IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V

I.A. (IBC) (PLAN) No. 4/2024 IN C.P. (I.B) No. 748/MB/2022

[Under Section 66 of the Insolvency and Bankruptcy Code, 2016]

Mr. Dharmendra Dhelariya,
Resolution Professional of KSS Limited,
Unit 101 A, 1st Floor, Plot No. B-17, Maurya landmark II, Andheri (West), Mumbai - 400053

…Applicant

Vs

1) **The Commissioner of Income Tax,**
   CITA – 54 Mumbai,
   102, 1st Floor, Earnest House, Nariman Point,
   Mumbai, Maharashtra - 400021,

2) **Principal Chief Commissioner of Customs,**
   TRC (Export), ACC
   Office of the Commissioner of Customs
   Tax Recovery Call
   Air Cargo Complex, Sahar, Andheri (E),
   Mumbai – 400099
3) **Principal Officer of SEBI**
   Mittal Court,
   'B' & 'C' Wing, 1st Floor, 224 Nariman Point,
   Mumbai – 400021, Maharashtra

... Respondents

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, BENCH-V

I.A. No. 04 of 2024
IN
C.P. No.748 of 2022

In the matter of

Micro Capitals Private Limited
…Financial Creditor

Vs

KSS Limited
... Corporate Debtor

Order Dated: 24.03.2025

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

Appearances:

For the Applicant: Adv. Rohit Gupta (PH)

For the Respondents: Adv. Amir Arsiwala (PH)

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ORDER

Per: Reeta Kohli, Member (Judicial)

1. The present Application **I.A. No. 2146 of 2023** is filed by **Mr. Huzefa Fakhri Sitabkhan,** the Interim Resolution Professional of Zicom Electronic Security Systems Limited (hereinafter referred as the "**Applicant**") seeking directions against **Mr. Manohar Bidaye and Anr.** (hereinafter referred as the "**Respondents**") under **Section 66** of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "**Code**"), praying for the following reliefs:

I. Brief facts of the case

1. On a Company Petition filed under Section 7 of the Code by Micro Capitals Private Limited, the Financial Creditor, this Hon'ble Tribunal initiated Corporate Insolvency Resolution Process ('CIRP') against KSS Limited ('Corporate Debtor') vide its order dated 24.01.2023 and Mr. Dharmendra Dhelariya was appointed as Interim Resolution Professional ('IRP').

2. Pursuant to the said order, a public announcement on 30.01.2023 which was published in the newspapers, namely Financial Express (English) and Nav Shakti (Marathi) for calling of submission of proof of claim from the Creditors in appropriate Form "B" to Form "F". In view of the same, the Applicant received claims amounting to Rs. 95.59 Crores from Micro Capitals Private Limited and Axis Bank Limited. The said claims were admitted and the CoC was constituted with the following voting share-

Sr. No.	Name of the Financial Creditor	Voting Right	Voted for the approval of Resolution Plan
1.	Micro Capitals Private Limited	77.97%	Yes
2.	Axis Bank Limited	22.07%	No

3. Two set of Registered Valuers were appointed by the RP on 28.02.2023, to conduct the valuation of the assets of the Corporate Debtor and reports with respect to the same were submitted to the Applicant. The Liquidation Value and Fair Value is stated as under-

Sr. No.	Name of the Valuer	Asset Class	Fair Value	Liquidation Value
1.	Anil Bhaskar Pai Kakode	Plant & Machinery	1.54 Crore	1.16 Crore
2.	Karan R Mody	Plant & Machinery	1.47 Crore	1.10 Crore
3.	Chirag Shah	Securities and Financial Assets	1.86 Crore	1.39 Crore
4.	Atharva Valuation (OPC) Private Limited	Securities and Financial Assets	1.55 Crore	1.39 Crore

4. Further, the RP published an Invitation for Expression of Interest (EOI) (Form-G) on 25.03.2023 in two newspapers, namely The Financial Express (English) and Mumbai Lakshdweep (Marathi). In furtherance of the same, the Applicant received 3 EOIs, however, at the request of a few other parties, a revised Form-G was published on 17.04.2023 in the aforementioned newspapers. Subsequently, the Applicant received a total of 8 EOIs. Name of the PRAs is as under –

Sr. No.	Name of Prospective Resolution Applicants
1.	Anirudh Agro Farms Limited

2.	Nakshatra Corporate Advisors Limited
3.	Kapil Mantri
4.	Innopark (India) Private Limited
5.	Rofstoffe International Private Limited
6.	Yantrapur Developers Private Limited
7.	Micro Capitals Private Limited
8.	Sagar Portfolio Services Limited

5. Furthermore, out of the 8 prospective resolution applicants ("PRA), allegedly, only one PRA, namely, Micro Capitals Private Limited came forward and submitted a Resolution Plan on 14.06.2023

6. In the 5th CoC Meeting held on 19.07.2023, he CoC decided to extend the CIRP period of the Corporate Debtor by 90 days as the CIRP was to be completed on 23.07.2023, however the Corporate Debtor's premises were sealed by the Enforcement Directorate on account of alleged offences by the suspended board, which made certain documents crucial to the CIRP inaccessible to the Applicant. The Application with respect to the said extension was filed by the Applicant and was allowed by this Hon'ble Tribunal on 28.08.2023.

7. During the course of the CIRP of the Corporate Debtor, an Auditor was appointed by the Applicant (RP) to conduct the forensic audit of the Corporate Debtor to determine if any transactions in the nature of PUFE

had taken place prior to the commencement of the CIRP. As submitted, in the said forensic audit report, it was ascertained that certain preferential transactions were carried out by the suspended Board of Directors of the Corporate Debtor. In view of the same, the Applicant filed an application for the avoidance of the said transactions and to bring back the monies lost from the Corporate Debtor back to it under Regulation 35A of the IBBI Rules and Regulations 2016.

8. Further, the Resolution Plan submitted by Micro Capitals Private Limited was presented before the CoC for its approval as the said plan was the only Resolution Plan received by the Applicant. The said Resolution Plan was voted upon in the 7th CoC Meeting held on 17.10.2023 and was approved by 77.97% voting. Pursuant to the approval of the said Plan, a Letter of Intent was issued by the Applicant on 09.11.2023 in favour of the Successful Resolution Applicant (SRA), Micro Capitals Private Limited, requiring the SRA to pay an Earnest Money Deposit (EMD) of 5% of the total plan value.

9. The Salient Features of the Resolution Plan are as under:

A. <u>Brief Background of the Corporate debtor</u>

i. KSS Limited (KSSL), is engaged in the business of content distribution and exhibition of feature films and other activities through its subsidiaries viz., K Sera Sera Digital Cinema Ltd- handling the Digital Cinema Roll Out and K Sera Sera Miniplex Ltd- specializing in the Exhibition Business building Cinema Halls across India. The company was incorporated in 06th Sep, 1995 and its registered office is located in Maharashtra.

ii. The Corporate Insolvency Resolution Process ("CIRP") of KSS Limited has been initiated as per the provisions of the Insolvency and Bankruptcy Code ("IBC") under Section 7. The application was preferred before the Hon'ble National Company Law Tribunal, Mumbai Bench ("NCLT") and was admitted vide its order dated 24.01.2023 ("CIRP Order"). Pursuant to such order, Mr. Dharmendra Dhelariya, Insolvency Professional, was appointed as the Interim Resolution Professional (IRP).

B. Background of the Resolution Applicant

Registered Address	UNIT NO. 101A, 1ST FLOOR,PLOT NO.B-17, MORYA LANDMARK II, ANDHERI (WEST), MUMBAI - 400053, MAHARASHTRA
Business Address	101A, 1st Floor, Plot No B-17, Morya Landmark II, Andheri West, Mumbai - 400053, Maharashtra
Date of Incorporation	6 Sep, 1995
Type of Entity	Public Limited Indian Non-Government Company
Listing Status	Listed
Website	https://kserasera.com/
Email	cs@kserasera.com info@kserasera.com
Phone	+91-22-42088600 +91-22-40427600
CIN	L22100MH1995PLC092438
PAN	AAACG5103D
Paid Up Capital	Rs. 213.59 Crore
Authorized Capital	Rs. 75.00 Crore
Sum of Charges	Rs. 0.00 Crore
E-Filing Status	Active
CIRP Status	Active
Active Compliance	Active Compliant
Date of Last AGM	27 Sep, 2022

The Resolution Applicant is eligible to act as a Resolution Applicant of the Corporate Debtor and is not ineligible under section 29A of Insolvency and Bankruptcy Code and also satisfies the eligibility criteria as mentioned in clause (h) of sub-section (2) of section 25 of the Code.

10. Summary of payments under the Resolution Plan

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	N/A	N/A	N/A	N/A
		(b) Other than (a) above:	N/A	N/A	N/A	N/A
		(i) who did not vote in favour of the resolution Plan	N/A	N/A	N/A	N/A
		(ii) who voted in favour of the resolution plan	N/A	N/A	N/A	N/A
		Total[(a) + (b)]	N/A	N/A	N/A	N/A
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	319.36	308.58	Nil	Nil
		(b) Other than (a) above:	2038.34	2038.34	58.38	2.86%

		(i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	7212.90	7212.90	206.62	2.86%
		Total[(a) + (b)]	9570.60	9559.82	265.00	
3	Operational Creditors	(a) Related Party of Corporate Debtor	Nil	Nil	Nil	
		(b) Other than (a) above: (i)Government (ii)Workmen (iii)Employees (iv) other operational creditors (who supplied goods and services)	3374.85 Nil Nil 61.71	1059.45 60.56	0.95 0.05	0.09 0.09
		Total[(a) + (b)]	3436.56	1120.01	1.00	0.09
4	Other debts and dues	N/A	N/A	N/A	N/A	N/A
Grand Total			12807.16	10679.83	301.00	2.82

11. Source of funds

(i) The Resolution Applicant and its group companies has requisite resources to fund the amount proposed in this Resolution Plan. The

acquisition will be supported by an equity-debt mix deal. The equity will be subscribed by the Resolution Applicant and other persons/companies/SPV as proposed by the Resolution Applicant. The envisaged deal will be financed in 100% equity deal.

(ii) *Financial Projection;* Financial Projection for next 3 years are attached herewith.

(Rs. In Crores)

Particulars	**FY -1**	**FY – 2**	**FY-3**	**FY -4**	**FY-5**
Revenue /Sales	18.00	21.60	23.76	26.14	28.75
Operating Profit	4.85	5.97	6.72	7.71	8.25
Profit Before Tax	3.50	4.11	5.35	6.85	7.39

In order to operate the Corporate Debtor as a going concern, need base working capital of upto Rs 5.00 Crores (approx.) would be infused through Financing within 6 months and an additional amount of Rs 5.00 Crores within 12 months of the Approval of this Resolution Plan to ensure that operations of CD run efficiently. The decision to infuse funds will be taken according to the need at that time. Accordingly, the infusion can be increased or decreased as well. The additional funding will not affect rights and interest of financial creditors and also not deal with assets of corporate debtor till time debt financial creditor has been repaid.

12. Payments proposals of the various stakeholders under the Resolution Plan:

The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. lakh(

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	N/A	N/A	N/A	N/A
		(b) Other than (a) above:	N/A	N/A	N/A	N/A
		(i) who did not vote in favour of the resolution Plan	N/A	N/A	N/A	N/A
		(ii) who voted in favour of the resolution plan	N/A	N/A	N/A	N/A
		Total[(a) + (b)]	N/A	N/A	N/A	N/A
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	319.36	308.58	Nil	Nil
		(b) Other than (a) above:				

		(i) who did not vote in favour of the resolution Plan	2038.34	2038.34	58.38	2.86%
		(ii) who voted in favour of the resolution plan	7212.90	7212.90	206.62	2.86%
		Total[(a) + (b)]	9570.60	9559.82	265.00	
3	Operational Creditors	(a) Related Party of Corporate Debtor	Nil	Nil	Nil	
		(b) Other than (a) above:				
		(i)Government	3374.85	1059.45	0.95	0.09
		(ii)Workmen	Nil			
		(iii)Employees	Nil			
		(iv) other operational creditors (who supplied goods and services)	61.71	60.56	0.05	0.09
		Total[(a) + (b)]	3436.56	1120.01	1.00	0.09
4	Other debts and dues	N/A	N/A	N/A	N/A	N/A
Grand Total			12807.16	10679.83	301.00	2.82

*If there are sub-categories in a category, please add rows for each sub-category.

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

13.Financial Proposal of the Successful Resolution Applicant

A. CIRP Costs

i. As per the IBC, the CIRP costs are to be paid in priority over payments to be made to any other creditors and the CIRP costs shall, amongst other things, include the costs, fees and charges incurred by Resolution Professional, in running the operations of the Company as a going concern.

ii. The applicant has made a provision of Rs. 35,00,000/- against the CIRP costs. The CIRP cost will be paid on an actual basis. The Applicant therefore propose that CIRP costs is paid in full and in priority to any other creditor of the Company upon Resolution Plan becoming effective.

B. Proposal for Workmen / Employees

i. As per the Information Memorandum, the total employee and Workmen dues admitted by the Resolution Professional is NIL ("Admitted Employees and Workmen Dues). So the Resolution Applicant has proposed to pay the NIL amount to be paid to Employees and Workmen.

C. Proposal for Financial Creditors

Particulars	Admitted Financial Debt	Amount -Proposed to be Paid
Financial Creditors	955982050.50	2,65,00,000 Within 180 days

i. The Resolution Applicant proposes to distribute the amount proposed to secured financial creditors in the following order of priority: -

a. Dissenting Financial Creditors shall be paid amounts not less than the Liquidation value due to each dissenting financial creditors, in case the proposed amount is less than the liquidation value.

b. The Assenting financial Creditors shall be paid the remaining amount on a pro rata basis of claim value due to each such financial creditors.

ii. Payment Schedule / Terms of Payment to Financial Creditors :-

(Amt in Lacs)

Particular	Amount	Balance
Total Amount Proposed		265.00
Upfront within 180 Days from Approval by AA	265.00	--

D. Dissenting members of the COC

Liquidation value of the Company is not known to the Applicant. In terms of IBC, and under regulation made thereunder, the amount payable in respect of Financial Creditors who do not vote in favour of the Resolution Plan would be paid not less than the amount to be paid to such creditors in accordance with sub-section (1) of Section 53 in the event of liquidation of the Company. The dissenting members of CoC will be paid the proceeds as per the clause 4.3.3, within 30 days of the effective date. As per the Insolvency & Bankruptcy Code, 2016, the dissenting financial creditors should be paid in priority to the assenting financial creditors, but in this particular case, the total payment is to be done within 180 days, therefore the dissenting creditors will also be paid within 180 days of the approval of the Resolution Plan.

E. <u>Proposal for Operational Creditors</u>

i. As per the IM, Operational Creditor (excluding employees, Workmen) claims aggregating to approximately INR 26,01,26,566.53("Operational Creditor Debt) have been admitted for the purposes of CIRP by the Resolution Professional.

ii. As per the Code, the Operational Creditors are required to be paid the Liquidation Value accruing to such Operational Creditors. Based on our assessment, the Liquidation Value is likely to be even insufficient to satisfy the claims of the Financial Creditors in full. In that case, the Liquidation Value accruing to Operational Creditors (but not including Employees and Workmen Dues for the preceding 24 (twenty four) months) would be NIL. In terms of Applicable Law, the Operational Creditors (excluding employees and Workmen) are required to be paid the amounts aggregating to the Liquidation Value

accruing to them, i.e. NIL amounts, except in cases where the Operational Creditor is a secured Creditor.

iii. The Resolution Professional has informed the Resolution Applicant through revised IM, that BSE and NSE has charged penalties and fines amounting to Rs. 31,23,681.00 and Rs. 29,32,569.53 of respective departments. These are covered under statutory dues and should be waived off as per the scheme mentioned for Operational Creditors in this Plan. Further, RA seeks waiver for many past non compliance under various regulation/ clauses of SEBI (LODR) Regulations,2015, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, SEBI (Prohibition of Insider Trading) Regulations 2015, Website disclosures and various periodical submission of data/ returns/ forms under Listing Agreement and various other statute including Ministry of Corporate Affairs.

iv. Further, in the interest of the keeping the Company operational and as a going concern, the Resolution Applicants propose to pay ex-gratia amounts aggregating up to INR 1.00 Lakhs (Indian Rupees Five Lakh only) ("Operational Creditors Ex-Gratia Amount) to Operational Creditors (excluding employees and Workmen) towards settlement of Operational Creditor Debt and Governmental Dues, over a period of 30 days from the date of approval of Resolution Plan by the NCLT and such amounts shall be distributed amongst the relevant Operational Creditors (excluding employees and Workmen) in a manner and proportion determined by the Resolution Applicants. It is further clarified that Related Party Operational Creditors shall be paid NIL amounts. It is further also clarified that the terms of this Resolution Plan applicable to Operational Creditors shall be binding on the Governmental Authorities as well. Except for the abovementioned amounts payable to Operational Creditors

(excluding employees and Workmen), all other dues payable to Operational Creditors (excluding employees and Workmen) shall be written off in full and shall be, and be deemed to be, permanently extinguished, restructured, restated, converted, assigned, written-down or written-off, as the case may be on the NCLT Approval Date. The Operational Creditors Ex-Gratia Amount proposed to the Operational Creditors (excluding employees and Workmen) as set out in this sub-section, shall be paid within 30 days from the NCLT approval date.

F. Treatment of Other Creditors

As per the IM, Other Creditor claims aggregating to INR NIL ("Other Creditor Debt) have been admitted for the purposes of CIRP by the Resolution Professional therefore no provision for payment is made for this class of creditors.

G. Treatment of Securities and Contractual Comforts

Except as dealt with in this Resolution Plan, all margin money/ fixed deposit with lien provided by the Corporate Debtor or any Encumbrances of similar nature, or margin assurances, Encumbrances or liens that exist by operation of Applicable Law, along with any contractual comforts provided by the Corporate Debtor or on its behalf, in relation to claims that are permanently extinguished, restructured, restated, converted, assigned, written-down or written-off, as the case may be, by the NCLT order approving the Resolution Plan shall be deemed to be released immediately upon the NCLT Approval Date and shall revert to the Corporate Debtor.

H. Treatment of Contractual Arrangement's Liabilities

Without prejudice to anything set out in this Resolution Plan, all liabilities (statutory or otherwise) arising from any contractual arrangements entered into by the Corporate Debtor shall be deemed to be terminated and any claims or liabilities arising or having crystallised shall be deemed to be cancelled and written-off in full, and be, and be deemed to be, permanently extinguished, restructured, restated, converted, assigned, written-down or written off, as the case may be, on the NCLT Approval Date. Any liability relating to the Corporate Debtor, before the Insolvency Commencement Date, shall be permanently extinguished,

restructured, restated, converted, assigned, written down or written-off, as the case may be, and deemed to not exist.

I. Treatment of Existing Share Holders-

The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share)%(held before CIRP	Voting Share)%(held after CIRP
1	Equity of Promoter & Promoter Group	Nil	Nil	Nil	Nil
2	Equity Shares of Public Shareholding	2,13,58,75,070	15,78,947.00	100%	5%
3	Equity Shares to Resolution Applicant	Nil	3,00,00,000	Nil	95%

14. Implementation Schedule:

In view of Section 238 of the Code, the Resolution Applicants have assumed that the Code is a complete code in itself and the NCLT order approving a resolution plan will constitute a single window clearance for all actions required under a resolution plan. Accordingly, the NCLT order sanctioning this Resolution Plan will be final and binding on all stakeholders and third parties to the extent permitted under the Applicable Law.

The Applicant assumes that the Resolution Professional will take all necessary actions and execute all documents/agreement as may be required to maintain the Company as a going concern until the Applicant acquires control over the Company in the manner set out in this Resolution Plan.

Subject to the above, provided below is an indicative timeline of events for implementation of the Resolution Plan:

Step	Action	Timeline (in business days)

Step 1	Approval of the Resolution Plan by Adjudicating Authority	T
Step 2	Payment of CIRP costs	T+30 business days
Step 3	Capital reduction of equity share capital of the Company	T +60 business days
Step 4	Infuse of funds by ways of equity or convertible securities or subordinate convertible loans or any other appropriate means	T+60 days business days
Step 5	Upfront Payment to the Financial Creditors of the Company	T+180 business days
Step 6	Payment of Deferred Amount of Financial Creditors	As per Payment Terms as set out in Para 4.3
Step7	Payment to Other class of Creditors	T+30 days
Step 8	Receipt of release of corporate guarantee(NOC) upon payment of amount proposed in this plan.	T+ 180 Days + 45business days

*T means date of approvals of the Resolution Plan by the NCLT.

15. Earnest Money Deposit

The Resolution Professional after the approval of the Resolution Plan, issued the Letter of Intent on 9th November, 2023 to the successful Resolution Applicant (SRA) i.e. Micro Capitals Private Limited and asked it to pay an Earnest Money Deposit of 5% of the total plan value within seven days from the receipt of the said Letter of Intent.

Monitoring Committee

On or after approval of this Resolution Plan by NCLT and until the Plan Implementation Date, Monitoring Committee consists of One Representative from Consenting Financial Creditor / Resolution Applicant, one representative of dissenting Financial Creditor, and Resolution Professional to supervise the Implementation of Plan. All major business decisions impacting the interest of financial creditors shall be made by said committee. Examples of major decision include but not limited to, sale of assets, assuming of non-trade liabilities etc.

Monitoring Committee shall decide about remuneration payable to the Resolution Professional, the frequency of reporting and meetings to have effective implementation and supervision of Resolution Plan. It is proposed that Applicant will bear the cost of Monitoring Committee.

The monthly fees of the IP will be Rs. 1,00,000/- To act as chairman of the Monitoring Committee and the same will be borne by Resolution Applicant.

16. <u>The compliance of the Resolution Plan is as under:</u>

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance)Yes / No(
25)2()h(	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Resolution Applicant complies with the minimum eligibility criteria as approved by the CoC considering the complexity and scale of operation of business of the CD.	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?		Yes
Section 30)1(	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		Yes
Section 30)2(	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs?	 Para 4.1 on Page No. 21 Para 4.5	 Yes Yes

	(b) provides for the payment to the operational creditors?	on Page No. 26	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Para 4.4 on Page No. 24-25	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Para 3.7 on Page No. 18	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Para 3.7 on Page No. 18	Yes
	(f) contravenes any of the provisions of the law for the time being in force?]	Para 3.8 on Page No. 19	
Section 30)4(	Whether the Resolution Plan)a(is feasible and viable, according to the CoC?)b(has been approved by the CoC with 66% voting share?	According to COC, the Resolution Plan submitted by Resolution Applicant is feasible and based on the said considerat ion it has approved the Plan. It is approved by COC by 77.97% voting share of the total	Yes Yes

		Financial Creditors.	
Section 31)1(	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Resolution Plan covers all the provisions for its effective implementation of Resolution Plan in Para 3.7 on **Page No. 18**	Yes
Regulation38)1(	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Para 3.1 on Page No. 16	Yes
Regulation 38)1A(	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Para 3.3 on Page No. 16	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	Para 3.5 on Page No. 18 NA	Yes
Regulation 38)2(	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule?)b(for the management and control of the business of the corporate debtor during its term?)c(adequate means for supervising its implementation?	Para 2.4 on Page No. 14 Para 4.20 on Page No. 39 Para 3.7 on Page No. 18	Yes Yes Yes

38)3(	Whether the resolution plan demonstrates that –)a(it addresses the cause of default?)b(it is feasible and viable?)c(it has provisions for its effective implementation?)d(it has provisions for approvals required and the timeline for the same?)e(the resolution applicant has the capability to implement the resolution plan?	 Clause (a) of Para 3.4 on Page No. 17 Clause (b) of Para 3.4 on Page No. 17 Clause (c) of Para 3.4 on Page No. 17 Para 12(c) on Page No. 17 Clause 4.20 on Page No. 39	 Yes Yes Yes Yes Yes
39)2(	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Resolution Applicant provided performance security of Rs. 15,10,000/- (5% of offer value -302.00 Lacs)	Yes

II. Written Submissions of Respondent No. 1 and Respondent No. 2

1. As submitted, Respondent No. 1 is the Commissioner of Income tax, Mumbai and Respondent No. 2 is Principal Chief Commissioner of Customs TRC(Export), ACC. As submitted by the Respondents, the Resolution Professional (Applicant) has filed Interlocutory Application No. 4 (Plan) of 2024 in Company Petition (IB) 748 of 2022 under Section 30(6) of the IBC seeking approval of the Resolution Plan submitted by Micro Capitals Private Limited, which was approved by 77.97% of the Committee of Creditors in the 7th CoC meeting held on 17.10.2023. Further, as contended, the CoC consists of only 2 members, i.e., Micro Capitals Private Limited with 77.97% voting share and Axis Bank with 22.07% voting share, and out of the said 2 members, only the SRA (Micro capitals Private Limited) has voted in favour of the Resolution Plan.
2. As stated, Respondent No. 2 has submitted a claim of Rs. 23,15,39,790/- pursuant to the Order-in-Original dated 29.03.2016 passed by the Office of the Commissioner of Customs IV. While the Corporate Debtor has filed an appeal against the said Order before CESTAT bearing Appeal No. 87308/2019, no stay has been granted by the Hon'ble CESTAT.
3. As submitted, it is important to take a note of the peculiar facts of the present case, which are that Micro Capitals Private Limited, viz. the Prospective Resolution Applicant / Dominant CoC Member; is a unsecured Financial Creditor at whose instance CIRP was initiated against the Corporate Debtor for an outstanding debt of Rs.67,11,69,217/-. Further, the SRA holds majority (77.97%) of voting share in the CoC and submitted the only Resolution Plan for revival of the Corporate Debtor, moreover, has approved the Resolution Plan

submitted by itself, offering a total plan value of **Rs. 3,01,00,000/-** as the against the total claims of **Rs. 128,07,16,000/-** received by the Resolution Professional. Furthermore, the SRA has proposed a payment of **Rs. 2,65,00,000/-** towards the payment of Unsecured Financial Creditor as against a payment of **Rs. 1,00,000/-** towards the Operational Creditor against the total claim of **Rs.23,15,39,790/-**

4. As submitted by the Respondents, the Resolution Plan submitted by the SRA / Dominant Financial Creditor deserves to be rejected on the following grounds-

A. <u>GROUND 1: THE RESOLUTION PLAN IS IN DIRECT CONTRAVENTION OF SECTION 30 (2) AND SECTION 30 (4) OF THE IBC.</u>

i. As contended, to safeguard the interests of the Operational Creditor, the Parliament introduced the Insolvency and Bankruptcy Code (Amendment) Act, 2019 and amended Section 30(2)(b) of the Code, which provides for a "fair and equitable" distribution. According to the amended provision, the Operational Creditors shall be entitled to receive the higher value of the liquidation value of their claims as per Section 53 of the code or the amount they would receive if the resolution plan's proposed payment were distributed in accordance with Section 53 of the IBC. Further, reliance was placed on the judgment of the Hon'ble Supreme Court in the matter of Essar Steel, wherein it was held that the ultimate discretion of deciding the

distribution of funds is with the CoC. However, such a decision should show adequate consideration of the objectives of IBC which are the maximisation of the value of assets of the Corporate Debtor; and balancing the interest of all the stakeholders, including the minimum payment of liquidation value to the Operational Creditor.

ii. As alleged by the Respondents, in the present case, the Dominant CoC member, i.e., Micro Capitals Private Limited, is the very Successful Resolution Applicant, who has approved the Resolution Plan, submitted by itself and has allocated a sum of **Rs. 2,65,00,000/-** towards the payment of dues of the unsecured Financial Creditor and allocated only a sum of **Rs. 1,00,000/-** as against the total dues of Rs. 34,36,56,000/- of the Operational Creditor including the Government Dues. Further, the SRA holds majority of the voting shares viz. 77.97% in the CoC, while the other CoC member (Axis Bank) has dissented the Resolution Plan.

iii. As stated by the Respondents, the Supreme Court, by various judicial pronouncements, has held that the decision of the CoC must reflect that it has *"taken into account"* the objectives of the IBC of the maximization of the value of the assets of the corporate debtor and balancing the interests of all stakeholders (including that of the operational creditors). Further, the "limited" jurisdiction of the Adjudicating Authority, includes a

review of whether the CoC has taken into account such objectives and interests. However, in the present case, the Dominant Financial Creditor (SRA), is acting solely in its self-interest, thereby depriving the entire class of Operational Creditors of its legitimate right without sufficient deliberations on the feasibility and viability of the Plan and it will be highly prejudicial if the Resolution Plan is allowed which, as alleged, is patently unfair and lacks a sufficient basis, thus, going against the very objectives of the Code.

iv. As submitted, the utter disenfranchisement and disregard of the interest of the Operational Creditors is unjustifiable and directly violates the explanation that distribution in view of Section 30(2)(b) of the code should be "fair and equitable". Furthermore, reliance was placed on the judgment of the Hon'ble NCLAT in the matter of ***Shaji Purushothaman vs. S. Rajendra RP of M/s. Empee Distilleries Limited and Ors.*** and ***Punjab National Bank Vs. Bhushan Power & Steel Limited***, wherein it was expressly held that the Operational Creditors under the Resolution Plan must be paid in accordance with the amended Section 30(2) of the Code.

v. It was also stated that Section 30(4) of the Code obliges the CoC to assess the viability and feasibility of the Resolution Plan. However, as contended by the Respondents, none of the Minutes of the Meeting held

by the CoC, the feasibility and viability of the plan has been discussed.

B. <u>GROUND 2: THE RESOLUTION PROFESSIONAL FAILED TO CONSIDER THE FACT THAT THE REVENUE DEPARTMENT HAS PRIORITY OVER THE PAYMENT OF UNSECURED FINANCIAL CREDITORS.</u>

i. As submitted, Section 142A of the Customs Act, 1962 makes its explicitly clear that, the Customs Authority would hold the *'first charge'* in cases where any amount of duty, penalty, interest or any other sum is payable by an assessee or any other person under this Act save as otherwise provided in the Code. In the instant case, there are no secured creditors as both the creditors are unsecured Financial Creditors. As contended, Section 142A of the Customs Act, will come into play only in cases which are not governed by any other specific provisions of IBC. Therefore, as alleged, it is only where there is *no other special provision* in relation to treatment of the Operational Creditors, in the event when only unsecured Financial Creditors are a part of the 'asset distribution' of the CoC respect to any other type of charge, this sub-section is attracted. Since the Code has not enacted any specific provision in regard to treatment of the due of the Operational Creditors, especially the 'custom departments' which admittedly holds '1st Charge' as against the dues of the unsecured Financial Creditor, it is reasonable to infer that the treatment of the claims of the Government Department should be governed by Section 142A of the Customs Act as against the dues of the unsecured Financial Creditor.

ii. Furthermore, reliance was placed on the decision of the Hon'ble Apex Court in the matter of ***State Tax Officer v. Rainbow Paper Ltd. [2023 (9) SCC 545],*** wherein it was held that the Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of IBC. Thus, the "government dues" would rank at par with the debts owed to secured creditors. As contended, the analysis of Rainbow Papers will be applicable to the facts of the present case as the statutory provision creating "first charge" in favour of the relevant government or statutory authority viz. Section 142A of the Custom Act, 1962 is *pari materia* with the provision of Section 48 of the GVAT Act.

C. <u>GROUND 3: THE RESOLUTION PLAN FAILS TO MUSTER THE TEST OF "FEASIBILITY" & "VIABILITY" AND THE HON'BLE ADJUDICATING ATHORITY IS EMPOWERED TO EXERCISE ITS POWER OF JUDICIAL REVIEW.</u>

i. As contended by the Respondents, the SRA / the Dominant Financial Creditor has vehemently failed to muster the test of *feasibility & viability* of the Resolution Plan as none of the minutes of the COC Meeting show that the Resolution Plan has deliberated on the *'feasibility & viability'* of the Resolution Plan. Further, it is just the Dominant Financial Creditor who dominates the voting of the CoC and has acted solely in its self-interest, depriving the entire class of Operational Creditors of its legitimate rights without sufficient deliberation on the feasibility and viability of the said Resolution plan.

ii. As stated by the Respondent, the Hon'ble Supreme Court has upheld the constitutionality of the amendments to the IBC, which granted the CoC considerable powers to decide matters related to the distribution of funds among creditors under a resolution plan, but has also attempted to afford some protection to operational creditors by requiring the CoC to *'take into account'* the interests of such creditors when exercising its commercial wisdom. Further, the Hon'ble Adjudicating Authority is required to satisfy itself whether the approved resolution plan meets the requirements [as provided in Section 30(2) of the Code] and provides for means for its effective implementation.

iii. The Respondents placed reliance on judgment of the Hon'ble Supreme Court in the matter of ***K. Sashidhar v. Indian Overseas Bank and Ors [2019 12 SCC 150], wherein it was*** conclusively held that the legislature, while enacting the Code, held that the amendment made to Section 30 (4) of the Code in June, 2018 [which introduced the requirement for the CoC to consider the *feasibility and viability* of a resolution plan before approval] was a not only a mere restatement of the factors that the CoC was required to consider in any event, whilst considering a resolution plan but also granted limited judicial review that can be exercised by the Hon'ble Adjudicating Authority is to see that the CoC has taken into account that the Corporate Debtor needs to continue as a going concern during the insolvency resolution process; that it needs to maximize the value of the assets of the Corporate Debtor; and that the interests of all stakeholders including operational creditors has been taken care of.

iv. As stated, in the present case, the Dominant Financial Creditor, has allocated a sum of **Rs. 2,65,00,000/-** towards the payment of dues of the unsecured Financial Creditor and allocated only a sum of **Rs. 1,00,000/-** as against the total dues of Rs. 34,36,56,000/- of the Operational Creditors including the Government Dues, evidencing that the same lacks the requisite feasibility and viability.

5. Thus, in light of the abovesaid submissions, the Respondents prayed that Adjudicating Authority exercises its limited judicial review and does not approve the Resolution Plan submitted by the Prospective Resolution Applicant / Dominant Financial Creditor as the attempt of the Prospective Resolution Applicant is only to buy out the Corporate Debtor without demonstrating how the self-proclaimed *maximization of value of assets" of the Corporate Debtor and to "balance the interest of all the stakeholders" are taken care of.*

III. Written Submissions of the Applicant

1. As stated by the Applicant, in its written submissions, the Respondents' objections are based on a misinterpretation of the law and a misunderstanding of the facts surrounding the Plan. In regard of "GROUND 1", as stated by the Applicant, The Respondents argue that the Plan violates Section 30(2)(b) of the IBC by not being fair and equitable to all creditors, especially operational creditors. However, this contention disregards the well-established principle that the CoC possesses the commercial wisdom to determine the distribution of amounts among different creditor classes. The Supreme Court in Committee of Creditors of ***Essar Steel India Limited vs. Satish Kumar Gupta & Ors.[Civil Appeal No. 8766-67 of2019]*** explicitly stated that the Adjudicating Authority's

role is confined to judicial review within the boundaries of Section 30(2) and cannot supplant its judgment on commercial matters. The CoC, exercising its commercial wisdom, has thoroughly assessed the Plan and its viability through extensive discussions and deliberations. The minutes of the CoC meetings substantiate that all pertinent factors, such as financial projections, operational strategies, and industry analysis, were taken into account. Furthermore, the Respondents' reliance on the IBC Amendment Act, 2019, is flawed. While the amendment mandates the CoC to consider the liquidation value of operational creditors' debts, it does not necessitate prioritizing operational creditors over unsecured financial creditors. The ultimate discretion lies with the CoC, as long as the distribution is fair and equitable.

2. The Applicant stated that the Plan does not contravene Section 30(2)(b) of the IBC as the operational creditors, including the government dues, will receive an amount that is not less than what they would have received in liquidation. The allocation of a higher amount to the unsecured financial creditor is a commercial decision taken by the CoC based on various factors, including the nature of the debt, the potential for future business relationships, and the overall viability of the Plan. Further, as stated, The Plan was prepared by a professional agency with expertise in the relevant industry and has undergone due diligence and in view of the same, the Applicant denied that the PRA, holding majority in the CoC has acted with malicious intent to benefit itself at the expense if the Operational Creditors.
3. As submitted, the Applicant denied the Respondents' contention that the Plan does not comply with the waterfall mechanism under Section 53 of the IBC, particularly regarding dissenting financial creditors by stating that the Plan complies with the waterfall mechanism. The dissenting financial

creditor, Axis Bank, will receive an amount that is not less than what it would have received in liquidation. Furthermore, as stated by the Applicant, the Respondents' contention that the Plan lacks feasibility and viability is unfounded as The CoC has diligently evaluated the Plan's feasibility and viability through detailed discussions and deliberations, as evidenced by the minutes of the CoC meetings. Moreover, the PRA is willing to infuse significant funds to revive the Corporate Debtor.

4. The Applicant, in regard of "GROUND 2" stated that the Respondents' reliance on the State Tax Officer v. Rainbow Papers Ltd. to claim that government dues should be treated as secured creditor dues and have priority over unsecured financial creditors, is misplaced as the said judgment dealt a specific provision under the GVAT Act, which created a first charge in favor of the government. The case is not applicable in the present scenario as the relevant statutes governing the Respondent's claims, namely the Customs Act, 1962, and the Income Tax Act, 1961, do not contain similar provisions creating a first charge. Further, it was also stated that the Respondents' interpretation of Section 142A of the Customs Act, which deals with the concept of "first charge," is flawed as merely states that the liability under the Customs Act shall be a first charge on the assets of the assessee, subject to the provisions of other laws, including the IBC and IBC overrides any conflicting provisions in other laws. Furthermore, it was also submitted that The Respondents' claim that government dues should be treated as secured creditor dues is not supported by the law as Government dues, in absence of any security intrest, cannot be considered as secured creditor dues.
5. The Applicant, in regard to "GROUND 3" submitted that The Respondents' contention that the Plan lacks feasibility and viability is

flawed as The CoC has diligently assessed the Plan's feasibility and viability through extensive discussions and deliberations, as evidenced by the minutes of the CoC meeting the financial projections, operational plans, and industry analysis provided in the Plan have been thoroughly scrutinized by the CoC. The Plan's viability is further bolstered by the Prospective Resolution Applicant's commitment to infuse substantial funds to revive the Corporate Debtor. The Applicant placed reliance on the judgment of the Hon'ble Supreme Court in ***K. Sashidhar v. Indian Overseas Bank and Ors.*** held that the Adjudicating Authority's power of judicial review on the feasibility and viability of the Plan is limited. The court emphasized that the Adjudicating Authority cannot re-appreciate the commercial wisdom of the CoC unless there are clear and cogent reasons to believe that the Plan is manifestly unviable.

6. Therefore, in light of the abovesaid submissions, the Applicant prayed before this Hon'ble Tribunal to reject the Respondents' objections and approve the Resolution Plan.

IV. FINDINGS

1. On the strength of the documents available on record and arguments advanced by the Ld. Counsel for the parties, it is clear that the present Application has been filed by the Applicant seeking the approval of the Resolution Plan submitted by Micro Capitals Private Limited, which was approved by 77.97% votes by the Committee of Creditors in the 7th CoC meeting held on 17.10.2023. However, it is pertinent to note that the objections to the Plan have been preferred by Respondent No. 1, i.e., the Commissioner of Income tax, Mumbai (Claim of approximately Rs. 28

Lakhs) and Respondent No. 2, i.e., Principal Chief Commissioner of Customs TRC(Export), ACC (Claim of approximately Rs. 23 Crores). The objections raised by the Respondents are as under-

a) The Resolution Plan is in direct contravention of **Section 30 (2) (b) (Explanation I)** of the Code, as the Resolution Plan fails to justify that the distribution as proposed in the Resolution Plan is fair and equitable to all the creditors. The Resolution Plan provides for a payment of **Rs. 2,65,00,000/-** towards the payment of Unsecured Financial Creditor as against a payment of Rs. 1,00,000/- towards the Operational Creditor against the total claim of Rs.23,15,39,790/-. It is noteworthy that, out of the 2 CoC Members only 1 CoC Member, who is also the PRA / SRA has voted in favour of (his own) Resolution Plan and allocated sums of Rs. 2,65,00,000/- towards the payment of Unsecured Financial Creditors.

b) The Resolution Professional **failed to acknowledge the malicious intent of the dominant Unsecured Financial Creditor / SRA** as the amounts that the SRA proposes to pump for revival of the Corporate Debtor, are indirectly received by the dominant Unsecured Financial Creditor / SRA through the payment plan as proposed in the Resolution Plan.

c) The Resolution Plan is in **direct contravention of Section 30 (2) (b)** as the Resolution Plan fails to justify that the payment to a dissenting financial creditor is not less than the amount to be paid in case of liquidation of the corporate debtor.

d) The Resolution Plan is in direct contravention of **Section 30 (4)** of the Code as the Resolution Plan fails to consider the feasibility and viability of the Resolution Plan. In fact, as contended, none of the

minutes of the CoC minutes record the deliberations of the CoC on the feasibility and viability aspect of the Resolution Plan. Further, the SRA is the dominant and the only member who has approved the Resolution Plan, with his majority voting share.

e) The Resolution Plan **does not make any provisioning for contingent liabilities** of the disputed claim. (this objection is being dealt with **Objection g**)

f) The Resolution Plan fails to demonstrate that, the Resolution Plan has "taken into account" the objectives of the IBC of the maximization of the value of the assets of the Corporate Debtor and that it balances the interests of all stakeholders.

g) The Resolution Professional failed to consider the fact that, the Revenue Department is a 'secured creditor' in terms of the Supreme Court Judgment passed in the matter of ***State Tax Officer v. Rainbow Papers Ltd.*** which was re-affirmed by the Hon'ble Supreme Court in ***Sanjay Kumar Agarwal v. State Tax Officer & Anr***. while dismissing five review petitions preferred against the State Tax Officer v. Rainbow Papers Ltd and the plan also fails to recognise the ruling of the Hon'ble Supreme Court in the matter of ***State Tax Officer v. Rainbow Papers Ltd.,*** wherein the Hon'ble Supreme Court has emphasized that statutory dues owed to the government or governmental authorities cannot be overlooked in a resolution plan. As highlighted, that the creditors, including financial institutions, should not prioritize their dues over statutory obligations to any government or governmental authority.

2. In light of the aforementioned objections raised by the Respondents, this Bench deems it appropriate to consider and examine the said objections as

adjudication upon the same is integral to the approval of the present Resolution Plan submitted by the SRA. ***Objection a*** *is that the present Resolution Plan has failed to demonstrate that the distribution as proposed in the Resolution Plan is* ***fair and equitable*** *to all the creditors and is in violation of* ***Section 30 (2) (b) (Explanation I)*** *of the Code.* In order to delve on the merits of the present objection, we must take notice of the provisions laid down in Section 30(2) the Insolvency and Bankruptcy Code, 2016, which is as under-

> ***"****(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 [2][payment] of other debts of the corporate debtor;*
>
> *[3][(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 the 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.

3. Thus, **Section 30(2), Explanation 1**, clearly states that the distribution of payment to the creditors of the Corporate Debtor should be **fair and equitable.** Upon perusal of the documents available on record, it is clear that the SRA, i.e., Micro Capitals Private Limited, is also the Dominant Financial Creditor with a total of 77.97% voting share in the CoC. The Resolution Plan submitted by Micro Capitals Private Limited (SRA) was approved with 77.97% voting share by the CoC at the 7th CoC Meeting, held on 17.10.2023. However, it deserves to be taken note of that the Resolution Plan was approved only by Micro Capitals Private Limited as it is the Dominant Financial Creditor as well as the SRA and the approval of the said plan was dissented by Axis Bank Limited, who is the other (non- dominant) member of CoC holding only 22% voting share in the CoC. The plan proposes a total resolution value of Rs. 3,01,00,000/- for the revival of the Corporate Debtor against the Liquidation Value of Rs. 2.52 Crores and the Fair Value of Rs. 3.21 Crores. Under the proposed distribution mechanism, an amount of Rs. 2,65,00,000/- has been allocated towards the claims of Unsecured Financial Creditors (primarily the SRA itself), while Rs. 1,00,000/- has been earmarked for settlement of Operational Creditors' claims, and the balance amount of Rs. 35,00,000/- is designated for CIRP costs. However, the distribution mechanism as proposed by the SRA is in accordance with the ruling of the Hon'ble NCLAT in the matter of ***HDFC Bank Ltd. Vs. Pratim Bayal (RP) and***

Ors. [CA(AT)(I)-1472/2023-NCLAT], wherein it was held that as per Section 30(4) of the Code, the CoC has the jurisdiction to decide on the distribution of the amounts either based on the vote share of the Financial Creditors or as per their security interest. In the present case, the aforesaid distribution is based on voting share percentage of the Financial Creditors. Thus, ***objection a*** does not hold merit.

4. Furthermore, ***objection b*** *raised by the Respondents is that the malicious intent of the dominant Unsecured Financial Creditor / SRA is apparent as the amounts that the dominant Unsecured Financial Creditor / SRA proposes to pump for revival of the Corporate Debtor, are indirectly received by the SRA itself in the present Plan.* In order to deal with this objection, we must take note of the ***"Infusion of Funds by Applicant"*** given in **Clause 4.20.4 (b)** of the Resolution Plan, which is as under-

(b) Infusion of Fund by Applicant

(i) To enable the implementation of the Resolution Plan, Applicant may incorporate / use a Special Purpose Vehicle ("SPV"). The SPV shall be funded by way of equity infusion by Applicant or its Promoters/Relatives/ Associates/ Investors ("Subscribers") and debt raised at the SPV/ Applicant Level.

(ii) Simultaneously, with the Capital Reduction, the Applicant will make necessary subscription for allotment of 3,00,00,000 (Three Crores) equity shares of Rs. 1 each at par aggregating to Rs. 3,00,00,000 (Rupees Three Crores only) in order to enable the Company to make necessary allotment of equity shares to the Subscribers.

(iii) It is clarified that the approval of NCLT shall constitute adequate approval for issuance and allotment of equity shares by the Company to the Subscribers in accordance with Section 42 and Section 62(1) (c) of CA 2013 and LODR Regulations, if applicable and accordingly, no approval or consent shall be necessary under any Applicable Law for making such allotment other than from the Board of Directors of the Company constituted post approval of the Resolution Plan.

On perusal of the aforementioned ***"Infusion of Funds by Applicant"***, it has come to our notice that the Resolution Applicant has ambiguously used

the term "may" with respect to the establishment of SPV, indicating that there is not much clarity with respect to the same. In addition, the Applicant has outlined a **capital reduction** process as part of the restructuring of the Corporate Debtor. This reduction of capital will be coupled with the Applicant's subscription to Rs. **3,00,00,000 (Three Crore)** equity shares of the company, each valued at Rs. 1 at par, aggregating to **Rs. 3 Crores**. The primary purpose of this capital reduction and subscription is to enable the company to raise necessary funds and issue equity shares to the identified Subscribers, contributing to the revival and restructuring process. However, from the perusal of the above, it is evident that, in fact, there is no infusion of funds by the SRA for the resolution of the Corporate Debtor. Thus, the amount proposed in the Resolution Plan is, in effect, not being used for the resolution of the Corporate Debtor but is being paid to the SRA, towards discharge of its liabilities and the proposed SPV/equity are out of the purview of the Resolution Plan. Hence, in effect there is no amount of money which is being pumped in for the resolution of the Corporate Debtor. The Adjudicating Authority is conscious of the fact that the proposed infusion of funds falls squarely within the domain of the commercial wisdom of CoC. However, in the peculiar facts and circumstances of the present case where the CoC is constituted of effectively none other than the SRA itself, who in exercise of *commercial wisdom* has approved his own plan. Therefore, such a CoC is merely an eyewash and is exercising no commercial wisdom, except protecting its own interest. The Court cannot afford to not take notice of these glaring facts, which on the face of it may appear legally sustainable but, in fact, are not inconsonance with the objects and purpose of the Code where the sole consideration is the resolution of the Corporate Debtor by

maximization of the value of the assets of the Corporate Debtor. Hence, this ***objection b***, as raised by the Objectors, holds merit.

5. ***Objection c*** *of the Respondents is that the Plan submitted by the SRA fails to justify that the payment to a dissenting financial creditor is not less than the amount to be paid in case of liquidation of the corporate debtor and thus, is in violation of* ***Section 30 (2) (b)*** *of the Code.* To adjudicate upon this, we must take notice of **Clause 4.4** of the Resolution Plan **(ANNEXURE- 10 of the present IA**) submitted by the SRA which deals with the financial plan with respect to the ***Dissenting members of the CoC.*** Clause 4.4 explicitly states that ***"The dissenting members of CoC will be paid the proceeds as per the clause 4.3.3, within 30 days of the effective date."*** **Clause 4.3.3** deals with the proposal for payment of the Financial Creditors, which is as under-

Particular	Admitted Financial Debt	Amount Proposed to be paid
Financial Creditors	955982050.50	2,65,00,000 Within 180 days

Furthermore, **Clause 4.3.3 (ii)** provides for ***Payment Schedule / Terms of Payment to Financial Creditors,*** which is as follows-

(Amount in Lacs)

Particulars	**Amount**	**Balance**
Total Amount Proposed		265.00
Upfront within 180 Days from approval of AA	256.00	--

Thus, on examination of the aforementioned **Clause 4.3.3** it has come to light that the SRA (Micro Capitals Private Limited) has failed to provide firstly, a detailed bifurcation with respect to the amount which is to be paid to the dissenting Financial Creditor, Axis Bank Limited, of the Corporate Debtor and secondly, there is no provision for the payment of dissenting Financial Creditor, on priority. This material omission with respect to the payment schedule makes it impossible to determine the amount that will be paid to the dissenting and the assenting financial creditor, creating substantial uncertainty in 3 critical aspects-

- The precise payment allocated to the Dissenting Financial Creditor.
- The specific amount designated for the Assenting Financial Creditor.
- The overall breakdown and structure of the abovesaid payments.

6. In addition to the aforementioned, it is imperative to examine whether the Resolution Plan submitted by the SRA is not compliant with **Regulation 38 (1)(b)** of IBBI Regulations, 2016. The aforementioned Regulation 38(1)(b) states that *"the amount payable under the resolution plan- to the financial creditors, who have a right to vote under sub- section (2) of 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan."* On examination of Clause 4.4 of the Resolution Plan which deals with the payment to Dissenting members of the CoC, the SRA has proposed that *"As per the Insolvency & Bankruptcy Code, 2016, the dissenting financial creditors should be paid in priority to the assenting financial creditors, but in this particular case, the total payment is to be done within 180 days, therefore the dissenting creditors will also be paid within 180 days of the approval of the Resolution Plan."* Furthermore, we deem it appropriate to

appreciate the indicative Timeline for implementation of Resolution Plan provided in **Clause 2.4** of the said Plan, the same is as under-

Step	Action	Timeline (in business days)
Step 1	Approval of the Resolution Plan by Adjudicating Authority	T
Step 2	Payment of CIRP costs	T+30 business days
Step 3	Capital reduction of equity share capital of the Company	T +60 business days
Step 4	Infuse of funds by ways of equity or convertible securities or subordinate convertible loans or any other appropriate means	T+60 days business days
Step 5	Upfront Payment to the Financial Creditors of the Company	T+180 business days
Step 6	Payment of Deferred Amount of Financial Creditors	As per Payment Terms as set out in Para 4.3
Step7	Payment to Other class of Creditors	T+30 days
Step 8	Receipt of release of corporate guarantee(NOC) upon payment of amount proposed in this plan.	T+ 180 Days + 45business days

Thus, it stands clear for the perusal of the aforementioned table that the SRA proposed *"Upfront Payment to the Financial Creditors of the Company"* in **180 days** from the approval of the said Plan. However, there is no separate provision with respect to the payment of the Dissenting Financial Creditors of the Corporate Debtor to be made in priority to the Assenting Financial Creditors. Thus, in light of the aforementioned, this Bench is of the judicious opinion that the SRA has failed to comply with the provision laid down in Regulation 38(1)(b) of the IBBI Regulations, 2016. Therefore, the objection raised by the Respondents that the Resolution Plan submitted by the SRA is in direct contravention of **Section 30 (2) (b)** of the IBC, 2016 and **Regulation 38(1)(b)** of the IBBI Regulations holds merit.

7. Further, ***objection d*** *is that The Resolution Plan is in direct contravention of* ***Section 30 (4)*** *of the Code as the Resolution Plan fails to consider the feasibility and viability of the Resolution Plan. In fact, none of the minutes of the CoC minutes record the deliberations of the CoC on the feasibility and viability of the Resolution Plan.* In order to deal with this objection, it is pertinent to take note of the Provisions laid down in **Section 30(4)** of the IBC, 2016, which is as under-

> ***"Section 30***
>
> ***(4)*** *The committee of creditors may approve a resolution plan by a vote of not less than [sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, [7][the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board:"*

8. Furthermore, while considering the Feasibility and Viability of a Resolution Plan, we must also appreciate **Regulation 38(3)(b)** of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, which are as under-

> *"[(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.]]"

9. In light of the aforementioned provision, we deem it appropriate to take notice of the fact that Micro Capitals Private Limited (SRA), in its proposed resolution plan, has elaborated on the "feasibility and viability" of the Resolution Plan in **Clause 3.4 (b)** of the said plan. The SRA has proposed the following under the heading **"Feasibility and viability of the Resolution plan (38(3)(b))"**, which is as under-

(b) **Feasibility and viability of the Resolution plan (38(3)(b)):**

The plan submitted by the Resolution applicant is with the objective to revive the Corporate Debtor and to maximize the value of assets. The Resolution Applicant is confident that the Corporate Debtor can be turned around and be a viable unit. The feasibility of revival and resolution of the Corporate Debtor is on account of the large experience of the Resolution Applicant to invest in distressed companies and then manage them professionally. The Applicants projected revenue is as under:-

(Amt in Crore)

Particulars	FY -1	FY – 2	FY-3	FY -4	FY-5
Revenue /Sales	18.00	21.60	23.76	26.14	28.75
Operating Profit	4.85	5.97	6.72	7.71	8.25
Profit Before Tax	3.50	4.11	5.35	6.85	7.39

On perusal of the aforementioned clause, it becomes evident that the SRA, with respect to the feasibility and viability of the Resolution Plan, has expressly stated that *"The Resolution Applicant is confident that the Corporate Debtor can be turned around and be a viable unit."* and "*The feasibility of revival and resolution of the Corporate Debtor is on account of the large experience of the Resolution Applicant to invest in distressed companies and then manage them professionally.".* Upon critical examination of the provided statements regarding feasibility and viability,

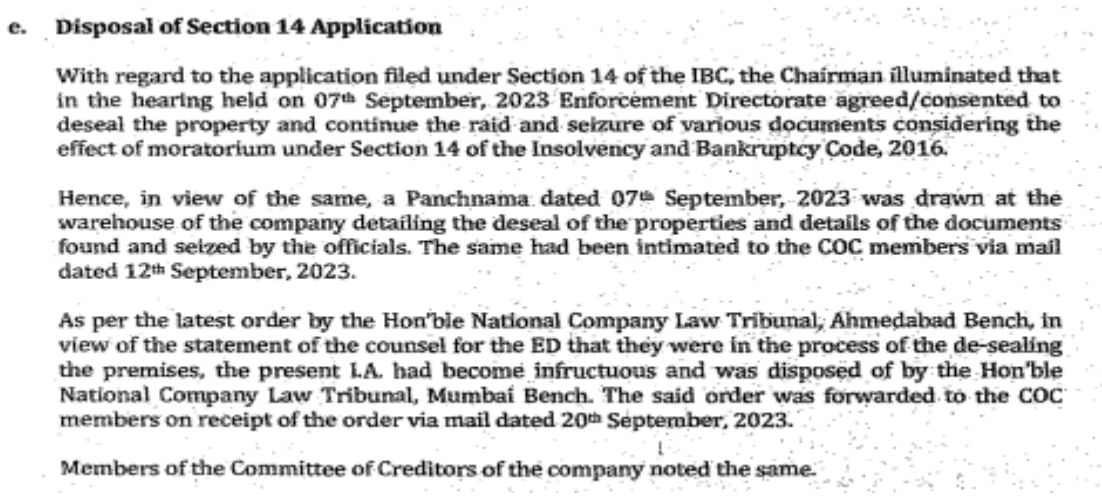
it is pertinent to take notice of the fact that the Resolution Applicant's assertions fundamentally lack substantive details and concrete implementation strategies. While the Resolution Applicant expresses confidence in their ability to revitalize the Corporate Debtor and cites its experience with distressed companies, these declarations remain purely aspirational in nature, unsupported by specific operational framework. The mere assertion of confidence and reference to past experience, without accompanying detailed operational restructuring plan or concrete and well-reasoned financial projections, fails to justify the "feasibility and viability" of the Resolution Plan submitted by the SRA. The Resolution Applicant has solely relied on its prior experiences as an NBFC without demonstrating its practical application to the Corporate Debtor's specific circumstances, thus, the same raises substantial doubts about the plan's sustainability. Furthermore, the SRA has failed to establish a clear nexus between its (SRA's) claimed expertise and the specific challenges faced by the Corporate Debtor. Furthermore, the Adjudicating Authority is conscious of its limited power of judicial review in relation to a plan approved by the majority of the CoC. However, in the present case, the SRA is also a Financial Creditor of the Corporate Debtor, holding majority of the Voting Share in the CoC. The SRA has itself submitted and approved the Resolution Plan orchestrated by itself, thus, this raises notable concerns about the Feasibility and Viability of the Resolution Plan and also the Commercial Wisdom having been exercised by the CoC, considering the fact that the SRA is virtually a sole CoC member, being an NBFC is providing for the resolution of a company engaged in the business of content distribution and exhibition of feature films, evidencing

that the SRA has no specific expertise in the line of business of the Corporate Debtor.

10. Moreover, **Regulation 39(3)(b)** makes it mandatory for the CoC to *"record its deliberations on the feasibility and viability of each resolution plan".* However, on through examination of the Minutes of the 7th CoC Meeting held on 17.10.2023, wherein the Resolution Plan submitted by the SRA was approved by the CoC with 77.97% votes, it has come to light that the CoC has nowhere, in the said meeting, recorded its deliberations with respect to the feasibility and viability of the plan submitted by the SRA. Thus, the plan approved by the CoC is in clear violation of Regulation 39(3)(b) of IBBI Regulations, 2016. Further, at this stage, it is also pertinent to note that the SRA, i.e., Micro Capitals Private Limited, is virtually a sole member of the CoC as it holds a dominant position in the CoC with a 77.97% voting share. However, the approval of the said plan was dissented by Axis Bank, which holds only 22% voting share in the CoC making it a mute spectator in the CoC. Therefore, the fact that the SRA is both the architect and primary approver of the Resolution Plan – raises substantial concerns about the objectivity of the approval process and this, viewed in conjunction with the Plan's inability to demonstrate concrete feasibility and viability measures, is enough to evidence that the current plan does not satisfy the provision given in Regulation 38(3)(b). Therefore***, objection d***, as raised by the Respondents hold merit as the Plan proposed by the SRA is, in fact, in direct contravention of Section 30(4) of the Code and further, none of the minutes of the CoC minutes placed on record demonstrates the deliberations of the CoC on the feasibility and viability of the Resolution Plan, in violation of Regulation 39(3)(b) of IBBI Regulations, 2016.

11. ***Objection e*** *of the Respondents is that the Resolution Plan does not make any provisioning for contingent liabilities of the disputed claim.* **It is pertinent to note that this Objection is being dealt with Objection g.**

12. ***Objection f****, as contended by the Respondents, is that the Resolution Plan submitted by the SRA fails to demonstrate that it has "taken into account" the objectives of the IBC of the maximization of the value of the assets of the Corporate Debtor and balances the interests of all stakeholders.* It is pertinent to note that a critical examination of the Minutes of the 7th CoC Meeting held on 17.10.2023, reveals a serious omission in the Resolution Plan. It has come to light that there exists property/properties of the Corporate Debtor which was apparently sealed by the Enforcement Directorate. The same can be substantiated by Item 5 (e) recorded in the said Meeting, which is as under-



e. **Disposal of Section 14 Application**

With regard to the application filed under Section 14 of the IBC, the Chairman illuminated that in the hearing held on 07th September, 2023 Enforcement Directorate agreed/consented to deseal the property and continue the raid and seizure of various documents considering the effect of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016.

Hence, in view of the same, a Panchnama dated 07th September, 2023 was drawn at the warehouse of the company detailing the deseal of the properties and details of the documents found and seized by the officials. The same had been intimated to the COC members via mail dated 12th September, 2023.

As per the latest order by the Hon'ble National Company Law Tribunal, Ahmedabad Bench, in view of the statement of the counsel for the ED that they were in the process of the de-sealing the premises, the present I.A. had become infructuous and was disposed of by the Hon'ble National Company Law Tribunal, Mumbai Bench. The said order was forwarded to the COC members on receipt of the order via mail dated 20th September, 2023.

Members of the Committee of Creditors of the company noted the same.

Thus, in view of the aforementioned Item 5(e), it unequivocally stands established that there is, in fact, a property/properties under the name of the Corporate Debtor which was/were sealed by the ED. While the ED subsequently granted consent for de-sealing this property, however, it is pertinent to note that there is no mention of such properties/property in the plan submitted by the SRA. The Resolution Plan submitted by Micro

Capitals Private Limited provided no way of dealing with the disposal/distribution of the aforementioned assets of the Corporate Debtor. The RP, in the present case, has miserably failed to protect the assets of the Corporate Debtor and also has failed to take any steps towards maximization of the value of the assets. The SRA's failure to mention the details of the property and treatment, disposal, or distribution of the said property of the Corporate Debtor constitutes a material deficiency in the Plan. Such an oversight cannot be overlooked, as it directly impacts the interests of all stakeholders and potentially undermines the entire resolution process, to the extent of going against the objective of the Code, that is, the *maximization of the value of assets* of the Corporate Debtor. The aforementioned fact of not taking into account the property / properties of the Corporate Debtor has caused immense prejudice to the interest of the Financial Creditors as the RP has miserably failed to collate all the assets of the Corporate Debtor and has not taken any steps towards maximization of the assets of the Corporate Debtor, and the same cannot be overlooked by this Tribunal. Such an omission on part of the RP is not detrimental to the interest of the Financial Creditors but has caused immense prejudice to the interest of all the stakeholders.

13. ***Objection g****, as raised by the Respondents, is that the Resolution Professional failed to consider that the Revenue Department is a 'secured creditor' in terms of the Supreme Court Judgment passed in the matter of* ***State Tax Officer v. Rainbow Papers Ltd.*** *which was re-affirmed by the Hon'ble Supreme Court in* ***Sanjay Kumar Agarwal v. State Tax Officer & Anr****.¸while dismissing five review petitions preferred against the State Tax Officer v. Rainbow Papers Ltd. Further, as contended, the Plan also fails to recognise the ruling of the Hon'ble Supreme Court in the matter*

of ***State Tax Officer v. Rainbow Papers Ltd.,*** *wherein the Hon'ble Supreme Court has emphasized that statutory dues owed to the government or governmental authorities cannot be overlooked in a resolution plan.* In order to appreciate the merits of this issue, we must appreciate the decision of the Hon'ble Supreme Court in the matter of ***State Tax Officer v. Rainbow Papers Ltd,*** wherein it was held as under-

> *"53. In other words, if a company is unable to pay its debts, which should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, uniform proportional reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in Section 53 IBC*
>
> *54. In our considered view, the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues."*

Furthermore, it is imperative to examine Section 142A of the Customs Act, 1962, vis-a-vis with Section 48 of GVAT Act. Section 142A of the Customs Act is as under-

> *142A. Liability under Act to be first charge.— Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any other person under this Act, shall, save as otherwise provided in section*

529A of the Companies Act, 1956 (1 of 1956), the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and [the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002) and the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

Further, Section 48 of GVAT Act is as under-

"48. Tax to be first charge on property.

- *Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person or account of tax, interest or penalty for which he is liable to pay to the Government shall be a first change on the property of such dealer, or as the case may be, such person."*

Thus, in view of the aforementioned and the Supreme Court's judgment, it stands established that the analysis of *Rainbow Papers* will be applicable to the facts of the present case as well, as the statutory provision creating "first charge" in favour of the relevant government or statutory authority viz. Section 142A of the Custom Act, 1962 is *pari materia* with the provision of Section 48 of the GVAT Act. Therefore, the statutory dues owed to government authorities deserve to be treated equally with other secured creditors as per Section 53 of the IBC, 2016. Therefore, in view of the above the objection raised by the Respondent holds merit. In context of

Objection e, on perusal of the documents available on record, it deserves to be taken note of that RP has failed to take notice of the fact of pendency of the Appeal before the Ld. CESTAT regarding the claim raised by the Customs Department. the Plan does not contain any contingency provision of disputed claims as the RP has failed to take notice of the same.

14. Apart from the grounds of objection raised by the Respondent, this Bench, after thorough perusal of the documents available on record, has noted that there is a glaring inconsistency in the Form H (**Annexure- 11**) submitted by the RP. Under Heading *"9. The Compliance of the Resolution Plan is as under:"*, With respect to the compliance of Regulation 38(1B), the RP has stated as follows-

Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	Para 3.5 on Page No. 18 NA	Yes

It stands clear from the perusal of the aforementioned that the RP has evidently marked a *"Yes"* to *"Whether the Resolution Applicant or any of its related parties has failed to implement or contribute to the failure of the implementation of any resolution plan approved under the Code."* Therefore, this Bench takes due notice of the glaring inconsistency on part of the RP of the Corporate Debtor.

15. Furthermore, it is pertinent to note that there exists a significant discrepancy with respect to the total plan value of the resolution plan submitted by the SRA. On examination of the Resolution Plan, it has been observed that on page 182 of the present Application, the SRA has expressly stated **"The total Plan value envisaged by the Resolution Applicant is of Rs. 2,65,00,000 (Rupees Two Crores Sixty-Five lakh**

only).” However, the same stands inconsistent to the pleaded case in the instant Application. The Applicant in the present Application has submitted and pleaded that the **Total Plan Outlay** is Rs. 3.01 Crores and the same is evident from the perusal of the present Application. Point 16 of the present IA deals with *“salient features of the Resolution Plan submitted by the Resolution Applicant”*, which is reproduced as under-

Sr. No.	Payment Proposed	Amount in Rs. (Lakhs)	Remarks
1.	CIRP Cost	35	As per the Resolution Plan, CIRP cost will be paid in priority on actual basis and any increase or decrease in CIRP Cost shall be adjusted against the amount proposed to Financial Creditors.
2	Unsecured Financial Creditor	265	The said amount is 2.86 % of the admitted claim of the Unsecured Financial Creditor.
3	Operational Creditors: including Statutory Dues/Government dues	1.00	The said amount shall be paid after 30 days of the Approval of the plan by the AA.
4.	Employees and Workmen	00	The said liability stands extinguished after the approval of the Resolution Plan .
5.	Unsecured Financial Creditors-Related Party	00	The Resolution Plan does not provide for any amount against the admitted claim of the Unsecured Financial Creditors-Related Party
	Total Plan Outlay	301	

16. Therefore, in view of the aforementioned fact, it stands established that there is, in fact, a material inconsistency with respect to the total value of the plan submitted by the SRA. In the Resolution Plan, the Plan value is stated to be Rs. 2,65,00,000/-. However, the actual plan value is Rs. 3,01,00,000/- according to the pleaded case of the Applicant and as the same has expressly stated in Form H submitted by the Applicant. Thus, this Bench takes notice of this glaring inconsistency in the present case.

17. Further, upon perusal of the documents available on record, it has come to light that the Applicant has failed to annexe the minutes of all the CoC Meetings. While the minutes of the 1st and 7th CoC meetings have been placed on record, the minutes of intervening meetings (2nd to 6th) are conspicuously absent. Furthermore, the Information Memorandum, which is a foundational document, has also not been placed on record. In the same vein, the RFRP has also not been placed on record. Thus, this selective placement of relevant documents raises substantial concerns about the transparency of the resolution process and the completeness of information available for judicial consideration. Such incomplete submission of crucial documents severely impairs this Bench's ability to conduct a thorough and meaningful evaluation of the resolution process.

18. At this stage, it deserves to be emphasized that this Bench is conscious of the ruling of the Apex Court in *The Committee of Creditors of Essar Steel Limited v. Satish Kumar Gupta [**(2019) ibclaw.in 07 SC**]*, wherein it was held that the CoC's commercial wisdom is paramount in resolving a Corporate Debtor. However, in the present case, the SRA, Micro Capitals Private Limited, commands a dominant position in the Committee of Creditors (CoC) with a 77.97% voting share and as effectively established itself as the sole decision-maker in the resolution process. This unprecedented situation, where the SRA has proposed, evaluated, and approved its own Resolution Plan through its majority voting power, is a clear violation of the legal maxim ***"nemo judex in causa sua"*** - *no one should be a judge in their own cause*. While the commercial wisdom of the CoC has been accorded paramount status and the jurisdiction of this Tribunal to interfere with the same is limited, but the facts and circumstances of present case fall beyond mere commercial consideration

as the same involves procedural impropriety. The SRA's dual role as both proposer (Resolution Applicant) and approver (Dominant CoC Member) has resulted in a Resolution Plan that is structured to primarily benefit its own interests, rather than serving the collective interests of all stakeholders, more particularly, in light of the fact that property/ properties belonging to the Corporate Debtor allegedly de-sealed by the ED has been kept out of the purview of the Plan value. This is a self-serving arrangement as is evidenced by the absence of clear payment terms for other creditors, particularly the dissenting Financial Creditor, Axis Bank, which holds a 22% voting share. Therefore, the fact that the SRA stands to benefit disproportionately from its own plan, coupled with the fact that the Resolution Plan lacks the requisite feasibility and viability, demonstrates that no sound wisdom, let alone commercial wisdom has not been exercised in this case.

19. Considering the facts and circumstances of the present case, particularly the objections raised by the objectors, we are of the opinion that the Resolution Plan submitted by Micro Capitals Private Limited has demonstrated multiple violations of the Code and Regulations, specifically:

- **Section 30(4)** of the Code and **Regulation 38(3)(b)** of IBBI Regulations, 2016 - The Resolution Plan submitted by the SRA fails to demonstrate the Feasibility and Viability in the present Plan.
- **Regulation 39(3)(b)** - The CoC failed to record its deliberations on the feasibility and viability of the Resolution Plan in the 7th CoC meeting.
- **Section 30(2)(b) of IBC** and **Regulation 38(1)(b)** of IBBI Regulations, 2016 - The plan fails to demonstrate bifurcation of payment to dissenting Financial Creditors over assenting Financial Creditors,

- **RP failed in collation of the assets of the Corporate Debtor as the properties have been left out of the valuation of the Corporate Debtor.** Thus**,** this is a violation of the very basic objective of the code, that is, maximization of value of assets of the Corporate Debtor.

20. Furthermore, the plan contains several material inconsistencies and deficiencies that cannot be overlooked:

- Discrepancy in the total plan value - stated as Rs. 2.65 Crores in the Resolution Plan but Rs. 3.01 Crores in Form H and the Application
- Absence of crucial documents including minutes of 2nd to 6th CoC meetings, Information Memorandum, and RFRP
- Glaring inconsistency in Form H regarding the Resolution Applicant's track record of implementation of previous resolution plans

21. In light of these violations, inconsistencies, and the fact that the Resolution Applicant is virtually acting as a sole CoC member approving its own plan, this Bench finds the Resolution Plan submitted by Micro Capitals Private Limited unsuitable for approval in view of the afore-stated violation of material provisions and regulations of the Code. The principle of **"nemo judex in causa sua"** has been violated, and the commercial wisdom, if any, exercised in this case fails to protect the interests of all stakeholders as envisioned under the Code. Accordingly, the Application seeking approval of the Resolution Plan is hereby rejected.

Sd/- Sd/-

MADHU SINHA
Member (Technical)

REETA KOHLI
Member (Judicial)