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, she has filed a Compliance Certificate in prescribed form i.e., Form “H”, annexed at Page 450 to the Application as Annexure “A-23”.

122. It is submitted that contended that the Resolution Applicant has met the criteria approved by the CoC having regard to the complexity and scale of operations of the business of the Corporate Debtor in terms of Section 25(h)(2) of the I&B Code.

123. Further it is submitted that the Resolution Applicant is eligible to submit a resolution plan in terms of Section 29A of the I&B Code and accordingly, an affidavit has also been furnished by the SRA.

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124.It is further submitted that the Resolution Applicant has submitted an affidavit stating its eligibility in terms of Section 30(1) of the I&B Code, 2016.

125.Further, it is submitted that details of various compliances as envisaged within the I&B Code and the CIRP Regulations to which a Resolution Plan has been adhered to, which is reproduced.

126.It is further submitted that in terms of **Section 30(2) of the I&B Code, 2016**, (as amended vide Amendment dated August 16, 2019) the Resolution Plan provides the compliance as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause /Page of Resolution Plan	Compliance (Yes/No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		Yes
Section 29 A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority	Appendix 10 and also as per Due Diligence the resolution applicant is eligible to submit the resolution plan	Yes

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Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Appendix 10	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor?	Clause 2.1.1, Page no. 2 Clause 2.6, Page No. 5 Clause 2.1.3, Page No. 3 Clause 2.9, 2.10, Page 7 & Appendix A-1	Yes Yes Yes Yes

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	<p>(e) provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?]</p>	<p>Clause 2.9 at Page no. 7</p> <p>Clause 2.9 at Page no. 7)</p>	<p>Yes</p> <p>Yes (It is contended that it does not contravene any of the provisions of the law for the time being in force.)</p>
Section 30(4)	<p>Whether the Resolution Plan</p> <p>(a) is feasible and viable, according to the CoC</p> <p>(b) has been approved by the CoC with 66% voting share?</p>	<p>11th CoC Minutes annexed at Page 238-261 to the Application as Annexure "A-18"</p>	Yes
Section 31(1)	<p>Whether the Resolution Plan has provisions for its effective Clans implementation plan, according to the CoC?</p>	<p>Clause 2.9 at Page no. 7</p>	Yes

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Regulation 38 (1)	Whether the amount due to the operational creditors under the Claus resolution plan has been given priority in payment over financial Page creditors?	Clause 2.6, Page No. 5	Yes
Regulation 38 (1A)	Whether the resolution plan includes a statement as to how it has Clause dealt with the interests of all stakeholders?	Clause 2.8 Pg no. 6	Yes
Regulation 38 (1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code . (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	Clause 2.14 at Page no . 10	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule?	(a) Clause 2.9, Page no. 7	(a) Yes

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	<p>(b) for the management and control of the business of the Corporate Debtor during its term?</p> <p>(c) adequate means for supervising its implementation?</p> <p>(d) provides for the manner in which proceedings in respect of avoidance transactions, if any, will be pursued after the approval Page of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.</p>	<p>(b) Clause 2.1, Page no. 2</p> <p>(c) Clause 2.9, Page no. 7</p> <p>(d) Clause 2.11 at Page no. 8</p>	<p>(b) Yes</p> <p>(c) Yes</p> <p>(d) Yes</p>
38 (3)	<p>Whether the resolution plan demonstrates that -</p> <p>(a) it addresses the cause of default?</p> <p>(b) it is feasible and viable?</p>	<p>(a) Clause 2.10 at Page no. 8</p> <p>(b) Annexure A1, Page 20</p>	<p>(a) Yes</p> <p>(b) Yes</p>

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	(c) it has provisions for its effective implementation?	(c) Clause 2.9 at Page no. 7	(c) Yes
	(d) it has provisions for approvals required and the timeline for (d) the same?	(d) Clause 6 at page no. 11	(d) Yes
	(e) The resolution applicant has the capability to implement the resolution plan?	(e) Clause 2.10 at Page no. 8	(e) Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Yes
Regulation 39 (4)	Provide details of performance security received, as referred to in sub- regulation (4A) of regulation 36B.		Yes

Details of the Resolution Plan and/or Payment Schedule

127.It is submitted that the outstanding debts of the Corporate Debtor to be settled in the proportionate basis payment against the

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consideration payable for assets to be acquired. The details of outstanding debts of the Corporate Debtor and claims provisionally admitted by the IRP is listed below with proposed amount to be paid.

(INR in Lakh)

SN	Particulars	Amount as per provisional Balance Sheet as on 10.06.2022	Claim Provisionally Admitted by IRP	Amount Allocated	Relevant Note discussing the same in the Resolution Plan
a.	CIRP Cost			Rs. 41.02	Note-2.1.1
b.	Workmen's Dues- Employee Benefits	Rs. 123.95		Rs. 123.95	Note-2.1.2
c.	Secured Creditors				
	- Loan from Bank	Rs. 3,478.41	Rs. 89,390.99	Rs. 5,818.16	Note-2.1.3
	- Loan from Others	Rs. 7,199.00			
d.	Unsecured Financial Creditor	-	Rs. 4,068.13	-	Note-2.1.4
e.	Claims – Government Dues	-	Rs. 1,185.57	Rs. 118.56	Note-2.1.5

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	(Provisionally Admitted)				
f.	Operational Creditors Claim (Other than Government & Employee Dues – Provisionally Admitted)	-	Rs. 62.09	Rs. 12.42	Note-2.1.6
	Total	Rs. 10,801.36	Rs. 94,706.78	Rs. 6,111.11	

128. The Note 2.6 of the Resolution Plan provided the terms of the Payment as:

- a.** A Performance security (after adjusting EMD already paid) @10% of the plan amount shall be payable within 3 working days of receiving letter of intent and
- b.** Payment as per resolution plan is proposed to be made in three tranches as provided in the plan at Note 2.6.

129. The amounts provided for the stakeholders under the Resolution Plan in details is as under:

SN	Category of Stakeholder	Sub-Category of Stakeholder	Amount claimed	Amount Admitted	Amount Provided under the Plan	Amount provided to the Amount claimed (%)
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(1)	(2)	(3)	(4)	(5)	(6)	(7)
I.	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:	NA	NA	NA	NA
		(i) Who did not vote in favour of the resolution Plan	Rs. 91,29,32,226/-	Rs. 90,66,90,493/-	Rs. 5,89,83,014/-	6.46

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		(ii) Who voted in Favour of the resolutio n plan	Rs. 803,31, 89,051/ -	Rs. 8,03,24,08 ,909/-	Rs. 52,25 ,32,9 86/-	6.50
		Total [(a) +(b)]	Rs. 8,94,61 ,21,277 /-	Rs. 8,93,90,9 9,402/-	Rs. 58,1 5,16, 000/ -	6.5
II.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub- section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above: (i) Who did not vote in	NA Rs. 40,68,1 3,000/-	NA Rs. 40,68,13,0 00/-	NA 0	NA 0

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		favour of the resolution Plan				
		(ii) Who voted in favour of the resolution plan	NA	NA	NA	NA
		Total [(a)+(b)]	Rs. 40,68,13,000/-	Rs. 40,68,13,000/-	0	0
III.	Operational Creditors	(a) Related party of Corporate Debtor	NA	NA	NA	NA
		(b) Other than (a) above: Workmen & Employees	No claim received	Nil	Rs. 1,23,95,000/-	NA

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		(i) Governm ent	Rs. 42,28,2 9,780/-	Rs. 20,04,76,6 15/-	Rs. 1,18, 56,00 0/-	2.80
		(ii) Operatio nal creditors (other than Workmen and Employee s and Governm ent Dues)	Rs. 62,09,2 40/-	Rs. 62,09,240 /-	12,42 ,000/ -	20.02
		Total [(a) +(b)]	Rs. 42,90,3 9,020/-	Rs. 20,66,85, 855/-	Rs. 2,54, 93,0 00/-	NA
IV.	Other debts and dues		NA	NA	NA	NA
V.	Grant Total		Rs. 9,78,19 ,73,297 /-	Rs. 9,55,25,9 8,257/-	Rs. 60,7 0,09, 000/ -	6.20

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Management, Implementation and Supervision of Plan of the Corporate Debtor After Approval of the Plan

130. The Note 2.9 of the Plan provides that after the final approval of the plan by this Adjudicating Authority, an implementation and Monitoring Committee shall be formed to supervise the implementation of the plan by the Resolution Applicant with the help of the Board of Resolution Applicant. The Committee shall include a nominee the Financial Creditors to safeguard the concern/interest of the Lenders and one nominee from the resolution Applicant along with the resolution Professional.

Avoidance Transactions

131. The Note 2.11 of the Plan provides that any recovery/realisations of receivables/payments in future on account of avoidance transaction shall be to the credit of Secured Creditors subject to netting off or reimbursement of costs incurred by the Resolution Applicant post approval of this Plan.

Reliefs And Concessions Sought by Resolution Applicant

The Resolution Applicant, Baumann Dekor Private Limited, pray for the following reliefs and concessions from the Adjudicating Authority:

SN	Clause	Reliefs and waivers
i.	6.1.	That all government authorities, statutory bodies, local authorities, municipal bodies, development authorities, creditors shall irrevocably and unconditionally settle/waive all liability/ obligations past claims, non- compliances, further claims of corporate debtor in perpetuity under applicable laws

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		like Income Tax, VAT, GST, Excise, Customs, EPFO, ESIC, SEBI, RERA, NI Act, Consumer Protection Act, Arbitrations or any other Government/ Semi-government/Institutions/Departments/Statutory body etc immediately upon approval of the Resolution Plan.
ii.	6.2.	The lenders to the Corporate Debtor shall regularize all the loan accounts of the Corporate Debtor and shall ensure that the asset classification of such loan accounts is "standard" in their books with effect from the date when Resolution Plan is fully implemented and report appropriately to credit rating agencies like CIBIL etc. Banks shall satisfy their charges by filing necessary forms on MCA, CERSAL and any other information utility if any.
iii.	6.3.	As on date of approval of the Resolution Plan by the Committee of Creditors, the Monitoring Committee shall support the successful Resolution Applicant in securing the Interim Reliefs, Reloads and fulfilling the key steps for successful implementation of Resolution Plan herein.
iv.	6.4.	As on the Effective Date all Secured Financial Creditors shall redeliver and shall cause to be delivered to the Resolution Applicant, all documents related to the Company (including loan agreements, guarantees, security documents, title deeds, lease deeds, lease agreements, property papers, demand promissory notes, records, power of attorneys, post-

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		dated cheques, other negotiable instruments etc.) and collateral related to Corporate Debtor in relation to such assets that are in possession of or deposited with such secured financial creditors or any other Person for the benefit of any of the creditors of the Company. Further, Secured Financial Creditor shall execute or issue discharge certificates, no-objection certificates and all other documents and take all such actions as may be reasonably required by the Company or Resolution Applicant for the release of the Encumbrances, security interests and charges contemplated in this para.
v.	6.5.	Hon'ble NCLT/Adjudicating Authority be pleased to give or issue necessary directions, instructions to all relevant Government Authorities to continue to make available the approvals to Corporate Debtor and waiver from obtaining any approval or no-objection and the business may continue being carried out as being carried out prior to the Corporate Insolvency Commencement Date.
vi.	6.6.	Hon'ble NCLT may be pleased to give or issue necessary directions, instructions to all that prior to approval of the counterparties of any contract, agreement, Licenses and Permissions shall not be required to be obtained for charge in control/ownership/constitution of the Corporate Debtor.

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vii.	6.7.	That once the Resolution Plan is duly approved by the Adjudicating Authority under sub section (1) of the Section 31, the claims as in the Resolution Plan shall stand frozen and will be binding on the Corporate Debtor and its employees' members, creditors, including the Central Government and State Government or any local authority, guarantors and other shareholders. On the date of approval of Resolution Plan by the Adjudicating Authority of such claims any erect part of Resolution Plan shall stand extinguished and no person shall be entitled to initiate or continue any proceedings irrespective on tam, which is not part of Resolution Plan.
viii.	6.8.	Management of the Corporate Debtor will vest with the Resolution Applicant from the effective date and no stamp duty registration fee, other duty shall be payable upon such change in management. Immovable Properties of the Corporate Debtor will continue to be owned and in possession of the Corporate Debtor without payment of any Stamp Duty, with such Registration Fees or of charges and Corporate Debtor (through its new management will be fully entitled to deal with such property in any way it wishes and envisage to, in the interest of all stakeholders of the Company.
ix.	6.9.	All waivers, concessions, assumptions, statements pertaining to any reliefs, extinguishment of liability (statutory or otherwise), discharge from the

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		obligation, deferment of timelines relating to implementation of plan, etc., as contemplated in the Resolution Plan will be subject to the provisions of the Code and judgements of the Hon'ble Courts and Appropriate Authorities; and anything stated or assumed otherwise will be deemed to be prayers and reliefs prayed for by the Resolution Applicant and will be subject to the grant of such relief by the Hon'ble Adjudicating Authority and/or Appropriate Authorities.
x.	6.10.	Further, pendency of any claim/prayer/relief by the Resolution Applicant before the Ld. Adjudicating Authority or before any appropriate authority for waiver, assumption, concession, extinguishment of liability (statutory or otherwise), discharge from obligation, deferment of timelines relating to implementation of the Resolution Plan would not per-se constitute any impediment or have the effect of absolving/suspending any of the obligations of the Resolution Applicant as stipulated under the Resolution Plan.
xi.	6.11.	The timeline for the implementation of the Resolution Plan shall further not be impacted/altered by the failure/non-cooperation of any third-party, government entity, government authority, or any local body, etc. from whom certain concession, waiver or relaxation had been sought by the Resolution Applicant under the Resolution Plan and

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		<p>the implementation of the Resolution Plan and disbursement of the payment to the creditors as envisaged under the Plan shall continue as per the specified timelines as approved in the Resolution Plan. Resolution Applicant envisages though the Adjudicating Authority shall consider any appeal/application filed by any third party or any Government Authority before giving final approval to the Resolution Plan. However, any aggrieved third party / government office taking its legal recourse before Appellant Adjudicating Authority and any restrained order passed prohibiting Resolution Applicant to take over the company as per the Resolution Plan may be beyond its control. Resolution Applicant in normal course of business in absence of any prohibition or restrain or stay order shall continue to adhere to meet the payments as per the specified timelines.</p>
xii.	6.12.	<p>Further, Any and all extinguishments towards the liabilities (statutory or otherwise) or waivers as contemplated in the Resolution Plan shall be subject to the provisions of Section 32A of the Code or any other relevant and applicable provisions of law and mere approval of the Resolution Plan shall not be deemed to be an extinguishment of any liability (statutory or otherwise) or waiver contemplated or assumed under the Resolution Plan.</p>

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xiii.	6.13.	Furthermore, no application or proceedings or actions undertaken by any third party, related party or affected party etc. against the implementation of the Resolution Plan or challenging or assailing the Resolution 6.13 impediment/ground to deviate front of to deviate from the stipulations in the Resolution Plan and the disbursement of all payments and obligations as undertaken by the Resolution Applicant under Resolution plan shall be paid and discharged within the timelines as specified under the Resolution Plan. However, in case any party succeed in taking any red by the orders of Adjudicating Authority/Court/ Tribunal order including meeting the payments as well as timelines as specified under the Resolution Plan.
xiv.	6.14. (a)	Other than Persons receiving allocated amount as settlement amount under this Resolution Plan, no other payments or settlements (of any kind) shall be made to another Person in respects of claims filed under the Corporate Insolvency Resolution Process (including, for avoidance of doubt, any unverified portion of their claims) and all Claims against the Corporate Debtor along with any related legal proceedings, Including criminal proceedings and other penal proceedings shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity on the Effective Date.

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xv.	6.14.(b)	The payment to all Persons/entities contemplated in the Resolution Plan shall be the Corporate Debtor's and Resolution Applicant's full and final performance and satisfaction of all its obligations to such Persons and Claims of such persons against the Corporate Debtor shall stand irrevocably and unconditionally settled and extinguished in perpetuity on the Effective Date.
xvi.	6.14 (c)	The Interim Resolution Professional issued a notice inviting all the potential claimants to submit their proof of claims. This was published in the newspapers in accordance with the applicable law. The said Resolution Plan is being proposed in order revive the stressed Corporate Debtor entity by way of rearranging/restructuring assets and liabilities of the Corporate Debtor entity by way of rearranging/restructuring assets and liabilities of the Corporate Debtor and in the best interest of stakeholders of the Corporate Debtor to the extent possible. With this objective, the Resolution Applicant assumes that all the creditors of the Corporate Debtor that they have any claims against the Corporate Debtor have tiled their claims and the verifiable claims have been admitted by the IKP/KP and disclosed In the Information Memorandum and updated list of creditors and its supporting documents. Accordingly, the Resolution Applicant shall have no responsibility or liability in respect of

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		any claims against the Corporate Debtor other than any payment to be made under this Resolution Plan and all Claims along with any related legal proceedings, shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity against the Corporate Debtor.
xvii.	6.14.(d)	All the outstanding negotiable instruments issued by the Corporate Debtor or by any person on behalf of the Company including Demand Promissory notes, post-dated cheques and letters of credits shall stand terminated and Company's liability under such instruments shall stand extinguished.
xviii.	6.14.(e)	Notwithstanding the above, upon the approval of the Resolution Plan by the NCLT under Section 31 of the IBC, on and from the Plan Effective Date, discharge certificates, no objection certificate and all other documents issued for the release of the encumbrances, security interest and charges will be deemed to be approved by the Secured Financial Creditors in entirety.
xviv.	6.15.	All terms which are integral part of IBC Code and Regulations shall have meaning as per the Code. However, for avoidance of doubt, it is clarified that the Resolution Plan is not conditional on grant of any or all of the above reliefs by the Hon'ble Adjudicating Authority and shall be implemented as per the IBC code and regulations.

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xvv.	6.16.	Right to share NCLT order and this Resolution Plan The Resolution Applicant and the Corporate Debtor shall be entitled to share a certified copy of the Resolution Plan and the order of the Hon'ble Adjudicating Authority approving this Resolution Plan with third parties, including Governmental authorities.
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132.At hearing the Learned Counsel, Shri Abhisekh Anand submits that the Resolution Plan approved by the CoC by 88.30% voting share complies with all the provisions of the Code and the Regulations and does not contravene any provisions of law for the time being in force.

Our Inference

133.It is evident from the valuation reports annexed to the Resolution Plan that the average fair value is Rs. 1,04,29,78,400/- and the average liquidation value is Rs. 79,14,62,075/-, however, the plan value is only Rs. 61.11 Crore, which is nearly 30% less than the liquidation value. We have noted that the CoC of the Corporate Debtor had negotiated on several occasions to enhance the value. While we find that the CoC had taken steps to maximize the wealth of the Corporate Debtor but still has not been able to maximize the wealth to its full potential, when the plan value is 30% less than the liquidation value.

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- 134.** Be that as it may, we rely on the Hon'ble Supreme Court's Judgment rendered in the case of ***Maharashtra Seamless Limited v. Padmanabhan Venkatesh & Ors.*** (CIVIL APPEAL NO. 4242 OF 2019) reported in [2020] ***ibclaw.in*** 03 SC, wherein the Hon'ble Apex Court had held that "**No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided** in Clause 35 of the *Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*" Relying on the said judgment, we proceed to examine the other aspects of the plan for the purpose of approval or otherwise.
- 135.** Upon hearing, the submission made by the Learned Counsel, Shri Abhisekh Anand appeared on behalf of the Resolution Professional of the M/s. Eastern Silk Industries Private Limited, Corporate Debtor herein and perusing the record and/or documents placed before this Adjudicating Authority, we find that the Revised Resolution Plan dated 02.01.2023 and addendums dated 04.02.2023 and 25.02.2023, submitted by **Mr. Ajay Bikram Singh through Baumann Dekor Private Limited, (CIN: U17299DL2021PTC377816)** has been approved by the CoC of the Corporate Debtor by 88.30% voting share in its 11th meeting convened on 03.03.2023. the copy of the Revised Resolution Plan dated 02.01.2023 and addendums dated 04.02.2023 and 25.02.2023, is annexed at Page 350-446 as Annexure "A-21 (Colly)" to the Application, and subsequently **Mr. Ajay Bikram Singh the promoter of Baumann Dekor Private Limited** is declared as the "**Successful Resolution Applicant**" for brevity

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“SRA”. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. Preponderantly, all the compliances have been done by the Resolution Applicant for making the plan effective after approval by this Adjudicating Authority.

136.In the course of the hearing, Ld. Counsel, further submitted that the Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016, read with relevant Regulations of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of law for the time being in force.

137.Upon perusal of the documents on record and/or documents, we are satisfied that the Resolution Plan dated 02.01.2023 and addendums dated 04.02.2023 and 25.02.2023, submitted by **Mr. Ajay Bikram Singh through Baumann Dekor Private Limited**, is in accordance with sections 30 and 31 of the I&B Code, 2016 and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

138.As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the I&B Code.

139.We have perused the reliefs, waivers and concessions as sought and as provided in the Resolution Plan. It is evident that some of the reliefs, waivers and concessions sought by the Resolution

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Applicant come within the ambit of the I&B Code and the Companies Act 2013, while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has the power to grant reliefs, waivers and concessions only concerning the reliefs, waivers and concessions that are directly with the I&B Code and the Companies Act (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt with by the respective competent authorities/forums/offices, Government or Semi-Government of the State or Central Government concerning the respective reliefs, waivers and concession, whenever sought for. The competent authorities including the Appellate authorities may consider granting such reliefs, waivers and concessions keeping in view the spirit of the I&B Code, 2016 and the Companies Act, 2013.

- 140.**It is almost trite and fairly well-settled that the Resolution Plan must be consistent with the extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for the renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving the insolvency of the Corporate Debtor.
- 141.**The reliefs sought for subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.
- 142.**Concerning the waivers with regard to the extinguishment of claims which arose prior to the initiation of the CIR Process and

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which have not been claimed are granted in terms of the law laid down by the Hon'ble Apex Court in ***Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited*** reported in **MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737** that "once a resolution plan is duly approved by the Adjudicating Authority Under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan." **(Emphasis Added)**

143. Further, the relevant part of the ***Ghanashyam Mishra judgment (supra)*** in this regard is given below:

"61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stake-holders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by

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CoC meets the requirement as referred to in Sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.'

"62. *This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra).'*

"107. *For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly*

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what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”

(Emphasis Added)

144.In this regard we also rely on the judgement of the Hon’ble High Court of Rajasthan in the matter of **EMC v. State of Rajasthan**, Civil Writ Petition No. 6048/2020 with 6204/2020 reported in **(2023) ibclaw.in 42 HC**, wherein it has been inter-alia held that:

“Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.”

(Emphasis Added)

145.Thus, on the date of approval of the resolution plan by the Adjudicating Authority, all such claims, that are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon’ble Supreme Court of India further laid down that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for

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the period before the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.

- 146.** Concerning the waivers sought in relation to guarantors, the Hon'ble Apex Court held in ***Lalit Kumar Jain v. Union of India*** reported in **MANU/SC/0352/2021: (2021) 9 SCC 321: (2021) ibclaw.in 61 SC** that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself.

(Emphasis Added)

- 147.** Further, we would rely upon the judgment rendered by the NCLAT in ***Roshan Lal Mittal v. Rishabh Jain*** reported in **(2023) ibclaw.in 803 NCLAT** that:

“The Resolution Plan does not absolve the personal guarantors from their guarantee. The law well settled by the Hon'ble Supreme Court in the matter of “Lalit Kumar Jain vs. Union of India & Ors. – (2021) 9 SCC 321), that by approval of resolution plan the guarantees are not ipso facto discharged.”

(Emphasis Added)

- 148.** For the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as per section 32A of the I&B Code, 2016 and the provisions of the law as may be applicable.

- 149.** As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the

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Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the Code.

150.In case of non-compliance with this order or withdrawal of the Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.

151.Subject to the directions made above as well as in in **I.A. 1573/KB/2023**, the Resolution Plan dated 02.01.2023 and addendums dated 04.02.2023 and 25.02.2023, submitted by **Mr. Ajay Bikram Singh through Baumann Dekor Private Limited** is hereby **APPROVED** and **FINALLY SANCTIONED** by this Adjudicating Authority. The Resolution Plan shall form part of this Order and shall be read along with this order for implementation. The Resolution Plan thus approved shall be binding on the Corporate Debtor and other stakeholders involved in terms of section 31 of the Code, so that the revival of the Corporate Debtor Company shall come into force with immediate effect.

152.We are of the view that no purposes would be served in sending the Resolution Plan back to the CoC for this purpose only and to come back to us once again for approval. This will only delay the resolution of the Corporate Debtor further. Therefore, we approve this Application seeking the approval of Resolution Plan subject to the direction given in **I.A. (IB) No. 1573/KB/2023**.

153.The entire exercise be completed in a week's time, after receipt of a copy of this order.

154.The Moratorium imposed under section 14 of the Code by virtue of the order dated May 25, 2022, shall cease to have effect from the date of this order.

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- 155.**The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return them to the Resolution Applicant or New Promoters.
- 156.**Liberty is hereby granted for moving any application if required in connection with the implementation of this Resolution Plan.
- 157.**A copy of this Order is to be submitted to the Registrar of Companies, West Bengal by the RP.
- 158.**The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
- 159.**The Resolution Professional is further directed to hand over all records, premises/ factories/ documents to the Resolution Applicant to finalise the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records/ premises/ factories/ documents through the Resolution Professional to finalise the further line of action required for starting the operation.
- 160.**The **Registry of this Adjudicating Authority** is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.
- 161.**In terms of the view above, the interlocutory application being **I.A. (IB) No. 1573/KB/2023** and **I.A. (IB) No. 510/KB/2023** along with main company petition being **C.P. (IB) No. 588/KB/2020** shall stand **disposed of** accordingly.

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162. Accordingly, I.A. (IB) No. 869/KB/2023, I.A. (IB) No. 813/KB/2023 and I.A. (IB) No. 513/KB/2023 in C.P. (IB) No. **588/KB/2020** are **dismissed**.

163. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

164. File be consigned to the record.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 31th Day of January, 2024.

Bose, R. K. [LRA]
Tiwari, V. [LRA]
Subhajit, G. [Steno]