THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 880 OF 2025

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016

Nirmal Ujjwal Credit Co-operative Society Ltd.

...**Applicant**

V/s

Mr. Ravi Sethia
The Resolution Professional

…**Respondent**

In the matter of
C.P.(IB) No. 1318/MB/2022

Axis Bank limited

…**Financial Creditor**

Vs.

Morarjee Textiles Limited

…Corporate Debtor

Order delivered on: 09.04.2025

Coram:

Shri Prabhat Kumar
Hon’ble Member (Technical)

Justice Shri V.G. Bisht
Hon’ble Member (Judicial)

Appearances:

For the Applicant	:	Sr. Advocate Mr. Vikram Nankani a/w Mr. Shyam Kapadia, Aditya Sharma and Anirudh Purshotam, Advocates
For the Respondent	:	Sr. Advocate Mr. Gaurav Joshi a/w Mr. Dhrupad Vaghani, Rahat Kalpatri and Ajiz MK, Advocates

ORDER

1. This Application IA 880/2025 was filed by **Nirmal Ujjwal Credit Co-operative Society Ltd.** (Applicant), against the Resolution Professional of Morarjee Textiles Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code"), seeking following reliefs:
   a. *Quash and set-aside the email dated 10.02.2025 issued by the Respondent Resolution Professional (Exhibit-A) as illegal and invalid.*
   b. *Direct the Respondent Resolution Professional to forthwith reinstate the Applicant as an eligible Prospective Resolution Applicant (PRA) in the CIRP of the Corporate Debtor, recognizing the Applicant's eligibility and allowing the Applicant to participate fully in the remaining stages of the CIRP.*
   c. *Direct the Respondent Resolution Professional and the Committee of Creditors to consider the Resolution Plan submitted by the Applicant on its merits, without any prejudice arising from the impugned email dated 10.02.2025 (Exhibit-A).*

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d. During the pendency and final hearing of this Application, stay the effect and implementation of the email dated 10.02.2025 (Exhibit-A).

e. During the pendency and final hearing of this Application, grant an interim order restraining the Committee of Creditors from considering, voting upon, or implementing any Resolution Plan for the Corporate Debtor until the final disposal of this application.

f. Interim and ad-interim reliefs in terms of prayers 'A' to 'E' above.

g. Award costs in favor of the Applicant.

h. Grant such other and further reliefs as the facts and circumstances of the present case and/or the discretion of this Hon'ble Tribunal may warrant

2. The Applicant is a credit co-operative society limited and is in the business of Textiles manufacturing. As per the society by-laws the objectives and functions of the Applicant society is to purchase, produce, procure, distribute the agro products for the processing of product and byproduct. It also makes available to members modern technique used in processing of agro products and other activities in the processing sector.

2.1. The Applicant submits that the Applicant, fulfilling all eligibility criteria, and having a net worth exceeding Rs. 123.29 Crores, submitted its EOI on 18.05.2024. On 23.06.2024, the RP circulated a provisional list of PRAs, which included the Applicant. Subsequently, on 02.07.2024, the RP issued the final list of PRASs, again including the Applicant.

2.2. The General Body of the Applicant, at its 35th Annual General Meeting held on 23.09.2024, specifically deliberated and passed a resolution authorizing the Applicant to participate in the CIRP of the Corporate Debtor. Thereafter, the Applicant was invited to and

actively participated in the 13th CoC meeting on 12.11.2024 and the 16th CoC meeting on 09.12.2024, where the Applicant was asked to improve its offer. The Applicant duly complied and submitted a revised Resolution Plan. Thereafter, the Applicant was invited by email dated 02.01.2025 to participate in the 18th COC meeting on 03.01.2025, in which all addendums to the plans submitted by all the PRAs, including the Applicant's, were to be presented. The Applicant attended the 18th COC meeting and presented its case.

2.3. It is submitted that the Resolution Plan along with Addendums tendered and proposed by the Applicant herein stood at the highest in terms of valuation, provided for resolution of Corporate Debtor, in comparison to other resolution plans received by the RP herein. However, the Respondent-Resolution Professional herein on 10.02.2025 via email informed the Applicant herein that its Resolution Plan would not be put to vote in view of:

(1) Mr. Pramod Manmode (one of the member of Applicant Society) was ineligible under section 29A as he held directorship in 'Ambicio Infotech Private limited' which was struck off and therefore, Mr. Manmode was disqualified under section 164(2) from holding directorship in any other company thereby rendering the Applicant society as disqualified from submitting its resolution plan.

(2) that as per Clause 52 of the bye-laws of the Applicant Society and as per Section 64 of Multi-state Co-operative Societies Act, 2012, the society cannot legally invest in the Corporate Debtor.

2.4. It is stated that Respondent-RP's conduct is absolutely unfounded in law and is rather arbitrary in nature thereby inflicting a grave blow to possibilities of Resolution of Corporate Debtor at a higher valuation which in turn disregards the interests of CoC and other creditors/stakeholders of Corporate Debtor. Following is a point wise enumeration of grounds on which such actions of RP of Corporate Debtor herein holds no ground in law

3. The Respondent filed affidavit in reply and written submissions stating that Applicant was one of the prospective resolution applicants ("PRA(s)") whose resolution plan was not put to vote before the committee of creditors as the Applicant was found to be ineligible on various grounds inter alia under Section 29A of the Insolvency and Bankruptcy Code, 2016 ("Code") and the legal disability to acquire the Corporate Debtor under the bye-laws of the Applicant read with the Multi-State Cooperative Societies Act, 2002 ("said Act"). The Respondent submitted that, on 18th & 26th November, 2024, the Applicant provided limited details on the pending cases against the promoter/ director of the Applicant and requested two days' time to furnish a legal opinion on its eligibility stating that as a co-operative society, the Applicant was eligible to participate in the CIRP process. In the 16th CoC meeting held on 9th December, 2024, the Applicant's eligibility was discussed with the Applicant. In this said meeting, the Applicant was informed that further information was needed to confirm their eligibility under Section 29Aof the Code and to submit a resolution plan for the Corporate Debtor. Further, the Applicant was also informed that the resolution plan submitted by the Applicant in its present

state was conditional and the same was non compliant of the provisions of the Code and regulations framed thereunder. In 22nd CoC meeting held on 4th February, 2025, a legal opinion from Khaitan & Co., a third party was discussed. The 29A Agency Amit Ray & Company submitted its final report on 4th February, 2025 holding the Applicant ineligible under Section 29A of the Code as Mr. Pramod Manmode, the present promoter/ director of the Applicant is disqualified to act as a director under the Companies Act, 2013 making him ineligible under Section 29A(e) of the Code.

3.1. The Applicant herein can invest only into specific industries/ sectors and pertinently the clause 5 of Byelaws does not include textile industry. In this regard, the by-laws of the Applicant do not allow the Applicant to invest in the Corporate Debtor. It is imperative to note that, as per the resolution plan submitted by the Applicant, the Applicant intended to acquire the shares of the Corporate Debtor by subscribing to the equity shares of the Corporate Debtor by way of Upfront Equity Infusion and further acquire the debt of the financial creditor by making payment to the financial creditor and consequently acquire the Corporate Debtor which is not permitted by the said Clause of the Applicant.

4. Heard the Learned Counsel and perused the material on record.

4.1. ***Alleged Ineligibility of Applicant herein under Section 29A of the IBC, 2016***

4.1.1. The Respondent RP has disqualified the applicant on the basis of report of 29A agency holding that Mr. Pramod Manmode, the director in the Applicant Society, is disqualified to be appointed as director in terms of Section 164(2) of the Companies Act, 2013

on account of failure of Ambicio Infotech Private Limited to file its annual financial statements for a period of three years since its incorporation. Indubitably, Ambicio Infotech Private Limited, incorporated in August, 2015 has not filed its annual financial statements and came to be struck from the Register of Members by the RoC on an application in STK-2 in terms of Section 248(2) of the Companies Act, 2013 made by such company on 6.2.2019 approved on 6.6.2020 (as noticed from MCA 21 e-filing portal).

4.1.2. Section 29A€ of the I B Code disqualifies a person from submitting a Resolution Plan if such person is disqualified to act as a director under the Companies Act, 2013; Provided that this clause does not apply in relation to a connected person referred to in clause (iii) of *Explanation I*. Section 29A(j) further disqualifies a person if such person has a connected person not eligible under clauses (a) to (i). Further, the terms Connected person for this purpose is defined in Explanation I to mean i) any person who is the promoter or in the management or control of the resolution applicant; or (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

4.1.3. Mr. Pramod Manmode is a connected person of the Applicant Society in terms of clause (i) of Explanation I, being in its management. Accordingly, if Mr. Pramod Manmode is disqualified to be Resolution Applicant in terms of clause €, so

will be the Applicant Society in terms of clause (j) as Mr. Pramod Manmode is its connected person. The Learned Counsel for Applicant submitted that clause € does not apply in case of connected person in terms of clause (iii) of Explanation I, however said submission has no substance as Mr. Pramod Manmode is a connected person in terms of clause (i) of Explanation I and not in terms of clause (iii) thereof '*as related party of a person referred to in clauses (i) and (ii) of Explanation I*'. Accordingly, it is necessary to ascertain whether Mr. Pramod Manmode is disqualified to be appointed as director under Section 164(2) of the Companies Act, 2013.

4.1.4. Section 164(2) of the Companies Act, 2013 provides that "*No person who is or has been a director of a company which (a) has not filed financial statements or annual returns for any continuous period of three financial years; or (b) …………………,shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so*. Section 92(4) of the Companies Act, 2013 provides that "*Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed*". Further Section 96(1) of the Companies Act, 2013 provides that

"*Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next;* ***Provided*** *that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year*".

4.1.5. Ambicio Infotech Private Limited was incorporated in the month of August, 2015, accordingly was liable to hold its first annual general meeting in terms of Section 96(1) latest by 30.9.2016 and file its audited financial statements with 30 days i.e. 29.10.2016 thereof. Further, it was also liable to file its first Annual Return u/s 92(1) of the Companies Act, 2013 by 28.11.2016 i.e. within 60 days of from 30.9.2016. The similar will be case for the successive financial years i.e. 2017 and 2018 only as it filed form STK-2 for its striking off on 6.2.2019. Accordingly, first disqualification in terms of Section 164(2) occurs on 29.11.2018 and no disqualification can be attributed for financial year 2018-19 as it was not obligated to file annual return or audited financial statements in view of filing of STK-2 on 6.2.2019 and its name was struck off by the Registrar of Companies in terms of Section 248 of Companies Act, 2013 on 6.5.2020 as in terms of Section 250 of the Companies Act, 2013, it shall on and from the date mentioned in the notice under sub-

section 248(5) cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date.

4.1.6. The Ld. Counsel relied upon the decision in the case of ***M.K. Rajagopalan Versus Dr. Periasamy Palani Gounder & Anr. (Civil Appeal 1682-1683 of 2022,*** which in our considered view is not applicable to the present case as that decision was rendered in context of Section 164(2)(b) which is attracted on failure to repay the deposits accepted by it or pay interest thereon or to redeem any debenture on the due date or pay interest due thereon or pay any dividend declared, accordingly the Hon'ble Supreme Court held that "*Unless a categorical finding was recorded in the competent forum as regards any such default and unless specific order disqualifying the resolution applicant as director because of such default came into existence, it could not have been taken by way of any process of assumption that the appellant-resolution applicant was disqualified to act as a director".* In the present case, the disqualification has occurred in terms of section 164(2)(a) and the same is evident from the company master data. Even, the certificate tendered by Company Secretary Monica Ramesh Bhattad, as relied by the Applicant, concludes that Mr. Pramod Manmode was disqualified though as per her calculation, the said disqualification ceased before June 2024.

4.1.7. As noticed from the above discussion, the disqualification occurred on 28.11.2018 and it shall cease to have effect on 28.11.2023 i.e. expiry of 5 years from the failure to comply with

section Section 92(1). The relevant date for considering the ineligibility is the date of submission of Resolution Plan. As the resolution plan was submitted in July, 2024, in our considered view, there was no disqualification attached to Mr. Manmode to hold a directorship in terms of Section 164(2)(a) of the Companies Act, 2013.

4.1.8. Since, Mr. Pramod Manmode, the connected person, is not disqualified u/s 164(2)(a) Companies Act, 2013 as on date of submission of Resolution Plan, we are of considered view no disqualification can be attached to the Applicant Society in view of Section 29A(j) read with Section 29A€ of the Code.

4.2. Alleged incapacity of applicant to invest in Corporate Debtor in terms of Bye Laws and Co-operative Act

4.2.1. Clause 5(s) of the Bye-laws of the Applicant Society enlists one of objective and function as "*to purchase, produce and distribute agro products and to further make available to members modern technique used in processing of agro products only.*" The Applicant has submitted that it is engaged into the business activity of textile comprising ginning and pressing to Yarn Manufacturing to manufacturing of Fabrics. It has explained that the raw cotton is procured and converted into the bail in a ginning and pressing unit, subsequently the bail is sent to the textile unit which convert the cotton bail into the yarn and then yarn to Fabric. Undisputedly, the business of the Applicant is in the field of Cotton and its processing till the conversion of raw cotton into fabric, and is squarely an agro based industry, as permissible under clause 5(s) of the Bye-laws. It is relevant to note here that

the Corporate Debtor is engaged in the business of cotton and man-made fabrics. The Learned Counsel for the Applicant relied upon the decision in the case of ***Shree Meenakshi Mills Ltd. vs. Union of India (1974) 1 Supreme Court Cases 468*** wherein it was held that "*Textiles ordinarily means cloth and yarn. The Cotton Textiles Order also shows that cloth and yarn are both embraced within the word "textiles" in the various clauses of the Order. The dictionary meanings show that cotton yarn is included in cotton textiles. The cognate legislations and the legislative practice show that cotton textiles is a generic term which includes cotton fabric and yarn. Yarn is the material or component with which cotton textile is manufactured or woven"*. This decision does not support the case of the Applicant as it does not hold that textile products other than cotton textile products are covered agro-based textile industry. He also argued that the Textile policy 2018-23 of Maharashtra Government identifies Textile Industry to be within the purview of the 'Agro based Industry'. However, the said policy recognizes the distinction between the agro based textile products i.e. Cotton ginning and pressing (4.1 of Policy) and Man made fibre i.e. Manufacturing viscose filament yarn / viscose staple fiber (4.15 of Policy), and the decision in case of Meenakshi Mills (Supra) as well as Textile Policy does not considers the textile industry as agro based industry, though some verticals of textile industry based on raw cotton certainly forms part of textile industry, which is a broad category.

4.2.2. Clause 28(m) of Bye-laws of the Applicant society as well Section 11 of the Multi State Co-operative Societies Act, 2002

(*"Act of 2002"*) empowers the General Body to "amend the bye-laws" and such amendment is to be registered with the central registrar subject to satisfaction in terms of section 11(7) thereof. Section 30(2)€ of the Code mandates that a resolution plan does not contravene any of the provisions of the law for the time being in force, however, the bye-laws of the Applicant Society can not be considered as law, more so such bye-laws as well as Multi State Co-operative Societies Act, 2002 permits the amendment of bye-laws. Accordingly, we are of considered view that the competence of the applicant society to undertake a business other than agro-based business is within the powers of the General Body of the Applicant Society, accordingly, it cannot be presumed that the Applicant Society shall proceed to invest in the Corporate Debtor's business without approval of General Body, even though such amendment has not yet taken place. This aspect can only be taken into consideration by CoC while evaluating the Resolution Plan of the Applicant on the aspect of its feasibility & viability and voting thereon. The Resolution Professional can not disqualify the Applicant's Resolution Plan merely on this basis unless CoC decides it to be not feasible in view of failure of the Applicant to modify its bye-laws. We note that the CoC in its 21st Meeting held on 29.1.2025 has discussed this issue.

4.2.3. This takes us to next question whether the Applicant Society can invest in the equity share capital of Corporate Debtor and lend money to it.

4.2.4. Clause 52 of the by-laws of Applicant, provides that "*The Society may invest or deposit its funds in : (a) Co-operative*

Banks; (b) Securities specified in Section 20 of the Indian Trust Act, 1882; (c) Shares and Securities of any other Co-operative Society/ Subsidiary institutions; (d) any other Scheduled Bank/ Nationalized Bank". Undisputedly, the Corporate Debtor, being a public limited company incorporated under the Companies Act, 2013 does not fall under any of sub-clauses as it is not subsidiary institution of the Applicant Society. Section 19(1) provides that "*Any multi-State co-operative society may, by a resolution passed at general meeting by a majority of members present and voting, promote one or more subsidiary institutions, which may be registered under any law for the time being in force, for the furtherance of its stated objects*". If it is the case of the Applicant Society that it intends to promote Corporate Debtor as its subsidiary institution, no resolution from the general body has been placed on record. Undisputedly, the Corporate Debtor is not a subsidiary institution of the Applicant Society as on date.

4.2.5. Section 64 of the Multi State Co-operative Societies Act, 2002 ("Act of 2002") provides that

"A multi-State co-operative society may invest or deposit its funds—

(a) in a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or

(b) in any of the securities issued by the Central Government, State Government, Government Corporations, Government Companies, Authorities, Public Sector Undertakings or any other securities ensured by Government guarantees;

(c) in the shares or securities of any other multi-State co-operative society or any co-operative society; or

(d) in the shares, securities or assets of a subsidiary institution or any other institution in the same line of business as the multi-State co-operative society; or

(e) with any other scheduled or nationalised bank.

Explanation.—For the purposes of this clause, the expression,—

(i) "scheduled bank" shall have the same meaning as assigned to it in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934); and

(ii) "nationalised bank" means a corresponding new bank constituted under sub-section (1) of section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980); or (f) in such other manner as may be determined by the Central Government.

4.2.6. It was argued by the Learned Counsel for Applicant that the present case is that of taking over the business of the Corporate Debtor and running it for profit which is different from making an investment/deposit and is instead an acquisition. However, this cannot be done unless it is eligible to promote it as subsidiary institution in terms of Section 11 of the Act of 2002.

4.2.7. He further argued that Section 64(d) of the Act of 2002 permits investment in the shares, securities or assets of a subsidiary institution or any other institution in the same line of business as the multi-State co-operative society. The Act of 2002 does not define the words institution, however section 19 of the Act provides for "Promotion of Subsidiary Institution". The word "Institution" has been used in the Act of 2002 in conjunction with the words "Financial" or "Subsidiary". Accordingly, the meaning of the word "Institution" stand alone is to be understood in that context. Even if Section 64(d) enables a Co-operative Society to invest in the shares, securities or assets of any other institution in the same line of business as the multi-State co-operative society, the words "any other institution" has to be understood to mean a subsidiary institution of any other Society in terms of section 11 or a financial institution, which the Corporate Debtor is not. Accordingly, we are of considered view that Section 64(d) does not enable the Applicant Society to invest its funds in a Company, which is not a subsidiary institution of other Co-operative Society.

4.2.8. Furthermore, Section 65 to 68 of the Act of 2002 lays down certain restrictions on investments and transactions with a non-member of the society and thus the society viz., the Applicant having a transaction with any person other than a member is subject to its bye-laws. Accordingly, as the Corporate Debtor herein is not a member of the society, the Applicant had restrictions in investing its funds and thus cannot make any investments into the Corporate Debtor which ought to be read

with by-laws of the Corporate Debtor. Undisputedly, the Corporate Debtor can become member of the Applicant Society after its resolution, if it contemplated in the proposed Resolution Plan.

4.3. The Respondent Resolution Professional has submitted that he had time and again sought for clarification on the Applicant's eligibility to participate in the CIRP of the Corporate Debtor. As the Applicant is a financial institution carrying on the business of lending and other allied services and governed by said Act, the Applicant was asked to provide details/ information showing that it is eligible to submit a resolution plan for the Corporate Debtor. It is further submitted that the Applicant is trying to mislead this Tribunal that the Applicant's Resolution Plan was never questioned, and it came as a shock when the Applicant was found to be ineligible to submit a resolution plan for the Corporate Debtor.

4.3.1. It is relevant to note that the Respondent Resolution professional vide email dated 11.11.2024 has specifically asked the Applicant "*whether the constitutional documents allow the acquisition of body corporates under the regime of the Insolvency and Bankruptcy Code, 2016*" and followed again on 17.11.2024. The Applicant responded on 18.11.2024 that "*Since the IBC law came into effect recently, it was not specifically mentioned. However, the constitutional document / charter document allows collaboration, joint-ventures, partnerships with national and international companies. The charter document also mentioned that the objective is to purchase and procure the agro products, modern techniques and other activities in the processing sector.*

The corporate debtor is also engaged in the business of processing of cotton into the spinning, weaving, printing and finishing business in the textile segment. Hence, we are well within the objectives of the charter document." The CoC in its 21st Meeting held on 29.1.2025 discussed this issue. The relevant part of the minutes reads as "*Further, the CoC legal counsel apprised the CoC that they have also included observation in their report related to permissibility for acquisition of textile unit as per by-laws of NUCCS. Additionally, the CoC counsel highlighted that the by-laws state that the funds of the society shall be used to achieve the objects of the society including providing financial assistance to certain section of the society and to participate in agro-related business. The representative of Indian Bank enquired whether the agro-related business could include the textile business. The RP legal Counsel shared the objects listed by NUCCS in its by-laws and it was clarified that the business of MTL would not fall into the agro-related business category. Upon detailed deliberation it was suggested and agreed that the RP legal Counsel and CoC legal counsel would get on a joint call to arrive at a conclusion on the participation of NUCCS given the bye laws and other relevant laws currently in place. It was also suggested by the CoC that RP may consider obtaining opinion from an independent legal counsel on this matter to obtain abundant clarity on this subject.*"

4.3.2. The Resolution Professional has placed on record one legal opinion from Khaitan & CO on the issue "*Whether Nirmal Ujjwal is eligible to submit the Resolution Plan for the Corporate*

Debtor", however said legal opinion has not considered competence of the Applicant Society to submit Resolution Plan in terms of its bye-laws and Act of 2002 and said opinion has dealt with issue of legal cases pending against the applicant and its members opining that "*an argument can be made that a person whose 'connected persons' are subjected to serious criminal investigations, including multiple allegations of fraud, issuance of non-bailable warrants and investigations by Economic Offences Wing, is a person: (a) who may not be in a position to lend credence to the insolvency resolution process of the Corporate Debtor; and {b) is otherwise undesirable to submit a resolution plan for the Corporate Debtor and may be rendered ineligible to submit a resolution plan under Section 29A of IBC*".

4.3.3. Nonetheless, it is for the CoC to consider the implications of legal cases pending against the Applicant and its members on the feasibility and viability of the Resolution Plan. Since, the Applicant Society has failed to have clarity in its bye-laws so as to expand the scope of agro based industry and make it eligible to promote subsidiary institution, we are of considered view that CoC's decision on the aspect of eligibility of the Applicant Society, if any taken by it, can not be further looked into by this Tribunal.

5. In view of the above, we are of considered view that the present application IA 880 of 2025 deserve to be dismissed in terms of aforesaid reasons.

Sd/-	Sd/-
Prabhat Kumar	**Justice V.G. Bisht**
Member (Technical)	Member (Judicial)