IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.301- IA/1039(AHM)2023
ITEM No.302- IA/170(AHM)2024
In
CP(IB) 195 of 2018

IA/1039(AHM)2023
Under Section 60(5) r/w 74(3) of IBC 2016
IN THE MATTER OF:

Monitoring Committee of Shriram Cement Ltd.
Through its Member SBI

........Applicant

V/s
High Performance Products Industries Pvt. Ltd.

....Respondent

IA/170(AHM)2024
Under Section 60(5) of IBC 2016
High Performance Products Industries Private Limited

........Applicant

V/s
Collector Banaskantha

.....Respondent

Order delivered on: 22/07/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

O R D E R
(Hybrid Mode)

The case is fixed for pronouncement of order. The common order is pronounced in the open court, vide separate sheet.

-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT-I, AHMEDABAD**

**IA/1039(AHM)2023
And
IA/170(AHM)2024
In
CP(IB) 195 of 2018**

In the matter of: *Shriram Cements Limited*

IA/1039(AHM)2023

[An application under Section 60(5) r/w section 75 of the IBC, 2016]

MEMO OF PARTIES

In the Matter of:
**Monitoring Committee of
Shriram Cement Limited**
Through its member:
The State Bank of India
Having its address at
Stressed Assets Management Branch
"Red Cross Building", No.32,
Montieth Road, Egmore,
Chennai-600009.

...Applicant

VERSUS

1. **High Performance Products Industries Pvt. Ltd.**
A company registered under
The Companies Act, 1956
Having its office at:
Flat No.1 03, 1st Floor,
Glen Eagle Gulmohar Road,
Opp. Juhu Galli, JVPD Scheme,
Vile Parle (West) Mumbai City,

Maharashtra- 400049.

2. **Shripravinchandra Sheth**
Director of Respondent No.1
Residing at
Salol, Tretrash Street,
Gandalal Bechalal,
Delo, Surendranagar,
Gujarat-363001.

3. **Shri Pradeep Kumar Tiwari**
Director of the Respondent No.1
Residing at
Ghurehata, Faizabad,
Uttar Pradesh-224284

... Respondents

AND
IA/170(AHM)2024

(Application under Section 60(5) of the IBC, 2016)

MEMO OF PARTIES

In the Matter of:
High Performance Products Industries Pvt. Ltd.
Through authorised signatory
Bhrugukumar Purshottam Bhatt
Having its registered office at
130, New Satguru Nanik IND Estate,
Jai Coach, Western Express Highway,
Goregaon East Mumbai, Mumbai,
Maharashtra - 400063

.... Applicant

Versus

1. **Collector, Banaskantha**
District Collector Office,
Jilla Seva Sadan,
Jorawar Palace
Ambika Society,

Palanpur, Gujarat 385001
E-mail: collector-ban@gujarat.gov.in

2. **Monitoring Committee of Shriram Cement Ltd.**
   Through its members
   The State Bank of India
   Having address at
   Stressed Assets Management Branch
   "Red Cross Building"
   No. 32, Monteith Road,
   Egmore, Chennai – 600009

3. **Guiarat Mineral Development Corporation Limited**
   Through its members
   Khanij Bhavan
   Having address at
   Near Gujarat University
   Ground 1, 32 Ft Ring Road
   Vastrapur, Ahmedabad
   Guiarat - 380052

...Respondents

In the matter between :

Agarwal Coal Corporation Pvt Ltd

...Operational Creditor

V/s.

Shriram Cement Ltd

...Corporate Debtor

Order Pronounced On: 22.07.2026

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicants	:	Ms. Aishwarya Reddy, Adv. (in IA/1039(AHM)2023) Mr. Saurabh Soparkar, Sr. Adv. a. w. Mr. Jaimin Da Adv. & Ms. Hirva Dave, Adv. (in IA/170(AHM)2024)
For the Respondents	:	Mr. Saurabh Soparkar, Sr. Adv. a. w. Mr. Jaimin Dave, Adv. & Ms. Hirva Dave, Adv. (in IA/1039(AHM)2023) Ms. Manisha Luvkumar Shah, AAG a. w. Mr. Hitesh Vachhani, Adv. (in IA/170(AHM)2024) Ms. Aishwarya Reddy, Adv. for R-2 (in IA/170(AHM)2024)

ORDER
[Per: Bench]

1. An application being **IA/1039(AHM)2023** in **CP(IB) 195 of 2018** is filed by the Applicant on 25.09.2023 (through e-mode), under the provisions of Section 60(5) r/w section 75 of the IBC, 2016inter alia seeking necessary directions from this Tribunal seeking the following reliefs: -

   a. *to liquidate the Corporate Debtor as per the provisions of Chapter II & Chapter III of the IBC;*

   b. *to appoint a liquidator in terms of Section 34 of the IBC;*

   c. *to direct the liquidator to take steps under Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016* *and consider the sale of the Corporate Debtor as a going concern as stipulated under Regulation 32(e) and (f) and 32-A of the IBBI (Liquidation Process) Regulations, 2016.*

d. *to direct the Insolvency and Bankruptcy Board of India to take steps for initiating appropriate penal proceedings against the Resolution Applicant and their concerned officers under Section 74(3) of the IBC and Section 213 read with Section 417 of the Companies Act for non-compliance with the Resolution Plan.*

e. *to direct the Resolution Applicant to make the payment of the dues to the Applicant as per the approved Resolution Plan;*

f. *Pass any other or further orders/directions that may be deemed fit and appropriate in the above facts of the case.*

2. An application being **IA/170(AHM)2024** in **CP(IB) 195 of 2018** is filed by the Applicant/SRA on 19.01.2024 (through e-mode), under the provisions of Section 60(5) of the IBC 2016 inter alia, seeking necessary directions from this Tribunal, seeking the following reliefs: -

a. *to allow the present application;*

b. *to quash and set aside order dated 10.12.2021 at Annexure- M passed by Respondent No. 1;*

c. to direct Respondent No. 1 to grant approval for transfer of land bearing Survey No. 47 admeasuring 39 - 00 acre situated at Village Hadad, Taluka: Danta, District Banaskantha along with plant, machinery and building thereon;

d. to release Bank Guarantee to the tune of Rs. 4,79,83,108/- and further restrain Respondent No.3 from interfering with the release of such Bank Guarantee;

e. to grant further time of 6 (six) months' time f or implementation of resolution plan as approved by this Hon'ble Court vide order dated 20.09.2021 passed in I.A No 936 o12020;

f. to restrain Respondent No. 3

g. To grant any other relief as may deem fit in the interest of justice.

IA/1039(AHM)2023

3. The facts of the case, as available in the Interlocutory Application **IA/1039(AHM)2023** in **CP(IB) 195 of 2018**, are summarized as under: -

a. It is submitted that the Corporate Debtor was incorporated on 27.04.2000 and CIRP was initiated by this Adjudicating Authority on 20.09.2019, whereupon the IRP was appointed and subsequently confirmed as the Resolution Professional in the 2nd CoC Meeting held on 08.11.2019.

b. Thereafter, pursuant to publication of EOI on 31.01.2020, fresh EOIs were invited and, following an exclusion of 90 days granted on 29.06.2020, the Resolution Plan submitted by Respondent No. 1 was approved by the CoC in its 10th Meeting held on 09.12.2020 and thereafter by this Adjudicating Authority on 20.09.2021.

c. Under the approved Resolution Plan, the Applicant's admitted dues of Rs. 20,75,09,078.93 were to be settled for Rs. 5.50 Crores on or before 20.12.2021. It is further submitted that Respondent No. 1 paid only Rs. 25 Lakhs on 24.09.2021, and despite repeated communications dated 22.11.2021, 25.11.2021, 01.02.2022, 07.02.2022 and 15.02.2022, had paid only Rs. 30 Lakhs as on 31.03.2022. Upon continued default, further notices dated 29.06.2022 and 27.07.2022 were issued, whereafter the 1st Monitoring Committee Meeting was held on 23.08.2022, in which Respondent No. 1 remained absent, though it sought further time by communication dated 07.09.2022.

d. In the 2nd Monitoring Committee Meeting held on 16.02.2023, it was resolved to initiate appropriate proceedings for implementation of the Resolution

Plan or liquidation of the Corporate Debtor and to extend the Bank Guarantee.

e. Thereafter, in the 3rd Monitoring Committee Meeting held on 05.08.2023, Respondent No. 1 sought an extension of 12 months, which was rejected, and it was resolved to initiate liquidation proceedings while appropriating the amount of Rs. 30 Lakhs towards the outstanding dues of the Applicant.

4. That, the Respondent No. 01/SRA filed an additional affidavit on 04.10.2023 vide Inward No. D-4865 stating that, subject to the resolution of the pending litigation concerning land bearing Survey No. 47 admeasuring 39.00 acres situated at Village Hadad, Taluka Danta, District Banaskantha, pending between the Corporate Debtor, Gujarat Mineral Development Corporation Limited and the State of Gujarat, it shall repay the balance outstanding dues to the sole secured financial creditor in instalments, namely Rs. 20,00,000/- on or before 31.12.2023, ₹1,00,00,000/- each on or before 31.03.2024, 30.06.2024, 30.09.2024, 31.12.2024 and 31.03.2025. It is further undertaken that the Respondent would be in a position to discharge the remaining instalments at an earlier date in the event the bank guarantee of Rs. 4,79,83,108/- lying with the Applicant is released. The said undertaking was solemnly affirmed at Ahmedabad on 02.12.2023.

5. That, in compliance with order dated 06.10.2023, the R-1/SRA filed its Affidavit-of-Reply on 04.12.2023 vide Inward No. D-4865 stating the following:

a. It is submitted that implementation of the Resolution Plan has been delayed owing to the dispute relating to Survey No. 47 admeasuring 39 acres at Village Hadad, Taluka Danta, District Banaskantha, the sole asset of the Corporate Debtor.

b. The land was originally allotted on 14.04.1981, transferred to Shriram Cement Ltd. on 16.06.1982, and thereafter vested in GMDC. Pursuant to the Agreement to Sell dated 30.05.2000 and permission sought on 21.01.2003, the premium demand dated 13.07.2006 was remanded by the SSRD on 03.05.2008, a Bank Guarantee of Rs. 4,79,83,108/- was furnished on 28.08.2010, and the subsequent demand dated 06.12.2012 was quashed by the Hon'ble High Court vide judgment dated 05.05.2017, which was affirmed upon dismissal of Letters Patent Appeal No. 2390 of 2017 on 01.07.2021.

c. It is further submitted that during CIRP commenced on 20.09.2019, the Resolution Professional invited

GMDC to lodge its claim on 19.11.2019, sought release of the Bank Guarantee on 14.07.2021, and opposed the renewed premium demand on 08.09.2021. Following approval of the Resolution Plan on 20.09.2021, Respondent No. 1 paid Rs. 25 Lakhs on 24.09.2021 and sought release of the Bank Guarantee on 19.10.2021.

d. However, the Collector, by order dated 10.12.2021, declined permission for transfer of the land, whereafter Misc. Civil Application No. 501 of 2021 was disposed of on 31.01.2022, Special Civil Application No. 7016 of 2022 was instituted challenging the said order, and GMDC invoked the Bank Guarantee on 02.02.2023.

e. It is lastly submitted that SLP (C) No. 21129 of 2021 was disposed of on 14.02.2023, the Monitoring Committee resolved to extend the Bank Guarantee, and Respondent No. 1, by communications dated 31.03.2023 and 24.07.2023, sought protection against its invocation and further time to implement the Resolution Plan.

6. That, in compliance with order dated 05.12.2023, the Applicant filed its Affidavit-of-Rejoinder on 27.12.2023 vide Inward No. D-5401 stating the following:

a. It is submitted that the Applicant has denied the contention of the Successful Resolution Applicant that the non-implementation of the approved Resolution Plan was attributable to the pending dispute concerning the land with GMDC and the State of Gujarat.

b. It is contended that Clause 5.9.8.7 of the approved Resolution Plan envisaged implementation through equity infusion, unsecured loans and promoter contributions, and therefore the plea of inability to arrange finances is contrary to the terms of the Resolution Plan.

c. It is further submitted that the SRA has sought an extension of approximately one year and four months by proposing payment in instalments from 31.12.2023 to 31.03.2025, subject to resolution of the land dispute and release of the Bank Guarantee of Rs. 4,79,83,108/- furnished on 28.08.2010, which, according to the Applicant, amounts to an impermissible modification of the approved Resolution Plan.

d. It is contended that the SRA had submitted its Resolution Plan with full knowledge of the pending litigation, the Resolution Plan having been approved by the CoC on 09.12.2020 and by this Tribunal on 20.09.2021, and is therefore bound by its terms.

e. It is lastly submitted that out of Rs. 5.50 Crores payable to the secured financial creditor, the SRA has paid only Rs. 30 Lakhs, leaving an outstanding amount of Rs. 5.20 Crores, thereby committing breach of the approved Resolution Plan, and accordingly the present Application deserves to be allowed.

7. In compliance with order dated 22.01.2024, the Applicant filed an additional affidavit on 19.02.2024 vide Inward No. D-1353 to clarify that the Bank Guarantee in favour of GMDC was backed by 100% margin money carved out of the term loan sanctioned by SBI. The Corporate Debtor's account was declared NPA on 30.06.2012, and the margin money was appropriated by SBI on 06.08.2019, prior to the commencement of CIRP on 20.09.2019. It is further submitted that SBI, being the sole secured financial creditor, had disclosed all particulars relating to the Bank Guarantee to the Resolution Applicant, and the same were incorporated in Clause 5.7 of the approved Resolution Plan. The affidavit further states that although the Resolution Applicant's initial proposal regarding payment upon invocation of the Bank Guarantee was not accepted in the 9th CoC Meeting, it subsequently agreed to repay the invoked amount after a six-month moratorium in 24 equal monthly instalments, as incorporated in the approved Resolution Plan. The affidavit was affirmed on 14.02.2024 at Chennai.

IA/170(AHM)2024

8. The facts of the case, as available in the Interlocutory Application **IA/170(AHM)2024** in **CP(IB) 195 of 2018** are summarized as under:-

a. It is submitted that the Corporate Debtor owns land bearing Survey No. 47 admeasuring 39 acres situated at Village Hadad, Taluka Danta, District Banaskantha, which was originally allotted by Respondent No. 1 to Mr. Suryakant Nanalal Gandhi on 14.04.1981 for a consideration of ₹46,800/-, subject to a restriction on transfer without prior approval.

b. Subsequently, upon permission sought on 22.04.1981, the Revenue Department granted approval on 16.06.1982 for transfer of the land to Shriram Cement Ltd. without levy of any premium. Thereafter, Shriram Cement Ltd. became a sick company and, pursuant to proceedings before the BIFR, stood amalgamated with Gujarat Mineral Development Corporation Ltd. (GMDC) with retrospective effect from 01.04.1992, following which Respondent No. 1 transferred the land in favour of GMDC by order dated 28.10.2002 without demanding any premium.

c. It is further submitted that the Corporate Debtor was incorporated on 24.07.2000, and pursuant to an Agreement to Sell dated 30.05.2000, GMDC agreed to transfer the cement plant, including the subject land, building, machinery and other assets, for a total consideration of Rs. 1,75,00,000/-, whereafter possession of the land was handed over to the Corporate Debtor.

d. On 21.01.2003, GMDC sought permission to execute the sale deed in favour of the Corporate Debtor; however, Respondent No. 1, by communication dated 13.07.2006, demanded payment of premium of Rs. 4,79,83,108/-, pursuant to which GMDC called upon the Corporate Debtor on 06.08.2007 to deposit the said amount.

e. The Corporate Debtor challenged the demand before the Hon'ble High Court of Gujarat, and thereafter before the Special Secretary, Revenue Department, who by order dated 03.05.2008 quashed the communication dated 13.07.2006 and remanded the matter for fresh consideration.

f. It is submitted that pursuant to the remand, GMDC required the Corporate Debtor to furnish a Bank Guarantee of Rs. 4,79,83,108/-, which was furnished on 28.08.2010. Thereafter, Respondent No. 1 again demanded premium of Rs. 41.95 Crores by order dated 06.12.2012, which was challenged by the Corporate

Debtor in Special Civil Application No. 3693 of 2013. The Hon'ble High Court of Gujarat, by judgment dated 05.05.2017, held that the State Government was not entitled to charge any premium for transfer of the land from GMDC to the Corporate Debtor. Although the matter was remanded for reconsideration, the Corporate Debtor preferred Letters Patent Appeal No. 2390 of 2017, apprehending that Respondent No. 1 may again seek to levy premium.

g. It is further submitted that during the pendency of the said appeal, this Tribunal admitted CP (IB) No. 195 of 2018 on 20.09.2019 and initiated the Corporate Insolvency Resolution Process, whereupon the Resolution Professional invited GMDC to submit its claim by e-mail dated 19.11.2019.

h. Subsequently, the Hon'ble High Court, by order dated 01.07.2021, dismissed the Letters Patent Appeal and reaffirmed that no premium was payable on transfer of the subject land. Consequent thereto, the Resolution Professional addressed communications dated 14.07.2021 to GMDC seeking release of the Bank Guarantee and, upon Respondent No. 1 again raising the issue of premium by communication dated 02.09.2021, submitted detailed representations on 08.09.2021 asserting that no premium was legally recoverable in view of the binding judgments of the Hon'ble High Court.

i. Thereafter, this Tribunal approved the Resolution Plan on 20.09.2021, and the Applicant has sought appropriate directions for its effective implementation.

9. That, in compliance with order dated 02.02.2024, the R-2/SBI filed its Affidavit-in-Reply on 20.02.2024 (through e-mode) stating the following:

a. It is submitted that the Applicant has attributed its inability to implement the approved Resolution Plan to the order dated 10.12.2021 passed by Respondent No. 1. However, Respondent No. 2 has contended that such plea is devoid of merit since Clause 5.9.8.7 of the approved Resolution Plan specifically provides that the source of funds for implementation would be through equity deposits, unsecured loans from associate companies, and infusion of funds by the Applicant's promoters/directors, their friends and relatives. It is therefore submitted that the non-implementation of the Resolution Plan cannot be attributed to the alleged dispute concerning the land.

b. It is submitted that the Applicant has itself admitted its failure to implement the approved Resolution Plan and, by seeking an extension of six months, is merely attempting to prolong the timeline for repayment. It is further submitted that Respondent No. 2, in its capacity as the Monitoring Committee, was entrusted only with monitoring and supervising the implementation of the approved Resolution Plan and had consistently reminded the Applicant to clear the outstanding dues of the Financial Creditor in accordance with the terms of the approved Resolution Plan.

c. It is further submitted that Respondent No. 2 had already approached this Tribunal by filing I.A. No. 1039 of 2023 in CP (IB) No. 195 of 2018, bringing to the notice of this Tribunal the Applicant's continued failure to implement the approved Resolution Plan by not discharging the dues payable to the Financial Creditor.

d. It is contended that the Applicant, by seeking stay of the said proceedings, is indirectly attempting to secure further time for implementation of the Resolution Plan. On the aforesaid grounds, Respondent No. 2 has prayed for dismissal of the present Application as being devoid of merits.

10. That, in compliance with order dated 02.02.2024, the R-3/GMDC filed its Affidavit-in-Reply on 12.04.2024 vide Inward No. D-2980 stating the following:

a. It is submitted that Respondent No. 3 has contended that the present Application is not maintainable as the appropriate remedy against the Collector's order dated 10.12.2021 is a Revision Application under Section 211 of the Gujarat Land Revenue Code, 1879, and accordingly Revision Application No. JMN/BNS/9/2022 is pending before the SSRD.

b. It is further submitted that the issue relating to transfer of the subject land and release of the Bank Guarantee is intrinsically connected with the said revision proceedings and, therefore, no relief can be granted until the revision is finally decided. Respondent No. 3 has relied upon the allotment of the land on 14.04.1981, the BIFR Order dated 16.09.1993, the Banakhat dated 30.05.2000, the premium demand dated 13.07.2006, and the judgments of the Hon'ble High Court dated 05.05.2017 and 01.07.2021 to contend that the Collector's order dated 10.12.2021 is under challenge before the competent authority.

c. It is lastly submitted that the assets of Shriram Cement Ltd. vested in GMDC under the BIFR Scheme, no premium was payable for transfer of the land, and the impugned order dated 10.12.2021, passed without affording an effective opportunity of hearing, is arbitrary, contrary to the aforesaid High Court judgments, and hit by the principles of estoppel, acquiescence and waiver.

11. That, in compliance with order dated 02.02.2024, the R-1/District Collector filed its Affidavit-in-Reply on 16.05.2024 vide Inward No. D-4154 stating the following:

a. It is submitted that Respondent No. 1 has opposed the present Application by raising a preliminary objection to its maintainability under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, contending that the Applicant seeks to quash the order dated 10.12.2021 and to direct grant of permission for transfer of land bearing Survey No. 47 admeasuring 39 acres situated at Village Hadad, Taluka Danta, District Banaskantha, which reliefs are beyond the jurisdiction of this Tribunal.

b. It is further submitted that the Applicant, being aggrieved by the order dated 10.12.2021, ought to have availed the statutory remedy of filing a Revision Application under Section 211 of the Gujarat Land Revenue Code, 1879 before the Special Secretary, Revenue Department (SSRD). It is contended that the impugned order dated 10.12.2021 came to be passed on account of non-payment of premium of Rs. 41,98,35,780/- by Respondent No. 3, resulting in rejection of the request for transfer of the subject land. It is further submitted that Respondent No. 3 has already challenged the said order before the SSRD and the Revision Application is presently pending adjudication.

c. It is therefore submitted that in view of the pendency of the statutory revision proceedings and the availability of an efficacious alternative remedy, the present

Application is not maintainable before this Tribunal and the Applicant is not entitled to any relief, including the interim reliefs sought therein. Accordingly, Respondent No. 1 has prayed for dismissal of the present Application.

12. That, in compliance with order dated 02.02.2024, the Applicant filed its Affidavit-in-Rejoinder on 14.06.2024 (through e-mode) stating the following:

a. It is submitted that Special Civil Application No. 7016 of 2022 was withdrawn pursuant to the order dated 10.10.2023 with liberty to approach this Adjudicating Authority. Relying upon the judgment of the Hon'ble Supreme Court in **Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, *(2021) 7 SCC 209***, it is contended that this Tribunal has jurisdiction to adjudicate issues arising out of or relating to the CIRP.

b. It is further submitted that the impugned order dated 10.12.2021 has materially affected the implementation of the approved Resolution Plan, as the subject land is the principal asset of the Corporate Debtor. It is contended that the said order is contrary to the judgments of the Hon'ble High Court of Gujarat and that the pendency of the Revision Application under Section 211 of the Gujarat Land Revenue Code does not bar the present proceedings in view of the overriding effect of Section 238 of the Code.

c. It is submitted that the Corporate Debtor had furnished a Bank Guarantee of Rs. 4,79,83,108/- in favour of GMDC and, after commencement of CIRP on 20.09.2019, the Resolution Professional invited GMDC to lodge its claim vide e-mail dated 19.11.2019, though no claim was filed. Thereafter, communications dated 14.07.2021 and 19.10.2021 were addressed seeking release of the Bank Guarantee, but the same was not released.

d. It is further submitted that the Applicant has denied the contentions of Respondent No. 2 and reiterated that the Resolution Plan envisaged funding through bank borrowings of Rs. 3 Crores and internal accruals of Rs. 3 Crores. It is contended that Respondent No. 2 has failed to hand over possession of the land bearing Survey No. 47 admeasuring 39 acres situated at Village Hadad, Taluka Danta, District Banaskantha, along with the plant and machinery, which constitutes the sole asset of the Corporate Debtor, and therefore cannot insist upon implementation of the Resolution Plan. Accordingly, the Applicant has prayed for allowing the present Application.

13. In compliance with order dated 14.06.2024, the R-1/ Collector filed its additional Affidavit-of-Reply on 22.08.2024 vide Inward No. D-6567 stating the following:

a. It is further submitted that the land was originally allotted on 14.04.1981, transferred to Shriram Cement Ltd. pursuant to permission dated 16.09.1982, and thereafter vested in GMDC pursuant to the BIFR Order dated 16.09.1993. GMDC entered into an Agreement to Sell dated 30.05.2000 with the Corporate Debtor, following which permission for transfer was sought on 21.01.2003.
b. The Collector demanded premium vide communication dated 13.07.2006, which culminated in proceedings before the SSRD and the Hon'ble High Court, resulting in orders dated 03.05.2008, 05.05.2017 and 01.07.2021, pursuant to which the Collector reconsidered the matter and passed the impugned order dated 10.12.2021.
c. It is submitted that the CIRP against the Corporate Debtor commenced on 20.09.2019, the Resolution Plan was approved on 20.09.2021, SLP (C) No. 21129 of 2021 was disposed of on 14.02.2023, and Special Civil Application No. 7016 of 2022 was withdrawn on 10.10.2023. It is contended that the Collector's order dated 10.12.2021 was passed in compliance with the directions of the Hon'ble High Court and does not violate any provision of the IBC.

14. In compliance with order dated 23.08.2024, the Applicant filed its Affidavit-of-Rejoinder to the additional reply filed by R-1/Collector on 24.09.2024 vide Inward No. D-7257 stating the following:

a. It is further submitted that the impugned order dated 10.12.2021 adversely affects the implementation of the approved Resolution Plan as the land bearing Survey No. 47 admeasuring 39 acres is the sole asset of the Corporate Debtor. It is contended that the pendency of the Revision Application under Section 211 of the Gujarat Land Revenue Code does not bar the present proceedings in view of the overriding effect of Section 238 of the IBC.

b. It is submitted that the Applicant has further contended that the demand of premium pursuant to the communications dated 13.07.2006 and 06.12.2012 stood quashed by the Hon'ble High Court vide judgment dated 05.05.2017, and Letters Patent Appeal No. 2390 of 2017 was dismissed on 01.07.2021, holding that no premium could be levied on transfer of the subject land. Accordingly, the impugned order dated 10.12.2021 is stated to be contrary to the aforesaid judgments and liable to be set aside.

15. That, in compliance with order dated 24.09.2024, the Applicant/SRA filed its written submission on 21.10.2024 vide Inward No. D-7983 relying upon the judgment of ***Gujarat Urja Vikas Nigam Limited vs. Amit Gupta,***

reported in (2021) 7 SCC 209 and ***Shiv Charan Vs. Adjudicating Authority under the Prevention of Money Laundering Act, 2002, Department of Revenue, reported in [2024] 183 SCL 542 (Bom).***

16. That, in compliance with order dated 24.09.2024, the Respondent-1/Collector, Banaskantha filed its written submission on 04.10.2024 vide Inward No. D-7577 relying upon the judgment of ***Embassy Property Developments Private Limited Vs. State of Karnataka and Others (2020) 13 SCC 308***.

17. That, in compliance with order dated 24.09.2024, the Respondent-1/Collector, Banaskantha filed its Convenience Compilation on 18.11.2024 vide Inward No. D-8396.

18. This Tribunal has carefully considered the pleadings, affidavits, rejoinders, written submissions and the documents placed on record in IA/1039(AHM)2023 and IA/170(AHM)2024.

19. The principal issue arising for consideration is whether the Successful Resolution Applicant ("SRA"), after approval of the Resolution Plan under Section 31 of the Insolvency and Bankruptcy Code, 2016 ("the Code"), has committed such failure in implementation of the approved Resolution Plan as would warrant initiation of liquidation proceedings under Section 33(4) of the Code and whether this Tribunal can grant the reliefs sought by the SRA concerning the transfer of the land bearing Survey No.47 and release of the Bank Guarantee.

20. At the outset, it is an undisputed position that the Resolution Plan submitted by the SRA came to be approved by this Tribunal vide order dated 20.09.2021 and, by virtue of Section 31 of the Code, became binding upon the Corporate Debtor, the Successful Resolution Applicant and all stakeholders. It is equally undisputed that under the approved Resolution Plan, the SRA was required to make payment of Rs.5.50 Crores towards the dues of the sole secured Financial Creditor. However, despite lapse of considerable time after approval of the Resolution Plan, the SRA has admittedly paid only Rs.30 Lakhs.

21. The record further reveals that repeated communications were addressed by the Monitoring Committee requiring compliance of the Resolution Plan and several opportunities were granted to the SRA to honour its obligations, but no meaningful implementation has taken place. The Monitoring Committee, therefore, resolved to seek liquidation of the Corporate Debtor upon the continued failure of the SRA to implement the approved Resolution Plan.

22. The defence of the SRA is that implementation of the Resolution Plan became impossible due to the continuing dispute relating to transfer of land bearing Survey No.47, Village Hadad, Taluka Danta, District Banaskantha, the Collector's order dated 10.12.2021, non-release of the Bank Guarantee and the pendency of proceedings between the State Government, GMDC and the Corporate Debtor. It has been further contended that since the subject land constitutes the principal asset of the Corporate Debtor, financial institutions were unwilling to extend financial assistance and consequently the Resolution Plan could not be implemented.

23. The Monitoring Committee has rightly contended that the explanation offered by the Successful Resolution Applicant is untenable. The Resolution Plan envisaged implementation through equity contribution, unsecured loans and promoter infusion and not upon resolution of the pending land dispute. Having submitted the Resolution Plan with full knowledge of the existing disputes and secured its approval under Section 31 of the Code, the Successful Resolution Applicant cannot subsequently seek to alter its obligations by making implementation contingent upon resolution of those disputes. This Tribunal finds merit in the said contention.

24. The undertaking furnished by the SRA proposing a revised payment schedule extending up to March, 2025 and making the implementation conditional upon the conclusion of land litigation and release of the Bank Guarantee is nothing but an attempt to materially alter the approved Resolution Plan. Such conditional implementation travels beyond the terms approved by the Committee of Creditors and sanctioned by this Tribunal under Section 31 of the Code. Once a Resolution Plan has attained finality, neither the Resolution Applicant nor any stakeholder can unilaterally rewrite its commercial obligations by introducing fresh conditions not forming part of the approved Resolution Plan. Acceptance of such a request would amount to permitting modification of the approved Resolution Plan contrary to the scheme of the Code.

25. This Tribunal has also considered the contentions raised in IA/170(AHM)2024 seeking quashing of the Collector's order dated 10.12.2021, issuance of directions for transfer of the subject land, release of the Bank Guarantee and grant of further time for implementation of the Resolution Plan. The Collector as well as GMDC has consistently objected to the maintainability of the said reliefs by contending that the challenge to the Collector's order lies under the Gujarat Land Revenue Code before the Special Secretary, Revenue Department ("SSRD"), where admittedly Revision Application is already pending. The Collector has further relied upon the judgment of the Hon'ble Supreme Court in ***Embassy Property Developments Private Limited v. State of Karnataka & Ors., (2020) 13 SCC 308*** to contend that disputes arising under the Land Revenue laws fall within the exclusive jurisdiction of the competent statutory authorities and are not amenable to adjudication by the Adjudicating Authority under the Insolvency and Bankruptcy Code.

26. Although the SRA has relied upon the decision of the Hon'ble Supreme Court in **Gujarat Urja Vikas Nigam Limited v. Amit Gupta, *(2021) 7 SCC 209*** to contend that this Tribunal possesses jurisdiction under Section 60(5) of the Code, the facts of the present case stand on a different footing. The dispute regarding transfer of land, levy of premium and legality of the Collector's order essentially arises under the provisions of the Gujarat Land Revenue Code and the statutory revision against the impugned order is admittedly pending before the Special

Secretary, Revenue Department. Determination of the validity of the Collector's order would necessarily require adjudication of rights under the Gujarat Land Revenue Code, which falls outside the limited jurisdiction conferred upon this Adjudicating Authority under the Insolvency and Bankruptcy Code. This Tribunal, therefore, refrains from expressing any opinion upon the correctness or legality of the Collector's order dated 10.12.2021 or the merits of the pending proceedings before the SSRD. Those issues shall be decided independently by the competent authority in accordance with law, uninfluenced by any observation made herein.

27. This Tribunal further notes that during the course of hearing, repeated opportunities were granted to the parties to arrive at an amicable settlement and to evolve a workable mechanism for implementation of the approved Resolution Plan. Several adjournments vide orders dated 10.12.2024, 28.01.2025, 10.03.2025, 13.06.2025, 16.09.2025, 10.10.2025, 15,12,2025 and 10.03.2026 were granted solely to enable the parties to resolve their disputes, particularly in view of the pendency of proceedings concerning the subject land. However, despite sufficient indulgence shown by this Tribunal over a considerable period of time, no settlement could be arrived at and the Resolution Plan continues to remain substantially unimplemented.

28. The Insolvency and Bankruptcy Code, 2016 envisages a time-bound insolvency resolution process. Despite the lapse of more than four years from the approval of the Resolution Plan, its principal obligations remain substantially unfulfilled. Such prolonged non-implementation defeats the object of the Code and cannot be permitted.

29. In view of the admitted failure of the Successful Resolution Applicant to implement the approved Resolution Plan, despite repeated opportunities, constitutes a contravention of the Resolution Plan under Section 33(4) of the Insolvency and Bankruptcy Code, 2016. The pendency of the land dispute or non-release of the Bank Guarantee does not absolve the SRA of its obligations under the approved Resolution Plan, particularly when such risks were within its knowledge at the time of submission of the Resolution Plan.

30. This Tribunal is, therefore, satisfied that the present case squarely attracts the provisions of Section 33(4) of the Insolvency and Bankruptcy Code, 2016, as the Successful Resolution Applicant has failed to implement the Resolution Plan approved under Section 31 of the Code. Consequently, the Corporate Debtor is liable to be ordered into liquidation in accordance with law. The Sections 33(3) & 33(4) of the Insolvency and Bankruptcy Code, 2016 reads as follows:

"Section 33: Initiation of liquidation.

(3) Where the resolution plan approved by the Adjudicating Authority under section 31 or under sub-section (1) of section 54L, is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), [5][(ii), (iii), (iv) and (v)] of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii),

(iii), (iv) and (v) of clause (b) of sub-section (1) and pass any other order as it deems fit."

31. Insofar as the prayer seeking initiation of proceedings under Section 74(3) of the Insolvency and Bankruptcy Code, 2016 read with Section 213 of the Companies Act, 2013 is concerned, this Adjudicating Authority is of the considered view that no sufficient material has been placed on record in the present proceedings warranting issuance of such directions. Accordingly, the said prayer is declined, without prejudice to the right of the competent authority to take action in accordance with law, if so advised.

32. In view of the omission of Regulations 32(e), 32(f) and 32A of the IBBI (Liquidation Process) Regulations, 2016 by the **IBBI (Liquidation Process) (Second Amendment) Regulations, 2025**, with effect from **14.10.2025**, the prayer seeking sale of the Corporate Debtor as a going concern cannot be granted.

33. Accordingly, **IA/170(AHM)2024**, seeking directions relating to the land dispute, release of the Bank Guarantee and extension of time for implementation of the Resolution

Plan, deserves to be **dismissed**, whereas **IA/1039(AHM)2023** deserves to be **allowed** to the extent of directing commencement of liquidation proceedings against the Corporate Debtor under Section 33(4) of the Insolvency and Bankruptcy Code, 2016. The consequential directions regarding appointment of Liquidator and conduct of liquidation proceedings shall follow in the operative portion of this Order.

34. In view of the above observations and findings, it is hereby ordered as follows: -

a. The Corporate Debtor, **Shriram Cements Limited**, is hereby ordered to be liquidated in exercise of powers under Sections 33(3) and 33(4) of the Insolvency and Bankruptcy Code, 2016, consequent upon the contravention of the approved Resolution Plan. The liquidation shall be conducted in accordance with Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, as amended from time to time, and shall commence from the date of this Order.

b. Since the Applicant has not proposed the name of a Liquidator, this Adjudicating Authority hereby appoints Mr. Bihari Lal Chakravarti, having Registration No. IBBI/IPA-002/IP-N00863/2019-2020/12776, having office at D-54, First Floor,Defence Colony ,New Delhi,National Capital Territory of Delhi ,110024, E-mail: blchakravarti25@gmail.com, as the Liquidator under Section 34 of the Insolvency and Bankruptcy Code, 2016, to conduct the liquidation process of the Corporate Debtor in accordance with law.

c. The Liquidator shall conduct the liquidation strictly in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the applicable Regulations in force on the date of commencement of liquidation.

d. The Moratorium declared under section 14 of the Code shall cease to have effect from the date of the order of liquidation.

e. A fresh moratorium under Section 33(6) of the Code is declared, prohibiting the institution or continuation of suits or proceedings against the Corporate Debtor, except as provided under the Code, effective from the date of this order until the completion of the liquidation process.

f. The Liquidator shall take charge of the Corporate Debtor's assets, books, and records forthwith and perform all duties as prescribed under Sections 35 to 50 of the Code and the IBBI (Liquidation Process) Regulations, 2016.

g. The Liquidator is directed to file a preliminary report within 25 days of this order, as per Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, and submit periodical progress reports as per Regulation 15 of the IBBI (Liquidation Process) Regulations, 2016 to this Tribunal.

h. The Liquidator shall endeavour to complete the liquidation process within the period prescribed under Regulation 44 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, as amended from time to time, subject to such exclusions or extensions as may be permissible under law.

i. All the powers of the Board of Directors, key managerial persons, and the partner of the Corporate Debtor, as the case may be, hereafter cease to exist. All these powers henceforth vest with the Liquidator.

j. The Financial Creditor as well as the personnel of the Corporate Debtor are directed to extend all cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

k. The Liquidator shall be entitled to fees and reimbursement of expenses strictly in accordance with Section 34 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and, where applicable, the fee fixed by the Committee of Creditors under Regulation 39D of the Insolvency Resolution Process for Corporate Persons Regulations, 2016.

l. Upon commencement of liquidation, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor except as provided under Section 33(5) of the Insolvency and Bankruptcy Code, 2016. The Liquidator shall be entitled to institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the Corporate Debtor in accordance with Section 35(1)(k) of the Code.

m. This liquidation order shall be deemed to be notice of discharge to the officers, employees, and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

n. This Adjudicating Authority directs the Liquidator to issue a public announcement stating that the Corporate Debtor is in liquidation. The Liquidator will also serve a copy of this order to the various

Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workman/employees could also be informed of this liquidation order through their association.

o. The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section 35(1) of IBC, 2016 read with relevant rules and regulations, and also file its response for disposal of any pending Company Applications during the process of liquidation.

p. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.

q. The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the Corporate Debtor, IBBI, the Resolution Professional, and the Liquidator by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities for records and necessary action, if any. The Registrar of

Companies shall update the Corporate Debtor's status on the MCA portal accordingly.

r. Liberty is granted to the Liquidator to approach this Tribunal for any further directions or clarifications as may be required during the liquidation process.

35. It is clarified that the liquidation of the Corporate Debtor has been directed solely on account of the contravention and non-implementation of the approved Resolution Plan under Sections 33(3) and 33(4) of the Insolvency and Bankruptcy Code, 2016. Nothing contained in this Order shall be construed as an adjudication upon the merits of the dispute relating to the transfer of land bearing Survey No. 47, Village Hadad, Taluka Danta, District Banaskantha, or the legality and validity of the Collector's order dated 10.12.2021, which are the subject matter of independent proceedings before the Special Secretary, Revenue Department under the Gujarat Land Revenue Code. All rights and contentions of the parties in those proceedings are expressly kept open and shall be decided independently in accordance with law, uninfluenced by any observation contained in this Order.

36. It is further directed that the amounts already paid by the defaulting Successful Resolution Applicant pursuant to the approved Resolution Plan shall continue to remain with the Corporate Debtor and shall be dealt with by the Liquidator strictly in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the applicable Regulations. The defaulting Successful Resolution Applicant shall not be entitled to seek refund of such amount except in accordance with law.

37. Accordingly, **IA/1039(AHM)2023** stands **allowed**, whereas **IA/170(AHM)2024** stands **dismissed** for the reasons recorded hereinabove. No order as to costs.

-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)
Jeel Pathak/LRA

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)