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

ITEM No. 301

IA/766(AHM)2021 in CP(IB) 289 of 2020

Under Section 30(6) IBC

IN THE MATTER OF:

Nitin Narang RP For Afcan Impex Pvt Ltd ....**Applicant**
V/s
Naresh Sevantilal Shah ....**Respondent**

Order delivered on: 30/09/2025

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(PLAN)/766(AHM)2021
IN
C.P.(IB)/289(AHM)2020

[An application under Sections 30 (6) of the Insolvency and Bankruptcy Code, 2016 r.w. Regulation 39 of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016]

In the matter of: *M/s. Afcan Impex Private Limited*.

Mr. Nitin Narang,
Resolution Professional of
M/s. Afcan Impex Private Limited
Building NO. 19, Vijay Nagar,
Kingsway Camp New Delhi-110009

.... Applicant/RP

Versus

Naresh Sevantilal Shah
Flat No. 301/CM Thosar House,
Hanuman Cross Road No.01,
Near Shiv Leela Hotel,
Vile Parle (Estate) Mumbai-400057

Order Pronounced On:. 30.09.2025

C O R A M:

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

A P P E A R A N C E:

For the Applicant/RP	: Mr. Gaurav Joshi, Adv.
For the SRA	: Mr. Rashesh Sanjanwala, Sr. Adv. a.w. Mr. Raheel Patel, Adv. & Mr. Yash Dadhich, Adv.
For the SM	: Mr. Masoom Shah, Adv.

ORDER
[Per: Bench]

1. An application being IA/766(AHM)2021 is filed on 27.10.2021 vide inward no. 1427 by the Applicant/Resolution Professional (Mr. Mr. Nitin Narang) of M/s. Afcan Impex Private Limited under Sections 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, also " **the Code"**) read with Regulation 39 of the IBBI (Insolvency Resolution Process of Corporate Debtor) Regulations, 2016 seeking the following prayers: -

a. Allow the present application and approve and accept the Resolution Plan submitted by Naresh S. Shah as approved by the Committee of Creditors with 100% voting share in its 7th CoC meeting in respect of the Corporate Debtor i.e. Afcan Impex Private Limited;

b. Declare that upon approval of the Resolution Plan by this Hon'ble Adjudicating Authority, the provisions of the Resolution Plan shall be binding on the Company, its creditors, guarantors, members, employees, Statutory Authorities and other stakeholders in accordance with Section 31 of the Code, and shall be given effect to and implemented pursuant to the order of this Hon'ble Adjudicating Authority;

c. Approve the appointment of the monitoring agency as stated in the Resolution Plan and confirmed by the Committee of Creditors;

d. Approve and grant reliefs and directions sought under the Resolution Plan by the Resolution Applicants;

e. Pass such other further order/order(s) as may be deemed fit and proper in the facts and circumstances of the present case.

FACTS

2. Some relevant facts as available in the submitted Plan Application are summarized below:

I. The Financial Creditor, Bank of Maharashtra, had filed a company petition under section 7 of the Code, bearing CP(IB) No. 289 of 2020 seeking the initiation of the Corporate Insolvency Resolution Process (**"CIRP"**) against the Corporate Debtor - M/s. Afcan Impex Pvt. Limited. This Adjudicating Authority vide its order dated 17.02.2021 admitted the Corporate Debtor in CIRP and appointed Mr. Nitin Narang Interim Resolution Professional (**"IRP"**). The IRP made a public announcement to invite claims from Creditors of the Company on 23.02.2021 wherein last date of submissions of claim was 08.03.2021. Pursuant to which, claims were received by the Applicant from the creditors of the Corporate Debtor and Applicant after verification of the claims received from the creditors, constituted the Committee of Creditors ("CoC") comprising of sole Financial Creditor having 100% voting share. Bank of Maharashtra, the petitioner under section 7 of the IBC, 2016 with a claimed amount of Rs 9,86,99,334 was the sole CoC member whose full claimed amount was admitted by the RP.

II. Being aggrieved by the order of this Adjudicating Authority dated 17.02.2021, the Suspended Board of

Directors of the CD filed an Appeal being Appeal No. (AT) (Ins) 441 of 2021 before the Hon'ble NCLAT challenging the order of CIRP passed by this Adjudicating Authority on the ground that the financial debt on the basis of which CIRP has been initiated is time barred and therefore, a petition under Section 7 of the Code could not have been admitted. The Hon'ble NCLAT vide its order dated 11.08.2021 dismissed the above Appeal No. (AT) (INS) 441 of 2021 filed by the Suspended Board of Directors thereby affirming the CIRP order passed by this Adjudicating Authority.

III. The 1st **meeting of CoC** was held on 26.03.2021 wherein the Applicant was confirmed as Resolution Professional (RP).

IV. Thereafter, there was a sudden surge in the cases of COVID-19 in the entire country including NCT of Delhi wherein, the Government of Delhi decided to impose curfew in NCT of Delhi with effect from 10:00 p.m. on 19.04.2021 till 26.04.2021 and the same was extended from time to time for a period of one week and continued till 06.06.2021.

V. The 2nd **meeting of CoC** was virtually convened on 05.05.2021 wherein, the Applicant apprised the members of CoC that in terms of Regulation 27 of the CIRP Regulations, the Applicant appointed registered valuers i.e. Shah Jigar Pradip Chandra & Shalin Harshadbhai Patel for Securities or Financial Assets, Rajubhai Kantilal Patel & Nishant Mansukhlal Vekaria for Land & Building, Rajubhai Kantilal Patel & Devang Jagdishchandra Shah for Plant & Machinery to determine the fair and liquidation value of the assets of the CD which was approved by the CoC. Further, the Applicant appointed M/s. Chirag L Thacker & Co (Gandhidham) to do physical verification of stock lying at plant based on provisions applicable to Kandla Special Economic Zone ("KASEZ") and other laws.

VI. Thereafter, the CoC decided to publish Form-G for invitation of EoI and approved the Eligibility Criteria with 100% voting share. Pursuant to which Form G was published in Financial Express in English and Gujarati on 12.05.2021 with last date of receipt of EoI as on 27.05.2021.

VII. The **3rd meeting of CoC** was virtually convened on 04.06.2021 wherein the Applicant apprised the CoC about the receipt of EoIs from Joint Applicants: (a) Mr. Laxmi Narayan M Gurjar and Mr. Hitesh L. Rathod and (b) Multicomm Industries Limited & Mrs. Anjali Kapdi W/o Kishor Kapdi. The Applicant further apprised the CoC that (a) Mr. Hemant Gupta and (b) Mr. Prabhatam Group have shown their interest by the last date of submissions of EoI and the Applicant also received emails from (a) Jindal Steels and Powers Limited and (b) Panchsheel Group after last date of submissions of EoI. After detailed discussion and deliberation, the sole Financial Creditor being Bank of Maharashtra approved the resolution for extension of last date of submission of EoI for 30 days from the date of approval of proposed resolution by CoC. Further, the sole member of CoC approved the appointment of Ms. Nisha Malpani as the Transaction Auditor for the Corporate Debtor for determination of any preferential, undervalued, extortionate & fraudulent transaction.

VIII. The 4th **meeting of CoC** was held on 09.08.2021 wherein, the Applicant apprised the CoC that the date of submission of Eol was revised and in pursuance of that a revised Form G was published for inviting EoI in Financial Express on 19.06.2021. Pursuant to which RP had received 3 additional EoIs. Accordingly, 5 parties had submitted Eols along with EMD of Rs. 5 Lakh each in the matter of the Corporate Debtor. The Applicant informed that after reviewing all the documents received with EoIs and after getting further information from Prospective Resolution Applicants ("PRAs") in pursuance of email communication by RP, a provisional list of PRA was issued. The List of PRA's is as follows:-

1. Laxminarya L. Gurjar and Hitesh L Rathod (Joint Applicant) Eligible
2. Muticomm Industries Limited & Anjali Kishor Kapdi (Joint

Applicant) - Ineligible

3. Naresh Sevanti Lal Shah - Eligible
4. Sachin Kirti kumar and Bhumi Sachin Kumar Dosaliya - Eligible
5. Supple Tek Industries Private Limited – Eligible

IX. The Applicant had requested Muticomm Industries Limited & Anjali Kishor Kapdi (Joint Applicant) to provide additional documents. However, the additional documents as sought were not provided. Pursuant thereto, EoI submitted by them could not meet the eligibility criteria and accordingly, same was rejected after providing sufficient opportunity for submission of documents as per law. In view thereof, final list of PRA was issued and circulated on 25.07.2021 and the date of submission of Resolution Plan was fixed as 16.08.2021:-

1. *Laxminarya L. Gurjar and Hitesh L Rathod (Joint Applicant)*
2. *Naresh Sevanti Lal Shah*
3. *Sachin Kirti Kumar and Bhumi Sachin Kumar Dosaliya (Joint Applicant)*
4. *Supple Tek Industries Private Limited*

X. The Applicant further apprised the CoC that CIRP of the Corporate Debtor is expiring on 16.08.2021 and the RP is in process of receipt of resolution plan and the last date of submission of plan is 16th August 2021. The sole members of CoC approved the resolutions with **100**% voting share. Accordingly, the Applicant filed IA No. 578 of 2021 seeking extension of CIRP as approved in 4th CoC meeting. This Adjudicating Authority vide its order dated 31.08.2021 allowed the application and extended the CIRP period by 90 days which period of time was due to expire on 15.11.2021.

XI. The **5th meeting of the CoC** was held on 09.09.2021, wherein the applicant apprised the sole member of the CoC that till the last date for submission of Resolution Plan i.e. 16.08.2021, the Applicant had received Resolution Plan from three PRAs and one of the PRA, being Laxminarayan L Gurjar and Hitesh L Rathod submitted their EMD after the last date and by way of RTGS instead of Demand Draft as prescribed. Upon discussions and deliberations, the sole member of the CoC decided to condone the delay in submission of EMD and to consider the resolution plan submitted by the said PRA for the purpose of maximization of the value of the Corporate Debtor for successful resolution. Thereafter, all three Resolution Plans were opened in the presence of the representatives of the Sole member of the CoC during the CoC meeting. It was decided to call all three PRAs to present their Resolution Plan in the next meeting of the CoC.

XII. The **6th meeting of the CoC** was convened on 24.09.2021, wherein the Applicant apprised the sole member of the CoC that PRAs were informed about the deficiency in the Resolution Plan in terms of the provisions of the Code vide email dated 15.09.2021 and that the deficiency was cured by the PRAs by 17.09.2021. Further, the Applicant apprised that the Applicant has shared the fair and liquidation value of the Corporate Debtor with the sole member of the CoC pursuant to receipt of confidentiality undertaking in terms of Regulation 35 of the CIRP Regulations.

XIII. The PRAs were called to the meeting to personally present their Resolution Plan to the sole member of the CoC. Upon detailed discussions and deliberations, the sole member of the CoC requested the **PRAs** to submit a revised Resolution Plan as the amount being offered in their respective Resolution Plan was quite less. The PRAs submitted that they shall submit a revised Resolution Plan. Further, in terms of Regulation 39B and 39C of the CIRP Regulations, the CoC decided upon the estimate of liquidation cost in the event of liquidation order is passed against the Corporate Debtor and requested the Applicant to put the resolution for liquidations costs as well as sale of Corporate Debtor as a going concern for e-voting.

XIV. The **7th meeting of CoC** was convened on 01.10.2021, wherein the Applicant apprised the sole member of the CoC that one of the PRAs, namely, Mr. Laxminarayan Gujar and Hitesh L. Rathod, sought an extension of 7 days to submit the revised Resolution Plan. The

Applicant informed to said PRA that the CIRP is a time bound process and extension cannot be granted at this stage. Upon discussions and deliberations, the sole member of the CoC was not inclined to grant extension to the said PRA i.e. Mr. Laxminarayan Gurjar and Hitesh L Rathod and voted against the resolution for extension of period to submit Resolution Plan. Accordingly, all three Resolution Plans submitted with the Applicant before the cutoff date was placed before the CoC member for its consideration. Upon discussion and deliberation, the sole member of the CoC requested the Applicant to place the following resolution for e-voting:

> *"RESOLVED THAT in pursuant to Section 30(3) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the consent of members of the COC be and is hereby accorded to approve the Final Resolution Plan submitted by Laxminarayan Gurjer and Hitesh L Rathod"*
>
> *"RESOLVED FURTHER THAT pursuant to the provisions of Section 30(6) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and rules and Regulations framed there under, the Resolution Professional be and is hereby authorized to submit the Resolution Plan as approved by the Committee of Creditors to the Hon'ble Adjudicating Authority and to do all acts, deeds and things as may be required or considered*

necessary or incidental thereto."

"RESOLVED THAT in pursuant to Section 30(3) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the consent of members of the COC be and is hereby accorded to approve the Final Resolution Plan submitted by Sachin Kirti Kumar and Bhumi Sachin Kumar Dosaliya"

"RESOLVED FURTHER THAT pursuant to the provisions of Section 30(6) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the Resolution Professional be and is hereby authorized to submit the Resolution Plan as approved by the Committee of Creditors to the Hon'ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto."

"RESOLVED THAT in pursuant to Section 30(3) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the consent of members of the COC be and is hereby accorded to approve the Final Resolution Plan submitted by Naresh Sevantilal Shah"

"RESOLVED FURTHER THAT pursuant to the provisions of Section 30(6) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the Resolution

Professional be and is hereby authorized to submit the Resolution Plan as approved by the Committee of Creditors to the Hon'ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto."

"RESOLVED THAT, in terms of Regulation 39B estimated liquidation cost as presented before the CoC, enclosed as Annexure 3 be and is hereby approved and same shall be contributed by Sole member of CoC in the event of Liquidation of Corporate debtor"

"RESOLVED FURTHER THAT, in terms of Regulation 39C, approval of Committee is hereby accorded for sale of corporate debtor as going concern in the event of Liquidation of Corporate debtor"

XV. The e-voting on the above resolutions were open from 02.10.2021 (6.00 pm) to 06.10.2021(07.22 pm). The CoC, in its commercial wisdom approved the Resolution Plan submitted by Mr. Naresh Sevantilal Shah with 100% voting share. The CoC further approved the resolution to contribute to the estimated liquidation cost in terms of Regulation 39B of the CIRP Regulation and to endeavor to sell the Corporate Debtor as a going concern in terms of Regulation 39C of the CIRP Regulation.

XVI. The brief contours of the Resolution Plan submitted by Mr. Naresh Sevantilal Shah as approved by CoC is given hereinbelow: -

- The plan value is Rs 9.05 crores and the utilisation of the same, as per distribution mechanism provided by the Resolution Applicant and approved by the CoC, is given in the table below:

Type of Creditors/Claim	Total Amount Admitted	Total amount to be paid under Resolution Plan	Terms of payment
CIRP Cost	0.40	0.40	CIRP cost amounting to Rs.0.40 Crore to be Paid within a period of 30 days out of funds infused by RA. Any upside to downside in the estimated CIRP cost shall be absorbed by the Resolution Applicant.
Secured Financial Creditor	9.86	3.50	Secured Financial Creditor shall be paid amount of Rs. 3.50 Crore towards satisfaction of its entire claim against corporate debtor within a timeframe of 30 days from effective date.
Employees	0.00	0.00	Since no claim has been received from employees, therefore no amount is being proposed to be paid on this count.
Workmen	0.00	0.00	Since no claim has been received from workmen, therefore no amount is being proposed to be paid on this count.
Operational Creditors other	7.44	0.15	To be paid within 30 days after effective date.

than workmen and employees			
Other Creditors	0.00	0.00	Since no claim has been received from other creditors, therefore no amount is being proposed to be paid towards them.
Total	17.70	4.05	
Towards working capital and capex	-	5.00	To be infused in one or more tranches on need basis after assessment of business operations post effective date.
Grand Total	17.70	9.05	

6.4. Term of Resolution Plan & its Implementation Schedule

S. No.	Particulars	Timeline
1.	Submission of Performance guarantee to the tune of 1/3rd of Resolution Plan amount and return of EMD of Rs. 25 Lakh deposited by RA	Within 7 business days from date of approval of this Resolution plan by CoC
2.	Effective date or date of approval of Resolution Plan by NCLT	T
3.	Renewal of Letter of approval and lease deed by KASEZ Authority	T+30 days
4.	Cessation of existing directors and induction of new board	T+30 days
5.	Cancellation of existing equity shares and acquisition of 100% shares by RA	T+30 days
6.	CIRP cost to be paid	T+30 days
7.	Payment to employees, Workers, operational creditors and unsecured financial creditors	T+30 days
8.	Payments to Secured Financial Creditors	T+30 days
9.	Completion of Term of Resolution Plan	T+30 days

XVII. An undertaking and affidavit dated 19.07.2021 stating that Resolution Applicant is eligible under Section 29A of the Code is annexed at Annexure-A14 to the application.

XVIII. The CoC constitutes of the following Financial Creditors and the details of claim summary is detailed hereunder:-

Name of Financial Creditor	Secured/ Unsecured	Amount Claimed (Rs)	Amount Admitted (Rs)
Bank of Maharashtra	Secured	9,86,99,334	9,86,99,334

SUMMARY OF CLAIMS- AFCAN IMPEX PVT LTD (AMOUNT IN RS.)		
Type Of Creditor	Amount Claimed	Amount Admitted
Financial Creditors	9,86,99,334	9,86,99,334
Operational Creditors	7,44,52,657	7,42,41,214
Employees	0	0
Workmen	0	0
Other Creditors	0	0
Total	17,31,51,991	17,29,40,548

XIX. Pursuant to approval of the Resolution Plan by the CoC, the Applicant issued a Letter of Intent dated 07.10.2021 to the Resolution Applicant and the Resolution Applicant was requested to convey his unconditional acceptance thereto. The Resolution Applicant duly submitted his unconditional acceptance on 16.10.2021 and submitted a Performance Guarantee in the form of a bank guarantee dated 13.10.2021 for a total amount of Rs.1,16,66,667/- Copy of letter of Intent dated 07.10.2021, signed and unconditionally accepted by the Resolution Applicant and performance guarantee in the form of bank guarantee are annexed at Annexure-A16 to the application.

XX. The Application notes that the Resolution Plan which has been submitted by the RA, would result into change in management and control of the CD and such change satisfies the conditions stipulated under Section 32A of the Code, therefore the benefit of immunity under Section 32A of the Code will be applicable to the Resolution Applicant.

XXI. In the facts and circumstances as detailed above, the Resolution Professional and the sole member of the CoC have taken guidance from the judgment passed by the Hon'ble Supreme Court in the case of Arcellor Mittal India Pvt Ltd., vs. Satish Kumar Gupta, wherein it has been held that the only reasonable construction of the Code is the balance to be maintained between timely completion of the Corporate Insolvency Resolution Process and the Corporate Debtor otherwise being put into liquidation and if there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible. In facts and circumstances of the case, the sole member of the CoC has in pursuance of its commercial wisdom, approved the Resolution Plan submitted by the Resolution Applicant with 100% voting share and furthermore the

Applicant has examined the Resolution Plan and has certified the Resolution Plan as being compliant of IBC, 2016, under the circumstances, the Applicant is filing the present application under 30(6) & 31 of the Code read with Regulation 39 of the CIRP Regulations, 2016 for approval of resolution plan by this Adjudicating Authority.

3. This Adjudicating Authority vide its order dated 17.11.2021 passed in IA/766(AHM)2021 directed the RP to serve notice to the Income Tax Department. However, no reply or objection is received from the Income Tax Department.

4. As noted above, being aggrieved with the order of this Adjudicating Authority dated 17.02.2021 wherein the CD had been admitted in CIRP, the Suspended Board of Directors had preferred a Company Appeal (AT) (Insolvency) No. 441 of 2021. The Hon'ble NCLAT vide its order dated 11.08.2021 dismissed the said appeal. Thereafter, the Suspended Management challenged the admission order before the Hon'ble Supreme Court in Civil Appeal No. 5580 of 2021. The Hon'ble Supreme Court vide its order dated 01.04.2024 also dismissed the said appeal. As the appeal of the suspended management was pending before the Hon'ble Supreme Court, there was not much progress in the CIRP during the pendency of proceedings before higher authorities.

5. This Adjudicating Authority vide its order dated 10.09.2024 recorded as under:-

> 1. *In terms of the last order dated 09.08.2024, the applicant / RP has placed on record the copy of the order of the Hon'ble Supreme Court passed on 01.08.2024, dismissing the Civil Appeal No. 5580 of 2021 filed by the Suspended Management by way of an additional affidavit filed under inward diary No. D-6836 on 09.09.2024. The same is taken on record.*
>
> 2. *Further, now the revised Form-H and copy of minutes of CoC meeting Nos. 8th to 11th held in between the intervening period of pendency of these proceedings. Learned Counsel for the RP seeks and is granted indulgence to file an appropriate application seeking exclusion of the period spent in the litigation from the Hon'ble NCLAT to the Hon'ble Supreme Court, with permission to hold another CoC meeting within a period of seven days in this regard.*
> 3. *Learned Counsel for the applicant / RP apprised that the State Tax Department has claimed dues for 5,80,64,381/-, which was admitted by the RP and the attachment order by the Competent Authority was passed only on 29.04.2021, after the commencement of the CIRP process. A copy of that order is annexed with IA No. 887 of 2021 in the vernacular attached at page Nos. 146 and 147.*
> 4. *Learned Counsel for the applicant / suspended management states that he has also in receipt of a reply from the SRA yesterday, i.e., 09.09.2024, to this IA and also seeks a week's time to file a rejoinder, if so required.*
> 5. *Learned Counsel for the applicant / RP also seeks indulgence to move an appropriate application against the order of this attachment passed by the concerned state Tax department and to clarify whether the judgment by the Hon'ble Supreme Court in the matter of State Tax Officer (1) vs. Rainbow Papers Limited is effected to the present matter.*
> 6. *Learned Counsel for the applicant/ RP undertakes to file the*

details of the other operational creditors as mentioned in page No. 13 of the revised Form-H. Further, Learned Counsel for the applicant/RP also seeks indulgence to place on record after holding another CoC meeting decision on the feasibility and viability of the Resolution Plan.

7. *Learned Counsel for the applicant/ RP has also filed an additional affidavit on 09.09.2024, vide inward diary No. D-6309, wherein at page No.11 has annexed the extension of bank guarantee submitted by the SRA, which is valid till 11.10.2024*
8. *Since the performance guarantee is going to expire in a short period. Learned Counsel for the applicant/ RP undertakes to get another extension for a suitable period from the SRA qua this performance guarantee and place the same before this Tribunal.*
9. *Learned Counsel for the applicant/RP also seeks time to place on record the decision of the CoC qua the 66 application pending before this Tribunal, as to who will take care of the after approval of the Resolution Plan Further, Learned Counsel for the applicant/RP also seeks indulgence to apprise about the status of the claim of the SEZ Kandala in view of the latest judgment in the matter of the Noida Authority.*
10. *Learned Counsel for the applicant/RP also undertakes to place on record the information of memorandum by way of an additional affidavit.*
11. *Subject to given confidentiality undertaking by the Suspended Management, the RP undertakes to provide the valuation report, if so required, within three days from the receipt of the confidentiality undertaking*
12. *Permission is given to RP to hold another CoC meeting within a period of seven days in these regard.*

6. In compliance with the order dated 10.09.2024, the Applicant filed an affidavit on 30.09.2024 vide diary no. D7290. In the said affidavit, it has been stated that: -

I. The Applicant conducted the 12th meeting on 18.09.2024 to ensure compliance of directions issued by this Adjudicating Authority. The CoC deliberated para-wise on the directions issued by this Adjudicating Authority.

II. The RP is placing on record the following documents

i. Revised Form-H annexed at Annexure-A3.
ii. Information Memorandum annexed at Annexure-A4.
iii. Extension letter for extending the performance bank guarantee issued by SRA up to 11.04.2025 annexed at Annexure-A5.
iv. List of creditors annexed at Annexure-A6

III. In compliance with the order dated 10.09.2024, the RP preferred the following IAs before this Adjudicating Authority which are yet to be listed till date of filing of present affidavit; -

a. Application for exclusion of period spent in litigation before Hon'ble Supreme Court vide e-filing no. 2401105024432024
b. Application against Sale Tax Department for setting aside attachment order passed during the moratorium vide e-filing no. 2401105024082024.

IV. The applicant places the e-voting result of the 11th CoC meeting annexed at Annexure A7.

V. Insofar as directions issued by this Tribunal regarding sharing of valuation report with suspended directors, applicant craves leave of this Tribunal to refer to Regulation 35 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, which reads thus-

"(2) After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of Section

29"
(3) The resolution professional and registered valuers shall maintain confidentiality of the fair and liquidation value"

Accordingly, in terms of Regulation 35, RP has communicated the same to suspended director vide email dated 15th September 2024. Copy of Email dated 15th September' 2024 is annexed as ANNEXURE A-8.

VI. The RP shall tender the valuation report before this Tribunal in sealed covers.

VII. In the 6th and 7th CoC meeting, CoC had evaluated the Resolution Plans and CoC has found the Resolution Plan submitted by Successful Resolution Applicant as feasible and viable and subjective satisfaction in this regard has been noted by CoC in 7th and 12th CoC meeting. Accordingly, the Resolution Plan, therefore, after exercising commercial wisdom, has been voted in favour by CoC with 100% voting share.

7. Further, this Adjudicating Authority vide its order dated 01.10.2024 recorded as under:-

In compliance of last order dated 10.09.2024, the Applicant/RP has filed additional affidavit vide Diary No. D-7290 dated 30.09.2024 in compliance of last order dated 10.09.2024. The same is taken on record.

However, in order dated 10.09.2024, point No.11 has not been complied with though the Suspended Management agreed to give *the undertaking of confidentiality within 24 hours.*

We direct the Applicant/RP to provide the valuation report to the suspended management within 24 hours of receipt of the confidentiality undertaking from the Suspended Management.

In case, no confidentiality undertaking is provided by the suspended management within 24 hours of this order, their right to get the valuation report will stand forfeited.

Further, the relevant portion of the resolution of the 12th CoC meeting dated 18.09.2024 is reproduced hereunder:-

" Mr. Ashutosh Ranjan, AR of BOM informed that since the attachment order has been passed by Sales Tax Department after declaration of moratorium and same being void, for which an application has already been filed by RP for setting aside the attachment, therefore Sales Tax Department shall be considered as unsecured creditor. Therefore, the Rainbow Papers judgement shall not be applicable in the present case. CoC member further informed that even in case it will be applicable, then right of sales tax department shall be restricted to Liquidation value of security interest, if any and same shall have to be distributed in paripassu basis with other secured creditor."

Ld. Counsel for the Applicant/RP undertakes to supply the copy of this affidavit with Resolution to the Ld. Standing Counsel for the State Tax Department..."

8. In compliance with the order dated 01.10.2024, the SRA filed an affidavit on 11.11.2024 vide diary no. D8278 stating that:-

I. The SRA undertakes that information or records as sought by the RP which has not been provided by the Suspended Board of Directors in IA No. IA 274 of 2021 & IA 622 of 2021, will not impact on the implementation of the Resolution Plan, submitted by me. Further undertakes that, once the resolution plan is approved by this Tribunal, SRA implement the resolution plan, notwithstanding supplying or furnishing of the information and records by as sought by the RP.

II. The Resolution Plan was submitted in the year 2021 and therefore, in order to assist this Tribunal in adjudication of the present application, a copy of certificate of net worth as on 18.10.2024 duly certified by a Chartered Accountant is annexed at Annexure A-2.

III. An affidavit under section 29A of the IBC, 2016 along with the Resolution Plan submitted by SRA, wherein it has been declared that SRA along with all of SRA connected person are eligible under section 29A of the IBC. Further, in the Resolution Plan, SRA has proposed that resolution applicant and his nominee shall be inducted as director in the board of corporate debtor upon approval of Resolution Plan by this Tribunal. The SRA states that, upon approval of the Resolution Plan submitted before this Tribunal, SRA shall take steps to induct the following directors in the board of corporate debtor-

a) Naresh Sevantilal Shah having DIN No.- 00928887
b) Aalok Shah S/o Naresh Shah having DIN No.- 10831679

9. As per clause 3.4 of the plan, the financial indicator of the Corporate Debtor is as under:-

3.4. Financial indicators of corporate debtor -

Below are the financial indicators of corporate debtor for last 3 years as provided by RP -

Particulars	FY 2019-20 (Rs.)	FY 2018-19(Rs.)	FY 2017-18(Rs.)
Assets			
Fixed Assets	2,48,57,673	2,46,54,170	2,89,49,391
CWIP	0	0	0

Investments (net of provisions)	0	0	11,99,209
Loans and Advances long Term	0	0	0
Tax Assets	0	0	0
Inventory	5,60,25,631	5,42,66,900	5,16,49,860
Debtors	3,90,69,931	3,93,15,453	3,14,44,207
Cash and Bank balances	3,744	8,92,041	98,477
Loans and Advances Short Term	27,74,100	30,12,800	21,61,388
Other Current Assets	28,970	28,970	4,33710
Total Assets	**12,27,60,049**	**12,21,70,334**	**11,59,36,242**
Liabilities			
Long Term Borrowing	5,67,27,499	5,25,22,135	5,97,70,985
Deferred Tax	0	0	4,24,563
Short Term Borrowing	0	0	0
Trade Payables	5,25,22,135	5,45,67,157	3,71,18,911
Other Current Liabilities	-27,217	0	2,006
Provisions	14,68,400	14,88,400	14,93,400
Share Application Money	0	0	20,00,000
Net Worth	1,20,69,233	1,35,92,642	1,51,26,378
Total Liabilities	**12,27,60,049**	**12,21,70,334**	**11,59,36,242**

Income Statement	**FY 2019-20 (Rs.)**	**FY 2018-19(Rs.)**	**FY 2017-18(Rs.)**
Total Revenue	3,94,03,643	11,44,59,198	11,62,07,957
Total Expenses	4,09,45,712	11,12,65,334	11,18,42,096
Profit / (Loss) Before Tax	-15,42,069	31,93,864	43,65,861

10. As per Clause 6.1 of the Resolution Plan, the Financial Outlay under the Plan is as under: -

6.1. Financial Outlay under Resolution Plan

Amount in INR Crores

Type of Creditor/ Claim	Total Amount Admitted	Total amount to be paid under Resolution Plan	Terms of Payment
CIRP Cost	0.40	0.40	CIRP cost amounting to Rs. 0.40 Crore to be paid within a period of 30 days out of funds infused by RA. Any upside or downside in the estimated CIRP cost shall be absorbed by the Resolution Applicant.
Secured Financial Creditor	9.86	3.50	Secured Financial Creditor shall be paid amount of Rs. 3.50 Crore towards satisfaction of its entire claim against corporate debtor within a timeframe of 1 month from effective date.
Employees	0.00	0.00	Since no claim has been received from employees, therefore no amount is being proposed to be paid on this count.
Workmen	0.00	0.00	Since no claim has been received from workmen, therefore no amount is being proposed to be paid on this count.
Operational Creditors other than workmen and employees	7.44	0.15	To be paid within 30 days after effective date.
Other creditors	0.00	0.00	Since no claim has been received from workmen, therefore no amount is being proposed to be paid towards them.
Total	**17.70**	**4.05**	
Towards working capital and capex	-	5.00	To be infused in one or more tranches on need basis after assessment of business operations post effective date.
Grand Total	**17.70**	**9.05**	

Notes:

Notes:

(i) *That all liabilities of the Corporate Debtor, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, disputed or undisputed, present or future, or any guarantee given by the Corporate Debtor in relation to any third party/related party transaction of any nature in respect of which such third parties may have rights against the Corporate Debtor, which may have been provided or*

issued by any person in support of, for the benefit of, or at the behest of the Corporate Debtor or for any other reason whatsoever, in relation to any period till the Effective Date, save of this Resolution Plan, shall stand cancelled and terminated without any liabilities accruing to the Corporate Debtor and / or Resolution Applicant and / or SPV, and will be treated as extinguished, as the case may be, by virtue of the order of the Adjudicating Authority approving this Resolution Plan.

(ii) *This Resolution Plan is a full and comprehensive proposal for the insolvency resolution of the Corporate Debtor. For the removal of doubt, it is hereby clarified that all the rights, title and interest of the Corporate Debtor in all its Assets shall continue to vest with the Corporate Debtor, except as specifically set out in this Resolution Plan. All the charge created on the assets of the corporate debtor by virtue of corporate guarantees given by Corporate debtor on behalf of any third party/related party for whatsoever purpose it may be, stands extinguished and settled and revoked and vacated as an when the resolution plan is approved by the adjudicating authority.*

(iii) *Upon payment of amount as mentioned in clause 6.1., each creditor to whom amount has been paid shall issue a no-dues certificate to the RA and Corporate debtor stating that entire liability owed to such creditor shall stand settled and corporate debtor is not liable to pay any amount to such creditor for any dues pertaining to period prior to effective date.*

(iv) *RA also reserves right to prepone the payment schedule as mentioned in clause 6.1 and no penalty/fee etc shall be levied on such preponement.*

(v) *RA shall be allowed a no-default period of 30 days and in case RA is unable to pay any instalment as per clause 6.1 on account of any reasons, RA may be allowed to cure the default within 30 days period.*

(vi) *At the cost of repetition, it is clarified that the Resolution Applicant shall make payment as mentioned in clause 6.1 to the Creditor towards full and final consideration against acquisition/purchase by the Resolution Applicant or through his nominee(s) from the Corporate Debtor of all and whatever the business, goodwill, assets and rights of whatsoever nature of and/or belonging to and/or enjoyed by and/or inuring unto the benefit of the Corporate Debtor, whether directly or indirectly, on a 'going concern' basis, within the timeframe set out in the table provided in Clause 6.1 hereof;*

(vii) *None of the payments made by the Resolution Applicant to the Secured Financial Creditor in the manner set out in Clause 6.1 shall carry interest.*

(viii) *RA shall be entitled to effectively pursue, prosecute and/or enjoy the benefits of and/or concerning any assets of or recoverable, sundry debtor, advances etc payable to the Corporate Debtor,*

whether emanating from any judicial or quasi-judicial proceedings initiated or to be initiated by the Corporate Debtor or otherwise.

(ix) *All payments under this plan shall be made to the bank account designated for that purpose by the Implementation and Monitoring Committee.*

(x) *On and from the Effective Date, the Corporate Debtor shall not be indebted to anyone except the RA. Any liability, whether known or unknown, crystalized or otherwise, owed by the Corporate Debtor prior to the Effective Dote shall be deemed to have been waived and/or written off by the creditor.*

(xi) *As per the inquiries made by the RA, the assets of the Corporate Debtor are not enough to satisfy the debt owed by it to the secured financial creditor. Therefore, the liquidation value owed by the Corporate Debtor to the operational creditors is presumed to be NIL. If however, the liquidation value payable to operational creditors is higher, then the RA undertakes to pay the liquidation amount owed to operational creditors in priority within a period of 30 days from the Effective Date.*

(xii) *We understand that CD has certain textile related inventory. It is understood that such inventory is lying there prior to commencement of CIRP and in order to avoid any further depletion in its value, RA should be allowed to dispose off the inventory. Entire proceeds from the sale will be first used to extinguish the amount due to secured financial creditors. RA may also explore sale of non-core assets/ plant & machineries which are outdated or require repair/overhauling.*

(xiii) *On and from the Effective Date, any guarantee provided by the Corporate Debtor shall be deemed to have been extinguished and cannot be enforced.*

(xiv) *On and from the Effective Date, any cheque or other negotiable instrument issued by the Corporate Debtor prior thereto shall be deemed to have been cancelled and cannot be enforced against the Corporate Debtor,*

(xv) *All the power of attorneys provided to any person by the Corporate Debtor stands revoked with effect from the Effective Date.*

(xvi) *RA shall not be liable to pay any amount to any person other than those mentioned under Clause 6.1 and for that matter, in case the secured financial creditor recovers any amount from the guarantors, they (the guarantors) shall not have any right of subrogation against the corporate debtor.*

(xvii) *Any amount recovered under any avoidance applications relating to the Corporate Debtor being allowed by the Adjudicating Authority would inure unto the benefit of the secured financial creditor. However, any other benefit relating to any matter concerning the Corporate Debtor's leasehold rights to which it is* *entitled, shall inure unto the benefit of the RA exclusively as the same would be required for carrying out operations of corporate debtor and RA shall be permitted to take recourse to appropriate legal measures in this regard.*

11. As per clause 6.2 of the plan, the Implementation of the Plan will be as under:-

> *6.2. Monitoring and Implementation of Resolution Plan*
>
> *For successful implementation of Resolution Plan, an Implementation and Monitoring committee (IMC) is being proposed by Resolution Applicant which shall have the following members:*
>
> ***1. One Representative of Secured Financial Creditors to be decided in the CoC meeting***
>
> ***2. One Insolvency Professional or other professional as maybe mutually decided by CoC and RA who shall act as chairperson of the committee.***
>
> ***3. Either RA or One Representative of Resolution Applicant.***
>
> *IMC shall oversee the implementation of the resolution plan and it shall report any deviation in timelines or breach of terms of Resolution Plan to NCLT after due consultation in their meeting of the IMC. RA shall be allowed a period of 30 days or such extended period as maybe allowed after mutual discussion in the meeting of IMC for curing of deviation, before reporting the same to NCLT.*

12. As per clause 6.4 of the Resolution Plan, the terms of the Resolution Plan & its Implementation Schedule are as under:-

6.4. Term of Resolution Plan & its Implementation Schedule

S. No.	Particulars	Timeline
1.	Submission of Performance guarantee to the tune of 1/3rd of Resolution plan amount and return of EMD of Rs. 25 Lakh deposited by RA	Within 7 business days from date of approval of this Resolution plan by CoC
2.	Effective date or date of approval of Resolution Plan by NCLT	T
3.	Renewal of Letter of approval and lease deed by KASEZ Authority	T+30 days
4.	Cessation of existing directors and Induction of new board	T+30 Days
5.	Cancellation of existing equity shares and acquisition of 100% shares by RA	T+30 Days
6.	CIRP cost to be paid	T+30 Days
7.	Payment to employees, workers, operational creditors and unsecured financial creditors	T+30 Days
8.	Payment to Secured Financial Creditors	T+30 Days
9.	Completion of term of Resolution Plan	T+30 Days

It is hereby clarified that after completion date, RA/CD shall be entitled to exercise any powers as per provisions of companies act' 2013 &other laws and any document issued by RP/CoC containing clauses contrary to provisions of companies act' 2013 and other applicable laws shall not restrain RA/CD to exercise such powers including capital restructuring, operational restructuring, debt restructuring, etc. as provided under companies act 2013 and other applicable laws.

13. As per clause 6.5 of the Plan, the Source of Funds under the Resolution Plan will be as follows:

6.5. Source of funds under Resolution Plan

The RA has sufficient net worth and liquid assets to finance the Resolution Plan. In case any shortfall arises, RA shall explore taking unsecured loans from relatives and friends for implementing the Resolution Plan. However, in order to implement the Resolution Plan, RA has following liquid asset *available at disposal –*

S No.	*Source*	*Amount (In INR Crores*
1.	*From own Sources*	*9.05*

14. In clause 8 of the Resolution Plan, the following reliefs, waivers, directions/specific orders have been sought:

Sr. No.	**Particulars**	**Concessions/Reliefs/Directions sought**
1.	Power Connection by respective power companies at site	The Approval of the Resolution Plan by NCLT shall be treated as an order to provide the requisite electrical power connection by the respective DISTCOMS to the CD to restart the operations (in case the power connections have been disconnected)
2.	Permission to Modify/construct/furnish/expand/extend the construction in the properties under the Corporate Debtor	To be permitted, subject to compliance of applicable guidelines.
3.	Sale of part of the properties in case of resorted to by the CD for raising funds subsequently	GST and Stamp duty on the sale of properties to be waived. The Custom Duty and GST leviable on the inventory and/or closing stock and/or mixed clothing and/or garbage mixers and/or other products or goods that are required to be disposed of and/or discarded by the Corporate Debtor be waived.
4.	Bank guarantee, if any	No obligation on CD on devolvement of any bank guarantee issued by any financial creditor/ Bank on behalf of corporate debtor prior to effective date.
5.	Electricity dues waiver	Outstanding dues, if any, with any of the power companies of the Corporate debtor to be waived.
6.	Water supply	To be provided by the respective

	requirement	water authorities to sustain the operations of the CD
7.	Pollution Control Consent	To issue Consent to Operate by the respective pollution authorities to sustain the operations of the CD upon receipt of application from the Corporate Debtor.
8.	Ability to utilize Cenvat credit, Service Tax credit, GST Credited in the books of the Company	In case of non-maintenance of requisite records by the Corporate Debtor, which has resulted in lapsing/ineligibility of the said benefits, under the new GST regime, benefits to be available on retrospective basis/reinstated, without fees/penalties/Interests.
9.	Issuance/Renewal of all kinds of Licenses/Permissions/Approvals required for operation of the Business/Factory Operations	Central State Government Departments/Local Bodies to Renew / Issue Fresh licenses/permissions/approvals on application of the same within 30 days of the Application. Temporary License shall be granted / provided to operate the Business/Factory Operations within 7 days of application for the Interim Period if required.
10.	Grace period to comply with various future statutory/regulator requirements	Twelve (12) months grace period (from the date of NCLT approval) to be provided to the Corporate Debtor to comply with the provisions of the various Acts/Regulations, to enable Corporate Debtor to ascertain the status of various compliances and take necessary steps to regularize the same. During grace period, no additional charges/fees etc to be charged including on account of Interest, Penal Interest, Penalty, Interest on Penalty, any kind of Late Fee or Damages.
11.	Extinguishing of existing onerous contracts by Corporate Debtor	Any onerous contract made by the Corporate Debtor subsisting before the approval of Resolution Plan shall be duly extinguished and be ineffective.
12.	Termination of all	As on the insolvency commencement

	existing Negotiable Instruments	date, all outstanding negotiable instruments, issued by Corporate Debtor or any other person on behalf of Corporate Debtor shall stand terminated and no liability shall arise on the same.
13.	Revocation of Power of Attorneys	All the power of attorneys provided to any person by the Corporate Debtor stands revoked with effect from the date of NCLT approval.
14.	Waiver/Exemption from requirement of No Objection Certificate under Sec 281 of the Income Tax Act, 1961	Waiver/Exemption from requirement of No Objection Certificate under Sec 281 of the Income Tax Act, 1961 by the Selling Shareholders and provision of taking over predecessor's tax liability under Sec 170 of the Income Tax Act, 1961 and Specific Order for treating such Transactions as VOID under Sec 281 of the Income Tax Act, 1961 for any claims in respect of tax or any other sum payable by Selling Shareholders.
15.	Waiver of Valuation of Pricing of Shares by Registered Valuer-	Approval of Resolution Plan by NCLT will be treated as waiver of the requirements of the Valuation of Pricing of Shares by Registered Valuer to be computed for Issuance of Equity Shares through Preferential Allotment /Warrants Preference Shares / Convertible Debentures to RA. The request for such waiver is due to the fact that current valuation of the Company on the basis of Book Value or Net Assets Value Basis Realizable Valuation of Assets adjusted to Current Liabilities or Discounted Cash Flow of the Business will be "Negative", whereas the RA is paying revised Face Value considering the Future Potential of the Business.
16.	Liabilities accrued/may accrue under Various Acts & Laws	Approval of the Resolution Plan will be treated as Waiver / Approval from past Liabilities, Payments of Fees and all Dues including any Penalties as well as any form of payment by way of Interest, Late

		Fees, Damages etc, related to all Government Authorities with regard to non-compliances of various Statutes to be adhered related to Consent, Fees, Certification etc. by the Corporate Debtor prior to the Effective Date which is inclusive but not exhaustive of – • Factories Act, 1948 • Industrial Disputes Act, 1947 • Payment of Wages Act, 1936 • The Minimum Wages Act, 1948 • The Employees State Insurance Act, 1948 • The Employees Provident Fund and Miscellaneous Provisions Act, 1952 • The Bonus Act, 1965 • The Payment of Gratuity Act, 1972 • Legal Metrology Act, 2009 • Negotiable Instruments Act, 1881 • Environment (Protection) Act, 1986 • Water (Prevention and Control of Pollution) Act, 1981 • Air (Prevention and Control of Pollution) Act, 1974 • Hazardous Waste (Management and handling) Rules, 1989 • State Fire Safety Act • The MSME Act • Electricity Act, 2003 • Trademarks Act, 1999 • Gujarat Special Economic Zone Act, 2004 • Foreign Trade (Development and Regulation) Act, 1992 • Special Economic Zones Act, 2005 • Special Economic Zone Rules, 2006 • The Income-tax Act, 1961 • Gujarat Value Added tax Act, 2003 • Goods and Service Tax Act, 2017 and/or the rules, regulations, policies, etc. framed thereunder from time to time. The Waiver also includes any dues relating to Interest, Penal Interest, Penalty, Interest on Penalty, any kind of Late Fee as well as Damages. Further RA

		shall not be liable for non-compliance of any laws prior to effective date.
18	Liability which may accrue to Provisions of MAT and Other Sections of Income Tax Act	Approval of the Resolution Plan will be treated as Waiver by NCLT and/or in respect of any liability (includes Tax, MAT, interest, fine, penalty etc.) on Corporate. Debtor, RAs on account of various actions proposed in the Approved Resolution Plan including but not limited to liabilities, if any, under Sec 56, Sec 43, Sec 28, Sec 115JB and Section 79 of the Income Tax Act, 1961.
19.	Claims by Government Authorities	Approval of the Resolution Plan will be treated as Approval by NCLT that claims of government authorities including DGFT, in relation of all taxes, penalties, dues, whether statutory or otherwise etc. for period pertaining prior to the insolvency commencement date and till the date of NCLT orders, shall stand extinguished and ineffective, except to the extent provided for under the Resolution Plan.
20.	Extinguishment/Revocation of Workmen/Consultant Contract	Approval of the Resolution Plan will be treated as Specific Order and Approval by NCLT that any contract subsisting with respect to Workmen contractual labor/ Consultant/Company secretary/ Statutory auditor before the approval of Resolution Plan shall be duly extinguished and be ineffective. Further, No NoC shall be required from such employees/workmen consultant/ company secretary/Auditor etc.
21.	VAT/Income Tax/Customs Duty/waiver	Upon payment to statutory authorities as proposed under the Resolution plan, no further amounts will become due and payable by the CD after the plan is approved by NCLT and all such debts shall stand satisfied fully for all intent and purposes. These Authorities will be required to drop all proceedings

		and/or precipitative steps, including attachment of assets against the company upon approval of the plan by NCLT. Further reasonable opportunity of being heard to be given to jurisdictional Principal Commissioner or Commissioner as provided under Section 79 of Income Tax Act, 1961. Resolution Professional would take the onus to give reasonable opportunity of being heard to jurisdictional principal commissioner with reference to concessions and reliefs granted under IBC, 2016 remains intact and entitlement of such reliefs are not withheld. Upon sanction of this Resolution Plan, all the dues of the statutory authorities shall stand waived, save and except to the extent proposed to be paid herein, and such payment by the RA shall be treated as full and final settlement of the entire dues and claims of the statutory authorities against the Corporate Debtor and no further action shall be initiated by and/or order shall be passed by any authority against the company and/or the RA and/or any person claiming by, from, through and/or under them in this regard. The order of sanction of the Resolution Plan shall be treated as necessary approvals from the Central and State Governments and other authorities as provided in Clause 37 (1) of Insolvency any Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. All the contingent liabilities, including any demand from the

		Income Tax Department, VAT, Custom Department, Goods and Service Tax Department and/or any other taxation authority or any other statutory authority whomsoever, whether at the Central or State level, arising GUE of any subsequent assessments, which relate to any non-compliance on part of the CD till the effective date, are proposed to be waived off immediately upon sanction of Resolution Plan subject to payment of the monies by the RA under and in terms of Clause 6.1 hereof.
22.	Waiver of all non-compliances prior to effective date	Upon order by NCLT approving this resolution plan, all the past non-compliances under any law, agreements, deeds, including but not limited legal proceedings regardless of the nomenclature thereof such as those relating to foreign exchange realization, non-achievement of APR (Annual performance report), violation of net foreign exchange, if any, shall stand waived /dropped for all intent and purposes and/or no consequences shall emanate therefrom vis a-vis the Corporate Debtor or RA or any person claiming through them.
23.	Direction to Development commissioner, KASEZ	The Letter of Approval bearing No. KASEZ/IA/1916/2003-2004/1999 dated 04/06/2003, currently expired on 31.12.2020 has not been renewed by KASEZ. The Resolution Applicant, cannot resume and/or carry out the business operations of the CD in the absence of renewal of the LOA. The dues of KASEZ have been categorized under the head of an operational debt and provision for the satisfaction thereof has been made under the present Resolution Plan. Therefore, the Hon'ble NCLT may issue direction to the KASEZ Authority for renewal of LOA within a period of 30 days from the date of

		approval of the Resolution Plan subject to payment of amount to them under the Resolution Plan so as the revive the business operations of corporate debtor.

<u>SOME ADDITIONAL FACTS</u>

15. Afcan Impex Private Limited, the Corporate Debtor, is engaged in the business of import and export of shoddy synthetic yarn, shoddy woolen yearns and blankets etc. for the import and export and permissible local sales within Domestic Tariff Area of unmutilated material, worn and used clothing. It is having manufacturing facility at Kandla SEZ, Gandhidham. The Resolution Plan notes that Kandla Special Economic Zone had issued a letter of approval dated 04.06.2023 for establishment of new undertaking for the manufacture of products as stated above. This approval has been renewed, and the approval was extended up to 31.12.2020. After 31.12.2020, the letter of approval has not been extended. The plots for manufacturing facility are leased by Kandla Special Economic Zone Authority to the corporate debtor. The Resolution Applicant has described factual position regarding plots and leasehold rights in its

Resolution Plan (pages 9 to 11).

16. The information on the existing shareholding and suspended directors, and financial indicators (for FYs 2017-2018 to 2019-2020) is also given in the Resolution Plan. Paragraph 6.3.3 of the Resolution Plan deals with the revival of business operations of the CD. Section 7 of the Plan deals with the mandatory compliances with provisions of IBC, 2016 and CIRP Regulations.

17. Page 35 of the Resolution Plan deals with compliance with Regulation 38(3) and identifies the reason for default/losses and the plan addresses the causes of default. Pages 36 to 49 of the Resolution Plan deals with Reliefs, waivers/Directions/ Specific orders from NCLT Requested/Prayed under the Resolution Plan.

18. As recorded in order dated 12.11.2024, in compliance of the order dated 01.10.2024 the SRA had filed an affidavit vide inward diary no. D-8278 on 11.11.2024. Further, during the hearing, this Adjudicating Authority observed as under: -

> *"It is observed that one of the companies where the SRA is Director is undergoing CIRP which was ordered by one of the Hon'ble Benches of Mumbai, NCLT. The admission order was upheld by Hon'ble NCLAT and is presently under challenge before the Hon'ble Supreme Court by the Suspended Directors of that particular company i.e., Can Enterprise Limited.*

Upon being asked, Mr. Naresh Shah stated that he is trying hard for a settlement in the matter and has requested time till the end of December, 2024 to come clean from the CIRP of Can Enterprise Private Limited."

19. In the meantime, the SRA – Mr. Naresh Sevantilal Shah filed an affidavit on 19.05.2025 vide diary no. D3236 thereby giving details of order passed by NCLT, Mumbai, copy of IA No. 1856 of 2025 filed before the NCLT Mumbai a.w. order dated 04.04.2025 and copies of reply filed by R-1 & R-2 in IA No. 1586 of 2025 before NCLT, Mumbai.

20. The RA, Mr. Naresh Sevantilal Shah has submitted that the proceedings pending before NCLT Mumbai have no adverse consequences to the approval of the Resolution Plan for the Corporate Debtor. The NCLT Mumbai Bench passed an order dated 27.01.2020 admitting CAN Enterprises Private Limited into CIRP, where Mr. Shah and Charu Naresh Shah were promoters and directors. The fact of proposal for settlement of 100% payment of admitted claims of all claims was placed before the Hon'ble NCLT Mumbai, wherein the Hon'ble NCLT Mumbai passed order dated 17.03.2025, directing Mr. Shah to file appropriate application to bring facts on record. An IA No. 1586 of 2025 was filed seeking directions of the Hon'ble

NCLT Mumbai to direct acceptance of the payment for claim of the creditor and for closure of the CIRP. It has been submitted that the present RA had already made proposal for payment of entire claims of M/s Malharshanti Enterprises, the operational creditor, however, the said creditor with malalfide intentions has rejected the proposal without any justifiable reasons. Copy of IAs 1586 of 2025 and copy of orders passed by the NCLT Mumbai on 04.04.2025 are placed on record.

21. In compliance with the order dated 07.05.2025, the Applicant filed an affidavit on 15.05.2025 vide diary no. D3230 for furnishing a Revised Form dated 13.05.2025 as per direction issued by IBBI and filing extension of documents of performance security.

22. Information relevant to the current proceedings, from Form-H, is given below:

- Date of initiation of CIRP: 17.02.2021
- Date of constitution of CoC: 15.03.2021 (Revised)
- Date of publication of Public Announcement: 24.02.2021
- Date of expiry of 180 days of CIRP: 16.08.2021
- Fair value of CD: Rs.4.28 Crore
- Liquidation value of CD: Rs.0.60 Crore

- Number of meetings of CoC held: Twelve
- The total admitted claims as Corporate Guarantee is NIL and the total admitted claims other than Corporate Guarantee is Rs.17,29,40,548/-
- The SRA is an individual having experience in textile and real estate sector. The CD is engaged into the business of import and export of shoddy synthetic yarn, shoddy woolen yarn and blankets etc., and blankets and for the import and export and permissible local sales within Domestic Tariff Area ("DTA") of unmutilated material, worn and used clothing including all kinds of textile material, rages, waste yarn wiper and finished goods after the sorting, segregation, reprocessing and reconditioning thereof and was having its manufacturing facility at Kandla SEZ, Gandhidham.
- Total plan value is Rs.9.05 Crore. Percentage of realizable value to Principal amount: 31.96%
- Submission of Performance Guarantee to the tune of 1/3rd of resolution plan amount and return of EMD: Within 7 Business Day from date of approval of Resolution Plan by CoC.
- The RP has certified that the said Resolution Plan complies with all the provisions of the IBC, 2016, IBBI Regulations 2106 and does not contravene any of the provisions of law for the time being in force.
- The Resolution Applicant has filed an affidavit confirming its eligibility under section 29A of the Code to submit a resolution plan. The RP has also filed a due

diligence certificate under section 29A of the IBC for the SRA.

- The said resolution plan has been approved by the CoC with 100% voting after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
- Corporate Debtor is a MSME, and a modified certificate was obtained on 14.04.2020.
- Total admitted claims other than corporate guarantee were of Rs 17,29,40,548.
- Resolution Plan Value: Rs 9.05 crores (SRA has undertaken to pay entire CIRP cost at actuals.
- Effective date of resolution plan implementation: 30 days from approval of Resolution Plan by NCLT.
- The corporate debtor is being sold as a going concern
- An application under section 66 of the IBC, 2016 is filed on 11.10.2024 and after approval of the Resolution Plan, this application shall be pursued by the CoC and bear expenses and any monetary recovery shall vest with the financial creditor.

- The Resolution Plan is not subject to any contingency/condition.
- The Resolution Plan has been filed 246 days after the commencement of CIRP.
- The details of Income Tax losses carry forward under section 79 (2) (c) of the Income Tax Act, 1961 are not available.
- The RP has filed a declaration with respect to compliances of provisions under Code and Regulations (pages 16 to 18 of the Affidavit).
- Details of Monitoring Committee (in brief) : For successful implementation of the Resolution Plan, an Implementation and Monitoring Committee (IMC) is being proposed which shall have following members:
    - i. One Representative of Secured Financial Creditors to be decided in CoC meeting.
    - ii. One Insolvency Professional or other professional may be mutually decided by CoC and RA who shall act as Chairperson of the Committee
    - iii. Either RA or One Representative of RA.
- The Secured Financial Creditor will be paid Rs.3.50 Crore.
- The Operational Creditors will be paid of Rs.15 Lakhs against admitted claim of Rs.742.41lakhs.
- The Government will be paid Rs.14.16 Lakhs against admitted claims.
- The other operational creditors will be paid Rs.84,000

against admitted claims of Rs.41.84 Lakhs

- The CIRP cost will be Rs.40 Lakhs.
- The RP has identified fraudulent transaction under Section 66 of the Code and in this regard, it has been stated in revised Form-H that ***"After approval of the Resolution Plan by Hon'ble Adjudicating Authority, the CoC shall pursue the avoidance application and bear the expenses. Any monetary recovery shall be vest with Financial Creditor"***.
- Nine IAs are pending.
- Estimated liquidation cost is Rs 32,57,000/-, and contributions required to be made are Rs 32,57,000/- .
- The Committee has recommended under section 39C as:
  - (i) Sale of CD as a going concern- Yes.
  - (ii) Sale of the business of the corporate debtor as a going concern- No.
- The Resolution Plan has been filed 246th days after the commencement of CIRP (in terms of Section 12 of the Code)
- The RP has certified that the Plan complies with the requirements of the Code and Regulations.

23. During hearing on 08.07.2025, the counsel for the RP has undertaken to file an affidavit of clarification about the assets owned by the third party i.e., Multicom Limited and brief answer to the valuation issues raised by the Suspended Management in IA No. 877 of 2021. Further, the RP was directed to get an affidavit from SRA to the effect that in case of approval of the plan, the implementation of the plan on the part of the SRA will not be in any way conditional in respect of any condition mentioned in the resolution plan.

24. In compliance with the above order, the RP filed an affidavit on 04.08.2025 vide diary no. 5258 clarifying the treatment of any third-party assets. It is stated that:

I. The resolution plan which is approved by the CoC and pending for approval before this Tribunal, the SRA has not claimed any right in assets owned by any third party i.e., Multicom Limited. In terms of directions of this Tribunal, the Applicant sought an affidavit from SRA to the effect that the implementation of the resolution plan on the part of SRA will not be any way conditional in respect of any condition mentioned in the resolution plan. The said affidavit dated 30.07.2025 is annexed at Annexure-1.

II. Further, as regards objections raised by the Suspended Directors qua the valuation issues, it is as follows: -

a. The valuation report under IBC 2016 is required to be shared with only members of CoC and therefore, the suspended directors do not have any right either to access the valuation report or to rely upon them to agitate any issue qua the valuation of the Corporate Debtor. When the law does not entitle the suspended directors to have access to the valuation report, the objections raised by suspended directors relying upon the valuation report is not required to be considered by the Adjudicating Authority. In this regards reference is drawn to the judgement passed by Hon'ble NCLAT in the matter of Dr. Arabinda Kumar Rath V/S Siba Kumar Mohapatra in Company Appeal (AT)(INS) No. 1482 of

2023 dated 07-05-2025.

b. Without prejudice to the above, I would like to give point wise response to valuation issues raised by suspended director which has already been pointed out in sur-rejoinder filed in IA. 877 of 2021.

S. No.	Objections	Response
4.26 – 4.28	Objection regarding back dating of valuation report- Applicant has stated that five reports out of six were received before the 4th CoC meeting where RP has informed CoC about difficulty in getting the inventory valuation done.	The applicant has made false and incorrect claims as all the reports were issued by the respective valuers on different dates, summary of which is as follows:- a. S&FA Report were issued on 3rd September 2021 and 19th August, 2021 b. Land & Building Report were issued on 29th July 2021 and 31st July, 2021 c. Plant & machinery report were issued on 10th August, 2021 and 28th June, 2021 Further, merely expression of getting difficulty in completion of valuation cannot in any manner draw an inference as to back dating of valuation report, more particularly when misleading facts has been presented by Applicant and also the report have been accepted by CoC without any objections.
4.29- 4.31	Objection regarding valuation of building- Applicant has	In terms of regulation 35, valuation has to be done as on CIRP commencement date which is 17-01- 2021 in

	relied upon allotment letter issued in year 2024 to allege undervaluation	the present matter. Further, comparison of two different buildings without having regard to type, size, location and other factors cannot be considered.
4.32- 4.35	Objections regarding low valuation of Plant and Machinery- Applicant has allege that there is discrepancy as per IM and list as per valuation report	The list of machinery as per IM was based on information which was provided by suspended director themselves, whereas list of machinery as per valuation report was based on actual physical verification by registered valuers who physically inspected the machinery. Therefore, such objection does not survive.
4.36- 4.45	Objection regarding valuation of stock	• Applicant has relied upon completely irrelevant and wholly unrelated documents to state that stock is undervalued. The said documents/circulars being not related and also of different time cannot be considered. • Applicant has also relied upon order passed by Kazez to state that the stock should be valued at Rs. 92.85 per Kg however, the applicant has himself challenged the said order before the Hon'ble Gujarat High Court, wherein the said order has been stayed. • As regards, claim of applicant that in the insurance policy the

		value has been declared as Rs. 55.10 per Kg, it is submitted that the said insurance policy was renewed on the basis of previous disclosure made by suspended director prior to CIRP.

25. The RA vide affidavit filed on 11.11.2024 (Diary No. D 8278) had submitted that in compliance of order dated 01.10.2024, he undertake that information or records as sought by the RP which has not been provided by the Suspended Board of Directors in IA 274 of 2021 and IA 622 of 2021 will not impact the implementation of the Resolution Plan. He further undertook to implement the resolution plan, as approved by this Hon'ble Tribunal, notwithstanding supplying or furnishing of information and records as sought by the RP. A copy of the net worth certificate as on 18.10.2024 duly certified by the Chartered Accountant was also filed. He also affirmed that he along with all his connected persons are eligible under section 29A of the IBC. He along with Aalok Shah s/o Naresh Shah are proposed as directors and affidavit under section 29A of the IBC, 2016 was submitted for both persons.

26. The Resolution Professional has provided the audited balance sheet of the Corporate Debtor for the year 31.03.2019. As per the said balance sheet: -

- The reserve and surplus for the year ended respectively as on 31.03.2018 and 31.03.2019 is Rs. -48,79,62/- and Rs. -64,07,358
- Total current liabilities for the year ended respectively as on 31.03.2018 and 31.03.2019 was Rs. 11,59,36,242/- and Rs.12,21,70,335/-.
- Total revenue from operations for the year ended respectively as on 31.03.2018 and 31.03.2019 were Rs.11,62,06,324/- and Rs.11,44,08,076/-.
- The profit before tax for the year ended respectively as on 31.03.2018 and 31.03.2019 were Rs.43,65,861/- and Rs.31,93,864/-

LEGAL BASIS FOR APPROVAL/REJECTION OF THE RESOLUTION PLAN

27. Section 31 of the IBC deals with the approval of the resolution plan. Section 31 reads as follows:

> *"**31. Approval of Resolution Plan***
> *(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom*

statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),—

> *(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and*
>
> *(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.*

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later.

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."

28. To our understanding, section 31 requires satisfaction of the Adjudicating authority on mainly two issues:

a) Whether the resolution plan has provisions for its effective implementation; and

b) Whether the resolution plan meets the requirements of section 30

(2) read with Regulations 38 and 39 of the CIRP Regulations.

29. Section 30 (2) of the IBC reads as below:

> ***"30. Submission of resolution plan.***
> *(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—*
>
> *(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;*
> *(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-*
>
> *(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*
>
> *(ii) 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, 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.*
> *Explanation 1.-For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*
> *Explanation 2.-For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-*
>
> *(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;*

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

(c) provides for the management of the affairs of the corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

Explanation. -For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law."

30. This Tribunal is fully conscious of the principle that judicial intervention by the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016, must be limited and restrained. As reiterated in a catena of decisions by the Hon'ble Supreme Court, including in ***K. Sashidhar v. Indian Overseas Bank [2019] 102 taxmann.com / 12 SCC 150,*** **Committee of Creditors of Essar Steel Ltd. V. Satish Kumar Gupta 8 SCC 531, Ebix Singapore (P) Ltd v.**

Committee of Creditors of Educomp Solutions Ltd [2021] 130 taxmann.com 208, ***Vallal RCK v. Siva Industries &Holding Ltd*** **((2022) 9 SCC 803)**, the commercial wisdom of the CoC is not to be interfered with, save in exceptional circumstances. However, this Tribunal cannot remain a mute spectator where the very anchor of the insolvency resolution process, the bona fide, and the commercial judgment of the CoC - is corroded by patent arbitrariness and opacity.

31. FINDINGS OF THIS TRIBUNAL

31.1 An application under section 9 of the IBC, 2016 was filed by Bank of Maharashtra against the Corporate Debtor and the application was admitted by an order passed by this Tribunal on 17.02.2021.

31.2 A Resolution Plan submitted by the Resolution Applicant, namely Mr. Naresh Sevantilal Shah, was discussed and Deliberated by the CoC (Sole member Bank of Maharashtra) in its 5th CoC meeting held on 09.09.2021 and was approved on 06.10.2021.

31.3 A period of 180 days of CIRP expired on 16.08.2021. This Tribunal vide order dated 31.08.2021, granted extension of the CIRP period up to 16.11.2021 and the CoC had approved the submitted resolution plan on 06.10.2021.

32. The contents of the Revised Form H filed by the Resolution Professional are discussed in paragraph 22 of this order and are not repeated.

33. This Tribunal has carefully considered the application filed by the Resolution Professional and affidavits filed by the Resolution Applicant and the provisions of Sections 30 & 31 of the Code and other Regulations of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The compliances of the Resolution Plan with the rules as well as regulations are stated below:-

Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Compliance (Y/N)	Relevant clause of resolution plan
Section 25(2)(h)	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	4.1

Section 29A	The Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority	yes	4.1
Section 30(1)	The Resolution Applicant has submitted an affidavit stating that it is eligible as per Code	yes	4.1
Section 30(2)	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 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 (e) provides for the implementation and supervision of the resolution plan (f) does not contravene any of the provisions of the law for the time being in force	Yes Yes	6.1 6.1
Section 30(4)	The Resolution Plan (a) is feasible and viable, according to the CoC (b) has been approved by the CoC with 66% voting share		Yes Yes
Section 31(1)	The Resolution Plan has provisions for its effective implementation plan, according to the CoC		Yes
Regulation 38 (1)	The amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors	6.4	Yes
Regulation 38(1A)	The resolution plan includes a statement as to how it has dealt with the interests of all stakeholders	7	Yes

Regulation 38(1B)	Neither the Resolution Applicant nor any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. If applicable, the Resolution Applicant has submitted a statement giving details of any such non-implementation.	7	Yes
Regulation 38(2)	The Resolution Plan provides: (a)the term of the plan and its implementation schedule (b)for the management and control of the business of the corporate debtor during its term (c)adequate means for supervising its implementation	 7.4 6.3 6.2	 Yes Yes Yes
Regulation 38(3)	The resolution plan demonstrates that – (a)it addresses the cause of default (b)it is feasible and viable (c)it has provisions for its effective implementation (d)it has provisions for approvals required and the timeline for the same (e)the resolution applicant has the capability to implement the resolution plan	 7 7 7 7 7	 Yes Yes Yes Yes Yes
Regulation 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)		Enclosed in ANNEXURE H-5.

34. Pages 86 and 87 of the Additional Affidavit filed on 21.06.2025 contains an email from the RA that notes reasons for the default committed by the CD and how the same is dealt in the Plan submitted by the RA and it also replies in the negative to the query that, whether the

Resolution Plan provides for any restructuring of the CD by way of merger, amalgamation and demerger. It also provides information on the business of the SRA and the plans of the SRA regarding the business of the CD. The SRA also submitted a declaration under section 29A of the IBC, 2016.

35. In so far as the approval of the Resolution Plan is concerned, this Authority is convinced on the decision of the Committee of Creditors, following the Judgment of Hon'ble Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank** *(2019) 12 SCC 150,* wherein in para 19 and 62 it is held as follows;

> *"19……. In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).*
>
> *62. ………In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the "commercial/business decision" of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count."*

36. Further the Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors**. *(2019) 12 SCC 150* has lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as follows;

"55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. <u>The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.</u>

58. <u>Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible.</u> Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also *expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers."*

(emphasis supplied)

37. The Supreme Court in its recent decision in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors.,** in *Civil Appeal no. 3395 of 2020* dated 24.03.2021 has held as follows;

"..76. The expositions aforesaid make it clear that the decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial creditors. Differently put, in regard to the insolvency resolution, the decision as to whether a particular resolution plan is to be accepted or not is ultimately in the hands of the Committee of Creditors; and even in such a decision making process, a resolution plan cannot be taken as approved if the same is not approved by votes of at least 66% of the voting share of financial creditors. Thus, broadly put, a resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.

77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides *for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.*

77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board

77.6.1. The assessment about maximisation of the value of assets, in the scheme of the Code, would always be subjective in nature and the question, as to whether a particular resolution plan and its propositions are leading to maximisation of value of assets or not, would be the matter of enquiry and assessment of the Committee of Creditors alone. When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority; and there is no valid reason in law to question the decision so taken by the Committee of Creditors, the adjudicatory process, whether by the Adjudicating Authority or the Appellate Authority, cannot enter into any quantitative analysis to adjudge as to whether the prescription of the resolution plan results in maximisation of the value of assets or not. The generalised submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

78. 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. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposited by this Court.

38. Also, the Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors**. *(2020) 8 SCC 531* after referring to the decision in ***K. Sashidhar (supra)*** has held as follows;

"73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal."

(emphasis supplied)

39. The Hon'ble Supreme Court in the case of **Ramkrishna Forgings Limited vs. Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr in Civil Appeal No. 1527 of 2022** also has reiterated that CoC wisdom is supreme.

40. Thus, from the catena of judgments rendered by the Supreme Court on the scope of approval of the Resolution Plan, it is amply made clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors.

41. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 100% voting share of the CoC (Being a single member CoC). As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been made by the RP and the RA for making the plan effective after approval by this Bench.

The plan is feasible and viable. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC, 2016 and complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

42. The Resolution Plan in question is hereby approved by this Adjudicating Authority. The Resolution Plan approved by the CoC shall form part of this order. The Resolution Plan is binding on the Corporate Debtor and other stakeholders.

43. The RA is directed to make payment of the entire Resolution Plan amount within the time stipulated under the Resolution Plan, failing which the entire amount paid by the Resolution Applicant (including the Performance Bank Guarantee, if any) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.

44. Item No. 8 of the Resolution Plan (Pages 212 to 225 of the Plan Application (Pages 36 to 49 of the Resolution Plan) deals with the Concessions and Reliefs, Waivers/Directions/Specific orders from NCLT required/prayed under the resolution plan and these are extracted in paragraph 14 of this order.

45. As far as reliefs and concessions (paragraph 44 above), claimed by the resolution applicant are concerned, the law has been well settled by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021*** in the following words:

> *86. "........The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.*
>
> *87. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of*

I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief....."

46. In view of the above, all unclaimed unpaid liabilities would stand extinguished. The claimed liabilities, only to the extent provided in the resolution plan for payment will require to be paid and the remaining balance/unpaid will be extinguished, and the Corporate Debtor will not be required to pay. As far as other reliefs and concessions as sought by the resolution applicant, we direct the said successful resolution applicant to approach the concerned authorities for those reliefs and concessions and the concerned authorities will consider the same as per the provisions of law under the relevant Acts. Considering that the resolution applicant will strive for reviving the closed business of the corporate debtor it is expected that the authorities will take their decisions keeping the objectives of IBC, 2016 in mind so that all stakeholders duly benefit from the revival of the business of the corporate debtor.

47. The corporate debtor is also entitled for the reliefs from the liabilities as available under section 32A (Liabilities for prior offences, etc.). It is made clear that, we are not inclined to give our decision on each and every reliefs/concessions/directions sought by the Resolution Applicant in the submitted Resolution Plan except explicitly stated in this paragraph and paragraphs 45 and 46 of this order.

48. The Resolution Professional has clarified that the Resolution Plan submitted by the RA provides that any benefits/recovery due from the Preferential, Undervalued, Fraudulent, and Extortionate (PUFE) application will go the financial creditor and the application under section 66 will also be pursued by the Financial Creditor. Section 26 of the IBC, 2016 provides that filing of avoidance application by the RP shall not affect the proceedings of the CIRP. These applications are pending for adjudication, but we consider that in view of the specific provisions of section 26, the pendency of the avoidance applications does not affect the approval of the Resolution Plan. Any recoveries from such applications shall vest with the financial creditor, as provided in the plan, and the CoC shall bear related expenses post-approval.

49. We have also decided the IAs 274 of 2021, 622 of 2021, 669 of 2021, 697 of 2021,877 of 2021, 1113 of 2023, and 447 of 2025 today vide separate orders passed in those cases. The Resolution Professional and the Successful Resolution Applicant will abide by the directions, if any, given in the relevant orders.

50. A certified copy of this Order be issued on demand to the parties concerned, upon due compliance.

51. Liberty is hereby granted for moving any application to this Tribunal, if required in connection with the implementation of this Resolution Plan.

52. A copy of this Order is to be submitted to the concerned Office of the Registrar of Companies ("RoC").

53. Accordingly, **IA 766/2021** stands allowed and disposed of.

54. The Monitoring Committee, as constituted under clause 6.2 of the plan, is directed to file monthly progress reports with this Tribunal, detailing implementation status, deviations (if any), and compliance with timelines, until full

implementation.

55. The Registry is directed at sending e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps. All the files related to the case covered by this order are consigned to the record.

-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

SEN/PS