





...2...

**Ajay Gupta Vs. Pramod Kumar Sharma, Civil Appeal No. 1385 of 2022 dated 25.02.2022 (2022) 6 SCC** it is as under:-

*“3. Shorn of unnecessary details, the relevant background aspects for the present purpose are that as regards the CIRP in question, there had been two resolution applicants, the consortium led by the appellant being one of them. It appears that there had been deliberations in the CoC over the resolution plans submitted by the appellant and other resolution applicant; and in the minutes of eighth meeting dated 02.11.2022, the CoC indicated its deliberations/observations concerning the two resolution plans in the following terms:*

*“At this stage, the representative of resolution applicant, namely, Sirius Foods Private Ltd. was invited to have detailed deliberations on the resolution plan submitted by Sirius Foods Private Ltd. and during the course of deliberations, defects/technical difficulty was pointed out and thereafter, representative of resolution applicant, namely, Sirius foods Private Ltd. assured that all defects would be removed to the extent possible and to the satisfaction of the CoC and resolution professional. No further objections/issues were raised by any other participant of the meeting and private Ltd. left the meeting thereafter.*

*At this stage, the representative of resolution applicant, namely, consortium of Prabhat Warehouse and Cold Storage Ltd. and Mr. Ajay Gupta was invited to have detailed deliberations on the resolution plan submitted by, consortium of Prabhat Warehouse and Cold Storage Ltd. & Mr. Ajay Gupta and during the course of deliberations, defects/technical difficulty were pointed out and thereafter, representative of resolution applicant, namely, consortium of Prabhat Warehouse and Cold Storage Ltd. and Mr. Ajay Gupta assured that all defects will be removed to the extent possible and to the satisfaction of the CoC and resolution professional and left the meeting room. No further objections/issue were raised by any other participant of the meeting and accordingly, representative of the said resolution applicant, left the meeting thereafter.”*

*4. After the aforesaid deliberations/observations of CoC, the appellant sent a communication dated 18.11.2021 and annexed therewith his affidavit dated 17.11.2021 in the so-called ‘clarification in respect of the resolution plant’. The contents of this affidavit dated 17.11.2021 read as under:-*

**“AFFIDAVIT**

*I, Ajay Gupta, a Director in Prabhat Warehouse Cold Storage Private Ltd. and on behalf of Ajay Gupta individual, which form a consortium and being the lead member*

...3...



...3...

of the said consortium, do hereby affirm as follows:

1. The consortium of Prabhat Warehouse Cold Storage Private Ltd. and Ajay Gupta have submitted a resolution plan dated 27.09.2021 which was further amended vide resolution plan dated 22.10.2021. In the amended resolution plan, payment schedule and the resolution of the corporate debtor has been mentioned, which we would be honouring at the earliest.
2. That while submitted the amended resolution plan, I was under certain apprehensions regarding litigations being involved in the process of resolution of the corporate debtor, but now after seeking legal advice under the resolution plan of Rs. 16.10 crores will remain the same and is not being modified, however I'm putting forth my gesture of making the payment upfront, if the bank allows the same within 90 days of the receipt of the order of Hon'ble NCLT approving our resolution plan, as I would be taking the possession of the corporate debtor on the payment of upfront amount of resolution amount i.e. Rs. 16.10 crores.
3. Our payment of upfront amount under the resolution plan is in no way going to modify the plan and I am submitting this affidavit so to clear my point."

Having heard the submissions of the Counsel appearing for the applicant and on perusal of the averment made in the application, this Bench is satisfied, accordingly Committee of Creditors is directed to consider the revised resolution plan of the applicant and take an informed decision. With the aforesaid observations, **IA No. 2193/2022** is **allowed** and **disposed of**.

**Sd/-**  
**SHYAM BABU GAUTAM**  
**Member (Technical)**

11.08.2022  
Sapana

**Sd/-**  
**JUSTICE P. N. DESHMUKH**  
**Member (Judicial)**