NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

2. IA/4588/2024 C.P. (IB)/1139(MB)2020

IN THE MATTER OF

Sandhya Dinesh Sancheti

VS

Trimurti Foodtech Private Limited

U/s 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 16.09.2025

CORAM:

SH. MOHAN PRASAD TIWARI MEMBER (J)	SH. CHARANJEET SINGH GULATI MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:
For the Petitioner:
For the Respondent: Adv. Amir Arsiwala (PH) i/b Adv. Aniket Sharma (VC)

ORDER

IA/4588/2024: The above IA is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

sd/- CHARANJEET SINGH GULATI Member (Technical)	sd/- MOHAN PRASAD TIWARI Member (Judicial)

//Arjun//

NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V

IA (IBC) NO. 4588 OF 2024

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

IN

CP (IB) NO. 1139/ (MB)/ 2020

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF

Dharampal Premchand Ltd.

Through its Director, Shashi Kumar Maheshwari, Regd. Office: 4873, Chandni Chowk, Delhi-110006 Corporate Office: A-34 & 35, Sector 60, Noida-201301 (Uttar Pradesh)

... Applicant

Versus

Mr. Jitendra Bhandari

'Kasturi Bangla' Sanmitra Housing,
Manmad Road, Savedi, Ahmedabad-414003
jmbhandari1979@gmail.com

...Resolution Applicant/Respondent No. 1

Mr. Manoj Kumar Mishra,
Resolution Professional of Trimurti Foodtech Private Limited, Office at 18, 3rd Floor, 84,

Dholakawala Building, Janmabhoomi Marg,
Fort, Mumbai-400001
manojkmishra95@gmail.com

...Resolution Professional/Respondent No. 2

Trimurti Foodtech Ltd.
Through its Managing Director, Shri Atul Dattatraya Banginwar, Regd. Office at Plot No.A-5, MIDC Area Railway Station, Aurangabad-431005, Maharashtra
md@freshvalley.in

... Respondent No. 3

IN THE ORIGINAL MATTER OF
Sandya Dinesh Sancheti & Ors.

... Original Financial Creditors

Versus

Trimurti Foodtech Private Limited

... Original Corporate Debtor

Order Pronounced on: 16.09.2025

Coram:
Sh. Mohan Prasad Tiwari, Hon'ble Member (Judicial)
Sh. Charanjeet Singh Gulati, Hon'ble Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: -	Adv. Rohit Vaishya (PH)
For the Respondents: -	Adv. Amir Arsiwala (PH)

ORDER

IA (IBC) NO. 4588 OF 2024

1. This I.A. is filed by M/s. Dharampal Premchand Ltd. (**'the Applicant'**) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**'IBC/the Code**') read with Rule 11 of the National Company Law Tribunal Rules, 2016 ('**NCLT Rules'**), praying for following reliefs:

    a) The instant interlocutory application may kindly be Allowed and the order dated 31 .03 .2023 passed in I.A. NO. 1916 of 2022 in C.P. NO.1139 of 2020 be recalled;

    b) The resolution plan may kindly be sent back to the COC for satisfying the parameters set out in the code including Strict compliance with the applicable mandatory provision of the code;

    c) The operation of the order dated 31.03.2023 passed in I.A. NO. 1916 of 2022 in C.P. NO. 1139 of 2020 may be put in abeyance during the pendency of this application in view of gross illegally and unconstitutionally committed by the RP;

    d) Pass such other order or orders as to this hon'ble Tribunal may deem fit and proper.

Brief Facts as per the Application:

2. The Adjudicating Authority vide order dated 11.08.2021, admitted the Company Petition bearing number C.P. (IB) NO. 1139 of 2020 filed by Sandhya Dinesh Sancheti & Ors ("**Financial Creditor"**) for initiation of Corporate Insolvency Resolution Process ("**CIRP**") of the M/s. Trimurti Foodtech Private Limited ("**Corporate Debtor"**) and appointed the Respondent No. 2 as Resolution Professional ("**RP**") for conducting CIRP of the Corporate Debtor.

3. The Applicant vide email dated 13.09.2021 filed its claim (**Form B**) before Resolution Professional on came across that CIRP is initiated against the Corporate Debtor and Respondent No. 2 has been appointed as Resolution Professional to conduct CIRP.

4. Vide email dated 02.12.2021, the Respondent No. 2 informed the Applicant that the claim was not remotely tallying with books of account of the company and claim was under verification. The CIRP concluded with approval of the Resolution Plan submitted by Respondent No. 1 ("**Resolution Applicant**"), providing 16.78% to Operational Creditors and applicant claim was treated as 'Contingent' and entire process of preparing the resolution plan and approving the same had been ex parte. The Adjudicating Authority approved the Resolution Plan submitted with I.A. No.1916 of 2023 in C.P. NO (IB).1139 of 2020 vide order dated 31.03.2023.

5. The present IA dated 27.05.2024 has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (the "**Code**") read with Rule 11 of the NCLT Rules, 2016 by M/s. Dharampal Premchand Ltd. ("**Applicant**"), seeking recall of the order dated 31.03.2023 approving the Resolution Plan filed with I.A. No. 1916 of 2023.

<u>Submissions of the Applicant, in brief:</u>

6. The Applicant, a company incorporated under the Companies Act, 1956 and a leader in the FMCG sector, entered into a Contract of Manufacturing and Packaging Agreement dated 20.08.2014 with the Corporate Debtor, providing mobilization and interest-free advances. Additionally, the Applicant purchased equipment and leased it to the Corporate Debtor under an Equipment Lease Agreement dated 20.08.2014, and pledged its entire shareholding in the Corporate Debtor under a Deed of Hypothecation dated 19.09.2014.

7. The applicant submits that the due to non-compliance with hygiene, quality, and recipe standards, the Applicant terminated both agreements vide letter dated 20.12.2017, instructing the Corporate Debtor to cease manufacturing activities, refund the advances, and return the leased equipment to the Applicant's Noida office.

8. As stated, due to the premature termination of the contracts, the Applicant is entitled to recover the following sums (as on 31.03.2018):
   (i) Security Deposit - Rs. 2,50,00,000.00
   (ii) Plant & Machinery - Rs. 2, 19,50,000.00 (Net Block)
   (iii) Fruit Pulp - Rs. 27,80,000.00
   Total - Rs. 4, 97,30,000.00 i.e. Rs. Four Crore Ninety-Seven Lakhs Thirty Thousand.

9. The Applicant submitted that the Tribunal admitted the Corporate Debtor into CIRP vide order dated 11.08.2021 and the Applicant submitted its claim of ₹6,81,21,070/- (**Form 'B'**) on 10.09.2021. Thereafter, the Interim Resolution Professional served a legal notice dated 12.04.2022 alleging a counterclaim of Rs. 55,68,00,000/- and treated the Applicant's claim as contingent to which Applicant replied on 13.05.2022 and also denied the existence of any arbitrable dispute in response to a notice dated 01.06.2022 under Section 11 of the Arbitration Act, vide reply dated 08.07.2022. Under Form B, the Applicant has submitted the claim, particulars of which are as extracted below:

Sr. No.	**Breakdown of Claim of Applicant**	**Amount (In Rs.)**
1.	Security Deposit	2,50,00,000/-
2.	Plant and Machineries	4,03,41,050/-
3.	Pulp	27,80,020/-
Total Claim		6,81,21,070/-

10. It is further submitted that the CIRP concluded in the approval of the Resolution Plan submitted by Respondent No. 1, wherein Operational Creditors were to receive 16.78% of their admitted claims. However, the

Applicant's claim was treated as 'contingent', reflected in the order dated 31.03.2023. In the said table, a total of 47 operational creditors' dues were dealt with; however, for illustration purposes, only the first eight claims, including that of the Applicant, are presented below:

Sr. No	Name	Claim	Admitted	Pmt
1.	Ajinath Gund Nominee Tulshiram Baburao Gund	31,458.00	-	-
2.	Ace Instrumentation Services	73,221.00	12,406.00	2,082.00
3.	Amol Gadhave/Owner of Rupesh Gadhave	28,920.00	28,920.00	4,854.00
4.	Anilkumar Dodia	15,83,313.00	11,83,724.00	1,98,684.00
5.	BSNL	2,21,916.00	2,21,916.00	37,248.00
6.	**Dharampal Premchand Limited**	**6,81,21,070.00**	**Contigent**	**–**
7.	Dinesh Vasantrao Choudhari	1,68,711.00	43,642.00	7,325.00
8.	Ethnic Food Products Private Limited	3,19,251.00	1,600.00	1,600.00

11. The Applicant respectfully submits that, it filed Company Appeal (AT)(INS) No. 829 of 2023 before the Hon'ble NCLAT on 11.05.2023. Following the Supreme Court's ruling on the NCLT's recall power, liberty was sought to withdraw the appeal for availing appropriate remedy before this Tribunal, granted by the Hon'ble NCLAT vide order dated 09.05.2024. In this regard, reliance is placed on **Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni and Anr** *Civil Appeal No. 7590-7591 of 2023,* the Hon'ble Supreme Court had occasion to examine the ambit and scope of section 60(5) of the Code and scope of · inherent power under Rule 11 of NCLT Rules' 2016. The Hon'ble Supreme Court, being of the

view that Rule 11 of the NCLT Rules preserves the inherent power of the Tribunal, by its verdict authoritatively held as follows:

> "**50 .... even in absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has power to recall the order ...** "

12. The Applicant submits that the Resolution Plan approved vide order dated 31.03.2023 in I.A. No. 1916 of 2022 reveals multiple legal and procedural lapses warranting recall of the said order, including:

    i. *The Operational Creditors to participate in the meeting of CoC as per mandate of Section 24(3)(c) of the Code was not complied even being above the threshold limit.*

    ii. *The Applicant was deprived of the opportunity to apprise the CoC of its claim involving security interest, which warranted treatment as a 'Secured Creditor' position of the Applicant in the order of priority amongst Creditors as laid down in Section 53(1) of the Code got adversely.*

    iii. *There was a clear violation of Section 24(3)(c) of the Code, with no notice issued to the Applicant and no explanation provided, rendering the approval legally unsustainable;*

    iv. *The Resolution Plan was approved ex parte, seriously prejudicing the Applicant;*

    v. *Despite full admission of the claim, the RP failed to apportion the financial component (after accounting for equipment value) and wrongly denied the Applicant its status as a 'Secured Creditor'.*

13. In the view of abovementioned submissions, it is prayed that the order dated 31 .03 .2023 passed in I.A. NO. 1916 of 2022 in C.P. NO.1139 of 2020 be recalled.

Reply on behalf of Respondent No. 1 to 3, in brief:

14. Respondent 1 & 3 filed the replies together and the Respondent 2 has filed separate reply. However, all such replies are similar. In the interest of brevity and to avoid unnecessary repetition, the individual replies are not reproduced herein. Instead, the collective submissions made by the Respondents in brief, are extracted herein as below:

14.1 Pursuant to the order dated 11.08.2021 passed by the tribunal for initiation of the CIRP of the Corporate Debtor, the Respondent No. 2 caused public announcement on 16.08.2021, wherein the last date of filing of claims was 31.08.2021. The Applicant submitted its claim on 13.09.2021 with a delay of 13 days. Further, Respondent No.2 informed the Applicant vide email dated 02.12.2021 that the claim did not reconcile with the Corporate Debtor's books of account.

14.2 The Respondents submits that, even prior to the commencement of the CIRP, the Corporate Debtor (Respondent No. 3) had a claim of ₹6,81,21,070 against the Applicant as of February 2016. This amount increased to ₹55,68,00,000 by March, 2022 due to the Applicant's failure to utilize 80% of the agreed capacity (i.e., 320 MT), thereby breaching the terms of the Agreement. The plants at Ahmednagar and Waluj were not even utilized up to 40% of their capacity. Therefore, the Applicant is liable to pay Rs. 55,68,00,000/- to Corporate Debtor (Respondent No. 3) in accordance with Schedule A of the Agreement. This position is further substantiated by the Audit Reports for FY 2019-20 and FY 2020-21 of the Corporate Debtor. Therefore, the Applicant is a debtor of the Corporate Debtor and not a creditor.

The Schedule A of the said Agreement is extracted below:

SCHEDULE A

Commencement Date (inl. Setup time)	**Agreed Monthly Capacity**	**Advance towards RM+ PM**	**Security**

Sep 2013	50 MT	Rs. 75 Lakhs	Advance Cheques
Sept 2014	150 MT	Rs. 150 Lakhs	Advance Cheques
Jan 2015	400 MT	Rs. 400 Lakhs	Advance Cheques and hypothecation of Shares

14.3 Therefore, calculation of the receivable of Rs. 55,68,00,000/- from Applicant which is elucidated as hereinunder:

Sr. No	Particulars		
1.	Number of Months from January 2015 till March 2022	A	87 Months
2.	Stipulated Order on a Monthly basis	B	400 Metric Tons
3.	Amount of compensation in terms of Metric tons of Order (80%) of unfulfilled Promise) (400*80%)	(C=B*80%)	320 Metric Tons
4.	Amount of Compensation on a monthly bases (320 Metric Tons * Rs. 20,000/-)	(D=C* Rs. 20,000/-)	Rs. 64,00,000/-
5.	Total Amount of Compensation for 87 Months for which default occurred (with effect from January, 2015 till March, 2022)	(E=A*D)	Rs. 55,68,00,000/-

14.4 The Respondent submits that, while the Applicant is seeking the return of the plant and machinery, the claim amount of ₹6,81,21,070/- already includes ₹4,03,41,050/- towards the value of the said plant and machinery. Respondent Nos. 1 and 3 are willing to return the plant and machinery and adjust its value against the counterclaim amount of Respondent No. 3. Upon such adjustment, the Applicant remains liable to pay ₹52,90,19,980/- to Respondent No. 1 and 3.

14.5 The Respondents submits that, the Applicant's termination of the Manufacturing and Packaging Agreement on 20.12.2017 was invalid. There is no proof of service of termination letter. Moreover, the termination letter was not sent to the address specified in Clause R of the Agreement. Further, Clause N requires a mandatory 180 days' written notice, whereas the agreement was terminated with immediate effect.

14.6 It is submitted that, the Applicant's claim was never admitted, therefore, the Applicant does not fall within the definition of a 'participant' under the Regulations, 2016, nor is entitled to notice of CoC meetings under Section 24(3)(c) of the Code, as its claim was still under verification or subject to contingency. The Respondents further contend that the Applicant, filed the claim in Form B as an Operational Creditor, therefore cannot assert itself as a 'Secured Creditor'.

14.7 It is submitted that, the Respondent No. 2 informed the CoC in the 5th meeting held on 17.03.2022 about the Applicant's claims, where the CoC, in its commercial wisdom, approved initiating legal action against the Applicant in respect of the counterclaim and notice dated 12.04.2022 issued upon the applicant demanding the payment and the applicant refused to make payment of Rs. 55,68,00,000/-.

14.8 The Respondents submit that, pursuant to the Resolution Plan was approved by this Tribunal under Sections 30(6) and 31 of the Code, 2016, vide order dated 31.03.2023. The Respondent No. 2 informed to Applicant on 27.04.2023 regarding the 'NIL' amount was payable to Applicant. Further, it is submitted that the Applicant had full opportunity to raise objections or approach this Tribunal prior to the approval of the Resolution Plan. However, no objections were raised by the Applicant at any stage during the CIRP and even after the plan was approved, the Applicant did not challenge the Tribunal's order.

14.9 Furthermore, it is submitted that the Respondents instituted an Arbitration petition bearing ARB/18/2023 (ARBST/25877/2023) under Section 11(5) r/w 11(6) of the A&C Act on 19.08.2023 before the Hon'ble High Court of Bombay at Aurangabad. The Respondents submitted that, the Hon'ble High Court has appointed sole Arbitrator vide. order dated 07.05.2025. The present Application, filed with intent, seeks to obstruct the concluded resolution process.

14.10 Accordingly, it is prayed to dismiss the present Interlocutory Application filed by the Applicant with costs.

Additional Affidavit on behalf of Respondent No. 2 and Reply to Additional Affidavit by Applicant:

15. According to the Order delivered on 21.08.2025, in IA/4588/2024 C.P. (IB)/1139(MB)2020, Additional Affidavit and the reply filed on behalf of the Applicant in respect of the Additional Affidavit filed on 28.06.2025 is not taken into the record. Hence, the additional affidavit & reply thereof is not being considered. The relevant part of the order dated 21.08.2025 is extracted below:

> *"Ld. Counsel for the Respondents undertook to file documents relating to the data uploaded on the IBBI website on 23.05.2022 by way of Additional Affidavit. The same has been filed. It is brought to our notice by the Ld. Counsel for the Applicant that in respect of the said Additional Affidavit filed on 28.06.2025, he has filed his reply. However, it is noted from the order dated 05.05.2025, that no such liberty was granted as what was undertaken to be filed by the Counsel for the Respondent was only certain additional documents and not anything else. In the wake, the reply filed on behalf of the Applicant in respect of the Additional Affidavit filed on 28.06.2025, is not taken on record."*

Analysis and Findings

16. We have heard the Ld. Counsels of the parties and perused the documents available on record.

17. Vide order dated 11.08.2021, the Company petition bearing number C.P. (IB) NO. 1139 of 2020 filed by the Financial Creditor for initiation of CIRP of Corporate Debtor was admitted. Pursuant to the voting in favour of approval of the Resolution plan, an I.A. No.1916 of 2023 was filed. The Adjudicating Authority subsequently approved the Resolution Plan submitted through I.A. No.1916 of 2023.

18. It is the case of the Applicant seeking directions against Respondents under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**"IBC/the Code"**) read with Rule 11 of the National Company Law Tribunal Rules, 2016. Further, the Applicant contends that the entire process of preparation and approval of the Resolution Plan was conducted ex parte, and denied the Applicant its status as a 'Secured Creditor' thereby prejudicing the interest of the appellant.

19. Per contra, the Respondents submit that prior to the approval of the Resolution Plan, Respondent No. 2, vide email dated 02.12.2021, informed the Applicant that its claim did not tally with the books of accounts of the Corporate Debtor. Even after the approval of the Resolution Plan, Respondent No. 2 further communicated to the Applicant that, in terms of the approved Plan, a NIL amount was payable against its claim. It is further submitted that the claim was filed by the Applicant under Form B as an Operational Creditor, and not as a Secured Creditor. Accordingly, the present Recall Application is not maintainable under the relevant provisions of the Code. The Applicant failed to raise any objections or approach this Tribunal prior to the approval of the Resolution Plan by the CoC and its subsequent approval by the Adjudicating Authority. There has been an inordinate delay on the

part of the Applicant in challenging the order of approval. The conduct of the Applicant also indicates an intent to derail the concluded resolution process as well as the pending arbitration proceedings before the Hon'ble High Court of Judicature at Bombay, Aurangabad Bench.

20. It is seen from the documents placed on record that, Respondent No. 2 issued a Public Announcement on 17.08.2021, fixing 31.08.2021 as the last date for filing claims. The Applicant submitted its claim belatedly on 10.09.2021. Respondent No. 2, vide email dated 02.12.2021, informed the Applicant that the claim did not reconcile with the Corporate Debtor's records. Thereafter, the Respondent No. 2 issued a legal notice and invoked the Arbitration Clause under Section 11 of the Arbitration and Conciliation Act, 1996, on 12.04.2022 and 01.06.2022, respectively. The Resolution Plan was approved by the CoC in its 9th meeting with 78.58% voting. It was further communicated by Respondent No. 2 on 06.09.2022 to Applicant that its claim was contingent upon a counterclaim, and vide email dated 27.04.2023, the Applicant was informed that a NIL amount was payable. Notably, this status was also published on the IBBI website on 23.05.2022.

21. The Applicant has relied on the judgment of the Hon'ble NCLAT in the case of **Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni & Anr**. *(2024) 2 SCR 258*, the Hon'ble Supreme Court laid down certain grounds on which a recall application is maintainable under Section 60(5) of the Code:

> ***"50. (a) the order is without jurisdiction;***
> ***(b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and***
> ***(c) the order has been obtained by misrepresentation of facts or by playing***

fraud upon the Court /Tribunal resulting in gross failure of justice."

22. Application of the above attributes to the facts of the present case are analysed hereinunder:

a. It is not the case, that while dealing with I.A. No. 1916 of 2022 and approving it, this tribunal acted without jurisdiction. In fact, there is no averment that this tribunal did not have any jurisdiction.

b. With respect to the I.A. seeking approval of the Resolution Plan under the provisions of the IBC, there is no involvement of any third party. The proceedings are strictly between the Tribunal and the Resolution Professional. Therefore, the question of issuing notice to any third party does not arise, and no creditor is a necessary party to such approval proceedings. Nevertheless, when the Applicant submitted its claim, it was duly responded to by the Resolution Professional. If the Applicant was dissatisfied with any such communication or action taken by the Resolution Professional, the proper course was to challenge the same before this Tribunal. Having failed to do so, it is not open for the Applicant to feel aggrieved and the Applicant not being a necessary party, to the proceedings in an IA filed (IA No. 1916 of 2022) for seeking approval of the Resolution Plan, no notice was required to be issued to it.

c. In the present case, the Applicant has failed to demonstrate that the order was obtained through misrepresentation of facts or there was any fraud played upon the Tribunal.

23. Further, it is not the case that there was infirmity in the Plan. In this regard, it would be relevant to refer to the judgment of **M/s. Sumeet Industries Ltd., vs. M/s. Sumeet Industries Ltd**., *Company Appeal (AT) (Insolvency) No. 922 of 2024,* wherein the NCLAT has laid down as under:

> *"13. From the above, it is clear that the Adjudicating Authority can reject Resolution Plan only when it is in non-compliance of Section 30(2). From the observations made by the Adjudicating Authority in the impugned order, it is clear that apart from only bare observation that Plan does not confirm to Section 30(2),* ***there are no reasons or material given as to how the plan can be said to be non-compliance of Section 30(2)."***

24. Having not produced any material as to how there was any non-compliance of Section 30(2), it is not open for the Applicant to seek recall of the order approval Plan. The Applicant seeks direction for remitting the approved Resolution Plan back to the CoC for reconsideration, purportedly to ensure its compliance with the mandatory provisions of the Code. However, the Respondents submits that the Resolution Plan in question has already been duly approved by the CoC with a voting share of 78.58% in accordance with Section 30(4) of the Code and has subsequently received approval from this Tribunal.

25. It is observed that the Insolvency and Bankruptcy Code, 2016 does not confer any power upon the Adjudicating Authority to direct the CoC to modify or revise a Resolution Plan after its approval by the CoC under Section 30(4) and the subsequent approval by the Adjudicating Authority under Section 31 of the Code. It is a well-settled position in law that where a Resolution Plan is found to be non-compliant with the provisions of Section 30(2), the Adjudicating Authority is empowered to reject such a plan. The commercial wisdom of the CoC, having been exercised in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016, is not subject to judicial interference.

26. We are supported by the judgment in ***Jaypee Kensington Boulevard Apartments Welfare Association vs. NBCC (India) Ltd*** *(2022) 1 SCC 401,* wherein the Hon'ble Supreme Court has laid down as under:

> "*108. To put in a nutshell,* ***the adjudicating authority has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions above referred.*** *The jurisdiction of the appellate authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code.* ***In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC.***"

27. With respect to the contention that the Applicant was denied participation in the meetings of the CoC under Section 24(3)(c) of the Code, it is noted that the Applicant's claim was not admitted by the Resolution Professional and was marked as 'contingent'. Consequently, the Applicant did not acquire the status of an Operational Creditor under the Code. In view of the same, the requirement under Section 24(3)(c) for issuance of notice to the Applicant, in the capacity of Operational Creditor would not apply in the present case.

28. As regards the Applicant's contention that it was deprived of the opportunity to apprise the CoC of its claim and that it ought to have been treated as a 'Secured Creditor', it is observed that the Applicant submitted its claim under Form B, which is prescribed for Operational Creditors. At no point during the process did the Applicant claim the status of a Secured Creditor. Further, the Applicant did not file any Interlocutory Application disputing it not being catagorised as Secured Creditor anytime earlier. Therefore, the Applicant cannot, at a later stage and more specifically after approval of the Resolution Plan even by the Adjudicating Authority, assert a status which was never claimed during

the process. Further, if the Applicant was aggrieved by the decision of the Resolution Professional in not admitting its claim, or by the approval of the Resolution Plan by the CoC, it was open to the Applicant to challenge the same before this Tribunal. However, no such challenge was made at the relevant time.

29. The Resolution Plan, approved by the Committee of Creditors (CoC) on 14.06.2022, was subsequently approved by this Tribunal under Sections 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016. However, the present I.A, was filed, on 27.05.2024 reflecting a lack of diligence on the part of the Applicant in pursuing its rights, if any. Consequently, the challenge raised post-approval of the Resolution Plan is liable to be rejected. Additionally, allowing the present Interlocutory Application would run contrary to the time-bound framework prescribed under the Code.

30. We are therefore of the considered view that once the Resolution Plan has been approved by both the CoC and the Adjudicating Authority, it cannot be reopened on the basis of the Applicant's claims. Any indulgence shown after such approval is likely to jeopardize the conclusion of the CIRP and the implementation of the Resolution Plan.

31. The Applicant has relied upon certain decisions, which for the purpose of completeness we are inclined to examine as to their applicability to the facts of the present case. The Applicant has relied upon the following precedents:

   a) **ANG Industries Ltd. Vs Shah Brothers Ispat Pvt Ltd. & Anr. (Company Appeal (AT) (Ins) No. 109 of 2018, 2018 SCC Online NCLAT 270**), the Applicant has relied on paragraph 10, which deals with the intention of the legislature is clear—while approving or rejecting any claim or resolution plan, the CoC is required to follow a transparent procedure. Although Operational Creditors (OCs) do not have voting rights in CoC meetings, they are not mere spectators; they possess the right to express their views before the CoC, enabling the CoC to arrive at an informed conclusion.

b) **Bhushan Shringarpure & Ors Vs. B.K Mishra & Ors (Company Appeal (AT)(Ins) No. 1504 of 2022)**, the Tribunal held that Section 24(3)(c) of the Insolvency and Bankruptcy Code, 2016, is mandatory in nature. It is incumbent upon the Resolution Professional to serve notice of each meeting of the Committee of Creditors (CoC) to all Operational Creditors.

c) **Hardesh Ores Pvt. Ltd. Vs. M/s Hede and Company" [(2007)5SCC 614],** in this case, the Hon'ble Supreme Court held that mere exercise of an option for renewal by the lessee does not automatically result in renewal of the lease.

d) **No. IBBI/DC/137/2022 (Order Dt. 02.11.2022), In the matter of Mr. Sanjeev Ahuja, Insolvency Professional (IP),** in this case, there were procedural lapses including the appointment of non-RVs, failure to send notice of the CoC meeting to the Operational Creditors under section 24(3)(c), and not obtaining CoC approval for insurance costs.

e) **Experts Reality Professional Pvt. Ltd vs. Logix Infra (IA No. 6541/2023 in IB-237(ND)/2023)**, in this case CIRP was recalled and bid submitted by RAs was directed to be refunded once the Ld. Tribunal concluded that the Resolution process was initiated in Collusion & Fraud.

The above decisions are instances where the rights of operational creditors have been confirmed by the respective authorities. However, to exercise such rights, it is condition precedent that their claim is admitted after due verification by the Resolution Professional. In the facts of the present case, the Applicant submitted its claim as an Operational Creditor; however, the Resolution Professional marked the claim as

'Contingent' in nature. Consequently, the claim was not admitted, and the Applicant never acquired the status of an Operational Creditor. Upon being intimated of this by the Resolution Professional, if the Applicant disagreed or was dissatisfied, the appropriate course of action was to challenge the said decision of Resolution Professional before this Tribunal, however, the Applicant has not challenged the same. Since the Applicant is neither an Operational Creditor, nor a Secured Creditor, nor does it fall within any other class of creditors, it was not entitled to be a member of the CoC or to receive notice of CoC meetings. Therefore, all the decisions relied upon by the Applicant are clearly distinguishable.

32. In view of the facts and circumstances of the case and discussion hereinabove, the prayers sought in IA 4588 of 2024 are rejected and the IA is accordingly, **dismissed**.

Sd/-
Charanjeet Singh Gulati
Member (Technical)

Sd/-
Mohan Prasad Tiwari,
Member (Judicial)

/Saumya – L.R.A/