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

ITEM No.301 - IA(Plan)/4(AHM)2025
in
C.P.(IB)/149(AHM)2024

Under Section 30 IBC 31 IBC r/w Regulation 39 IBBI

IN THE MATTER OF:

CA Gomti Ramchandra Choudhary RP of Sunpoint Trading Limited ....**Applicant**

Order delivered on: 29/08/2025

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sanjeev Sharma, Hon'ble Member(T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The 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)/04(AHM)2025
IN
C.P.(IB)/149/7/(AHM)2024

IA(Plan)04(AHM)2025

(An Application under Section 30 r/w Section 31 of the Insolvency and Bankruptcy Code, 2016 for approval of the Resolution Plan)

In the matter of: *Sunpoint Trading Limited.*

Ms. Gomti Ramchandra Choudhary
Resolution Professional of
Sunpoint Trading Limited
Having Office at:
9B, Vardan Complex, Nr. Vimal House,
Lakhudi Circle, Navrangpura,
Ahmedabad- 380061.

... Resolution Professional/Applicant

Order Pronounced On:29.08.2025

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. Atul Sharma, Advocate a.w.
	: Mr. Jigar Shah, CA & Ms. Gomti R.
	: Choudhary, RP
For the SRA	: Mr. Sanjay Dubey, Adv.

ORDER
[Per: Bench]

1. The instant application being IA/04(AHM)2025 is filed on 07.02.2025 vide diary no. E00419 by the Applicant/Resolution Professional (Ms. Gomti Ramchandra Choudhary) of the Corporate Debtor – Sunpoint Trading Limited under Sections 30 and 31 of the Insolvency and Bankruptcy Code, 2016 (for short "Code"), read with Regulation 39(4) of the IBBI (Insolvency Process of Corporate Persons) Regulations, 2016 seeks the following prayers: -

   a. *Your Lordship may be pleased to admit and allow the present amended Resolution Plan approval application;*

   b. *Your Lordship may be pleased to approve the Resolution Plan dated 18.06.2024 submitted by M/s. Capvital Advisors Private Limited jointly with Mr. Kaushik Hasmukhlal Gandhi as approved by the members of CoC by 100% Voting Share in its 5th CoC meeting dated 06.01.2025 in the matter of M/s. Sunpoint Trading Limited.*

   c. *Your Lordship may be pleased to grant any other relief or relief as may deem fit in the lights of the facts and circumstances of the case.*;

FACTS

2. Relevant facts as available in the Plan Application are summarized below:

I. It is stated that this Tribunal vide its order dated 29.08.2024 ('Admission Order') passed in CP (IB) No. 149 of 2024 was pleased to initiate CIRP of the Corporate Debtor and was further pleased to appoint the applicant as the Interim Resolution Professional ('IRP) of the Corporate Debtor. A copy of the admission order dated 29.08.2024 passed in CP (IB) No. 149 of 2024 is annexed as ANNEXURE A of the Application.

II. It is submitted that the IRP had made public announcement as contemplated under the Section 15 of the Code on 31.08.2024 in the newspaper i.e., Business Standard (English), Financial Express (Gujarati) and subsequently, invited claims from all the creditors. That the IRP collated all the claims received from all the creditors of the Corporate Debtor till 14.09.2024 i.e., last date of submission of claim as per Form A and further constituted Committee of Creditor ('CoC) and further submitted report certifying the constitution of CoC before this Tribunal on 21.09.2024.

III. The IRP has made publication of Annual General Meeting ('AGM') notice on 03.09.2024 in the newspaper i.e., Business Standard (English), Financial Express (Gujarati) as per the provision of Companies Act, 2013 which was held on 27.09.2024 at 4:00 PM at the registered office of the Corporate Debtor. In the said AGM, agenda pertaining to the re-appointment of Statutory Auditor as well as Managing Director were discussed and further change in designation of Independent Director to non-executive non-independent Director were also discussed. A copy of the publication of Annual General Meeting notice dated 03.09.2024 along with minutes of AGM dated 27.09.2024 is annexed at ANNEXURE C COLLY to the application.

IV. The IRP duly convened the 1st meeting of CoC on 28.09.2024 wherein the IRP apprised the members of CoC about progress made after the initiation of CIRP of the Corporate Debtor. In the said meeting, the member of CoC inter alia approved the following resolutions:

   a. Appointment of the IRP as Resolution Professional ('RP') of the Corporate Debtor.
   b. Initiation of the EOI process and to fix the criteria under Section 25(2)(h) of the Code.
   c. Reduction in the notice period from 5 days to 24 hours.

V. Pursuant to the resolution passed in the 1st CoC meeting dated 28.09.2024, IRP has duly published the Expression of Interest ('EOI') in prescribed Form G on 01.10.2024 wherein the last date of receiving EOI was 16.10.2024.

VI. The RP duly convened the 2nd meeting of CoC on 21.10.2024 wherein the members of CoC inter alia resolved to (1) approve the Evaluation matrix as defined under Regulation 2(HA) of the IBBI ("CIRP") Regulations, 2016; (2) draft Request for Resolution Plan ("RFRP").

VII. The RP duly convened the 3rd meeting of CoC on 22.11.2024 wherein the members of CoC discussed the valuation methodology adopted by the valuers appointed for the purpose of valuation of Securities and Financial Assets ('SFA') category. In the said meeting, the RP apprised the members of CoC about 4 EOIs received from following PRAS:

SR. NO.	PARTICULARS
1)	Jai Hind Sugar Private Limited
2)	Mr. Manish Bipinchandra Dalokiya
3)	Susmita Radhakrishna Vikhe Patil
4)	Capvital Advisors Private Limited jointly with Mr. Kaushik Hasmukhlal Gandhi

VIII. The RP duly convened the 4th meeting of CoC on 30.11.2024 wherein the RP apprised the members of CoC that out of 4 PRAs, only 2 PRAs have submitted their Resolution Plans. In the said meeting, the members of CoC discussed the feasibility and viability of Resolution Plans submitted by the PRA i.e., Capvital Advisors Private Limited jointly with Mr. Kaushik Hasmukhlal Gandhi. Further, the members of CoC inter alia requested the PRA to consider the changes in the distribution amount offered to creditors in the Resolution Plan.

IX. The RP duly convened the 5th meeting of members of CoC on 06.01.2025 whereby RP apprised the members of CoC about receipt of about two Resolution Plans i.e., (1) Capvital Advisors Private Limited and (2) Mr. Manish Bipinchandra Dalokiya. At the time of submission of Final Resolution Plan, Mr. Manish Bipinchandra Dalokiya expressed his willingness to withdraw the plan through its email and further refund of EMD amount. That in the said meeting, RP apprised that one final Resolution Plan has been received from M/s. Capvital Advisors Private Limited jointly with Mr. Kaushik Hasmukhlal Gandhi. That in the said meeting, the CoC members had discussion on feasibility and viability of the final enhanced Resolution Plan. That in the said meeting, the members of CoC inter alia approved the Resolution Plan of M/s. Capvital Advisors Private Limited jointly with Mr. Kaushik Hasmukhlal Gandhi by 100% voting share.

X. The Resolution Plan submitted by of M/s. Capvital Advisors Private Limited jointly with Mr. Kaushik Hasmukhlal Gandhi ('SRA') came to be approved by the members of CoC by 100% voting share. A copy of the Resolution Plan dated 20.12.2024 submitted by the SRA was annexed at ANNEXURE J (Pages 130 to 198) of the Application.

XI. The payment structure in Resolution Plan dated 20.12.2024 by M/s. Capvital Advisors Private Limited jointly with Mr. Kaushik Hasmukhlal Gandhi is extracted herein below for kind perusal: -

Sr. No.	Parameters	Claim Amount Admitted (INR Rs.)	Resolution Plan Amount Proposed (INR Rs.)
1.	Payment towards unpaid CIRP cost	-	
2.	Unsecured Financial Creditors	1,46,59,589	To be decided by RP in consultation with the CoC Members
3.	Operational Creditors (Government Dues)	8,65,47,963	
4.	Operational Creditors (other than Workman, Employees and Government Dues)	41,595	
5.	Non-promoters Equity Capital	2,31,73,000	
	Total Payout	**12,44,22,147**	**27,00,000**
6.	Working Capital	-	25,00,000
	Total		**52,00,000**

Part A: **Cost of Corporate Insolvency Resolution Process (CIRP)**

- Estimated CIRP Cost as provided by the RP is Rs. 15,00,000/-. The Resolution Applicant proposes to pay the unpaid CIRP cost as on the date of approval of Resolution Plan by the Hon'ble NCLT in Top Priority.
- The Resolution Applicant further submit that in case CIRP cost exceed the amount offered in the resolution plan. the RA shall ensure that such excess CIRP cost is also paid in priority to any other payment from the amount paid to the unsecured Financial Creditors. Consequently, the proposed amount allocated to the unsecured Financial Creditors shall be adjusted proportionally to account for such excess costs.
- The Resolution Applicant state that the CIRP Cost shall be paid in priority to any other payment to other

stakeholders.

Part B: **Proposal for Unsecured Financial Creditors (other than Financial creditors belonging to creditors in a class)**

Sr. No.	Type of Creditor	Amount claimed (In Rupees)	Amount admitted (In Rupees)
1.	Unsecured Financial Creditors Jhaveri Trading & Investment Private Limited	1,46,59,589	1,46,59,589

- As per the List of Creditors available as on 20.09.2024 provided only for Unsecured Financial Creditors (Other than Financial Creditors belonging to Creditors in a Class) -by the Resolution Professional, the Resolution Applicant understands that the claim submitted by Unsecured Financial Creditors (Other than Financial Creditors belonging to Creditors in a Class) amounts to Rs 1,46,59,589 out of which claims aggregating to Rs 1,46,59,589 have been admitted by the Resolution Professional.
- The payment to the unsecured financial creditors except any payment to related party shall be distributed as decided by the RP in consultation with the CoC members from the total payout proposed by the Resolution Applicant. The RA shall pay the amount immediately upon the date of approval of Resolution Plan by the Adjudicating Authority subject to provision of Bank Account details by the Unsecured Financial Creditors.

Part C Proposal for Operational Creditors (Government Dues)

Sr. No.	Type of Creditor	Amount claimed	Amount admitted

1.	Operational Creditors (Government Dues) Income Tax Department (DCIT)	15,36,21,163	8,65,47,963

- As per the List of Creditors available as on 20.09.2024, the amount claimed by Operational Creditor (Government Dues) is Rs 15,36,21,163/- and the amount admitted by the RP is Rs. 8,65,47,963/-.
- The payment to the Operational Creditor (Government Dues) shall be distributed as decided by the RP in consultation with the CoC members from the total payout proposed by the Resolution Applicant. Immediately upon the date of approval of the Resolution Plan by the Adjudicating Authority.
- The Resolution Plan assumes that no additional liability has accrued towards Operational Creditors (Government Dues), between the ICD and the plan approval date by Adjudicating Authority, and all such liabilities have been settled by the RP and claimed as CIRP Cost.

Part D: Proposal for Operational Creditors (other than workmen and Employees and Government dues)

SR. NO.	TYPE OF CREDITOR	AMOUNT CLAIMED (In Rupees)	AMOUNT ADMITTED (In Rupees)
1.	Operational Creditors (Other than workman, Employees and Government Dues) Devpura Navlakha & Co.	41,595	45,595

- As per the List of Creditors available as on

20.09.2024 provided only for Operational Creditor (other than Workmen and Employees and Government Dues) is Rs 41,595 and the same amount admitted has been admitted by the RP.

- The payment towards the admitted debt of the Operational Creditor (other than Workmen and Employees and Government Dues) shall be distributed as decided by the RP in consultation with the CoC members from the total payout proposed by the Resolution Applicant. Immediately upon the date of approval of the Resolution Plan by the Adjudicating Authority.
- Any claim of the operational creditors, which is not submitted to the Resolution Professional prior to the approval of the Resolution Plan by the CoC or the claim if filed but not admitted or rejected by the Resolution Professional, such operational creditors shall not be entitled to receive any payments under the Resolution Plan.
- Section 30 of the Code requires that the payment of the debt of the Operational Creditors shall be the greater of (a) the amount to be paid to the operational creditors in the event of liquidation of the Corporate Debtor under Section 53 of the Code; or (b) the amount that would have been paid to the operational Creditors, if the amount to be distributed under this Resolution Plan had been

distributed in accordance with the order of priority in sub-section (1) of Section 53 of the Code. Further, as per Regulation 38 of the CIRP Regulations, the amount due to the operational creditors under a resolution plan shall be given priority in payments to Financial Creditors.

Part E: Non-Promotor Equity Capital

- The Resolution Applicant proposes to restructure the capital structure of the Corporate Debtor. These shares allotted in the name of erstwhile shareholders whether listed or unlisted/equity or preference shall stand cancelled upon approval of Resolution Plan. The more details are mentioned in para 10.1 of the Resolution Plan.

Part F: Working Capital

- The Resolution Applicant proposes a payment of Rs. 25,00,000 as a working capital expense, which will improve the working of the company. The working capital infusion in key areas that drive growth, improve efficiency, and enhance product offerings.

XII. Source of Funds

Particulars	*0-15 days (in Rs.)*
A. Equity Shares	*25,00,000*
B. By way of interest free loan in the Corporate Debtor for a period of 9 months and thereafter shall have option to convert into the equity shares of equal amount as per market value.	*27,00,000*
Total	*52,00,000*

Implementation & Supervision of the Resolution Plan

- The supervising/Monitoring committee shall be formed which shall comprise of following:

  a. Resolution Professional as Chairman of Monitoring Committee
  b. 1 Member from Resolution Applicants
  c. 1 member from unsecured financial creditor

Waiver/Concession : stated at the page 11 to 16 to the application)

Recovery of Avoidance Transactions

The Resolution Applicant state that avoidance transaction if any under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the code will be pursued after the approval of Resolution Plan by the Resolution Applicant and all the proceeds from such avoidance transactions shall accrue to the Resolution Applicant and the same shall be deposited into Prime Ministers Relief Fund.

XIII. That pursuant to the approval of the Resolution Plan, RP has duly issued the letter of Intent to the Successful Resolution Applicant i.e., M/s. Capvital Advisors Private Limited on 07.01.2025. A copy of the letter of Intent is annexed at ANNEXURE K to the Application.

XIV. The SRA has submitted the EMD Mount to the tune of Rs. 3,00,000/- and further submitted its Performance Security to the tune of 5% of financial outlay of Rs. 5,00,000/-. A copy of the proof evidencing payment of EMD & Performance Bank Guarantee by SRA is annexed at ANNEXURE L to the Application.

XV. The fair value of the corporate debtor is Rs. 11,29,717/- and the liquidation value is Rs. 1,03,432/-. A copy of Summary of Valuation is annexed at ANNEXURE M to the application.

XVI. The RP has duly prepared a Compliance Report of the Resolution Plan dated 20.12.2024 in the prescribed 'Form H'. A copy of the report on compliance of revised resolution plan in prescribed 'Form H' is annexed as ANNEXURE-N of the Application.

XVII. The Applicant herein has not filed any other application concerning subject matter of this application before any other court including the Hon'ble Supreme Court of India.

3. During the hearing on 21.02.2025, this Tribunal found some discrepancies in Form-H and directed the applicant to filed copies of RFRP and Information Memorandum as well as the copies of the claim Form/documents submitted by Income Tax Department. The relevant portion of the said order is reproduced hereunder:

"After hearing briefly on the salient features of the Resolution Plan, we find that there is a discrepancy in the Form-H qua the status of the claims which is admitted by the learned counsel for the Applicant/RP and undertakes to file the revised Form-H.

Further, it is not clear form the 5th CoC meeting in which Resolution Plan was approved whether any notice was given to the Stakeholders for final meeting or not. Let copy of the all-relevant documents of notices issued for that meeting be placed on record along with proof of delivery. Further, Copies of Request for Resolution Plan (RFRP) and Information Memorandum (IM), as well as copies of Claim Form/documents submitted by the Income Tax Department be placed on record."

4. In compliance of the order dated 21.02.2025, the Applicant has filed an additional affidavit on 20.03.2025 vide inward diary no. D1870 to place on record Revised Form-H as well as other relevant documents such as

a. Revised Form-H on account of discrepancy qua status of claims.

b. All relevant documents of notices along with any proof of delivery showcasing convening of the CoC meeting in which Resolution Plan came to be approved;

c. Copy of Information memorandum, Copies of Request of Resolution Plan (RFRP);

d. Copy of claim form along with documents submitted by the Income Tax Department and

e. Issuance of Notice upon the Income Tax Department along with proof of service.

5. It is seen that the Applicant has filed an additional affidavit on

01.04.2025 vide inward diary no. D2174, in compliance of the order dated 21.03.2025 wherein this Tribunal had directed the Applicant to serve notice upon the Income Tax Department through registered post and other modes. The relevant portion of the order is reproduced as under:

> *"Further, directions were issued to serve the notice upon the Income Tax Department and file proof of the same. Proof of service filed along with the affidavit reflects that against the order dated 21.02.2025, notice to the Income Tax Department was sent through e-mail only on 15.03.2025. Therefore, we direct the Applicant/RP to serve a fresh notice upon the concerned Income Tax Department through registered post as well as through E-mode and through Dasti mode along with copy of this order within 7 days and file proof of proper service."*

6. In compliance of the aforesaid order, the Applicant filed an additional affidavit on 21.04.2025 vide inward diary no D2611 as a convenience proforma.

7. This Tribunal vide order dated 22.04.2025 directed the Applicant to file 29A declaration and proof of the net worth on the SRA as well as source of funding towards the implementation of the plan. The relevant portion of the said order is produced as under:

> *"...*
>
> *5. However, during the course of hearing, it is pointed out and observed that the SRAs who has given the plan have not given declaration in terms of section 29A of Insolvency and Bankruptcy Code, 2016 to which counsel for the Applicant/RP undertakes to place on record the same. Further, though there is a narration qua net worth of the SRA but there is no proof on record qua net worth on the SRA as well as source of funding toward the implementation of the plan.*
>
> *6. Further, the cause of default is not properly shown to have been addressed in*

the plan application, as neither the cause of default has been identified or addressed.
7. Therefore, we direct the applicant/RP to clarify on these issues and in return the Ld. Counsel for the applicant / RP undertakes to file additional affidavit along with relevant documents.
8. Further, applicant/RP is also directed to explain the strength of replies of the corporate debtor in the last four years and cash flow for the period of 01.04.2025 till date…"

8. In compliance of the order dated 22.04.2025, the Applicant filed an additional affidavit on 02.06.2025 vide inward diary no. D2972 to place on record revised affidavit of declaration of compliance u/s 29A of the IBC along with DIN numbers on the accounts of certain discrepancies. The contents of the affidavits are produced as under:

I. Certificate from SRA with respect to eligibility under Section 29A of the Code:

The deponent most humbly submits that during the course of the CIRP of the Corporate Debtor, the deponent has duly received the certificate/ undertaking from the SRA under Section 29A of the Code. A copy of the certificate/undertaking from the SRA under the Section 29A of the Code is annexed at ANNEXURE B to the said affidavit.

II. Proof of net worth of the SRA as well as source of

Fund for implementation of the plan;

a. The deponent further submits that as per the net worth certificate received from the SRA, the Net worth of Capvital Advisors Private Limited is Rs. 46,04,238.84/-and Mr. Kaushik Hasmukhlal Gandhi is Rs. 60,98,32,000.00/-. A copy of the net worth certificate of SRA is annexed as ANNEXURE C to the said affidavit.

b. The deponent humbly submits that the Resolution Plan encapsulated the financial capabilities of RAs which states '*The Resolution Applicant, backed by a robust financial background and a financial capacity of around Rs. 100 Crores from personal and family resources...*'. The deponent humbly submits that the RA has provided the bank statement showcasing the availability of funds for the purpose of implementation of the Resolution Plan. A copy of the bank statement of SRA showcasing availability of funds is annexed as ANNEXURE D to the said affidavit.

III. Cause of default in the Resolution Plan application

a. Prior to Covid Pandemic, Corporate Debtor had a healthy lending portfolio of INR 1327 Lakhs (as on 31.03.2019) including advances (Short-term loans) amount to INR 252 Lakhs. However, on account of outbreak of covid pandemic, the lending opportunities for the specific activity of the Corporate Debtor reduced, resulting in shrinking of Loan portfolio. Further opportunities for Corporate Debtor were deteriorated when the lending market tightened primarily due to introduction of innovative digital lending products during post-covid era. The Surplus Liquidity arising as a result of the above situation was diverted towards investment in capital markets.

b. The capital market returns being uncertain exposed the corporate debtor to instability; as a result, the company incurred losses during FY 2020-21, 2021-22 and 2022-23. Apart from these financial difficulties in the form of losses for 3 consecutive years has brought down the Net Owned fund below the prescribed regulatory limit of INR 2 Crores.

c. Subsequently, the board in its meeting dated 26.06.2023, in the interest of the Corporate Debtor, resolved to exit from the business of NBFC w.e.f 30.06.2023 and further decided to surrender the certificate of Registration u/s 45-1A (6) of the RBI Act 1934 as 'Investment and Credit Company.' A copy of the Board resolution along application for voluntary surrender of Registration along with resolution along application for voluntary surrender of Registration along with its annexures are annexed as ANNEXURE E COLLY to the said affidavit.

d. Consequently, the RBI vide its order dated 21.09.2023 was pleased to cancel the certificate of Registration on voluntary basis for the Corporate Debtor. A copy of the order dated 21.09.2023 is annexed as ANNEXURE F to the said affidavit.

e. The deponent further submitted that the Resolution applicant has further addressed the cause of default in detail in its Resolution Plan. (@157-158).

IV. Strength of the Corporate Debtor in the Last Four

years and cash flow for the period of 01.04.2025 till date.

a. The copy of the Annual Report of the Corporate Debtor for the FY 20-21, 21-22, 22-23 & 23-24 along with the provisional balance sheet for the period 01.04.2024 to 29.08.2024 is annexed as ANNEXURE G COLLY to the said affidavit.

9. However, vide order dated 05.05.2025 this Tribunal further observed as under:

"Ld. Applicant further submits that there is some error in the compliance affidavit of declaration filed u/s 29A of IBC provided by the SRA. Hence, he requested to file revised/corrected affidavit of declaration of compliance u/s 29A of IBC along with their DIN numbers."

10. Therefore, the applicant complied with the order dated 05.05.2025 by filing the revised affidavit on 02.06.2025 vide inward diary no. D-2972 as well as another affidavit of compliance qua 29A through inward no. D3401.

11. On 24.06.2025, during the hearing, the applicant counsel sought indulgence to file a revised Form-H provided by the IBBI in terms of fresh notification issued in the month of April, 2025, along with convenience compilation chart of the consolidated summary of the pleadings. The relevant portion of the said order is reproduced as under:

"Ld. Counsel for the applicant/RP and RP in person seeks indulgence to file a revised Form-H provided by the IBBI in terms of fresh notification issued in the month of April, 2025, along with convenience compilation chart of the consolidated summary of the pleadings. Let the same be filed by way of affidavit within a period of seven working days."

12. Thereafter, the Applicant filed an additional affidavit on 14.07.2025 vide inward diary no. D4674 in compliance with the above mentioned order. The contents as reproduced as reproduced as under:

i. The present application is preferred by the Deponent under Section 30 of the Code, seeking approval of the resolution plan. This Tribunal, vide its order dated 24.06.2025, directed the applicant herein to place on record the revised Form-H and compilation chart of the consolidated summary of pleadings. A copy of the order dated 24.06.2025 passed in IA (Plan) No 4 of 2025 in CP (IB) No 149 of 2024 is annexed at "ANNEXURE - A" to the said affidavit.

ii. The Deponent in compliance with the order dated 24.06.2025 is placing on record the revised Form-H dated 02.07.2025. A copy of the revised Form-H dated

02.07.2025 is annexed at "ANNEXURE - B" to the said affidavit.

iii. The Deponent during the pendency of the IA (Plan) 4 of 2025 has multiple additional affidavits to place on record additional documents as and when directed by this Hon'ble Tribunal. The Deponent for ready reference and convenience of this Bench has reproduced a detailed timeline of the multiple affidavits filed during the pendency of IA (Plan) 4 of 2025 hereunder:

Order Date	Compliance	Particulars
21.02.2025	Affidavit dated 15.03.2025	A copy of revised Form-H. A copy of the relevant documents of notices along with the any proof of delivery showcasing convening of the CoC meeting in which Resolution Plan came to be approved. A copy of the claim form along with documents submitted by the Income Tax Department along with RFRP & Information Memorandum. A copy of the email dated 15.03.2025.
22.04.2025	Affidavit dated 03.05.2025	A copy of the email dated 15.03.2025. A copy of the certificate/undertaking from the SRA under the Section 29A of the Code. A copy of the net worth Certificates of SRA. A copy of the Bank Statement of SRA showcasing availability of funds. A copy of the Board Resolution along application for voluntary surrender of Registration along with its annexures.

		A copy of the order dated 21.09.2023 issued by RBI. The copy of the Annual Report of the Corporate Debtor for the FY 20-21, 21-22, 22-23 & 23-24 along with the provisional balance sheet for the period 01.04.2024 to 29.08.2024.
05.05.2025	Affidavit dated 02.06.2025	Copies of affidavits of declaration of compliance u/s 29A of the IBC, 2016.

iv. That, the Deponent in compliance with the order dated 24.06.2025 is placing on record the Revised Convenience Proforma for Resolution Plan. A copy of the Revised Convenience Proforma for Resolution Plan is annexed at "ANNEXURE - C" to the said affidavit.

13. As per clause 6 of the Resolution Plan, the summary of proposal is as under: -

Summary of Proposal

6.1 The following list of claims have been prepared on the basis of list claims provided by the RP as on 20.09.2024.

Sr. No.	Type of Creditor	Amount Claimed	Amount Admitted
1.	**Unsecured Financial Creditors**	**1,46,59,589**	**1,46,59,589**
a.	Jhaveri Trading and Investment Private Limited	1,46,59,589	1,46,59,589
2.	**Operational Creditors (Government Dues)**	**15,36,21,163**	**8,56,47,963**
a.	Income Tax Department (DCIT)	15,36,21,163	8,56,47,963
3.	**Operational Creditors (other than Workman, Employees and Government Dues)**	**41,595**	**41,595**
a.	Devpura Navlakha & Co.	41,595	41,595

Total	16,83,22,347	10,12,49,147

6.2 CIRP Cost

The Resolution Applicant has provided with an estimate of the CIRP costs at Rs.15,00,000/- which shall be paid in full and priority as per the provisions of the Code and in case it exceeds the said amount the said amount shall be adjusted from payment to other creditors subject to total outflow not exceeding Rs.27,00,000/- to all the creditors of the corporate debtor.

6.3. Settlement of Creditors

Pursuant to Regulation 38(1A) of CIRP Regulation, The Resolution Applicant is submitting The Resolution Plan which takes care of interest of all the stakeholders. A brief snapshot of financial proposal for settlement of all the creditors of corporate debtor is as under:

Sr. No.	Parameters	Claim Amount Admitted (INR Rs.)	Resolution Plan Amount Proposed (INR Rs.)	% paid under Plan	Note
1.	Payment towards unpaid CIRP cost	-		-	(i)
2.	Unsecured Financial Creditors	1,46,59,589	To be decided by RP in consultation		(ii)

			with the CoC		
3.	Operational Creditors (Government Dues)	8,65,47,963			(iii)
4.	Operational Creditors (other than Workman, Employees and Government Dues)	41,595			(iv)
5.	Non-promoters Equity Capital	2,31,73,000			(v)
	Total	12,44,22,147	27,00,000		
6.	Working Capital	-	25,00,000		(vi)
	Total		52,00,000		

14. As per 9.1 and 9.2 of the Resolution Plan, **Infusion/ Source of Funds** are as under: -

From the date of NCLT Order approving the Resolution Plan the Resolution Applicant is proposing a plan size of Rs 52,00,000/- for the Resolution of the Corporate Debtor. Out of the entire resolution plan, a sum of Rs. 25,00,000/-shall be paid by subscription to 2,50,000 equities of Rs. 10/- (Rs. Ten only) each. Remaining Rs 27,00,000/- shall be paid as loan, which shall be interest free for nine months and thereafter shall have option to convert into the equity shares of equal amount as per market value and Rs 25,00,000/- as working capital. All Infusion in the Corporate Debtor shall be from Special Purpose Vehicle either to be formed or through the existing entity such as Partnership firm or a private limited company or a public limited company as the case may be.

Particulars	*0-15 days (in Rs.)*
A. Equity Shares	*25,00,000*
B. By way of interest free loan in the Corporate Debtor for a period of 9 months and thereafter shall have option to convert into the equity shares	*27,00,000*

of equal amount as per market value.	
Total	*52,00,000*

Utilization of Funds

Sr. No.	*Particulars*	*Amount*
1.	*Corporate Insolvency Resolution Process (CIRP) Cost*	
2.	*Unsecured Financial Creditors*	*To be decided by RP in consultation with the CoC Members Rs. 25,00,000*
3.	*Operational Creditors (Govt. Dues)*	
4.	*Operational Creditors (Other)*	
5.	*Non-Promoter Equity Capital*	
6.	*Working Capital Expenses*	*25,00,000*
	Total	***52,00,000***

15. As per Clause 4.9 of the Resolution Plan, **the Board of Directors** is as under: -

Following table contains the core skills/expertise/competencies identified by the board of directors as required in the context of its business(es) and sector(s) for it to function effectively and those actually available with the Board after the approval of Resolution Plan

Name of the Director	**Designation (proposed)**	**Skill/ Expertise/ Competency**
Mr. Kaushik Hasmukhlal Gandhi	Director	Chartered Accountant and carries an experience of more than 22 years in the relevant field
Mr. Nimesh Sahdev Singh	Director	With a good experience of more than 10 years
Mr. Sanjay Dubey	Consultant	experience of more than 25 years in compliance and legal field

16. As per Clause 12 of the Resolution Plan, the **Term and timeline** under the Resolution Plan is as under: -

Resolution Applicant proposes to implement the Resolution Plan in following milestone –

S. No.	ACTION	TIME LINES (In days)
1.	Date of the Adjudicating Authority's approval of the Resolution Plan by the Adjudicating Authority	T
2.	Payment of CIRP Costs	T
3.	Payment and settlement of claims of Operational Creditors	T
4.	Payment and settlement of claims of Financial Creditors	T
5.	Intimation to Stock Exchange about approval of Resolution Plan by RP/RA as required under SEBI(LODR) 2015	T+1
6.	Restructuring of share capital as proposed under the Resolution Plan	T+30
7.	Payment for Working Capital	T+60
8.	Change in Management of the Corporate Debtor, by appointment of Directors nominated by RA/SPV on the Board of the Corporate Debtor	T+60
9.	Compliance with norms relating to appointment of required KMP	T+90
10.	Compliance with Minimum Shareholding Norms	As per laws

17. As per Clause 11.1 of the Resolution Plan, the **Monitoring Committee** and the **Supervision of Implementation** of the Resolution Plan is as under: -

> *"11.1. On Approval of the Plan by the Adjudicating Authority*
> *11.1.1. By order of the Adjudicating Authority approving this Resolution Plan, all the existing Directors of the Corporate Debtor, without any further action being required on the part of any person, shall, unless otherwise required by the Adjudicating Authority or agreed to by the Resolution Applicant in writing, be deemed to have resigned from the Board of the Corporate*

Debtor. After the Effective Date, the Resolution Applicant shall constitute the Board of the Corporate Debtor and appoint key managerial personnel.

The Resolution Applicant proposes to discharge all amounts due to creditors as decided by RP in consultation with the CoC Members immediately upon its approval by the Adjudicating Authority however, in no case the amount offered shall exceed Rs.27,00,000/- in total being outflow to creditors including CIRP cost. PROPOSAL FOR SUPERVISING RESOLUTION PLAN AND ITS IMPLEMENTATION

Subject to approval of Committee of Creditors and Adjudicating Authorities, the Supervising / Monitoring committee shall be formed which shall comprise of following

(a) Resolution Professional (RP) as Chairman of Monitoring Committee

(b) 1 Member from Resolution Applicants;

(c) 1 Member from Unsecured Financial Creditor

to supervise the implementation and execution of Resolution Plan till the completion of tenure of full payment of Rs.27,00,000/- as envisage under resolution plan said amount is paid on the effective day, such constitution of monitoring committee shall not be required."

18. Some additional facts

- The Form G titled, (Invitation for Expression of Interest for Sunpoint Trading Limited dated 01.10.2024 stated that the company does not have any fixed assets, and has no manufacturing unit and no business operations. There are no employees other than a company secretary.
- Information relevant to the present proceedings, as available in the audited accounts of the CD for the

financial year 2023-2024, is given below (the RP provided the information based on the directions issued by this Tribunal)

- The share capital of the company as on 31.03.2024 and 31.03.2023 was Rs 303.34 lacs. The name of the shareholder holding more than 5% shares and promoters are disclosed which are as follows:

Details of shareholders holding more than 5% shares in the Company (In Lacs)

Name of Shareholders	As at March 31, 2024		As at March 31, 2023	
	No. of shares held	% of Holding	No. of shares held	% of Holding
Unilon Private Limited	512500	16.90%	512500	16.90%
Lakshya Infraspace Private Limited	579200	19.09%	579200	19.09%
Legacy Infotech Private Limited	605800	19.97%	605800	19.97%

Disclosure of Shareholding of Promoters

Sr. No.	Shares held by promoters at the end of the year			Beginning of the year		% Change during the year
	Promoter name	No. of shares	% of total shares	No. of shares	% of total shares	
1	Unilon Private Limited	512500	16.90%	512500	16.90%	0.00%
2	Premium Polycot PVt LTD	149000	4.91%	149000	4.91%	0.00%
3	Smt Mrudula H Patel	54570	1.80%	54570	1.80%	0.00%
	Total	716070	23.61%	716070.00	23.61%	

- Reserves and surplus of the company as on 31.03.2024 and 31.03.2023 were Rs -408.89 lakhs and Rs -253.21 lakhs respectively. The bifurcation of reserve and surplus are as such General Reserve of Rs. 77.08 lakhs, Statutory Reserve 0.00 and Retained Earnings of Rs. (-)

485.96 for the year 31.03.2024 and General Reserve of Rs. 0.65 lakhs, Statutory Reserve 76.43 lakhs and Retained Earnings of Rs. (-) 330.29 for the year 31.03.2023. The retained earnings in negative indicates the accumulated business loss.

- Long-term borrowings respectively as on 31.03.2024 and 31.03.2023 were Rs. 131.77 lakhs and NIL.
- There was no borrowings as on 31.03.2023. The Unsecured financial creditor, Jhavery Trdaing and Investment (P) Ltd. Provided a loan of Rs 1,25,00,000 and later filed application under section 7 on 2.4.2024.
- Tangible assets were of Rs 1.58 lakhs and Rs 12.06 lakhs respectively as on 31.03.2024 and 31.03.2023.
- Other Non-Current Assets were of Rs 0.51 lakhs as on 31.03.2024 and 31.03.2023.
- Current assets comprising current investments,

cash and cash equivalents, short-term loans and advances, and other current assets were of Rs 2.70 lakhs and Rs 154.60 lakhs, respectively, as on 31.03.2024 and 31.03.2023.

- As on 31.03.2024 and 31.03.2023, respectively the Company had a loss before tax of Rs 165.08 lakhs and 416.06 lakhs.
- The company made nil revenue from Operations in the FY 2023-2024 and 2022-2023.

Similarly, the information for the financial year 2021-2022 is given below:

- The share capital of the company as on 31.03.2022 and 31.03.2021 was Rs 303.34 lakhs.
- Reserves and surplus of the company as on 31.03.2022 and 31.03.2021 were Rs 155.89 lakhs and Rs.194.13 lakhs, respectively.
- Tangible assets were of Rs 15.98 Lakhs and Rs. 19.26 Lakhs respectively as on 31.03.2022 and 31.03.2021.

- Current assets comprising of current investments, cash and cash equivalents, short term loans and advances, and other current assets were of Rs 430.27 lakhs and 341.66 lakhs respectively as on 31.03.2022 and 31.03.2021.
- As on 31.03.2022 and 31.03.2021 respectively the Company had total revenue of Rs.51 Lakhs and Rs.235.04 lakhs.
- As on 31.03.2022 and 31.03.2021 respectively, the company had total expenses of Rs 79.11 lakhs, and Rs. 212.41 Lakhs.
- As on 31.03.2022 and 31.03.2021, respectively the Company had a Profit/loss before tax of Rs (73.62) lakhs and 0.10 lakhs.

19. Jhaveri Trading and Investment Private Limited granted Inter Corporate Deposit loan facility (for short "ICD") of Rs. 1,25,00,000/- through Sanctioned letter dated 25.02.2023 to the Corporate Debtor i.e. M/s Sunpoint Trading Limited.

20. As the loan was not repaid by the CD, the FC filed application under section 7 of the IBC and the Corporate Debtor replied that, "**We would like to inform you that due to volatility and downfall of market for the purpose of non-payment of financial debt**" and "**the Respondent admits to having defaulted in repaying the financial debt in question**".

21. The RP has not submitted a copy of valuation reports with this Tribunal and only submitted that one valuer, namely Janak Jagivan Shah, had valued the fair value of the CD at Rs. 10,10,382/- and Liquidation Value of Rs. 94,812/-. Another valuer was Mr. Manish Buchasia who valued the CD at fair value of Rs. 12,49,052/- and Liquidation Value of Rs. 1,12,052.

22. No information on the assets valued is provided. It appears that these were cash and bank balances, financial assets and investments. It is unclear whether the valuation reports were also sought by the sole CoC member to understand the net worth of the CD.

23. The Resolution Plan seeks various waivers and concessions. Some of these waivers and concessions sought have no nexus with the real facts and ground situation of the Corporate Debtor.

24. The Plan states that avoidance transactions if any under Chapter III or fraudulent transactions will be pursued by the RA. This indicates that the RP has not informed and CoC ha not considered that no such avoidance transactions or fraudulent transactions have been identified as no transaction auditor was appointed.

25. The Resolution Plan states that the name of the Corporate Debtor was changed to Sunpoint Trading Limited from SUN Finlease (Gujarat) Limited on 10.11.2023. The Corporate Debtor is owned 23.61% by the promoters and 76.39% by Public.

26. A total claims of Rs 16,83,22,347 were received by the RP and that included Rs 15,36,21,163 from the Income Tax Department (Government Dues). Cliams of the operational creditors include that of Bombay Stock Exchange, SEBI, NSDL, CSDL etc. (Page 167 of the Plan Application).

27. The Plan provides a total payout of Rs 27,00,000 and it states that this amount will be used as decided by the RP in consultant with the CoC member. The plan states that estimated CIRP cost as provided by the RP is Rs 15,00,000.

28. On being requested by this Tribunal, the Rp has provided copy of income tax assessment orders incase of CD. An addition of Rs 5,00,00,000 was made to the income of the CD for Assessment Year 2018-2019. For Assessment Year 2015-2016, the total income was determined at Rs 12,74,99,391 and additions of more than Rs 12 cores were made and most of these additions are on account of transactions covered by fraudulent transactions and the promoters could have benefitted by these transactions and money was taken out of the CD. Still, the CoC did not propose carrying out the transaction audit.

29. The cash flow statement for the year ended 31.03.2023 shows that the company had sold fixed assets for Rs 16.76 lakhs and accordingly there were no fixed assets on the date of issue of Form G. The company also sold financial instruments in the year ended 31.03.2023 and net loss on such instruments was Rs 353.14 lakhs. Indicating that the Corporate Debtor sold most of its assets in the year 2022-2023 before the start of the CIRP but neither the RP nor the CoC took note of it. The company suffered a loss of Rs 409.09 lakhs in the year 2022-

2023.

30. There has been no revenue from the operations during financial years 2022-2023 and 2023-2024.

31. The balance sheet for the year ending 31.03.2024 shows that the company has a cash and bank balance of Rs 0.66 lakhs, deferred tax asset of Rs 22 lakhs, investments of Rs 0.51 lakhs, and other current assets of Rs 1.53 lakhs. The company had borrowings of Rs 131.77 lakhs as on 31.03.2024 which was nil as on 31.03.2023.

32. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

Before adverting to the Application filed by the RP and the submitted Resolution Plan, we consider it appropriate to highlight essential facts about the case as available in the records.

- The Corporate Debtor had availed the ICD loan of Rs 1,25,00,000 from one M/s Jhaveri Trading and Investment Private Limited. The agreement between parties is of 27.02.2023 and the disbursements are stated to be on 27.02.2023 of Rs 50 lakhs, on 28.02.203 of Rs 50 lakhs, and Rs 25 lakhs on 4.3.2023. This borrowing is shown as Rs 125 lakhs in the balance sheet as on 31.03.2023.

- The facts stated above in the orders show that the company had no business during the year 2022-2023 and sold its remaining fixed assets in the year.

- Jhavery Trading and Investment (P) Ltd is the only member of the CoC. The Corporate Debtor has no loans from any part except this creditor.

- The information available on the record does not show the purpose for which this loan received was used. No transaction audit (for determining avoidance or fraudulent transactions) has been carried out in the case.

- As per the revised Form H, the fair value of the CD is Rs 11,29,717 and Liquidation value is Rs 1,03,432.

- The Financial Creditor, namely Jhaveri Trading and Investment Private Limited, had filed the application under section 7 of the IBC, 2016, against the CD on 02.04.2024.

- The information on various assets and liabilities as noted in the balance sheet of the CD as on 31.03.2021, 31.03.2022, and 31.03.2023 and 31.03.2024 is noted in this order. There are huge liabilities, and surprisingly, none have made any claims against the CD. The CD also did not make any claims or recover any amount.

- The CD has practically no business prior to the admission to the CIRP, and also not during the period of the CIRP.

- The CD has no assets (no factory, no office, or other premises) as on 30.09.2024, and it has only financial assets, and those are valued at liquidation value of less than one lakh.

- The CD had no employees at the time of admission of the CD in the CIRP, and during the CIRP and at present, the CD has no employees.

- The CD has a huge business loss (indicated by the negative reserves and surplus of Rs 408 lakhs as on 31.03.2024) However, this asset is not valued.

- The Plan provides that the RA will contribute Rs 27,00,000 in the form of a loan and this will be used to pay CIRP cost of Rs 15,00,000 and a balance of Rs 12, 00,000 will be used to pay lone creditor i.e. Jhavery Trading and Investment Private Limited.

- The Income Tax Department made a claim of Rs 15,36,21,163 but there is nothing on the record about due diligence carried out by the CoC about reasons of this tax demand. Rs 12,00,000, out of plan payment of Rs 27,00,000, is proposed to go to the unsecured financial creditor (who gave loan) and who was the sole CoC member. The RP admitted claims of Rs 8,65,47,963 for the Income Tax Department.

- The Resolution Applicant has proposed to infuse an amount of Rs 25 lakhs in the equity of the company.

- The total realizable amount under the plan is Rs 27,00,000 and only Rs 12,00,000 will be available to meet the claims from the unsecured financial creditors. Less than 1% will be realized out of total claims received by the RP. No other claimants including the Income Tax Department will get anything.

- The revised Form H provides that the CD has a business loss of Rs 4,60,76,225 and unabsorbed depreciation of Rs 7,98,557 and these amounts are available for carry forward under section 79 (2) (c) of the Income Tax Act, 1961.

- No transactions under sections 43, 45, 50, and 66 are identified and this is a failure of CoC and RP considering the fact that the company had a tax demand of more than Rs 15 crores. The CD took a loan of Rs 1.25 crores when it had no business and within a year the same lender filed the application under section 7 and became the sole CoC member.

- The Records indicated that the suspended board of directors never attended any CoC meetings.

21.2 The CoC appears to have no idea about the business of the CD and it never asked any questions or raised any doubts about the transactions undertaken by the CD. The CD was neither subjected to any forensic audit nor the transaction audit nor were the transactions referred to any auditor for identifying the preferential transactions under section 43, undervalued transactions under section 45, extortionate transactions under section 50, and fraudulent transactions under section 66 of the IBC, 2016.

33. **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."

34. To our understanding, section 31 requires satisfaction of the Adjudicating authority on 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.

35. 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."

Furthermore, Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, requires the CoC to evaluate the resolution plan based on its feasibility and viability, a responsibility that appears to have been inadequately discharged in this case, as evidenced by the lack of scrutiny over the plan's business projections and financial provisions.

36. We note that, as far as the amounts provided by the RA in the Plan are concerned. It provides for the utilization of Rs 27,00,000. Rs 15,00,000 will be used to meet the CIRP cost. Balance of Rs 12,00,000 will be paid to the sole CoC member against the claim amount of Rs 1,46,59,589. Nothing will be paid to the Income Tax Department having claims of Rs 15,36,21,163. There is an operational creditor for Rs 41,595 who will also not get anything. It is noted that the fair value of financial assets is Rs 11,29,717.

37. There is nothing in the plan for effective implementation of the plan except the receipt of Rs 27,00,000 and utilization of the same. In the case of the CD, the plan does not benefit anyone except the CoC member sold. The CD has no other stakeholders like employees or customers who will benefit. In fact, there is nothing in the plan that provides for insolvency resolution of the CD or revival of the CD. The CD has already sold all the assets even during the year 2022-2023. It is obvious because there is nothing in the CD except its name, business losses, and financial assets having liquidation value of about Rs 1.03 lakhs. From the revised Form-H it is clear that the company has carry forward losses as per ITR for F.Y 2023-2024 are as such Business Losses: Rs. 4,60,76,225 and Unabsorbed Depreciation: Rs. 7,98,557. The case has potential of misuse of the business losses and long-term capital loss for income tax purposes. This concern arises under Section 79 of the Income Tax Act, 1961, which restricts carry-forward of losses upon change in shareholding exceeding 51%, unless exempted for IBC resolutions.

38. 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.

39. Hon'ble Madras High Court in the matter of S.V. Ramani v. Union of India (Writ Petition No. 29845 of 2022) has observed in para 52.3 as under:

> " 52.3 While the legislative intent to save the corporate debtor as a going concern may be appreciable, should it be at the cost of others, more so when the IBC offers adequate space for engineering manipulation? The larger question therefore, is why should the Parliament bend backwards to protect one corporate debtor at the risk of exposing the public interest to peril? The present case, a case study merely, illustrates how IBC could be manipulated to defeat the interests of the undisclosed creditors of the corporate debtor. Some points for the Parliament to ponder, and some legislative correction for it to make, lest the long term impact of the IBC could be disastrous, if not counterproductive. Incidentally, has the Parliament taken note of the percentage of recovery generally achieved out of a successful resolution process of the Corporate Debtor?".

40. The facts suggest that there is no business of the CD, no employees, no assets (other than financial assets which are valued), the remaining fixed assets are sold in the year 2022-2023. The CD took a loan of Rs 1.25 crores at the time when it was selling all the assets and even changed its name.

41. These facts raise serious doubts about the whole CIRP process initiated based on the application of Jhavery Trading and Investment Private Limited. The whole exercise suggests accommodation or collusive arrangement with the sole purpose of helping the CD get benefits of reliefs and concessions under Section 32A of the IBC, 2016 and raises concerns about its alignment with the IBC's objective of genuine insolvency resolution.

42. There is no material in the Plan underpinning the feasibility and viability of the Resolution Plan.

43. The Corporate Debtor has no assets and no employees. Currently, CD is not conducting any business and is not a going concern or in operation. None will benefit, other than the sole CoC member, from the approval of the Plan.

44. The RP has not filed any IA before this Tribunal regarding non-co-operation from the CD. The RP has neither proposed nor has any initiative taken by the CoC for identifying the avoidance transaction.

45. The fulcrum on which the Resolution Process under the Code proceeds is the full and correct knowledge of the affairs of the CD; however, in the present case, it appears that full information about the CD was not available to the CoC. Therefore, the CoC could not be said to have exercised its commercial wisdom while approving the resolution plan.

46. Commercial wisdom of the CoC: The role of CoC is questionable. The decision of the CoC to approve everything put up to it with a 100% majority and without raising any pertinent questions/clarifications on anything during the whole CIRP indicates a behavior not of prudent decision makers and at arm's length. The CoC's approval of the resolution plan with a 100% majority, without questioning significant transactions undertaken and particularly of selling the assets by the CD just prior to taking loan. Such failure to exercise due diligence violates the CoC's duty to maximise value under Section 30(4) and undermines the IBC's objectives. The facts indicate that their decisions were motivated with the sole intention of getting the approval of this Tribunal and getting all types of benefits, reliefs and concessions available due to the approval of the plan to all involved in the transactions. There appears to be no intention to resolve the insolvency, as the CD has no ongoing business and no party is interested other than the sole CoC member.

47. In the case of ***Vallal RCK v. Shiva Industries (supra)*** the Hon'ble Supreme Court has also held that:

> *" ...in our view, the adjudicating authority or the appellate authority cannot sit in an appeal over the commercial wisdom of the CoC. The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and de hors the provisions of the statute or rules."*

48. In view of the facts discussed above, the CoC not only acted in a "capricious, arbitrary, irrational" manner but also approved the plans that contravene the provisions of IBC and the Regulations. In that regard, the CoC has failed to exercise its commercial wisdom in deciding on the Resolution Plan, which, in a real sense, does not take into account the ground realities of the CD and is not commercially feasible and viable. It does not lead to value maximisation from the assets of the CD.

49. Therefore, we are of the view that the resolution plan has no provisions for its effective implementation as required by Section 31 (1) of the IBC, as there is nothing in the plan except payment to CoC member of Rs 12 lakhs and meeting of CIRP cost of Rs 15 lakhs.

50. The Tribunal would also like to mention that the underlying purpose of a resolution plan is not merely the settlement of claims but the revival of the Corporate Debtor as a going concern in a manner that is commercially viable and legally compliant. In this regard, Regulation 38(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, outlines key parameters that every resolution plan must comply with. The said regulation reads as under:

"Regulation 38(3): The resolution plan

shall demonstrate 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; and
(e) the resolution applicant has the capability to implement the resolution plan."

51. In the present case, upon a detailed consideration of the material on record, it is evident that the resolution plan fails to satisfy the criteria laid down in the above regulation. Further, section 30 (2) of the IBC, 2016 requires that the plan provides for the implementation and resolution of the Plan. The RA has no plans to provide a resolution to the corporate insolvency. As discussed in detail with cogent reasons, the Plan fails to meet the requirements of clauses (c), (d), (e), and (f) of section 30 (2) of the IBC, 2016.

52. The plan lacks financial depth and strategic clarity to justify its feasibility and viability, as it provides no business projections to revive the Corporate Debtor, which has no ongoing operations, employees, or plant and machinery. Moreover, there is no demonstrable vision to restart the business of the CD and no capability is shown on the part of the Resolution

Applicant to implement the plan. In fact, does not provide any information on the business projections of the CD and how will it be achieved.

53. Thus, in substance and spirit, the resolution plan does not comply with the provisions of Sections 30(2)(c), (d), (e), and (f) and Section 31 of the IBC, 2016, and Regulation 38(3) of the CIRP Regulations, as it fails to provide for the management of the CD's affairs, effective implementation, compliance with applicable laws, and demonstrates the RA's capability to implement the plan.

54. The Hon'ble Supreme Court in the case of Pratap Technocrats (P) Ltd. v. Monitoring Committee of Reliance Infratel Ltd. 10 SCC 623, under the Heading: Balancing the goals and key objectives of insolvency law in paragraph 46 of the order noted that, " since an insolvency regime cannot fully protect the interests of all parties, some of the key policy choices to be made while designing the insolvency law relate to the broad goals of the law (rescuing businesses in financial difficulty, protecting employment, protecting the interest of creditors.

Encouraging the development of an entrepreneurial class) and achieving the desired balance between the specific objectives identified above.

> The Hon'ble Court in paragraph 47 further notes that, "Hence, once the requirements of IBC have been fulfilled, the adjudicating authority and the appellate authority are duty-bound to abide by the discipline of the statutory provisions. It needs to be emphasised that neither the adjudicating authority nor the appellate authority have an unchartered jurisdiction in equity. The jurisdiction arises within and as a product of a statutory framework.

55. As discussed in this order, currently there is no business in the CD, CD has no employees, the creditor other than the unsecured security creditor (sole CoC member) have not even filed any claim, all pointing to the conclusion that the plan submitted by the RA does not meet the goals of the IBC law.

56. Accordingly, and in view of the discussion above, the relying on the provisions of Sections 30 and 31 (2) of IBC, 2016 and Regulation 38 as referred above, the Resolution Plan in question is hereby rejected by this Adjudicating Authority for non-compliance with Regulation 38(3)(a), (b), (c), and (e) of the CIRP Regulations, 2016, as it fails to address the cause of default, demonstrate feasibility and viability, provide for effective implementation, and establish the resolution applicant's capability to implement the plan.

57. The provisions under Section 33(1)(b) of the Code are reproduced below: -

> ***33. Initiation of liquidation.*** -
> *(1) Where the Adjudicating Authority, -*
>
> *(b) rejects the resolution plan under section 31 for the non- compliance of the requirements specified therein, it shall -*
>
> *(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
> *(ii) issue a public announcement stating that the corporate debtor is in liquidation; and*
> *(iii) require such order to be sent to the authority with which the corporate debtor is registered.*

58. The Hon'ble Supreme Court in the case of Ramkrishna Forging Ltd. (Supra), in paragraph 29 referred to the decisions in the cases of Innoventive Industries Ltd. v. ICICI Bank Ltd. [2017] 84 taxmann.com 320/ 1 SCC 407 and Swiss Ribbons (P) Ltd. v. Union of India [2019] 101 taxmann.com 389/4 SCC 17 in which it was explained that the Code was specifically introduced by the Parliament for ensuring quick and time bound resolution of insolvency of corporate entities in financial trouble, by first attempting to revive the Corporate Debtor, failure whereof would entail liquidation of the corporate debtor's assets.

59. As a consequence, following the rejection of the resolution plan under Section 31(2) for non-compliance with statutory requirements, and given the mandatory requirement under Section 33(1)(b) to initiate liquidation upon failure to approve a resolution plan within the CIRP period (expired on 25.02.2025), the Tribunal orders the liquidation of the Corporate Debtor to maximize creditor value and conclude the insolvency process.

60. Considering that not much work/process is involved in the liquidation of this case, we direct that the RP continue as the liquidator.

61. In view of the above, it is hereby ordered as follows: -

a) The Corporate Debtor **Sunpoint Trading Limited** is admitted into liquidation in terms of the provisions of **33(1)(b)** of the Insolvency and Bankruptcy Code, 2016, to be conducted in accordance with Chapter III of the Code and the IBBI (Liquidation Process) Regulations, 2016 which shall be effective from the date of this order.

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

c) A fresh moratorium under Section 33(5) of the Code is declared, prohibiting the institution or continuation of suits or proceedings against the Corporate Debtor, except as provided under the Code, effective from the date of this order until the completion of the liquidation process.

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

e) The Liquidator is directed to file a preliminary report within 75 days of this order, as per Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016 and submit periodical progress reports to this Tribunal.

f) The Liquidator so appointed shall complete the liquidation process as per the provisions of the Code r.w. the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

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

h) The Creditors as well as the Personnel of the Corporate Debtor are directed to extend all cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

i) The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and same shall be paid to the Liquidator from the proceed of the liquidation estate under section 53 of the Code.

j) Once the liquidation process is initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor. The Liquidator has the liberty to institute a suit and other legal proceedings on behalf of the Corporate Debtor with the prior approval of this Adjudicating Authority, as provided in sub-section (5) of section 33 of the Code.

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

l) This Adjudicating Authority directs the Liquidator to issue a public announcement stating that the Corporate Debtor is in liquidation. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workman/employees could also be informed of this liquidation order through their association.

m) The Liquidator is further directed to consider commissioning a forensic audit to identify any preferential, undervalued, fraudulent, or extortionate transactions under Sections 43, 45, 50, and 66 of the IBC, given the significant asset sales and financial discrepancies noted during the CIRP.

n) The Liquidator is directed to prioritize these investigations to ensure transparency and protect creditor interests, addressing all the deficiencies noted in this order during the CIRP. The Liquidator shall coordinate with the Adjudicating Authority for any necessary approvals to institute legal proceedings, as provided under Section 33(5) of the IBC.

o) As has been discussed in this order, the CD is not carrying out any business operation, there are no plant and machinery and no employees. The Liquidator in consultation with the Stakeholder Consultation Committee, as constituted under the provisions of Regulation 31A, may consider the sale of financial assets with priority.

p) The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the Corporate Debtor, IBBI, the Resolution Professional, and the Liquidator by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities for records and necessary action, if any. The Registrar of Companies shall update the Corporate Debtor's status on the MCA portal accordingly.

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

62. Considering that, the CD has only a few financial assets and these can be sold easily. The liquidator is directed to complete the process at the earliest and file an application for the dissolution of the CD. The Liquidator, in consultation with the Stakeholders' Consultation Committee shall determine the mode of sale under

Regulation 32 of the Liquidation Regulations, ensuring no misuse of tax benefits under the Income Tax Act, 1961. He shall sell the assets and the CD should not be sold as a going concern or business as a going concern to avoid the misuse of the tax losses.

63. Accordingly, **IA (Plan) No. 04 of 2025** in CP(IB) No. 149 of 2024 stands **dismissed** and disposed of.

64. The Registry is also directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps. Files be consigned to the record.

-Sd-

-Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

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