

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, BENCH-V**

I.A. No. 2165 of 2021

I.A. No. 963 of 2022

I.A. No. 112 of 2022

I.A. No. 2917 of 2021

IN

C.P. No. 1340 of 2020

In the matter of an Application under
Section 30(6) and Section 31 of the
Insolvency and Bankruptcy Code, 2016.

In the matter of

ASREC (India) Limited

... Financial Creditor

V/s.

M/s Shivaji Cane Processors Limited

... Corporate Debtor

I.A. No. 2165/2021

IN

CP (IB) No. 1340 of 2020

Mr. Ritesh R. Mahajan

...Applicant/Resolution Professional

V/s.

Committee of Creditor (CoC)

... Respondent No. 1

AND

**M/s. Puro Natural Sugars JV (Resolution
Applicant/RA)**

... Respondent No. 2

AND

I.A No. 963 of 2022

IN

CP (IB) No. 1340 of 2020

Filed by

**The Kolhapur Urban Co-Op Bank
Limited**

.....Financial Creditor

Versus

Mr. Ritesh R. Mahajan & anr.

.....Respondent

AND

I.A. No. 112 of 2022

IN

CP (IB) No. 1340 of 2020

Filed by

Shree Warna Sahakari Bank Limited

... Financial Creditor

Versus

Mr. Ritesh R. Mahajan & anr.

..... Respondent

AND

IA No. 2917 OF 2021

IN

C.P. (IB) 1340 OF 2020

Dombivli Nagari Sahakari Bank Ltd

.... Applicant

Versus

Mr. Ritesh Mahajan

.... Respondent

Date of Order: 01.05.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)
Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance (through video conferencing):

In I.A. No. 2165/2021

For the Applicant/ Resolution Professional: Adv. Rohit Gupta i/b
Agam Maloo & Co.

For the Resolution Applicant: Adv. Ashish

Kamat a/w Viraj Parikh, Umang Mehta, Amir Attori i/b Dhruve
Diladhar & Co

For the Respondent: PCA Udayraj Patwardhan

I.A No. 963 of 2022 & I.A. No. 112 of 2022

For the Applicant: Adv Sumant Batra, Adv Apoorva Chowdhury, PCA
Udayraj Patwardhan

For the Respondent: Adv. Rohit Gupta i/b Agam Maloo & Co.

IA No. 2917 OF 2021

For the Applicant: Adv. Vishwali Botle i/b Adv. Ashutosh Ravindra
Gole

For the Respondent: Adv. Rohit Gupta i/b Agam Maloo & Co.

ORDER

1. This is an Application filed under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) filed by the Resolution Professional, seeking approval of the Resolution Plan, submitted by the Resolution Applicant M/s Puro Natural Sugars JV, which was approved by 78.03% voting share of the members of the Committee of Creditors (hereinafter referred to as ‘**COC**’).
2. The facts leading to the Application are as under:
 - a. The Financial Creditor viz, ‘ASREC (India) Limited’ had furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as “**Rules**”) on 31.01.2019 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter referred to as “**Code**”) against ‘Shivaji Cane Processors Limited’ (hereinafter referred to as ‘**Corporate Debtor**’). The Corporate Debtor was admitted in Corporate Insolvency Resolution Process (**CIRP**) by an order dated 18.02.2021 (**Admission Order**) and Mr. Ritesh R. Mahajan, was appointed as Interim Resolution Professional. The IRP constituted the Committee of Creditors. The COC in its 1st meeting held on 15.03.2021 appointed (**the present Applicant**) as the Resolution Professional (**RP**). The IRP published a public announcement as per Section 13 & 15 of the Code, inviting claims from the creditors of the Corporate Debtor.
 - b. The Interim Resolution Professional (hereafter referred to as “**IRP**”) published a Public Announcement in Form A in accordance with

Section 15 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as “**Code**”) on 24.02.2021, in English Newspaper Business Standard and one in Marathi Newspaper Kesari, Pune edition, inviting claims from the creditors of the Corporate Debtor. The Interim Resolution Professional (IRP) formed the COC consisting of the following Financial Creditors, having voting percentage right as stated below:

| Sr. No. | Name of the COC Member | Voting % |
|----------------|--|-----------------|
| 1 | ASREC India Limited | 31.60 |
| 2 | Bank of Baroda (Dena Bank) | 13.24 |
| 3 | Mahindra & Mahindra Financial Services Limited | 11.53 |
| 4 | IDBI Bank | 11.73 |
| 5 | Shree Warna Sahakari Bank Limited | 11.13 |
| 6 | The Kolhapur Urban Co-operative Bank Limited | 10.84 |
| 7 | Bank of India | 09.94 |
| | Total | 100 |

- c. The Resolution Professional pursuant to the approval of the CoC members, in the Second meeting held on 30.04.2021, published Form – G on 03.05.2021 in Indian Express (English Language) and in Pudhari (Marathi Language). In response thereto, he received four responses, out of which two of the applicants had failed to provide the undertaking and other documents as required under the Regulation 36A, of the IBBI Regulation. Their proposals were

rejected. Other two submitted all the necessary documents and information.

- d. On 09.06.2021, the Resolution Professional circulated the final list of the prospective Resolution Applicants to the CoC members. M/s. Puro Naturals Sugars JV was the prospective Resolution Applicant of the Corporate Debtor. It is the joint venture of three JV partners, M/s. Sun Sugar Pvt Ltd – Company engaged in sugar trading activities and financing sugar units, M/s. Meir Commodities India Pvt Ltd – Company engaged in Agro Commodity and Sugar trading activities and Mr. Abhijit Naik – Business Entrepreneur (Sugar and allied manufacturing industries and promoter and suspended director of the Corporate director). The Resolution Professional communicated that Mr. Satyajit Shivajirao Naik and one of the JV partners of PURO Natural Sugars i.e. Mr. Abhijit Shivajirao Naik are related party and both of them cannot submit the Resolution Plan at the same time. Hence, the Applicant requested them to provide only one Resolution Plan.
- e. The Resolution Professional received Resolution Plan from M/s. PURO Naturals Sugars JV (“Resolution Applicant”) on 02.07.2021 along with the demand draft of Rs. 25,00,000/- as bid amount. **The Plan were discussed in several meetings of the CoC and was approved in the 6th CoC meeting dated 27.07.2021, with 78.03% votes in favour of the M/s. Puro Natural Sugars JV. The two members of the Committee of Creditors (“CoC”) viz Shree Warana Sahakari Bank Limited (“SWSBL”) and Kolhapur Urban Cooperative Bank Limited (“KUCBL”), having 11.13% and 10.84% voting share**

respectively, have voted against the Resolution Plan of Puro Natural Sugars JV (hereinafter “SRA”) The same plan has been submitted before the Adjudicating Authority for approval under Section 30(6) of the IBC, 2016.

- f. The Interim Resolution Professional on 26.03.2021, according to Regulation 27 of the CIRP Regulations, 2016, appointed six registered valuers (two each for ‘Land and Building’ class, ‘Plant and Machinery’ Class and ‘Securities or Financial Assets’ class) to determine the fair value and the liquidation value of the Corporate Debtor. The liquidation value and fair value of the Corporate Debtor is reported at Rs. 21,15,61,184/- and Rs. 29,93,64,214/- respectively.
- g. The Resolution Applicant - M/s. Puro Natural Sugars JV has proposed to pay a sum of Rs. 43,82,17,730/-. The details are as follows:

| Sr. | Particularsof Claim | Type of Claim | Admitted Amount (INR) | Settlement Amount (INR) |
|------------|-------------------------------|----------------------|------------------------------|--------------------------------|
| 1 | CIRP Cost | At actual | | |
| 2 | Secured Financial Creditors | Secured | 49,97,14,297 | 26,64,72,649 |
| 3 | Unsecured Financial Creditors | Unsecured | 30,32,37,640 | 6,06,47,528 |
| 4 | Operational Creditors | Unsecured | 8,01,9967 | 80,200 |

| | | | | |
|---|--|-----------|---------------------|---------------------|
| 5 | Workmen and Employees | Unsecured | 48,50,844 | 48,50,844 |
| 6 | Other Creditors | Unsecured | 34,20,3574 | 3,42,036 |
| 7 | Sugarcane arrears (Farmer's dues) | Unsecured | 3,23,75,474 | 3,23,75,474 |
| 8 | Redemption of Converted Preferential share capital | Unsecured | 7,34,49,000 | 7,34,49,000 |
| | Total | | 95,58,50,796 | 43,82,17,730 |

h. The Resolution Plan contains the following provisions:

Insolvency Resolution Process Costs:

The Information Memorandum provided by the Resolution Professional, does not mention about the Insolvency Resolution Process Costs. Therefore, the Resolution Applicant, as per the Section 30 (2) (a) of the IBC, 2016 will provide for the complete **Insolvency Resolution Process Costs**, if any, **within 90 days** from the approval of the Resolution Plan by Hon'ble NCLT **in Priority to the payments of the other Debts of the corporate debtor.**

The payment to Secured Financial Creditors shall be made as follows:

- There are four Secured Financial Creditors who have submitted their claims and the total amount of outstanding due to Secured Financial Creditors of Shivaji Cane Processors Limited is Rs. 49,97,14,297/- (Rupees Forty-

Nine Crores Ninety Seven Lacs Fourteen Thousand Two Hundred and Ninety-seven only), claim received and admitted by the applicant.

- The Resolution Applicant proposes to pay an aggregate amount of Rs. **22,48,71,434/- (Rupees Twenty Two Crores Forty Eight Lakhs Seventy One Thousand Four Hundred and Thirty Four Only)**. This amount is split in two portions:
 - Rs. 20,48,71,434/- (Rupees Twenty Crore Forty Eight Lakhs Seventy One Thousand Four Hundred and Thirty Four Only) towards the repayment of the debt;
 - Rs. 2,00,00,000/- (Rupees Two Crore) towards assignment of balance debt after adjusting the settlement amount.

- i. The first portion will be adjusted towards the debt and thereafter the balance debt will be assigned by the Secured financial Creditor for an aggregate consideration of Rs. 2.00 Crore to the entity identified and nominated by the Resolution Applicant.

- j. The payment to Secured Financial Creditors shall be made as follows:

| Period of Payment | Percentage of the Resolution amount as attributable to Secured Financial | Amount (Rs) | | |
|-------------------|--|-------------|----------|-------|
| | | Principal | Interest | Total |
| | | | | |

| | Creditors | | | |
|---|------------------|------------------|-----------------|------------------|
| Within 90 day from the date of approval of the NCLT order approving the Resolution Plan | 20% | 44974287 | | 44974287 |
| At the end of 12 months from the date of approval of the NCLT order approving the Resolution Plan | 20% | 44974287 | 17989715 | 62964001 |
| At the end of 24 months from the date of approval of the NCLT order approving the Resolution Plan | 20% | 44974287 | 12367929 | 57342216 |
| At the end of 36 months from the date of approval of the NCLT order approving the Resolution Plan | 20% | 44974287 | 7870500 | 52844787 |
| At the end of 48 months from the date of approval of the NCLT order approving the Resolution Plan | 20% | 44974287* | 3373072# | 48347358 |
| TOTAL | 100% | 224871434 | 41601215 | 266472649 |

k. Sharing ratio of the Secured Creditor, of the aggregate amount, is as follows:

| Sr. No. | Particulars | Sharing Ratio (%) | Resolution Amount Rs. |
|----------------|---|--------------------------|----------------------------------|
| 1 | ASREC India Limited | 48.55% | 12,93,68,528 |
| 2 | Mahindra & Mahindra Financial Services Ltd. | 17.71% | 4,71,80,236 |
| 3 | Shree Warna Sahakari Bank Ltd. | 17.09% | 4,55,48,663 |
| 4 | The Kolhapur Urban Co-op Bank Ltd. | 16.65% | 4,43,75,222 |

| | | | |
|--|--------------|----------------|---------------------|
| | Total | 100.00% | 26,64,72,649 |
|--|--------------|----------------|---------------------|

1. The Resolution plan proposes to pay an amount not less than the liquidation value to the dissenting financial creditors. Also the plan proposed that the assenting Secured financial creditors may redistribute the amounts, attributable to the Secured Financial Creditors, under the plan. In no event the total payments to the secured financial creditors should exceed than Rs. 26,64,72,649/- (Rs. Twenty-Six Crores Sixty Four Lacs Seventy Two Thousand Six Hundred and Forty Nine only).

- m. Hence, on 08.09.2021, the representatives of Asrec India Limited communicated to the RP that the majority of the Secured creditors have decided to that the redistribution of the amounts should be done to the Assenting Secured Financial Creditors i.e. ASREC and Mahindra & Mahindra in their respective ratios.

Unsecured Financial Creditor

- n. The dues of Unsecured Financial Creditors of Shivaji Cane Processors Ltd. Is Rs.**30,32,37,640/-** (Rupees Thirty Crores Thirty-Two Lacs Thirty-Seven Thousand Six Hundred and Forty only), claim received and admitted

- o. The Resolution Applicant proposes to pay aggregate amount of Rs. **6,06,47,528/- (Rupees Six Crore Six Lac Forty Seven Thousand Five Hundred and Twenty Eight only)** on proportionate basis. This amount is split into two portions:
 - Rs. 5.00 Crore towards the guarantee obligation

- Rs. 1.06 Crore towards assignment of balance debt after adjusting the settlement amount.
- p. The first portion will be adjusted towards the debt and thereafter the balance debt will be assigned by the Unsecured financial Creditor for an aggregate consideration of Rs. 1,06,47,528/- (Rupees One Crore Six Lac Forty Seven Thousand Five Hundred and Twenty Eight only) to the entity identified and nominated by the Resolution Applicant.
- q. The Schedule of payment to unsecured financial creditors shall be as follows:

| Period of Payment | Percentage of the Resolution amount as attributable to Unsecured Financial Creditors | Amount (Rs) |
|---|---|--------------------|
| Within 90 day from the date of approval of the NCLT order approving the Resolution Plan | 40% | 2,42,59,011 |
| At the end of 6 months from the date of approval of the NCLT order approving the Resolution Plan | 40% | 2,42,59,011 |
| At the end of 12 months from the date of approval of the NCLT order approving the Resolution Plan | 20% | 1,21,29,506 |

r. Unsecured Financial Creditor shall get its share in the following manner:

| Sr. No. | Particulars | Sharing Ratio (%) | Resolution Amount Rs. |
|----------------|-----------------------------|--------------------------|------------------------------|
| 1 | Bank Of Baroda (Dena Bank) | 33.51% | 2,03,22,457 |
| 2 | IDBI Bank | 29.68% | 1,80,01,874 |
| 3 | Bank of India | 25.15% | 1,52,55,364 |
| 4 | Yashwant Dugdh Prakriya Ltd | 11.65% | 70,67,833 |
| | Total | 100.00% | 6,06,47,528 |

s. **Operational Creditors of Corporate Debtor:**

- The amount due to the Operational Creditors of Corporate Debtor as per Information Memorandum (other than government/ statutory dues) is Rs **80,19,967/-** (Rupees Eighty Lacs Nineteen Thousand Nine Hundred and Sixty Seven only).
- The Operational Creditors will assign the entire receivable from the Corporate Debtor to the Resolution Applicant for a consideration of **Rs. 80,200/- (Rupees Eighty Thousand Two Hundred only)**.
- Total outstanding Rs. 80,200/- (Rupees Eighty Thousand Two Hundred only) would be settled by Resolution Applicant in the under mentioned manner:

| Sr | Name of the Creditor | Amount Claimed | Net Amount Admitted | % | Resolution Amount |
|----|---|--------------------|---------------------|----|-------------------|
| 1 | Sri Sri balancing Alignment& engineering industries | 8,22,363 | 4,00,799 | 1% | 4,008 |
| 2 | Bhagyalaxmi Engineers | 7,30,113 | 2,62,693 | 1% | 2,627 |
| 3 | A V Enterprises | 343924 | 3,43,924 | 1% | 3,439 |
| 4 | Aradhya Industries | 25864 | 25,864 | 1% | 259 |
| 5 | Palkar Petroleum | 292571 | 1,91,850 | 1% | 1,919 |
| 6 | Patil Traders | 2007779 | 12,45,627 | 1% | 12,456 |
| 7 | Venkateshwara Industries | 715825 | 5,69,943 | 1% | 5,699 |
| 8 | SR Infotech | 210000 | 2,10,000 | 1% | 2,100 |
| 9 | Sandeep Enterprises | 150803 | 1,50,803 | 1% | 1,508 |
| 10 | Shri Gorashnath Stationary Store | 51035 | 46,818 | 1% | 468 |
| 11 | Prabhuram Enterprises | 414881 | 3,79,628 | 1% | 3,796 |
| 12 | Chemical Systems Technologies India Pvt. Ltd. | 1156000 | 11,56,000 | 1% | 11,560 |
| 13 | Lex Orbis | 71700 | 71,700 | 1% | 717 |
| 14 | GurukrupaIndustires | 142097 | 80,417 | 1% | 804 |
| 15 | Universal Trading Company | 163554 | 1,31,898 | 1% | 1,319 |
| 16 | Aditya Enterprises | 2130263 | 21,30,263 | 1% | 21,303 |
| 17 | TechnoweldEngineering Company | 87382 | 68,104 | 1% | 681 |
| 18 | Unico Print Pack India Pvt Ltd | 508,636 | 5,08,636 | 1% | 5,086 |
| 19 | Mauli Chem | 50,000 | 45,000 | 1% | 450 |
| | TOTAL | 1,00,74,790 | 80,19,967 | 1% | 80,200 |

t. The amount shall be paid **within 90 day from the date of approval of the NCLT order approving the Resolution Plan.**

u. **Employees And Workmen of Corporate Debtor.**

- Total amount of outstanding due to Employees and Workmen of Corporate Debtor as per Information Memorandum being Rs. **48,50,844/-** (Rupees Forty-Eight Lacs Fifty Thousand Eight Hundred and Forty-Four only).
- Schedule of payment to Employees And Workmen Of Corporate Debtor:

| Sr. No. | Particulars | Admitted Amount Rs. | Resolution Amount Rs. | Payment Terms |
|----------------|----------------------------|----------------------------|------------------------------|--|
| 1. | Employees and Workmen Dues | 48,50,844 | 48,50,844 | Within 90 days from the date of approval of the NCLT order approving the Resolution Plan |

v. **Other Creditor of CD**

- I. Total amount of outstanding due to Other Creditors of Corporate Debtor as per Information Memorandum being Rs. **3,42,03,574/-** (claim admitted for) (Rupees Three Crore Forty Two Lacs Three Thousand Five Hundred Seventy-Four only).

II. The Other Creditor will assign the entire receivable from the Corporate Debtor to the Resolution Applicant for a consideration of **Rs. 3,42,036/-** (Rupees Three Lacs Forty Two Thousand and Thirty Six only). Schedule of the same has been mentioned below:

| Sr. | Name of the Creditor | Amount Claimed | Net Amount Admitted | % | Resolution Amount |
|------------|---|-----------------------|----------------------------|-----------|--------------------------|
| 1 | Ankitraj Expotrade Pvt. Ltd. | 11,05,47,616 | 2,70,00,000 | 1% | 2,70,000 |
| 2 | Girjamata Trading Company | 89,95,194 | 62,03,574 | 1% | 62,036 |
| 3 | Padhiana Pinnacle Sourcing & Marketing Pvt. Ltd | 10,00,000 | 10,00,000 | 1% | 10,000 |
| | TOTAL | 12,05,42,810 | 3,42,03,574 | 1% | 3,42,036 |

The amount shall be paid at the end of **90 Days** from the date of approval of the NCLT order approving the Resolution Plan.

w. **Sugarcane Purchase from Farmers Outstanding of Corporate Debtor:**

- Total amount of outstanding Sugarcane purchase arrears of Corporate Debtor as per Information Memorandum being **Rs. 4,23,01,217/-** (Rupees Four Crores Twenty Three Lacs One Thousand Two Hundred and Seventeen only).
- As per latest information available in Information Memorandum, total amount claimed and the admitted amount towards Cane payments are tabulated below:

| S. No | Particulars | Amount Claimed | Net Amount Admitted | % | Amount as per % |
|--------------|--------------------|-----------------------|----------------------------|-------------|------------------------|
| 1 | Sugarcane Arrears | 3,23,75,474 | 3,23,75,474 | 100% | 3,23,75,474 |
| | TOTAL | 3,23,75,474 | 3,23,75,474 | 100% | 3,23,75,474 |

x. **Payment Schedule of SUGARCANE PURCHASE CLAIMS**

- I. Total amount of dues towards Sugarcane Purchase arrears as per Balance Sheet are Rs. 4,23,01,217/- (Rupees Four Crores Twenty Three Lacs One Thousand Two Hundred and Seventeen only). The Resolution Applicant shall pay only Rs. **3,23,75,474/-** (Rupees Three Crores Twenty Three Lacs Seventy Five Thousand Four Hundred and Seventy Four only) i.e. 100 % amount of the total claims admitted for Sugarcane arrears and the remaining sum of Rs. 99,25,743/- (Rupees Ninety Nine Lacs Twenty Five Thousand Seven Hundred and Forty Three only) of the claim shall be waived off.
- II. Amount of Rs. 3,23,75,474/- (Rupees Three Crores Twenty Three Lacs Seventy Five Thousand Four Hundred and Seventy Four only) as envisaged above shall be paid within **90 days** from the date of approval of the NCLT order approving the Resolution Plan.

y. **Statutory Dues of CD**

- I. Total amount of outstanding Statutory Dues of Corporate Debtor as per Information Memorandum **being NIL.**
 - II. All balance dues and claims of the Statutory Dues against the Corporate Debtor other than what is agreed to be paid by the Resolution Applicant shall stand waived in terms of Regulation 37(l) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
3. It has further come to the notice of this Bench that the Ld. Counsels for the Dissenting Financial Creditors in Interlocutory Application No. 963 of 2022 filed by The Kolhapur Urban Co-Op Bank Limited and I.A. No. 112 of 2022 filed by Shree Warna Sahakari Bank Limited are the members of the Committee of Creditors (“**CoC**”) having 10.84% and 11.13% voting share respectively and have voted against the Resolution Plan of Puro Natural Sugars JV (hereinafter “**SRA**”). The Resolution Plan of Successful Resolution Applicant was approved by the members of the CoC, in its 6th CoC meeting dated 27.07.2021, with 78.03% votes in favour of the Puro Natural Sugars JV.
4. Since both the Petitioners raised common questions of fact and law and also relied on common citations, both the

above applications are dealt through this common Order. It is important to mention here that most of the reliefs claimed by both the Petitioners, in the above interlocutory applications are common and identical.

5. Both the above dissenting financial creditors are objecting to the approval of the Resolution Plan, submitted by the **Resolution Applicant i.e. Puro Natural Sugars JV** (hereinafter "**SRA**"). In this regard, it has been argued by the counsel for the dissenting financial creditor that the Resolution Plan does not provide for upfront payment to the dissenting financial creditors as is mandatory under the Provisions of the Code and further the Resolution Plan assigns and extinguishes the third party security interest of the dissenting Financial Creditors and Personal Guarantees executed in favour of the dissenting Financial Creditors, without the approval of the dissenting Financial Creditors which is not permissible under the Code.
6. The counsel for the dissenting financial creditors further submits that the Resolution Plan is not compliant with the provisions of Section 30(2) of the Code and CIRP Regulations. The Resolution Professional ("**RP**") had placed a non-compliant Resolution Plan for voting, by the CoC, and thereby violated the provisions of Section 30(3) of the Code.

7. The Ld. Counsel of the Dissenting Financial Creditor further submits, that Regulation 38 of the CIRP Regulations, specifies the mode of payment and provides that the dissenting financial creditors shall be paid “**in priority**” over the financial creditors, who voted in favour of such Resolution Plan. The relevant provision of the CIRP Regulations is reproduced below:

“38. Mandatory contents of the resolution plan

*The amount payable under a resolution plan - ...
... (1) (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.”*

8. Regulation 39 (1B) (c) of the CIRP Regulations reads as under:

“The committee shall not consider any resolution plan that does not comply with the provisions of sub-section (2) of section 30 and sub-regulation (1)”

9. The prayers in I.A No. 963 of 2022 filed by The Kolhapur Urban Co-Op Bank Limited are:

a) “Reject the Resolution Plan submitted by Puro Natural Sugars JV and floored in CoC meeting dated 27th July 2021;

- b) Set aside the decision of the CoC of the Corporate Debtor vide its e-voting concluding on 2nd August 2021 qua the Resolution Plan submitted by Puro Natural Sugars JV having mandatory clause of release of personal guarantees of the promoters/related parties*
- c) Direct the Respondent No. 1 herein to circulate the copy of transaction audit report and valuation report in the matter of the Corporate Debtor.*
- d) Award cost for this application*
- e) Pass any such orders or directions as may be deemed appropriate this Hon'ble Tribunal in the interest of justice and the facts and circumstances of this case.*

10. The prayers in I.A. No. 112 of 2022 filed by Shree Warna Sahakari Bank Limited are:

- a) Reject the Resolution Plan submitted by Puro Natural Sugars JV and floored in CoC meeting dated 27th July 2021;*
- b) Set aside the decision of the CoC of the Corporate Debtor vide its e-voting concluding on 2nd August 2021 qua the Resolution Plan submitted by Puro Natural Sugars JV having mandatory clause of release of personal guarantees of the promoters/related parties.*
- c) Direct the Respondent No. 1 herein to circulate the copy of transaction audit report and valuation report in the matter of the Corporate Debtor.*
- d) Award cost for this application*

e) Pass any such orders or directions as may be deemed appropriate this Hon'ble Tribunal in the interest of justice and the facts and circumstances of this case.

11. We have thoughtfully considered the objections raised against the resolution Plan. It is noted by this Bench that the Resolution Plan proposes payment to the Dissenting Financial Creditors (hereinafter referred to as “**DFC**”) over a period of 3 (three) years, even when payment to assenting financial creditors commences in 90 (ninety) days from the approval of the Resolution Plan and Resolution Plan assigns and extinguishes third party security interest of dissenting financial creditors and personal guarantees executed in favour of dissenting Financial Creditors **without approval of the dissenting Financial Creditors.**

12. As regards to the issue pertaining to the extinguishment of the Personal Guarantees, we are of the view that it is the settled position of law that personal guarantees executed to secure the debt of Corporate Debtor are not covered by Section 14 moratorium and do not get extinguished on approval of Resolution Plan. The release or discharge of a principal borrower from the debt owed by it, to its creditor, by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an

independent contract. The said ratio has also been upheld in Hon. Supreme Court in **Lalit Kumar Jain v Union of India & Ors. (2021) 9 Supreme Court Cases 321**. The relevant extract of the said order is reproduced below for ready reference:

“122. It is therefore, clear that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor’s liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. However, this court has indicated, time and again, that an involuntary act of the principle debtor leading to loss of security, would not absolve a guarantor of its liability. In Maharashtra SEB the liability of the guarantor (in a case where liability of the principle debtor was discharged under the Insolvency law or Company Law), was considered. It was held that in view of the unequivocal guarantee, such liability of the guarantor continues and the creditor can realise the same from the guarantor in view of the language of Section 128 of the Contract Act, 1872, as there is no discharge under Section 134 of that Act. This Court observed as follows:

.....

125. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this Court, the release or discharge of a principle

borrower from the debt owed by it to its creditor, by an involuntary process i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his/her liability, which arises out of an independent contract.”

13. The counsel for the Resolution Professional has sought to distinguish the the above case by arguing extensively that the Resolution Plan only assigns the personal guarantees and does not extinguish the same. However, the argument is without any merit for two reasons. Firstly, the argument is in complete defiance of record and is factually incorrect, as the Resolution Plan in fact and indeed seeks to not just assign but extinguish the personal guarantee and securities in the garb of assignment in favour of a third party. Secondly, without prejudice to the above, such assignment is without consent of Dissenting Financial Creditors which cannot bind the Dissenting Financial Creditors. In a recent judgment, the National Company Law Tribunal, Indore Bench has in its order dated January 06, 2023 in the matter of **Naveen Kumar Sood RP of Ujaas Energy Ltd & Anr v/s. Ujaas Energy Ltd & Ors** has upheld the said settled position of law in the following terms:

“...10. Be that as it may we are not going in details of the plan since the said resolution plan contains a relief to extinguish the personal guarantee given to the lenders on the borrowings of the corporate debtor but the same is objected by Bank of Baroda. This Adjudicating Authority vide its order dated 04.08.2022 released the matter for

clarification with respect to the said relief in the plan, however the resolution applicant wish to proceed without amending such reliefs and therefore, such conditional plan without the consent of all the secured financial creditors is not in accordance with the provisions of the Code

11. In our considered opinion the CoC can take any commercial decision relating to insolvency of the corporate debtor only, the CoC cannot extinguish right of the particular secured creditor to proceed against the personal guarantor of the corporate debtor under the garb of its commercial wisdom. Such provision in the resolution plan is not only prejudicial to the right of such secured creditor but also against the provisions of law. Hence we cannot approve such resolution plan as it contravenes the provision of section 30(2)(e) of the Code.

12. In view of the above, we are of the considered opinion that such resolution plan cannot be approved and deserves to be rejected as the CoC by majority votes cannot enforce its decision for extinguishment of the right of the dissenting creditor to proceed against the personal guarantor.....”

In the light of what has been held by the Hon’ble NCLT Indore Bench, it is clear that the COC can take any commercial decision relating to insolvency of the Corporate Debtor but it cannot extinguish right of the particular Secured Creditor to proceed against the personal guarantor of the Corporate debtor under the grab of its commercial wisdom. Such provision in the resolution plan is not only prejudicial to the right of such secured creditor but also is not in consonance with the provisions of law. Therefore, the plan cannot be approved as it contravenes the provision of section 30(2)(e) of the Code.

14. The Resolution Professional relied upon the ruling of Hon'ble National Company Law Appellate Tribunal ("NCLAT") vide Order dated 18.01.2022, in the matter of **SREI Infrastructure Finance Limited v/s. Ashish Chhawchharia** to argue that assignment without consent is possible. The SREI case Supra is not applicable to the facts of the present case as in that case the resolution plan was approved by 100% voting share of CoC and there were no Dissenting Financial Creditors nor any creditor had objected to the extinguishment of the securities. However, in the present case, the Dissenting Financial Creditors have voted against the Resolution Plan, and are also apposing on the ground that they were not being paid upfront and the guarantees were also being extinguished.
15. In view of the above, we are of the considered opinion that such Resolution Plan can not be approved and deserves to be rejected as the CoC by majority votes cannot enforce its decision for extinguishment of the right of the dissenting creditor to proceed against the personal guarantor.
16. Accordingly, IA 2165 of 2021 is **rejected and disposed of**. A copy of this order be served to the Resolution Professional and the Corporate Debtor and the Dissenting Financial Creditors within 7 days from the date of the order.
17. IA No. 2917 of 2021 was filed by Dombivli Nagari Sahakari Bank Ltd. with the following prayers:

- a) *the delay in filing the present application be condoned;*
- b) *the claim of the Applicant annexed at Exhibit H be accepted*
- c) *that the Applicant be added as the member of Committee of Creditors;*
- d) *the IRP be directed to supply copy of the Resolution Plan and all other relevant documents to the Applicants;*
- e) *For such further and other relief as this Hon'ble Tribunal deemed fit in the nature and circumstances of the case.*

18. The above captioned Interlocutory Application 2165 of 2021 filed for approval of the Resolution Plan vide our detailed order above, we are of the considered view that such Resolution Plan **cannot be approved and deserved to be “rejected”**. Accordingly, I.A. No. 963 of 2022 filed by The Kolhapur Urban Co-Op Bank Limited, I.A. No. 112 of 2022 filed by Shree Warna Sahakari Bank Limited are **“allowed”** and IA No. 2917 of 2021 filed by Dombivli Nagari Sahakari Bank Ltd. are rendered **“infructuous and disposed of”**.

Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

Kuldip Kumar Kareer
Member (Judicial)