

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I**

**IA 561 of 2021, IA 1785 of 2021, IA 1986 of
2021 and IA 1052 of 2022**

**In
C.P (IB) No. 1399/MB/C-I/2017**

An application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016
Filed by

IA 561 of 2021

GB Global Limited (previously known as “Mandhana
Industries Limited its Resolution Professional Ms. Charu
Desai)

-----Applicant

Versus

Formation Textiles LLC

-----Respondent

IA 1785 of 2021

Anglomonto Resource Private Limited
U74999GJ2016PTC092480 Off. 516, 5th Floor, SNS
Arista,Rundh, Happy Home, Vesu, Surat-Gujarat395007

-----Applicant

Versus

Ms. Charu S. Desai Resolution Professional Address:
2602, Fairfield A Wing, Lodha Luxuria, Majiwada, Thane
West, Thane, Maharashtra 400060

-----Respondent No. 1

GB Global Limited (previously known as “Mandhana Industries Limited”) Address: PLOT NO.C-3, M.I.D.C, Tarapur Industrial Area, Boisar Maharashtra 401506 India

-----Respondent No. 2

Dev Land & Housing Private Limited Address: 10th Floor, Dev Plaza, opp. Andheri Fire Station S. V. Road, Andheri (west), Mumbai- 400058, India

-----Respondent No. 3

Ms. Charu Desai on behalf of Monitoring Committee of GB Global Limited Address: Marathon Futurex, Unit No. A2402, 24th Floor, Mafatlal Mills Compound, NM Joshi Marg, Lower Parel, Mumbai 400013

-----Respondent No. 4

IA 1986 of 2021

Vishal Dyes and Chemicals & 36 Ors.

Versus

Formation Textiles LLC

(Former Successful Resolution Applicant), a limited liability company incorporated under the laws of the United States of America, having its principal office at 16, Arcadian Way, Paramus, New Jersey 07625, United States of America

-----Respondent No. 1

G B Global Limited (Formerly Mandhana Corporate

Industries Debtor management of new Limited), under successful Resolution Applicant, having its address at Dev Plaza, S.V. Road, Andheri West 400058

-----**Respondent No. 2**

Charu Desai, Erstwhile Resolution Professional, GB Global Ltd (former Mandhana Industries Limited)

-----**Respondent No. 3**

N V Dand & Associates (Monitoring Committee) F-51, R Galleria Shopping Arcade, Runwal Greens Complex, Mulund Goregaon Link Road, Bhandup (W, Mumbai, Maharashtra 400078

-----**Respondent No. 4**

IA 1052 of 2022

Gimatex Industries Private Limited, having registered address at: 202, 2nd Floor, A-Wing, Ramji House 30, Jambulwadi Kalbadevi Road, Mumbai MH 400002 IN; Represented Through Its Director Mr. Rameshchand s/o Hansrajji Gandhi (DIN: 00427698)

...Applicant

Versus

Formation Textiles LLC

-----**Respondent No. 1**

Mr. Piyush Viradia

-----**Respondent No. 2**

Mr. Jiten Parikh

-----Respondent No. 3

G B Global Limited (Formerly Mandhana Corporate Industries Debtor management of new Limited)

-----Respondent No. 4

Dev Land & Housing Private Limited

-----Respondent No. 5

Ms. Charu Desai, Erstwhile Resolution Professional, GB Global Ltd (former Mandhana Industries)

-----Respondent No. 6

Committee of Creditors of GB Global Limited

-----Respondent No. 7

Bank of Baroda

-----Respondent No. 8

In the matter of

Bank of Baroda

...Financial Creditor

Versus

Mandhana Industries Ltd.

... Corporate Debtor

Order Pronounced on: 06.07.2023

Coram:

Hon'ble Member (Judicial) : Mr. Kishore Vemulapalli

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Applicant IA 561 of 2021 : Ms. Pooja Mahajan, Ms. Mahima Singh, Ms. Shrishti Agnihotri, Mr.

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Mustafa kanchwala, Ms. Ketki
Pansare i/b Kanchwala Misar & Co.

For the Applicant IA 1785 of 2021 : Mr. Dhiraj Garg, Advocate.

For the Applicant IA 1986 of 2021 : Mr. Amir Arsiwala a/w Ms. Gayatri
Mohite, Advocates i/b The Law
Point.

For the Applicant IA 1052 of 2022 : Mr. Amit Agrawal, Advocate.

For for the Committee of Credirors : Mr. Gopal Jain, Sr. Advocate a/w
Mr. Bishwajit Dubey, Mr. Madhur
Kanoria, Mr. Anush Mathkar, Ms.
Ashutosh Singh i/b Cyril
Amarchand Mangaldas.

For Successful Resolution Applicant : Mr. Daval Salve, Advocate.

For the Formation Textiles LLC : Mr. Amrut Joshi, Mr. Prakhar
Tandon, Mr. Nikhil Mishra, Mr.
Agam Maloo and Mr. Irfan Khan,
Advocates i/b Sudha Dwivedi &
Associates.

ORDER

Per Coram:

IA 561 of 2021:

1. The present Application is filed by the erstwhile Resolution Professional i.e. R-3 seeking the direction that Respondent No.1 i.e. Formation Textiles LLC to pay balance outstanding Interim Trade Creditors dues amounting

to Rs. 20.35 Crores to the Corporate Debtor.

2. The Applicant herein submits that on 31.01.2019 Formation took over the control and management of the Corporate Debtor, during this period i.e. 31.01.2019 to 05.12.2019 as moratorium period was not operating, various trade creditors had provided goods and services to the Corporate Debtor for running it as a going concern.
3. The payments due to these interim trade creditors still remain pending to the tune of Rs.21.98 Crore as on 28.02.2021. Due to the circumstances as detailed above in IA 443 of 2021, the CIRP of the Corporate Debtor was restored on 05.12.2019, Formation continued to run the affairs of the Corporate Debtor till 08.01.2020. The costs incurred during this period as to be treated as CIRP 2 Costs.
4. The Applicants submits that the new SRA Dev Land & Housing Private Limited in its Resolution Plan provides that such dues shall be settled, discharged and extinguished in full and reduced to nil by payment of Rs.1,63,00,000/- (Rupees One Crore Sixty-Three Lakh Only). Rs. 20.35 Crore still remain due and payable to the Trade Creditors.
5. The Applicant submits that the period during which the dues were incurred, the Corporate Debtor was under the management of Formation. Hence, Formation is liable to pay the said amount.

6. The Respondent in its Reply states that after approval of the Resolution Plan, the RP becomes functus officio and can no longer file any application. Further, it is submitted that after approval of Plan all claims which are not a part of the Resolution Plan shall stand extinguished. Further, the new SRA has already dealt with the same and allocated a sum of Rs.1,63,00,000/- towards the amount payable to the interim trade creditors.

IA 1785 of 2021:

7. The Application bearing no. IA 1785 of 2021 has been filed under Section 60(5) read with section 5(13) of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as the 'Code') read with Rule 11 of the National Company Tribunal Rules, 2016 seeking directions upon the successful resolution applicant and the corporate debtor to pay the pending insolvency resolution process costs or in the absence of which declare the resolution plan as ultra-vires the provisions of the Code and initiate the liquidation of the Corporate Debtor under section 33 of the Code.
8. That during the implementation of the Resolution Plan, , the Corporate Debtor placed various Purchase Orders between 11.09.2019 to 04.12.2019 consequent to which the Applicant supplied Non-coking imported coal from 17.09.2019 to 08.01.2020 under various tax invoices for an amount aggregating INR 79,81,397/- (Rupees Seventy Nine lakhs eight one

thousand three hundred ninety seven only).

9. That till 08.01.2020, out of INR 79,81,397/-, only an amount of INR 16,48,231/- (Rupees Sixteen Lakhs Forty-Eight Thousand Two Hundred Thirty-one only) was settled by and by between the applicant and the Corporate Debtor leaving behind an unpaid principal balance of INR 63,33,166/- (Rupees Sixty-Three Lakhs Thirty-three Thousand One Hundred Sixty Six Only). After persistent reminder(s) from the applicant to make the payment, finally on 16th January, 2020, the respondent no. 2 assured that the payment of the overdues of the applicant shall be taken care of.
10. That thereafter on enquiring further, the Applicant came to know that the successful resolution applicant, M/s Formation Textiles LLC, had filed an application before this adjudicating authority to withdraw from its resolution plan which had been allowed vide order dt. 05.12.2019 with further directions for the revival of the CIRP.
11. Further it is informed that the new Form-G issued in response to which eight prospective resolution applicants expressed their interests to submit resolution plans for the Corporate Debtor. Thereafter, the resolution plan of M/s Dev Land & Housing Private Limited, the respondent No.3, came to approved by the CoC and the respondent No.1 filed an application

bearing IA 19/2021 for approval of the resolution plan of M/s Dev Land & Housing Private Limited.

12. This Adjudicating Authority vide order dt. 19.05.2021 has approved the resolution plan of M/s Dev Land & Housing Private Limited. Consequent to approval of the resolution plan, respondent no.4, monitoring committee, has been constituted to oversee the implementation of the resolution plan. After the approval of the resolution plan of respondent No.2, on 07.06.2021, the respondent no.3 has released only a part amount of INR 36,14,601/- (Rupees Thirty Six Lakhs Fourteen Thousand Six Hundred One only) in two tranches by way of bank transfer leaving an unpaid principal balance of INR 27,18,564/- (Rupees Twenty-Seven Lakhs 7 Eighteen Thousand Five Hundred Sixty-Four only) along with an accumulated interest of INR 17,09,451/- (Rupees Seventeen Lakh Nine Thousand Four Hundred Fifty One only) calculated as on 15th July 2021.
13. That the overdues of the applicant are in the nature of insolvency resolution process costs and despite being afforded highest priority under the law, the same have not been paid by the respondent no.2, respondent no.3 and respondent no.4.

IA 1986 of 2021:

14. This Application is filed by the Operational Creditors of GB Global

Limited (Mandhana Industries Limited) for losses caused to the Applicants by Formation Textiles Limited (hereinafter referred to as “FTL”) during the period (31.01.2019 to 08.01.2020) when it had taken over the control of the Corporate Debtor as a Successful Resolution Applicant. It is submitted that FTL utilized the services of the Applicants and raised a debt of Rs.13,24,98,245/-.

15. The Applicants states that its claims have not been considered by FTL or new Resolution Applicant. It was the Applicants whose supply of goods have kept the Corporate Debtor running when it was being managed by FTL. The Applicants submit that when the second CIRP of the Corporate Debtor commenced and Resolution Plan of Dev Land & Housing Private Limited was approved, the claims of the Applicants was not admitted. Further, these claims have also not been considered as CIRP Costs either.
16. STATUS OF THE OPERATIONAL CREDITORS DURING THE PERIOD IN WHICH THE CORPORATE DEBTOR WAS UNDER THE CONTROL OF THE FORMER SRA (FTL):

It is submitted that the former SRA has created a liability towards the Operational Creditors to the extent of Rs.22.53 Crores and a sum of Rs.1.63 Crores is provided to them under this Resolution Plan. Hence, there is a balance of Rs. 20.9 Crores payable to this category of the Operational

Creditors. For this balance amount payable, the CoC has submitted that this category of Operational Creditor shall be treated as pre-CIRP Operational Creditors. However, we are unable to concede to such submission. The rights of this category of Operational Creditors cannot be decided the way opined/suggested by the CoC. It is to be noted that these creditors cannot even file their claims. This does not relate to pre-CIRP liability but a liability created by the former SRA. We feel that the commercial wisdom of the CoC cannot be stretched to a situation where the rights of these creditors can be decided by the CoC. In fact, the liabilities were created by the former SRA during the period the Company was under its management. A decision relating to such liability by the CoC adversely affecting the rights of these category of creditors to the extent of around Rs.20.9 Crores, could not be decided without hearing the affected parties. Hence in our considered opinion the CoC cannot be held competent to take such a decision and such a decision would not come within the domain of its commercial wisdom. This issue has to be decided only after hearing such category of Operational Creditors in an appropriate proceeding as and when initiated. However, we are making it clear that the present RA (DLH) shall not in any manner be held accountable for this liability of Rs.20.9 Crores.

17. The Respondent No.1 in its reply dated 28.02.2022 has primarily stated that since the new Successful Resolution Applicant has already considered the claims of these interim trade creditors in its Resolution Plan and has assigned an amount already. Further, after approval of the Plan no claims can be considered.

IA 1052 of 2022:

18. The Applicant, Mr. Rameshchand Hansrajji Gandhi (DIN: 00427698) is a Director/ Authorized Person in Gimatex Industries Private Limited; the Operational Creditor is engaged in the business of spinning, weaving and finishing of textiles. The board resolution passed by Board of Directors of Operational Creditor authorizing the Applicant to file the instant application is annexed as Annexure No. A16 to the Application.

19. The authorized persons of Corporate Debtor approached the Applicant/Operational Creditor for purchasing fabrics and textiles manufactured, promoted, endorsed and sold by Operational Creditor during the ongoing corporate insolvency resolution process of R-4. It is worthwhile to note that Operational Creditor and Corporate Debtor were in continuous business relations since the year 2010-11 and since then Operational Creditor has executed purchase orders placed by Corporate Debtor to the extent of INR 8.40 Crores & odds.

20. The erstwhile management of R-4 i.e. GB Global Limited (Formerly known as Mandhana Industries Limited) had cleared the entire debt due to Operational Creditor on dated 31.01.2017 and thereafter no trade transactions surfaced between the parties for a substantial period however after admission of CP (IB) No. 1399/MB/2017 vide order dated 29.09.2017, the R-6 i.e. Mrs. Charu Sandeep Desai took control of administration and management of R-4 and new management placed purchase orders during the ongoing CIRP to keep it a going concern. The R-4 placed various purchase orders in the year 2018-19 and goods were supplied by the Operational Creditor. The purchase orders placed by R 4 are annexed as Annexure No. A1 to the Application. The Operational Creditor supplied the goods and raised invoices. The invoices from 13.11.2018 till 06.09.2019 are annexed as Annexure No. A2 to the Application. The e-way bills raised by Operational Creditor are annexed as Annexure No. A3 to the Application. The packing slips of the goods are annexed herewith as Annexure No. A4, and transport challans are annexed as Annexure No. A5 to the Application.
21. In the meantime, resolution plan floated by erstwhile successful resolution applicant i.e. Formation Textiles LLC (R-1) comprising of Mr. Piyush Viradia (80% shareholder) (R-2) and Mr. Jiten Parikh (20% shareholder)

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(R-3) was approved by 80.92% voting share by the Committee of Creditors of GB Global Ltd. (R-7 i.e. CoC) in the meeting held on dated 04.07.2018. The said resolution plan received sanction from this Tribunal on dated 30.11.2018 vide an order passed in MA No. 692/MB/2018 qua which the operational debt due to Operational Creditor was taken over by R-1 i.e. FTL being the beneficiary thereof. The order passed on dated 30.11.2018 is annexed as Annexure No. A8 to the Application. After approval of resolution plan of R 1, the trade transactions surfaced till date 31.12.2019 when last payment was made by R-1 to Operational Creditor. The ledger statement of Operational Creditor is annexed as Annexure No. A12 to the Application.

22. As R-1 to R-3 failed in implementing the resolution plan as approved, this Tribunal vide order dated 05.12.2019 in MA No. 2326/ MB / 2019 and MA No. 2124/MB/2019 directed R-1 to R-3 to hand over the possession of R - 4 back to R 6 and R-7 vis-à-vis restored the CIRP of R-4 and initiated the process afresh. Though restoration of CIRP might have turned out to be prospective for R-4 and R-7 however it turned out to be fatal for Operational Creditors of R-4 whose interest left unchecked during the entire process. The order passed on dated 05.12.2019 is annexed as Annexure No. A9 to the Application. Meanwhile this Tribunal partly allowed the MA No.

2326 MB / 2019 vide an order dated 05.02.2020 and called for fresh resolution plans from prospective resolution applicants. The order dated 05.02.2020 is annexed as Annexure No. A10 to the Application.

23. The new resolution applicant i.e. Dev Land & Housing Pvt. Ltd. (R-5) stepped forward to participate in the fresh resolution process and floated its resolution plan which was put before this Tribunal for its sanction by R-6 after being approved by R-7 by 67.01% voting share. After considering the resolution plan submitted by R-5, this Tribunal was pleased to grant sanction to the new resolution plan vide order dated 19.05.2021 in IA No. 19/MB/2021. The orders passed on dated 19.05.2021 by this Tribunal in IA No. 19/MB/2021 and IA No. 734/MB/2021 are annexed as Annexure No. A11 to the Application.
24. During the entire process, the interest of stakeholders mainly that of Operational Creditors of R-4 wasn't taken into consideration and the resolution plan of R-5 was approved vide order dated 19.05.2021 wherein a saving clause/ immunity was granted to the new resolution applicant in respect of the operational debt due to Operational Creditors. **This Tribunal categorically opined that R-1 to R-3 failed in implementing the resolution plan and has also created a liability to the extent of INR 22.53 Crores out of which sum of INR 20.9 Crores still remains unpaid to**

Operational Creditors. Furthermore this Tribunal also granted liberty to Operational Creditors to initiate appropriate action against the parties concerned for the unpaid debt due to R-1 to R-3.

25. The R-4 had also issued various cheques in respect of the unpaid operational debt due to Operational Creditor. The cheques were dishonored for the reason as "Payment Stopped by Drawer" thus amounting to dishonesty and cheating with the creditors. The cheques are annexed as Annexure No. A6 to the Application. The Operational Creditor issued various emails to R- 4 in respect of the operational debt due and payable and also sought for ledger confirmation of R-4. In view thereof, R -4 had issued ledger statement in respect of the trade transactions that surfaced with Operational Creditor. The email correspondences along with ledger statement of R -4 from 01.04.2019 till 19.12.2019 is annexed as Annexure No. A7 to the Application.
26. The Intervener/Operational Creditor **of R-4 herein has supplied goods to the extent of INR 5,69,72,143/- (Rupees Five Crores Sixty Nine Lakhs Seventy Two Thousand One Hundred Forty Three only)** during the ongoing CIRP of R-4 and thus Operational Creditor has played a paramount role in keeping R-4 as a going concern entity and the interest thereof has been left unchecked before restoring CIRP inter-alia approving

the resolution plan of R-5 vide order dated 19.05.2021 in IA No. 19/MB/2021 without clearance of operational debt due to Operational Creditor herein.

27. The Operatione Creditor is in huge monetary loss. The Respondents are well in knowledge of the unpaid debt however R-1 to R-4 defaulted in repayment thereof. Furthermore R-5 to R-7 failed in taking into consideration the interest of stakeholders of R-4 who had supplied goods during the ongoing CIRP to keep R- 4 as a going concern. Moreover, this Tribunal sanctioned the resolution plan of R 5 without granting an opportunity of audience to the Operational Creditors who are directly aggrieved in the entire process.
28. Being aggrieved by the order dated 19.05.2021 passed in IA No. 19/MB/ 2021 inter-alia approving the resolution plan floated by R-5 and also granting immunity/saving clause in respect of the operational debt owed by R-1 to R-4 of which R-5 happens to be ultimate beneficiary in the capacity of a receiver; the Intervener/Operational Creditor is moving this interlocutory application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 thereby seeking appropriate reliefs to the extent of issuance of appropriate directions to Respondents to clear the operational

debt due to Operational Creditor herein.

Submissions made by the Respondent No.3 i.e. Erstwhile Resolution Professional to I.A. No. 561/2021, IA 1785 of 2021 I.A. No. 1052/21 and I.A. No. 1986/2021:

29. The Ld. Counsel appearing for Respondent No.3 i.e. the erstwhile RP submits that the RP or CoC did not induce the Applicant into submitting the Plan.

30. Interim Trade Creditors' Dues:

- i. When Formation was in control of the Corporate Debtor, during 31 January 2019 till 5 December 2019 (“**Interim Period**”), various trade creditors/ suppliers (“**Interim Trade Creditors**”) had provided goods and services to the Corporate Debtor for running the Corporate Debtor as a going concern.
- ii. We understand that while some of the Trade Creditors were paid by the Corporate Debtor in ordinary course, certain payments to the Trade Creditors in respect of goods/services supplied during the Interim Period were not made (“**Interim Trade Creditors Dues**”). These outstanding Interim Trade Creditors' Dues amount to approx. INR 21.98 Crores as on 28th February 2021.
- iii. The list of Interim Trade Creditors along with outstanding amounts

has been filed by the RP in IA. 561 of 2021 and includes the names of the operational creditors who have filed the application in I.A. 1986 of 2021 and I.A. 1052 of 2021. (**Ref: Page 42-47 of IA. 561 of 2021**)

31. Treatment of Interim Trade Dues in the DLH Resolution Plan

- i. The DLH Resolution Plan approved by Adjudicating Authority provides for full payment of unpaid CIRP costs, which includes the following-
 - a) CIRP 1 costs (29 September 2017-31 January 2019) of approx. INR 3.91 Crores which was incurred in round 1 of the CIRP of the Corporate Debtor till the control was taken over by Formation; and
 - b) CIRP 2 costs being the CIRP costs incurred after the CIRP of the Corporate Debtor was restored on 5 December 2019. As on 31 December 2020 these are INR 23.35 Crores.
- ii. As regards the Interim Trade Creditors' Dues, the DLH Resolution Plan provided that such dues shall be settled, discharged and extinguished in full and reduced to nil by payment of INR 1,63,00,000 (Indian Rupees One Crore Sixty-Three Lakhs only) to the Interim Trade Creditors.

iii. At the time of hearing of the DLH Resolution Plan, the treatment of Interim Trade Creditors' Dues was discussed, and the Adjudicating Authority held as follows:

“It is submitted that the former SRA has created a liability towards the Operational Creditors to the extent of INR 22.53 Crores and a sum of INR 1.63 Crores is provided to them under this Resolution Plan, Hence, there is a balance of INR 20.9 Crores payable to this category of the Operational Creditors. For this balance amount payable, the CoC has submitted that this category of Operational Creditor shall be treated as pre-CIRP Operational Creditors. **However, we are unable to concede to such submission. The rights of this category of Operational Creditors cannot be decided the way opined/suggested by the CoC. It is to be noted that these creditors cannot even file their claims. This does not relate to pre-CIRP liability but a liability created by the former SRA.** We feel that the commercial wisdom of the CoC cannot be stretched to a situation where the rights of these creditors can be decided by the CoC. **In fact, the liabilities were created by the former SRA during the period the Company was under its management.** A decision relating to such liability by the CoC adversely affecting the

rights of these category of creditors to the extent of around INR 20.9 Crores, could not be decided without hearing the affected parties. **Hence in our considered opinion the CoC cannot be held competent to take such a decision and such a decision would not come within the domain of its commercial wisdom. This issue has to be decided only after hearing such category of Operational Creditors in an appropriate proceeding as and when initiated. However, we are making it clear that the present RA (DLH) shall not in any manner be held accountable for this liability of INR 20.9 Crores.”** (Emphasis Supplied)

(Ref: Page 76, 77 of I.A. 1986 of 2021)

- iv. Hence, this Adjudicating Authority observed that the liabilities towards Interim Trade Creditors had been created by Formation during the period when the Corporate Debtor was under its management. This Adjudicating Authority further held that the issue of treatment of interim trade creditor dues could be decided only after hearing such category of Operational Creditors in an appropriate proceeding as and when initiated.
- v. It may be noted that against the total Interim Trade Creditors' Dues

of approx. INR 21.98 Crores as on 28th February 2021 (calculated by the RP), DLH has paid INR 1.63 Crores to Interim Trade Creditors under its Resolution Plan. Hence a balance of INR. 20.35 Crores is still outstanding.

32. The Interim Trade Creditors ought to be paid by Formation Textile Limited

- i. It is submitted that the balance Interim Trade Creditors' Dues, including the dues of the Operational Creditors in I.A. 1986 of 2021 and I.A. 1052 of 2022, ought to be paid by Formation due to the following reasons:
 - a) During the Interim Period, it was Formation which was in control of the Corporate Debtor and was responsible for all managerial, financial and business decisions taken by the Corporate Debtor. It was Formation's management which took commercial calls while running the business of the Corporate Debtor during the Interim Period and failed to pay the Trade Creditors who supplied various goods/ services to the Corporate Debtor during this period.
 - b) During the Interim period, Formation was managing affairs of the Corporate Debtor and the business incurred significant losses.

Manufacturing businesses such as that of the Corporate Debtor, can break-even or realise profits only when the facilities are operated above certain capacity utilization levels. Such ramp-up in production levels require working capital infusion, which Formation failed to infuse, despite their approved resolution plan envisaging a working capital infusion of INR 51 crores within 10 days from approval of their Resolution Plan by the Adjudicating Authority. Not only did Formation fail to implement their resolution plan, and infuse working capital as per its terms, they funded the losses incurred by the Corporate Debtor from the working capital pool inherited at the time of handover.

- c) Further during the Interim Period, Formation ran the business in a haphazard manner as is evident from a constant change in strategy (own products vs job work), ill-conceived management structure, frequent attrition of senior plant officials and wasteful expenses on head office renovation resulting in a decline in margins and order cancellations from customers which further impacted sales and profitability of the Corporate Debtor.
- d) As per the books of the Corporate Debtor, at the time when Formation took over the CD on 31 January 2019, it inherited a

working capital pool of INR 46.16 Crores. However, by 5 December 2019, when this Hon'ble Adjudicating Authority ordered the restoration of CIRP, the net working capital pool of the Corporate Debtor had gone down to INR 32.83 Crores. Thus, during the Interim Period when Formation was in management and control of the Corporate Debtor, the net working capital depleted by approx. INR 13 Crores. Further, post restoration of CIRP by this Hon'ble Adjudicating Authority, the current assets that were inherited back from Formation were found by the RP to be significantly inflated which were then appropriately adjusted by the RP in the accounts during the closure of March 2020 year end financials. The adjustments included inventory write-off for INR 3.75 Crores and debtor provisioning of INR 3.46 Crores. After accounting for these adjustments, the total working capital depletion during the Interim Period amounted to INR. **20.54 Crores.**

- e) It may also be noted that during the period from 1 April 2018 to 31 January 2019, when the RP was in management of the Corporate Debtor, the earnings before interest, taxes, depreciation, amortization (“**EBITDA**”) of the CD had turned positive and was

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INR 4.46 Crores while the Losses Before Tax (“LBT”) was INR 29.28 Crores. In stark contrast, during the Interim Period when Formation was in control of the Corporate Debtor, the company ran a negative EBITDA of INR 8.93 Crores while the LBT ballooned to INR 43.53 Crores.

f) The workings regarding working capital position and loss position of the Corporate Debtor are summarized below as:

Particulars	As on 31st Jan 2019	As on 05th Dec 2019	Variance
Inventory	44.57	36.94	(7.63)
Debtor Receivables	41.83	36.53	(5.31)
Cash & Cash Equivalent	20.03	18.32	
Sub-Total	106.43	91.79	(14.64)
Trade Creditors	44.43	43.39	(1.04)
Other Current Liabilities	15.84	15.57	(0.27)
Sub-Total	60.27	58.96	(1.31)

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Net working capital	46.16	32.83	(13.33)
Adjustments:			
Inventory write-off			(3.75)
Provision for debtors			(3.46)
Total working Capital depletion			(20.54)
	01.04.2018		
	to	01.02.2019	01.02.2019
Particulars	31.01.2019	to 05.12.2019	to 31.12.2019
EBITDA YTD	4.46	(8.93)	(10.08)
PBT YTD	-(29.28)	(43.53)	(48.29)

Note:

1. Above figures are as per provisional balance sheet prepared by the Corporate Debtor
2. Cash and Cash equivalent does not include funds of INR 93 Crores infused by Formation

g) Aggrieved by the non-implementation of Formation's resolution plan, the CoC filed M.A. No. 2326 of 2019 which led to the restoration of CIRP of the Corporate Debtor on 5 December 2019.

It may be noted that during the hearing of M.A. No. 2326 of 2019,

Formation had readily agreed to handover the Corporate Debtor back to the CoC/ RP.

- h) After hastily taking over the CD and then running it aground over a period of 10 months, Formation abandoned the CD with impunity and left it saddled with huge liabilities/ losses.
- ii. During the Interim Period, the Interim Trade Creditors have extended their support to the Corporate Debtor (which was under the management of Formation) by providing various goods/ services in the course of running the business and operations of the Corporate Debtor. Given the aforesaid facts and submissions, it is therefore imperative that these Interim Trade Creditors must be compensated by Formation for the goods/ services provided by them.
33. It is submitted that having made the submissions as mentioned above, the RP is not commenting on the source of funds for payment of the Interim Trade Creditors – i.e. whether the balance Interim Trade Creditors Dues should be paid from the sum of INR. 42.99 Crores deposited by Formation with the CD or should Formation be asked to bring fresh funds for payment of such dues.
34. In light of the aforesaid submissions made, it is submitted that the I.A. 561 of 2021 by the RP may be allowed and Formation should be directed to

make payment of balance Interim Trade Creditors Dues.

Findings:

35. We have perused the records and heard the Ld. Counsel for the parties.
36. Herein, it is important to note that while approving the resolution plan of DLH vide order dated 19.05.2021, Adjudicating Authority noted as follows:

“It is submitted that the former SRA has created a liability towards the operational creditor to the extent of Rupees 22.53 Crore and a sum of Rupees 1.63 Crore is provided to them under the Resolution Plan. Hence, there is a balance of Rupees 20.9 Crore payable to this category of the O C. For this balance amount payable, the Coc has submitted that this category of OC shall be treated as pre CIRP Operational Creditor. However, we are unable to concede to such submissions. The rights of this category of Operational Creditors can not be decided the way opined/ suggested by the Coc. It is to be noted that these creditors can not even file their claims. This does not relate to pre CIRP liabilities but a liability created by the former SRA. We feel that the commercial wisdom of the Coc cannot be stretched to a situation where the rights of the creditors can be decided by the Coc. Infact, the liabilities created by the former SRA during the period the company was under its management. A decision relating to such liability by the Coc adversely affecting the rights of these category of creditor to the extent of around Rupees 20.9 Crore, could

not be decided without hearing the affected parties. Hence, In our considered opinion the Coc cannot be held competent to take such a decision and such a decision would not come within the domain of its commercial wisdom. This issue has to be decided only after hearing of such category of OC in an appropriate proceeding as an when initiated. However, we are making it clear that the present SRA (DLH) shall not in any manner be held accountable for this liability of Rs. 20.9 Crore. “

37. From the above it is clear that DLH has not only dealt with the liabilities of interim trade creditors in its resolution plan, by making some payment towards them, but the same has even been approved by the Adjudicating Authority. Therefore, merely by including the said interim trade creditors as a part of the resolution plan, which was approved by the CoC and Adjudicating Authority has now made it difficult for Adjudicating Authority to interfere in such a case. Specially so because based on the application filed, wherein, the alternative reliefs sought by them is that DLH may be directed to make payment to the interim trade creditors.
38. Partly agreeing with the contentions raised by CoC, not only the said IAs have been filed belatedly, but, the said IAs have been filed to circumvent the explicit provisions of the Code, by seeking reliefs that can be sought only once jurisdiction of the Appellate Tribunal is invoked. Admittedly, the

applicant namely Vishal Dyes and others, and Gimatex, who are interim trade creditors, are aggrieved by order dated 19.05.2021, therefore, they ought to have approached to the Appellate Tribunal in terms of the timelines prescribed under section 61 of IBC.

39. It is an asinine arguments that, merely because FTL was in custody and control of the CD, when such vendors and suppliers were used, now FTL will have clear their dues not goods and services, benefits of which DLH, the new Successful Resolution Applicant is reaping further, it is trite law that once the resolution plan is approved, all claims stand extinguished, and the CD is handed over to the RA, in this DLH as a “clean slate”. This is also because the CIRP is designed in a manner that all have an opportunity to file their claims. We have been informed that the said interim trade creditors were never given this opportunity to file fresh claims. Here, we would like to observe that the RP ought to have invited fresh claims upon recommencement of fresh CIRP. It is unclear as to why RP did not follow the procedure prescribed in law. However, no objections were raised by the Interim Trade Creditors between 06.01.2019 till 19.05.2021, with regard to their claim. It is only now that these objections have been filed by them, at a much belated stage. Upon approval by the Adjudicating Authority, all claims that are included in Resolution plan shall be dealt in accordance with

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the said plan and all the claims that are not a part of the Resolution Plan, shall stand extinguished. If these interim trade creditors are aggrieved by the order dated 19.05.2021 then they ought to have challenge the said order. Under the shelter of the said order they can not make an application before this tribunal. It is trite law that a Tribunal can only exercise jurisdiction vested in it by these statute under which it is established. It cannot be conferred jurisdiction under an order if it does not otherwise possesses the requisite jurisdiction.

40. With regard to the IA filed by Charu Desai, who is now erstwhile RP of the CD, the said application would meet the same fate, at the same time, it is based on *Venus Recruiters (supra)*. It is clear that upon approval of the resolution plan, the RP becomes *functus officio*. No substitution application have been filed by the DLH to pursue the said application, therefore, it is safe to say that the IA filed by Charu Desai is infructuous.

In view of the above, all the above IAs are rejected, leaving open the interim trade creditors to work out their remedies.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

06.07.2023
SAM

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)