

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

M.A. No. 3271/2019

In

CP No. 2956/ 2018

Under section 30(6) of IBC, 2016

Mr. Vivek Murlidhar Dabhade

Resolution Professional

... **Applicant**

In the matter of

The Cosmos Co-Operative Bank Limited

... **Financial Creditor**

Vs.

New Phaltan Sugar Works Limited

... **Corporate Debtor**

**Order delivered on: 11.11.2019**

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble Shyam Babu Gautam, Member (T)

For the Applicant: Mr. Gaurav Joshi, Sr. Advocate; Mr. Rohit Gupta, Advocate; Mr. Swapan Pradhan, Advocate; Mr. Ritesh Mahajan, CS

For Resolution Applicant: Kartikeya and Associates

For Shetkari Kaamgar Dachav Kruti Samiti: Ashish Pyasi, Advocate, a/w Adv Dinesh Jadh i/b Dhir and Dhir

**Per: Shyam Babu Gautam**

**Per: Bhaskara Pantula Mohan**

**ORDER**

1. This is an Application filed by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016, read with Regulation 39(4) of the IBBI (Insolvency Resolution Process of Corporate Person) Regulations 2016, seeking approval of the Resolution Plan, as approved by the Committee of Creditors (CoC) in its 9<sup>th</sup> meeting held on 04.10.2019 with 71.32% voting in favour of the Resolution Plan submitted by the Resolution Applicant.

2. After the conclusion of the Ninth CoC meeting, Mr. Sandeep Kadam, authorized representative of M/s ED & F Man Commodities India Pvt. Ltd. contacted the Resolution Professional over a telephonic call and intimated that they are reconsidering their decision and willing to assent to the approval of the said resolution plan. Mr. Sandeep Kadam also vide its e-mail dated 04.10.2019 requested the Resolution Professional to change the voting of M/s ED & F Man Commodities India Pvt. Ltd. from 'Descent' to 'Ascent' and also requested the Resolution Professional to share the physical ballot paper for the purpose of voting. Thereafter, the Resolution Plan was approved unanimously by all the CoC Members by 100% voting in favour of the Resolution Plan.
3. The Corporate Debtor, New Phaltan Sugar Works Limited was put under Insolvency Resolution Process by an order of this Tribunal dated 22.02.2019. Pursuant to the said order, Mr. Vishram Narayan Panchpor, having Registration No. IBBI/IPA-002/IP-P00269/2017-18/10782 was appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The said IRP issued Public Announcement inviting the claim from creditors on 23.02.2019.
4. Thereafter, the CoC appointed Applicant as the Resolution Professional in place of Mr. Vishram Narayan Panchpor, IRP on their first meeting held on 22nd March 2019 vide a unanimous resolution. The same was approved by this tribunal vide its order dated 28.05.2019.
5. Subsequently, on 08.04.2019 the RP appointed two Registered Valuers for valuating the assets of the Corporate Debtor namely LSI Engineering & Consultants Limited and Mr. Parag Sheth. The Applicant further submits that on 07.05.2019, the RP published Expression of Interest (EOI) in newspaper for inviting prospective bids from Applicants.
6. Pursuant to the publication of Form 'G', the Applicant received only one bid from one M/s Shri Dutt India Private Limited, the prospective Resolution Applicant on 05.06.2019. Thereafter, the RP shared the Information Memorandum with the CoC and M/s Shri Dutt India Private Limited on 28.06.2019, after obtaining a confidentiality undertaking from them.
7. In their Fifth CoC meeting held on 27.06.2019, Mr. Anil Vaidya, Resolution Process Advisor to the RP, and also an independent

Insolvency Professional presented the draft of the Request for Resolution Plan (RFRP) to the CoC, and the said draft was approved by the CoC after finalizing the terms of Bank Guarantee, Performance Bank Guarantee, EMD and Evaluation Matrix with Mr. Anil Vaidya. The CoC further directed the RP to issue the RFRP to the Resolution Applicant M/s Shri Dutt India Private Limited.

8. The Resolution Applicant also submitted a Performance Bank Guarantee of Rs. 5 Crores with the Resolution Professional on 01.08.2019. After which, the Resolution Plan was submitted on 02.08.2019. The said Resolution Plan was to the Resolution Process Advisor of the Resolution Professional namely M/s Mitcon Insolvency Professionals Services Private Limited for evaluation.
9. The Resolution Plan defines “Effective Date” as the date after approval of Scheme of Amalgamation as envisaged under this Resolution Plan by NCLT order date of disposal of litigations/appeal before the Hon’ble NCLAT (or any other competent Court of Law or Authority) or any other litigation emanating from the sanctioned Scheme of NCLT.
10. On Seventh CoC meeting dated 31.08.2019, the RA presented the Resolution Plan before the CoC, who suggested/requested further improvements/additions in the amounts proposed to be paid and certain other modifications in the Resolution Plan.
11. Thereafter, resolution plan submitted again on 27.09.2019 alongwith the affidavit under section 29A of the Code, the same was considered by CoC in the Ninth meeting held on 04.10.2019 where the RP informed that the plan complies with the requirements of section 30(2) of IBC. The said resolution plan was approved with 71.32 % voting by CoC. However, as explained above, M/s ED & F Man Commodities India Pvt. Ltd. Later decided to change their vote from “dissent” to “assent” approving the Resolution Plan unanimously by 100% voting by CoC.
12. The Applicant had also filed an MA 2838/2019 seeking extension of 90 days of CIRP period from 20.08.2019, which was passed by the CoC with 100% voting and approved by this Tribunal vide its order dated 11.09.2019 extending the CIRP 17.12.2019.
13. The Resolution Plan approved by the Committee of Creditors provides for the following payments to the stakeholders:

<b>Sno.</b>	<b>Particulars of Claim</b>	<b>Claim admitted (In INR)</b>	<b>Total payable as per resolution plan (In INR)</b>	<b>Term of Payment</b>
1.	Secured Financial Creditors	56,96,28,193.00	30,92,52,619.20	3 Months
2.	Unsecured Financial Creditors	34,11,44,592.00	3,89,79,607.80	12 Months
3.	Operational Creditors	54,65,62,881.00	54,65,628.81	3 Months
4.	Workman and Employees	10,04,66,626.00	2,00,93,325.20	3 Months
5.	Farmers Dues	25,59,49,888.00	25,59,49,888.00	3 Months
6.	Statutory Dues	22,87,90,209.00	22,87,90,209.00	3 Months
7.	Provident Fund	4,40,77,899.00	4,40,77,899.00	3 Months
	<b>Total</b>	<b>208,66,20,288.00</b>	<b>67,61,06,870.10</b>	

According to aforesaid the Resolution Plan the terms of payment to Farmers shall be as follows:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount (INR)</b>
1.	Cash Component	10,59,49,888
2.	Allotment of Cumulative Preference Shares of the Resolution Applicant to be paid after a period of 5 years from date of issuance	15,00,00,000
	<b>Total</b>	<b>25,59,49,888</b>

14. On inquiry, the counsel appearing on behalf of the Resolution Professional Submitted that, The Applicant shall issue and settle 6% Cumulative Redeemable Preference Shares of Rupees Fifteen Crores on

a Trust (in accordance with Indian Trust Act, 1882) for the benefit of the Farmers in the ratio of their outstanding) and the said Preference shares would be redeemable after a period of 5 years from the date of its issuance.

15. Upon hearing by the bench, the Counsel representing the Applicant, it was recommended by the Tribunal that farmers who are the backbone of our economy must be fairly and timely compensated for their claims. It was suggested by this bench, that the remaining amount of Rs. 15 Crores should be paid to the Farmers as soon as possible.

16. Therefore, the Resolution Applicant filed an affidavit on 30.08.2019, wherein he proposed to pay the Farmers as follows:

Sr. No.	Particulars	Amount (INR)
1.	Cash Component	10,59,49,888
2.	Cash Component to be paid within 3 months after the end of one year from the effective date.	15,00,00,000
	<b>Total</b>	<b>25,59,49,888</b>

17. This bench considering the paramount interest of the Farmers proposed that it was very important that some sort of security should be attached to the payment promise being made by the Resolution Applicant, so that in case he defaults in fulfilling his financial obligations as per the plan, the Farmers won't be left high and dry. Therefore, this Tribunal granted another opportunity to the Resolution Applicant to furnish some security to protect the interest of the farmers.

18. Thereafter, on 05.11.2019, the Resolution Applicant filed another application before this Tribunal, wherein they proposed to change the Original Part H and recommended to pay the Farmer in the following method:

***“(B) Security of the payment to be made towards farmers’ claim***

- (i) *The Resolution Applicant in order to secure the payment of the amount due towards farmers claim shall furnish a **bank guarantee in the sum of Rs. 10,00,00,000/- (Rupees Ten Cores Only)**. The said bank guarantee will be kept valid and*

*subsisting for a period of **15 months** from the date of passing of the order by this Hon'ble Tribunal approving the Resolution plan and the Resolution Applicant being put in physical possession of the factory premises.*

(ii) *Upon the Resolution Applicant making payment of the sum of **Rs. 10,59,49,888/- (Rupees Ten Crores Fifty Nine Lakhs Forty Nine Thousand Eight Hundred and Eighty Eight only)** towards the farmers dues in the manner mentioned in Clause II (A) (i) above, the Resolution Applicant shall furnish an **additional bank guarantee of Rs. 5,00,00,000/- (Rupees Five Crores Only)** in order to secure the balance amount of Rs. 15,00,00,000/- (Rupees Fifteen Crores Only) due and payable towards the farmers dues. **The said additional bank guarantee of Rs. 5,00,00,000/- shall remain valid and subsistent for a period of 12 months. Thus, Resolution Applicant would be submitting two bank guarantees as under :***

(a) *Rs. 10,00,00,000/- (Rupees Ten Crores Only) which will be renewed from time to time to be valid and subsisting for a period of 15 months*

(b) *Rs. 5,00,00,000/- (Rupees Five Crores only) which will be valid and subsisting for a period of 12 months after the date of payment of the sum of Rs. 10,59,49,888/- (Rupees Ten Crores Fifty Nine Lakhs Forty Nine Thousand Eight Hundred Eighty Eight Only).*

(c) *In the event of the Resolution Applicant being able to discharge its liability towards the payment of the farmers dues before the expiry of the period mentioned in 2(a) (i) above then in such an event the Resolution Applicant shall withdraw the bank guarantee/s submitted by it."*

**(Emphasis Supplied)**

19. On our persuasion the Resolution Applicant improved its offer for payment to the Financial Creditors besides this the Resolution Plan offers payment to the farmers without much delay and with a failsafe, since the Resolution Applicant has agreed to provide two bank guarantees' worth Rs. 15,00,00,000/- (Rupees 15 Crores Only), as a

security in case the Resolution Applicant, at any point of time defaults in making payments to the farmers as promised in the Resolution Plan.

20. It is further submitted that the management and control of Corporate Debtor shall be handed over to the Board of Directors of Resolution Applicant for proper running and operation of the plant of the Corporate Debtor subject to approval of Committee of Creditors and Adjudicating Authorities. Further the existing technical team of the other plants of the Resolution Applicant shall be involved for smooth overhauling, as well as restarting of the commercial operations of the plant. Further, Resolution Applicant shall do necessary compliance with MCA and other concerned and applicable authorities as per Applicable laws.
21. It is also submitted that, the existing team of Resolution Applicant shall commence all activities required for establishment of a Distillery for maximization of future returns. Furthermore, the existing technical team of the other Plants of the Resolution Applicant shall be involved for smooth overhauling, as well as restarting of the commercial operations of the Plant.
22. The Board of Directors of Resolution Applicant shall supervise the implementation and execution of Resolution Plan. The Resolution Applicant shall submit a half yearly progress report in the format suggested by the CoC to appraise them about the supervision of the implementation of the Resolution Plan. For supervision and implementation of resolution plan, a core committee consisting following persons shall be formed;
- (i) Resolution Professional (Chairperson)
  - (ii) Two Representatives of Resolution Applicant
  - (iii) One Representative of State bank of India
  - (iv) One Representative of Cosmos Bank
  - (v) One Representative of FDS Infotech..
  - (vi) One Representative of Bharti Sahakari Bank Ltd.
  - (vii) One Representative of Farmers.
23. Herein, it is important to place reliance on Section 30 and Section 31 of the Code which provides as below:

*“(1) A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.*

*(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 repayment of other debts of the corporate debtor; (b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53; (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.*

*(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).*

*(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty six percent of voting share of the financial creditors.*

*(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.*

*(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority”*

Section 31 of the Code provides as below:

*“(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, guarantors and other stakeholders involved in the resolution plan.*

*(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.”*

24. It is also necessary to refer the provisions of Regulation 38 and 39 of CIRP Regulations to come to a conclusion that requirements of the Regulations are fulfilled and the same reads as below:

*“Regulation 38 - Mandatory contents of the resolution plan:*

*(1) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.*

*(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.*

*(2) A resolution plan shall provide:*

*(a) the term of the plan and its implementation schedule;*

*(b) the management and control of the business of the corporate debtor during its term; and*

*(c) adequate means for supervising its implementation.*

*(3) A 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.”*

*“Regulation 39 - Approval of resolution plan:*

*(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with*

*(a) an affidavit stating that it is eligible under section 29A to submit resolution plans;*

*(c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.*

*(1A) A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected.*

*(2) [The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code*

*and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him:-*

*(a) preferential transactions under section 43;*

*(b) undervalued transactions under section 45;*

*(c) extortionate credit transactions under section 50; and*

*(d) fraudulent transactions under section 66,*

*(3) The committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit: Provided that the committee shall record the reasons for approving or rejecting a resolution plan.]*

*(4) The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule.*

*(7) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.*

*(8) A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.*

*(9) No proceedings shall be initiated against the interim resolution professional or the resolution professional, as the case may be, for any actions of the corporate debtor, prior to the insolvency commencement date.*

*(10) A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan."*

25. As discussed supra by virtue of mandatory contents of resolution plan, the same is in accordance with Section 30 and 31 of the Code, and also complies with the requirement of the Regulations 38 and 39 of CIRP Regulations.

26. On perusal of the resolution plan, this Bench being satisfied with the valuation given by the registered valuers, estimation of turnover during the resolution period, repayment schedule to the creditors both secured

and unsecured and the approval of resolution plan as approved by the CoC with 100% voting, approves the resolution plan with a condition that the Resolution Applicant shall make the additional payment towards non-moving statutory liability as undertaken.

27. The Resolution Applicant in its resolution plan, has dealt with interests of all stakeholders of the Corporate Debtor, including the Financial Creditors, the Operational Creditors and the CIRP cost.
28. The Resolution Applicant, on taking control of the Corporate Debtor, shall ensure compliance under all applicable law for the time being in force.
29. On perusal of the Resolution Plan, we find that the resolution plan has necessary provisions for its effective implementation.
30. Given the above observations, we approve the resolution plan with modifications, as mentioned above, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the resolution plan.
31. In view of the approval of the Resolution Plan as sought by the RP, this Bench hereby discharges the RP from duties of the RP by submitting all the records maintained by him to the Insolvency and Bankruptcy Board of India as provided under the Insolvency and Bankruptcy Code, 2016 and the regulations thereunder.
32. Accordingly, this MA No: 3271/2019 is hereby allowed by vacating the moratorium already granted at the time of admission of Company Petition No: 2956/2017.

**Sd/-**  
**Shyam Babu Gautam**  
**Member (Technical)**

**Sd/-**  
**Bhaskara Pantula Mohan**  
**Member (Judicial)**

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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

M.A. No. 3477/2019

In

CP No. 2956/ 2018

Under section 30(6) of IBC, 2016

Castle Distributor Private Limited

**... Applicant**

Vs

Mr. Vivek Murlidhar Dabhade

Resolution Professional

**... Respondent**

**In the matter of**

The Cosmos Co-Operative Bank Limited

**... Financial Creditor**

Vs.

New Phaltan Sugar Works Limited

**... Corporate Debtor**

**Order delivered on: 11.11.2019**

**Coram:**

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble Shyam Babu Gautam, Member (T)

For the Applicant: Mr. Ashish Makhija, Advocate i/b MSB Legal

For the Respondent: Mr. Gaurav Joshi, Sr. Advocate; Mr. Rohit  
Gupta, Advocate; Mr. Swapan Pradhan,  
Advocate; Mr. Ritesh Mahajan, CS

***Per Bhaskara Pantula Mohan, Member (J)***

**ORDER**

1. This Miscellaneous Application is filed by Castle Distributor Private Limited (hereinafter “Applicant”) on being aggrieved by the unreasonable, arbitrary, and unlawful actions of the Resolution Professional of refusing to accept the claim of the Applicant as a Financial Debt.
2. It is the case of the Applicant that he as per an Advance Agreement dated 02.03.2017, the Applicant had agreed to provide a sum of Rs. 22.50 Crores to the Corporate Debtor against which the Corporate Debtor were to provide him with 90,000 quintals of sugar.
3. Thereafter, a modification to the aforesaid agreement was carried out and it was decided that the Applicant would instead advance a sum of Rs. 12.46 Crore to the Corporate Debtor. The same was done in the month of July 2017.
4. As per the submissions of the Applicant, the Corporate Debtor repaid the advance by supplying sugar worth of Rs. 8,05,64,446/-. However, the Corporate Debtor failed to comply with the terms of Advance Agreement by not paying the remaining Rs. 4,56,12,520/- and an interest to the tune of Rs. 1,05,74,800/-, with the total outstanding coming out to be Rs. 5,18,09,276/-.
5. The Applicant further points out that later in 2018, the Corporate Debtor paid Rs. 2,18,09,726/- towards his liability towards the Applicant, with Rs. 3 Crores remaining to be paid. For which some post-dated cheques were issued by the Corporate Debtor, which were dishonored with for the reason “insufficient funds”.
6. In view of the above, the Applicant invoked the Arbitration Clause of the Advance Agreement and filed a petition before the Hon’ble High Court, wherein the court was pleased to direct the Corporate Debtor deposit a sum of Rs. 1,47,42,709/-. The Applicant has apprised the bench with the fact that the Corporate Debtor failed to follow the aforesaid direction and is in violation of the High Court order.
7. The Applicant submits that the Applicant came to the know that CIRP was being initiated against the Corporate Debtor only in the month of June 2019. Therefore, on 15.06.2019, the Applicant wrote

a letter to the Resolution Professional (hereinafter the “Respondent”), who informed him with all the relevant information. Herein it is interesting note that the last date for submission of claim was 21.05.2019, which was already long gone.

8. The Applicant submits that they were under the wrongful assumption that they were Operational Creditor and therefore submitted their claim before the Respondent in Form B on 01.08.2019.
9. It is the case of the Applicant that only after filing his claim before the Respondent, he decided to take some legal advice about the same and it is then when he got to know that since transaction was to come under Financial Debt and he should have filed a claim under Form C instead. Therefore, the Applicant filed their claim in requisite Form C of the Regulations before the Applicant on 01.10.2019.
10. The Resolution Professional vide his email dated 16.10.2019 refused to admit the claim of the Applicant as Financial Creditor, therefore this Application.
11. Respondents have filed their Written Submissions and have argued that the reliefs sought by the Applicant cannot be accepted because the Advance Agreement is a sale – purchase agreement of good and therefore the Applicant cannot be termed as a Financial Creditor.
12. We perused the documents submitted by the Applicant and we are of the view that 21.05.2019 was the last date to receive claims and even though the Applicant had not filed his claim by then, the Respondent still entertained their claim as late as in August 2019.
13. Herein, it is an undisputed fact that the nature of transaction between the Applicant and the Corporate Debtor was one of a Sugar Supplier and buyer. In the lieu of this relationship only an advance payment for receiving some sugar was given by the Applicant. Such a transaction under circumstances be termed as a Financial Debt. The transaction herein does not complete the requirement of a Financial Debt as defined under the code.
14. It is important note here that for this Application to success the Applicant has to be a financial creditor as defined under the Code, failing which the application will be dismissed. This Bench is of the

opinion that an essential requirement for a debt to be a financial debt, is that the said debt must be disbursed against the consideration of 'time value of money'. Which would mean the inflows and outflows are distanced by time and there is a compensation for time value of money.

15. Herein in this case, we have examined the nature of transactions, and have arrived to the conclusion that it is a pure and simple agreement of sale or purchase of sugar. A mere clause regarding 'payment of interest in case of delay' would not give this debt the status of 'financial debt'. Based on the above it is clear that the amount mentioned in this transaction is not a financial debt and therefore, applicant cannot be treated as a financial creditor.

16. On top of the that, the Applicant has time and again showed is callous and casual attitude towards the entire proceedings, since primarily the claim filed before the Respondent was with a delay of 1.5 months and one month after filing their claim, the Applicant suddenly realized that they are indeed Financial Creditors. The arguments therefore made by the Applicant at not tenable and liable to be rejected.

17. In view of the recent Insolvency and Bankruptcy Code (Amendment) 2019, there is a mandatory upper limit of 330 days, within which the entire Resolution Process has to be completed. The legislative intent of the legislature with this amendment is very clear that, time is of utmost essence in matter of IBC. Therefore, the Applicant cannot approach the Resolution Professional at such a late stage, when the CoC has already approved the Resolution Plan.

18. Furthermore, it is a well-established principle of law "***Vigilantibus Et Non Dormientibus Jura Subveniunt***" which means the law assists those that are vigilant with their rights, and not those that sleep thereupon. The Applicant had very conveniently decided to sleep over his right from October 2019. It is only at this ripe stage when the CoC has already approved the Resolution Plan that the Applicant suddenly decided to make his claim again.

19. We are also of the opinion that the Applicant has no *locus standi* to file this application in the first place. The Application who is an

admitted operational creditor is trying to mask himself as a financial one and trying to use NCLT proceedings as a tactic to delay the Resolution Plan approval process. Such actions cannot be allowed.

20. Allowing this Application would not only set a wrong precedent but would be completely against the principles of law and equity.

21. Accordingly based on the above discussion, this Application is disposed of as dismissed.

Sd/-

**Shyam Babu Gautam**  
**Member (Technical)**

Sd/-

**Bhaskara Pantula Mohan**  
**Member (Judicial)**

(PT)