IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH COURT-III

I.A. 25/2024

In

C.P. No. (IB)1254/MB/2022

Under Section 30(6), 31 and 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Mr. Kamal Kishor Gurnani)
Resolution Professional of)
Sushitex Industries Private Limited)
Having address at 101, Kanakia)
Atrium 2, Cross Road A, Chakala)
MIDC, Andheri East,)
Mumbai – 400093.) **...Applicant/Resolution Professional**

IN THE MATTER OF

Bank of India **...Financial Creditor**

Vs

Sushitex Industries Private Limited **...Corporate Debtor**

Order pronounced on: 27.02.2025

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati Member (Technical)

Appearances:

For the Applicant: Adv. Rakesh Gupta, a/w Prajakta Menezes and Adv. Geeta for RP, Adv. Nausher Kohli for Resolution Applicant; Adv. C.P. Ravindranath Mohan for CoC.

PER: MS. LAKSHMI GURUNG, MEMBER (JUDICIAL)

1. The present I.A. has been filed by the Resolution Professional ('Applicant/RP') of **Sushitex Industries Pvt. Ltd.** (**'the Corporate Debtor'**) under the provisions of Section 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 ("**the Code**") read with applicable Regulations of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") for approval of the Revised Resolution Plan dated 15.01.2024 submitted by a consortium of M/s. HDR Import Export Pvt. Ltd. along with Mr. Prem Ramchandani, Successful Resolution Applicant ('SRA') while seeking the following prayers: -

   a) *Allow the present Application and approve the Resolution Plan submitted for the Corporate Debtor by the Successful Resolution Applicant in terms of Section 31(1) of the Code;*

   b) *Direct that the Successful Resolution Plan approved/ sanctioned by this Tribunal shall be binding on the Corporate Debtor, its employees, members/ shareholders, all creditors, guarantors and other stakeholders in the CIRP of the Corporate Debtor;*

2. Upon an application filed by Bank of India ("**Financial Creditor**") under section 7 of the Code, Corporate Insolvency Resolution Process (**CIRP**) was initiated against the Corporate Debtor and Mr. Kamal

Gurnani, was appointed as the Interim Resolution Professional (**'IRP'**) vide order dated 10.04.2023.

3. Pursuant to Section 13 of the Code, read with Regulation 6 of the Insolvency Resolution Rules, a public announcement was made in "The Free Press Journal" (English Language), Mumbai Edition and "Navakal" (Marathi Language), Mumbai Edition by the Applicant on 18.04.2023.

4. As per the provisions of Section 21 of the Code read with Regulation 13 and 17 of the CIRP Regulations, the IRP constituted the Committee of Creditors ("**CoC**"). The list of creditors is set herein below:-

Particulars	No. of claims received	Amount Claimed (Amt in INR)	Amount Admitted (Amt in INR)	Voting % in CoC
Secured Financial Creditors – [Bank of India]	1	43,34,93,207	43,34,93,207	100%
Operational Creditors	0	-	-	-
Workers/Employees	0	-	-	-
Statutory Authorities	0	-	-	-
Total Claim	**1**	**43,34,93,207**	**43,34,93,207**	**100%**

5. In the 1st CoC Meeting, the IRP, was appointed as the Resolution Professional. In the 2nd CoC Meeting held on 05.07.2023, the contents of the Form G and Expression of Interest ("**EoI**") were put for vote, along with the issuance of the Request for Resolution Plan ("**RFRP**") and Evaluation Matrix ("**EM**") to the Prospective Resolution Applicants ("**PRAs**") as per Regulation 36B of CIRP Regulations. After the CoC's approval, Form G for invitation for EoI was published in the

newspapers namely “Free Press Journal” in English and “Navakal” in Marathi of Mumbai Editions on 11.07.2023.

6. Pursuant to Section 29 of the Code and Regulation 36 of the CIRP Regulations, the Applicant prepared an Information Memorandum which was shared with the CoC Members after receiving the confidentiality undertaking as per Regulation 36(4) of CIRP Regulations, 2016 from the CoC Members.

7. It is pertinent to note that the Applicant has not disclosed in the Application, the issue of Provisional List and Final List of Prospective Resolution Applicant (‘**PRA**’). In the averments, the Applicant has informed about the submission of plans without disclosing the Final List of PRAs.

8. **It was only during the course of the hearing on 25.07.2024 upon query by this Tribunal about the Final List of PRAs that an Additional Affidavit dated 04.09.2024 was filed giving details of the Provisional List of PRAs.**

9. Coming back to the facts narrated in the Application, it is stated that on behalf of the CoC, the Applicant issued the Request for Resolution Plan (“RFRP”) dated 25.08.2023.

10. In the 3rd CoC Meeting held on 22.09.2023, the Applicant informed the CoC that the last date for submission of Resolution Plan as per the timeline of Form G is 24.09.2023.

11. Four PRAs approached the Applicant and requested him to extend the last date for submission of Resolution Plans. The CoC Members passed a resolution with 100% voting to extend the last date for submission of Resolution Plan by 30 days i.e., from 24.09.2023 to 24.10.2023. In the same meeting, the CoC Members approved the

extension of the CIRP by a period of 90 days beyond 180 days i.e, 7.10.2023 as per section 12(2) of the Code and the CoC.

12. Accordingly, the Applicant filed an I.A. No. 4594 of 2023 seeking extension of the CIRP period by 90 days from 07.10.2023. Vide order dated 13.10.2023, this Tribunal extended the CIRP period by a period of 90 days until 05.01.2024.

Receipt of the Resolution Plans and Negotiations

13. In the 4th CoC Meeting held on 27.10.2023, the Applicant apprised the members that a soft copy and hard copy of the Password Protected Resolution Plans had been received from the following Resolution Applicants: -

Sr. No.	Name of Resolution Applicants	Whether part of Final List issued by RP
1.	Allen Jorgio Lifestyle LLP	Yes
2.	Sunrise Industries	Yes

14. It is submitted that, the Applicant informed the members of CoC that he had also received a Resolution Plan from a consortium of HDR Import Export Pvt. Ltd. and Mr. Prem Ramchandani **('HDR Consortium'**), which does not form part of Final List of PRAs of the Corporate Debtor. However, they had deposited the EMD amount of INR 50,00,000/- as required by the RFRP. The Resolution Plan received from HDR was disclosed in the CoC Meeting with the permission of Sole CoC Member, Bank of India. Thereafter, all the Resolution Plans were opened separately in front of the members of CoC and respective invitees. The RP apprised the members that all Resolution Plans after legal vetting will be shared with the members of the CoC and after vetting the plans, observations will be shared with the Resolution Applicants if any.

15. Perusal of minutes of the 4th CoC Meeting annexed to the Application captures the discussions in the said CoC meeting. It is stated that the Chairman informed that one PRA i.e. a consortium of Mr. Prem Ramchandani and HDR Import Export Pvt. Ltd. were present physically to place their resolution plan before the CoC and were subsequently allowed in the conference room. The Chairman informed Mr. Prem Ramchandani that they do not form part of list of PRA due to non-submission of eligibility documents. Since the Resolution Professional received the Resolution Plan, same was opened with the consent from CoC members subject to HDR Import Export Pvt. Ltd. being eligible and required documents are submitted by them by 30.10.2023 to the Resolution Professional. After due discussion, Ms. Anita Nair, Authorized Representative of Bank of India stated that the financial proposal is on a very low side and needs to be re-considered by the Resolution Applicant and submit a revised plan to the Resolution Professional by 06.11.2023, to which Mr. Prem Ramchandani agreed to submit a revised resolution plan by 06.11.2023.

16. The Resolution Plan submitted by Mr. Avinash Garg, Authorised Representative of Sunrise Industries was disclosed by the Chairman before the CoC Members. After due discussion, Ms. Anita Nair, Authorized Representative of Bank of India stated that the financial proposal is on a very low side and needs to be re-considered by the Resolution Applicant and submit a revised plan to the Resolution Professional by 06.11.2023, to which Mr. Avinash Garg agreed to submit a revised resolution plan by 06.11.2023.

17. Another PRA i.e. Allen Jorgio Lifestyle LLP submitted their Resolution Plan in the meeting where Mr. Sanjay Shah introduced himself and gave a short brief of his Company. CS Ranjit Kejriwal, Authorized Representative of Mr. Sanjay Shah briefed the members with the

commercials of the Resolution Plan and financial offer proposed. After due discussion, Ms. Anita Nair, Authorised Representative of Bank of India stated in the meeting that the financial proposal is on a very lower side and needs to be re-considered by the Resolution Applicant and submit a revised plan to the Resolution Professional by 06.11.23, to which Mr. Sanjay Shah and CS Ranjit Kejriwal agreed to submit the revised resolution plan by 06.11.2023.

18. In the 5th CoC Meeting held on 23.11.2023 wherein the Applicant informed the CoC Members that Mr. Prem Ramchandani on behalf of M/s. HDR Import Export Pvt. Ltd. had submitted a letter stating that they are submitting the Resolution Plan for Sushitex Industries Pvt. Ltd. in consortium and that their combined net worth is satisfying the eligibility criteria mentioned in detailed invitation of Expression of Interest for submission of Resolution Plan which is more than the required networth of Rs. 4 Cr.

19. The Applicant discussed and updated the members with the summary of the Resolution Plans submitted by Allen Jorgio Lifestyle LLP, HDR Consortium and Sunrise Industries, Resolution Applicants. After due discussions, the Authorised Representative of Bank of India, Sole CoC Member stated that they are not satisfied with proposal and requested all the Resolution Applicants to re-consider and enhance their financial offers and inform the members in the next meeting of CoC. The Applicant also updated the members that the last date of the CIRP was 05.01.2024. Accordingly, all the Resolution Applicants were requested to provide their final Resolution Plans with necessary changes as discussed in the meeting by Ms. Anita Nair, Authorized Representative of Bank of India.

20. In the 6th CoC Meeting held on 08.12.2023, the Applicant informed the members that the revised Resolution Plan had been received from

Allen Jorgio Lifestyle LLP. The revised Resolution Plans from M/s Sunrise Industries and HDR Import Export Pvt. Ltd. along with Mr. Prem Ramchandani in consortium had not been received. The Applicant informed the CoC Members that M/s Sunshine Industries, one of the Resolution Applicants had sent an email stating that in case the previous Resolution Plan submitted by them was not feasible and viable according to CoC members then they have requested to refund their EMD amount of Rs.50,00,000/-. The members of CoC discussed that since their Resolution Plan amount is on the lower side they are not inclined to revise their financial offer, their EMD amount of Rs.50,00,000/- shall be refunded back and was duly refunded back.

21. The Applicant presented the brief outline of Resolution Plans of Allen Jorgio Lifestyle LLP and HDR Consortium. The Applicant informed the members of CoC that the Resolution Plan submitted by Allen Jorgio Lifestyle LLP is conditional in nature and their conditions were presented and discussed in the said meeting. The Members of CoC discussed on the feasibility and viability of both the Resolution Plans and duly allocated marks to both Resolution Plans as per the criteria laid down in the Evaluation Matrix approved by the CoC Members. Pursuant to these discussions, the CoC Members directed the Resolution Professional to keep both the Resolution Plans on e-voting.

22. Resolution Plan by Allen Jorgio Lifestyle LLP and HDR Consortium, were put up for e-voting and the voting window was kept open for 15 days i.e., from 15.12.2023 to 26.12.2023. The Resolution Plan submitted by HDR Consortium on 30.12.2023 and Allen Jorgio Lifestyle LLP on 01.01.2024 after revising their financial proposals were provided to the members of the CoC for their consideration along with the revised Evaluation Matrix

23. The Sole CoC Member, Bank of India requested the RP through an email to extend the voting window from 26.12.2023 to 01.01.2024 and thereafter the voting window was again extended twice upon email request received from Bank of India. On 03.01.2024, the Applicant had received an email from Bank of India, Sole CoC members stating that: -

> *"Approval of plan from Competent Authority would require some more time, we request you to file application at NCLT for extension of time so that total CIRP becomes 330 days."*

Hence in view of above, CoC member abstained from e-voting on the agendas put forth in 6th CoC Meeting of Corporate Debtor.

24. In the 7th CoC Meeting held on 08.01.2024, the Applicant informed the CoC Members that the revised Resolution Plan of Allen Jorgio Lifestyle LLP continued to contain two conditions which were presented and discussed in the 6th CoC Meeting. The Applicant apprised the members that the Resolution Applicants had further revised their financial proposal and tenure of making payment in the revised resolution plans dated 30.12.2023 and 06.01.2024. The Applicant presented the broad contours of revised Resolution Plans dated 30.12.2023 and 06.01.2024 submitted by both the resolution applicants for the consideration of members of CoC.

25. The Applicant apprised the members about the extension of the CIRP period by further 60 days', beyond 270 days from the Insolvency Commencement Date. Consequently, the CoC approved further extension of the CIRP by a period of 60 days beyond 05.01.2024 i.e., from 270 days to 330 days with 100% Voting share, therefore, the last date for completion of CIRP would be 05.03.2024. The Applicant filed

an I.A. No. 750 of 2024 for the extension of CIRP period by 60 days, which was allowed by the Tribunal vide order dated 28.02.2024.

26. The Applicant received an email from Bank of India on 10.01.2024 in which it was stated as follows: -

> *"With reference to the above, you had received a plan from one of the eligible PRA's with a changed repayment schedule. Accordingly, we request you to follow the principle laid down in the above case and provide equal opportunity to both eligible PRA's to improve their plans, if they intend.*
> *Last date for such improvement shall not be extended beyond 15.01.2024, 5 p.m. We reiterate that this shall be the last and final opportunity which is being given to all the eligible PRAs to put forth their improved plans, if any. Beyond this time, no extension/revision/changes/requests for any of the foregoing shall be entertained. If no advice from any of the eligible PRA's is received by this time, it shall be presumed that they have no improvement to offer."*

27. The aforesaid email was intimated to both Resolution Applicants. No revised Resolution Plan was submitted by Allen Jorgio Lifestyle LLP. But HDR Consortium submitted the revised Resolution Plan on 15.01.2024. Accordingly, the revised Resolution Plan dated 06.01.2024 submitted by Allen Jorgio Lifestyle LLP and Revised Resolution Plan dated 15.01.2024 submitted by HDR Consortium were considered.

<u>Voting Lines and Plan Approval</u>

28. In the 8th CoC Meeting held on 18.01.2024, the Applicant informed the CoC regarding the receipt of revised Resolution Plans from Resolution Applicants. The broad outline of the revised Resolution Plans of Allen Jorgio Lifestyle LLP dated 06.01.2024 and HDR Consortium dated 15.01.2024. The Resolution Plan submitted by

Allen Jorgio Lifestyle LLP being conditional in nature, their conditions were discussed in the said meeting.

29. The Applicant submitted that on receipt of email requests from Sole CoC Member, the e-voting window was extended by 24 hours from 21.02.2024 until 29.02.2024. The Sole CoC Member voted and approved with 100% voting share the Revised Resolution Plan of HDR Consortium.

Key features of the revised Resolution Plan dated 15.01.2024 submitted by HDR Import Export Pvt. Ltd. along with Mr. Prem Ramchandani in consortium, successful resolution applicant.

30. The copy of the Revised Resolution Plan received on 15.01.2024 from the HDR Consortium along with the addendum to Resolution Plan was brought on record. As per Section 29A of the Code, the Resolution Applicant provided an Affidavit in terms of its eligibility to submit a Resolution Plan.

31. The Compliance Certificate in Form H was issued by the Applicant on 05.03.2024 to the effect that the contents of the Successful Resolution Plan met all the requirements laid down in the Code and the CIRP Regulations.

Details about the Successful Resolution Applicant (SRA), HDR Import Export Pvt. Ltd. along with Mr. Prem Ramchandani in consortium.

32. HDR Import Export Pvt. Ltd. was incorporated in 2017, having a team of industry experts with experience of 25-30 years across manufacturing, exports and wholesale of fabrics, apparels and institutional wear. Mr. Prem Ramchandani being one of the majority shareholder and director holding 50% of Equity Shares and the

balance 50% were held by his wife Mrs. Bharti Ramchandani. The individual net worth of Mr. Prem Ramchandani was Rs.44.23 Cr. which met the requirement of the required Net Worth of Rs.4 Cr. as per the eligibility criteria mentioned in the detailed invitation of Expression of Interest.

Creditworthiness and Financial Capability of Resolution Applicant: -

33. The net worth of HDR Import Export Pvt. Ltd. in Rs.53.09 Lakhs as per its audited Financial Statements for F.Y. 2022-2023. The Individual Net worth of Mr. Prem Ramchandani duly qualifies the Resolution Applicant to become eligible to submit Resolution Plan.

34. The Successful Resolution Plan has proposed a total financial proposal of Rs.11,85,00,000 (Eleven Crores Eighty-Five Lakhs) which will be paid for the full and final settlement of all liabilities of the Corporate Debtor along with the payment of CIRP cost as actuals.

Financial Outlay under Resolution Plan: -

Category of Creditor	Claim admitted amount	Payment as per the Resolution Plan	Timeline
CIRP Cost	-	-	First and foremost is the payment towards CIRP Cost incurred to conduct the Corporate Insolvency Resolution Process for the Corporate Debtor. The CIRP Cost is not provided by the Resolution Professional. Resolution Applicant shall pay the CIRP Cost at actuals. The same shall be adjusted from distribution available to

			secured financial creditors. (Shall be paid in priority over other creditors – within 30 days i.e., upfront payment)
Secured Financial Creditors	43,24,93,207	11,85,00,000 – CIRP Cost at actuals	Within 60 DAYS of the approval of Resolution Plan by Hon'ble NCLT, Mumbai Bench. (Within 30 days i.e., upfront – 1,85,00,000) Within 60 DAYS – 10,00,00,000)
Unsecured Financial Creditor	-	-	-
Employees	-	-	-
Workmen	-	-	-
Operational Creditors	-	-	-
Total		**11,85,00,000**	

Term of infusion of Financial Proposal offered in this Plan	**Amount (in INR)**
Upfront Payment within 30 Days of effective date	1,85,00,000
Deferred Payment to secured financial creditors - Within 60 DAYS of effective date	10,00,00,000
Total Plan Amount	**11,85,00,000**

35. The summary of claims received and admitted by Resolution Professional during the Corporate Insolvency Resolution Process: -

Sr. No.	**Type of Creditor**	**Amount Claimed**	**Amount Admitted**
1.	Financial Creditors – Secured	43,34,93,207	43,34,93,207

2.	Financial Creditors – Unsecured	-	-
3.	Operational Creditors – Workmen and Employees	-	-
4.	Operational Creditors – Government Dues	-	-
5.	Operational Creditors other than Workmen and Employees and Government Dues	-	-
	Total	**43,34,93,207**	**43,34,93,207**

The details of the Secured Financial Creditor as per the Information Memorandum submitted by the Resolution Professional are as below: -

Sr. No.	Name of Creditor	Amount of Claim Admitted	Nature of Claim
1.	Bank of India	43,24,93,207	Secured

<u>Sources of Funds</u>

36. The Resolution Applicant stated that they had sufficient net worth and liquid assets to finance the Resolution Plan. The amount as envisaged in the plan amounting to Rs.11,85,00,000/- shall be paid by the SRA. The own funds of the will be used to pay the amount proposed in the resolution plan for the Corporate Debtor. Net worth certificate of Mr. Prem Ramchandani and Financial Statements of HDR Import Export Pvt. Ltd. were also submitted along with the Resolution Plan.

37. The brief details of proposed payments are as follows: -

a. <u>CIRP Costs</u>: - The Resolution Plan provides for the payment of CIRP cost at actuals. The CIRP cost shall be paid in priority to any other debt of the Corporate Debtor within 30 days from the effective date. The same shall be adjusted from distribution available to secured financial creditors.

b. <u>Settlement of claims filed by Operational Creditors</u>: - No claims have been filed by Operational Creditors in the CIRP of Corporate

Debtor. Hence, the Resolution Plan does not provide for any payment to Operational Creditors.

c. Settlement of claims filed by Secured Financial Creditors: - There is only one secured financial creditor, Bank of India in the CIRP of Corporate Debtor. The Resolution Applicant has proposed payment of Rs.11,85,00,000/- less CIRP cost at actuals against their admitted claim of Rs.43,24,93,207/-. The proposed amount will be paid within 60 days from the date of approval of resolution plan by NCLT.

38. As per the Resolution Plan, an amount of Rs.2.5 Cr. had been proposed to be infused towards need based Working Capital from its own sources or working capital limits from banking system.

39. The Resolution Plan states that any amount recovered under any avoidance applications relating to the Corporate Debtor being allowed by the Adjudicating Authority would incur unto the benefit of the secured financial creditor. One Avoidance Transaction had been noted in the final Transaction Audit Report received on 22.12.2023 submitted by the Transaction Auditor to the Applicant. The Applicant intimated the CoC of the findings of the Transaction Audit Report and filed an Avoidance Application for reporting the fraudulent transactions of the Corporate Debtor on 01.01.2024 with this Tribunal and since the matter has been pending for adjudication.

Monitoring Committee

40. For successful implementation of the Resolution Plan, an implementation and Monitoring Committee (MC) was proposed by the Resolution Applicant which shall have the following members: -

a. Erstwhile Resolution Professional who shall act as monitoring agent.

b. One Representative of Secured Financial Creditor.

c. One Representative of the Resolution Applicant.

41. The Registered valuers were appointed to conduct valuation of the class of Land and Building, Plant and Machinery and Securities and Financial Assets of the Corporate Debtor. The Liquidation Value and Fair Value as per the Valuation Reports submitted by the valuers is as under: -

Class of Assets	**Fair Value (in Rs.)**		**Liquidation Value (in Rs.)**		**Average (in Rs.)**	
	Valuer 1	Valuer 2	Valuer 1	Valuer 2	Valuer 1	Valuer 2
Land & Building	61789,953	43933,460	43252,967	37966,641	52861,707	40609,804
Plant & Machinery	107186,588	91313,670	75030,612	73050,936	99250,129	74040,774
Securities & Financial Assets	9,000	9,000	9,000	9,000	9,000	9,000
Total	168985,541	118292,579	135256,130	111026,577	152120,836	114659,578

Thus the average Fair Value of all the Assets is **Rs.15,21,20,836/-** and the Liquidation Value of all the Assets is **Rs.11,46,59,578/-**.

Findings

42. During the course of the hearing on 25.07.2024, it was noticed that the Successful Resolution Applicant does not appear in the Final List of Prospective Resolution Applicants. It was further noticed that there were discrepancies in the Net Worth Certificate of Mr. Prem Ramchandani. These observations are recorded in the daily order dated 25.07.2024 and set herein below: -

"I.A. (PLAN) 25/2024
Heard Learned Counsel for the applicant at some length. However, on perusal of the documents, it is seen that the minimum net worth required for submission of the Resolution Plan by an individual and Corporate body is Rs.4 Crores. One of the constituents of the Successful Resolution Applicant, M/s HDR Import Export net worth is nearly 55 lakhs. Therefore, net worth of its director, Mr. Prem Ramchandani has been considered. However, perusal of the net worth certificate issued by Chartered Accountant, Mr. Satish Shivnani and Company, we find the there is no date on the certificate as well as there is no UDIN No. mentioned in the certificate which raises suspicion about the genuineness of the certificate issued and the address of the director is mentioned as H. No. 587-G, Near Bank of India, Vaishali Nagar, Ajmer – 305006 (Rajasthan). However, the supporting affidavit given by Mr. Prem Ramchandani states that he is residing at B-2401, Oberoi Esquire, Mohan Gokhale Rd, Goregaon Rd, Goregaon East, Mumbai – 400063.

Further, it is noticed that the SRA in this case whose plan is considered for approval is not even in the final list of the PRAs.
Ld. Counsel seeks time to clarify above.
List on 06.09.2024."

43. In response to the above daily order, the Applicant filed an Additional Affidavit on 04.09.2024 wherein the Applicant clarified about the Net Worth Certificate as well as the issue relating to the SRA not being in the Final List of the PRAs. It would be appropriate to reproduce the relevant excerpts from the Additional Affidavit dated 04.09.2024 which is given below: -

"5.... with respect to SRA being not a part of final list of PRAs, it is submitted that as per the Form G published on 11 July 2023, the last date of submission of the EOI along with the required documents was of 10 August 2023, and the date for issuance of Provisional List of PRA's was of 20 August 2023. The Applicants submits that one of members of the SRA, namely HDR Import Export Pvt. Ltd. had submitted its EOI on

9 August 2023. Thus, as in line with the Form G published, the provisional list of Prospective Resolution Applicants (PRA's) was published by the Applicant on 20 August 2023 and the same is produced as follows:

Sr. No.	*Name of PRA*	*Whether eligible to submit a Resolution Plan*
1.	*Allen Jorgio Lifestyle LLP*	*Yes*
2.	*HDR Import Export Pvt. Ltd.*	*No*
3.	*Nakshatra Corporate Advisors Ltd.*	*Yes*
4.	*Next Avenue Ventures Pvt. Ltd.*	*Yes*
5.	*Sandeep Gupta*	*Yes*
6.	*Siddhivinayak Steels*	*Yes*
7.	*SPSS Infrastructure Pvt. Ltd.*	*No*
8.	*Subhlaxmi Investment Advisory Pvt. Ltd.*	*Yes*
9.	*Sunrise Industries*	*Yes*
10.	*Viraj Profiles Pvt. Ltd.*	*Yes*

6 *The Prospective Resolution Applicant – HDR Import Export Private Limited did not submit the required documents for verification of its eligibility for submission of resolution plan for corporate debtor within the stipulated timeline. Hence, HDR Import Export Private Limited was not included in the final list of Prospective Resolution Applicants of corporate debtor as published by the Applicant on 25 August 2023.*

7 *It is also submitted the Hon'ble NCLAT in the matter of Sharavan Kumar Vishnoi v. Upma Jaiswal and Ors. (C.A (AT) (Ins.) No. 371 of 2022 with C.A (AT) (Ins.) No. 374 of 2022) has held that the ratio of the judgment of the Hon'ble Supreme*

Court in Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors. [2018] ibclaw.in 31 SC is that the Resolution Professional is not to take a decision regarding the ineligibility of the Resolution Applicant. It has only to form its opinion because it is the duty of the Resolution Professional to find out as to whether the Resolution Plan is in compliance of the provisions of the Code or not the Resolution Professional can give his opinion with regard to each plan before the CoC and it is for the CoC to take a decision as to whether the plan is to be approved or not. In the impugned order, NCLAT have noticed that the direction has been issued to the Resolution Professional to place all the Resolution Plans along with his opinion on the contravention or otherwise of the various provisions of law. The aforesaid direction clearly indicates that the Resolution Professional is free to submit his opinion with regard to contravention or otherwise of the various provisions of law. The aforesaid observations take care of the duties and responsibilities of the Resolution Professional. The Resolution Professional can give his opinion with regard to each Resolution Applicants and further steps are to be taken for the CoC as per the direction issued by the Adjudicating Authority.

8 *Thus, in view of the above caselaw, the Applicant was duty bound to place the Resolution Plan as received from the SRA on 23 October 2023 before the CoC, which was duly done in the 4th CoC Meeting as convened on 27 October 2023 and the CoC in their commercial wisdom has duly considered the Resolution Plan as submitted by the SRA and duly approved in the 8th CoC Meeting as convened on 18th January 2024."*

44. From the above Affidavit it is clear that HDR Consortium was not even part of the Final List of PRA. It is the mandate of Regulation 39(1B)(b) of CIRP Regulations that the CoC shall not consider any Resolution Plan received from a person who does not appear in the Final List of PRA. The RP was duty bound to inform the CoC that the CoC cannot consider a resolution plan from a Resolution Applicant who does not

appear in the Final List of PRA and that if the CoC considers such a resolution plan, it would amount to violation of Regulation 39(1B)(b).

45. We have gone through the minutes of the various 8th CoC meetings and note that there was no discussions regarding the non-compliance of Regulation 39(1B)(b) which was included in the Code vide Notification No. IBBI/2021-22/GN/REG 078 dated 30.09.2021 w.e.f. 30.09.2021. The 8th CoC Meeting was held on 18.01.2024 which was subsequent to the introduction of Regulation 39(1B). The email dated 10.01.2024 of the Sole CoC member i.e. Bank of India refers to the eligible PRAs.

46. The Revised Resolution Plan submitted by HDR consortium on 15.01.2024, states, under the head of *'Mandatory Compliance with provisions of IBC, 2016 and CIRP Regulations'*, (Page No. 353) as set in below: -

Relevant Provision	*Provisions of Section 30 of the Code/Regulation*	*Reference*
Section 30(2)(e)	*Does not contravene any of the provisions of the law for the time being in force.*	*RA has prepared the Resolution Plan after taking into consideration and* ***with compliance of all applicable laws and regulations and shall not contravene any of the provisions of the law for the time being in force****.*

47. We also note the Compliance Certificate in Form – H, which mentions "Compliance of the Resolution Plan" is reproduced below for ease of reference: -

Section of the Code; Regulation No.	*Requirement with respect to Resolution Plan*	*Compliance Yes/No*
Section 30(2)	*Whether the Resolution Plan: -*	
	(a) Provides for the payment of insolvency resolution process costs	*Yes*
	(b) Provides for the payment to the operational creditors	*NA*
	(c) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	*NA*
	(d) The implementation and supervision of the resolution plan	*Yes*
	(e) Contravenes any of the provisions of the law for the time being in force?	***Yes***

48. It can be thus seen that the Applicant in Form H has clearly indicated that the resolution plan contravenes the provisions of law. It is not clear when a resolution plan contravenes the law then how was it permitted to be placed before the CoC and to be considered by CoC. By considering a resolution plan submitted by a person whose name does not appear in the Final List of PRA, the RP as well as CoC have committed violation of Regulation 39(1B)(b) of the CIRP Regulation.

49. The Applicant submitted in their averments on Page No. 21 as a *'Note'* under Para No. 33 which gives a brief overview of the conformity of

the Successful Resolution Plan with the requirements under the Code and the CIRP Regulations, that: -

> *"Note: HDR Import Export Private Limited along with Mr. Prem Ramchandani, Resolution Applicant were not part of the Final List of Prospective Resolution Applicants of Sushitex Industries Private Limited issued by Resolution Professional as they have directly submitted their resolution plan. The said resolution plan has been considered upon satisfying the eligibility criteria and with the consent of members of CoC."*

50. The 'Note' on Page No. 378 of the Compliance Certificate states as under: -

> *"Note: HDR Import Export Private Limited and Mr. Prem Ramchandani are not part of the Final List of Prospective Resolution Applicants of Sushitex Industries Private Limited issued by Resolution Professional as they have directly submitted their resolution plan. The said resolution plan has been considered upon satisfying the eligibility criteria and with the consent of members of CoC."*

51. At this juncture, we would like to refer to Regulation 39(1B)(b) of the CIRP Regulations which is reproduced below for ease of reference: -

(1B) <u>The committee shall not consider any resolution plan</u>-

(a) Received after the time as specified by the committee under Regulation 36B; or

(b) <u>Received from a person who does not appear in the final list of prospective resolution applicants; or</u>

(c) Does not comply with the provisions of sub-section (2) of section 30 and sub-regulation (1).

(emphasis provided)

52. The Regulation 39(1B) of the CIRP Regulations specifies and mandates that the CoC shall not consider any resolution plan received from a

person who does not appear in the final list of Prospective Resolution Applicants. In the present case the Resolution Plan does not comply with Regulation 39(1B) (b) which leads to the contravention of the law and is liable to be rejected.

53. The Applicant has relied on the case of ***Sharavan Kumar Vishnoi Vs. Upma Jaiswal and Ors. C.A. (AT)(Ins.) No. 371 of 2022*** with ***C.A.(AT)(Ins.) No. 374 of 2022***, to contend that a Resolution Professional is required to examine the Resolution Plan before submitting it to the CoC but is not required to take any decision. It is the CoC which has to take the decision whether the Resolution Plan does or does not contravene the provisions of law.

54. However, the above judgment does not support the submission of the Applicant, since the same judgment also states that the RP shall present to the CoC such Resolution Plans which are in conformity with the conditions referred to in 30(2) of the Code. Section 30(2) (e) of the Code mandates that the Resolution Professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan does not contravene any of the provisions of the law such law includes any Regulation prescribed by the IBBI under the Code. Accordingly, IBBI has prescribed IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which includes Regulation 39(1B).

55. We rely on a recent judgement by the ***National Company Law Appellate Tribunal Principal Bench, New Delhi*** in ***Jindal Power Ltd. Vs. Dhiren Shantilal Shah, RP and Anr***. *Company Appeal (AT) (Insolvency) No. 1166-1167 of 2023* dated 08.01.2024. The relevant paragraphs of the judgment are reproduced below: -

*“**31**. If unsolicited plans are obtained at any stage it will cause unnecessary avoidable delay in the CIRP process. If resolution plans are allowed to be submitted at any stage, it will make the whole CIRP process unending. <u>To curtail the delay in the CIRP process, it is appropriate to restrain the tendency to consider resolution plans after the time as specified by the CoC and from someone not in the final list of PRAs. This has been the spirit and justification of newly inserted provisions in the Regulations in 2021 and which has been eloquently described in the Discussion Paper of the IBBI,</u> before changes were brought in and which have also been referred to by SRA viz. SEAPOL.*

***35**. No doubt the whole process prescribed in the Code and supported by Regulations aims at maximization of the value for the Corporate Debtor but it cannot give a go by to the existing specific Regulations as discussed above. In the present case the matter has been reversed from the stage of liquidation and one of the PRA in the final list has been given an opportunity to file its resolution plan and which is to be accepted or rejected by the CoC. Maximisation of the value of the Corporate Debtor can be ensured by other means also, particularly by conducting CIRP in a time-bound manner, simultaneously complying with existing regulations and not bypassing them. <u>The Resolution plans, which enter midway and which were not in the final list of PRAs derail and delay the CIRP proceedings and this has also been noted in the background Discussion paper, before the introduction of new Regulations in 2021.</u>*

***37**. <u>In the above circumstances, we do not find merit in the present Appeal, which if allowed would mean contravention and violation of Regulation 39(1- B) read with Regulation 36-B(7) of IBBI (CIRP) Regulations, 2016. The Appeal is, therefore, dismissed.</u> Both the lAs become infructuous. RP and COC* *should proceed with its CIR proceedings and decide the resolution plan available with them either way."*

(***Emphasis Implied***)

56. We further rely on the ***Hon'ble Supreme Court*** in the matter of ***K.Shashidhar Vs. Indian Overseas Bank (2019) 12 CC 150***, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follows: -

"35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force! (vi) conforms to such other requirements as may be specified by the Board."

57. In view of the facts of the present case we are of the opinion that the 'integrity of CIRP has been greatly compromised on lateral induction of the Resolution Plan of the of HDR consortium which is in stark violation of the express provisions of applicable regulation. The parties

involved in the CIRP, RP, CoC and Resolution Applicant must adhere to the highest standards of integrity to ensure that the CIRP is conducted in the manner as envisaged under the Code and Regulations thereunder.

58. As we have already held that the Resolution Plan approved by the CoC is in violation of Regulation 39(1B) (b) of the CIRP, it contravenes the provisions of the law and is liable to be rejected. The CoC may consider to take appropriate steps in accordance with law and for the interest of all stakeholders in sync with the objectives of the Code.

59. Accordingly, the **I.A. No. 25 of 2024** in C.P. 1254 of 2022 is **dismissed** and **disposed of**.

Sd/-	**Sd/-**
CHARANJEET SINGH GULATI **(MEMBER TECHNICAL)**	**LAKSHMI GURUNG** **(MEMBER JUDICIAL)**

Vaishnavi, LRA