



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

**CORAM: SHRI DEEP CHANDRA JOSHI,  
HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY,  
HON'BLE TECHNICAL MEMBER**

**IA No. 590/JPR/2022**

**IA No. 90/JPR/2022**

**IA No. 220/JPR/2022**

**IA No. 323/JPR/2022**

**IA No. 327/JPR/2022**

**IA No. 401/JPR/2022**

**IA No. 519/JPR/2022**

**IA No. 581/JPR/2022**

**IA No. 602/JPR/2022**

**In CP No. (IB)- 275/9/JPR/2019**

*(Under Section 30(6) read with Section 31 and 60(5) of the Insolvency and Bankruptcy Code, 2016)*

**IN THE MATTER OF CIRP:**

**SUZUKI TEXTILES LIMITED THROUGH  
MR. PRASHANT AGRAWAL, RESOLUTION PROFESSIONAL**

...APPLICANT

**IN THE MATTER OF**

**SANGAM (INDIA) LIMITED**

...OPERATIONAL CREDITOR

*Versus*

**SUZUKI TEXTILES LIMITED**

... CORPORATE DEBTOR

**Memo of Parties**

**IN THE MATTER OF CIRP**

**Suzuki Textiles Limited  
Through its Resolution Professional,  
Mr. Prashant Agrawal**



Address: F-106, Sumer Complex,  
Gautam Marg, B/h Bagadia Bhawan,  
C-Scheme, Jaipur (Rajasthan)-302001  
Email ID cirp.suzuki@gmail.com/ippagrawal@gmail.com

... Applicant

**IN THE MATTER OF**

**SANGAM (INDIA) LIMITED**

...OPERATIONAL CREDITOR

*Versus*

**SUZUKI TEXTILES LIMITED**

... CORPORATE DEBTOR

**For the Applicant:** Prakul Khurana, Adv.  
Ankit Sareen, Adv.  
Amol Vyas, Adv.  
Prashant Agarwal, RP  
Prashant Kumar Sharma, Adv.  
Rachit Sharma, Adv.  
Karan Pratap Singh, Adv

**For the Respondent:** Abhishek Naik, Adv.  
Kartikeya Sharma, Adv.

**Order Pronounced On: 18.01.2023**

**ORDER**

**Per: Shri Prasanta Kumar Mohanty, Hon'ble Technical Member**

1. This Application has been filed on behalf of the Resolution Professional under Section 30(6) read with Section 31 and 60(5) of the Insolvency and Bankruptcy Code, 2016 for the approval of the Resolution Plan submitted by Successful Resolution Applicant- M/s Sai Leela Synthetics Private Limited which has been approved by the Committee Of Creditors with 99.99% voting shares in the second phase of their eighth meeting of CoC dated 19.10.2022, for which the voting window was kept open till 09.11.2022., seeking the following reliefs:

**1.1** Allow the present Application and pass necessary order(s)/direction(s):

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- a. Under Section 31 of the Code, approving the Resolution Plan submitted by the Respondent/Successful Resolution Applicant M/s Sai Leela Synthetics Private Limited, which has been approved with 99.99% vote casted in favour by the Committee of Creditors of M/s Suzuki Textiles Limited;
- b. Declaring that upon approval of the Resolution Plan by this Hon'ble Tribunal, the provisions of the Resolution Plan shall be binding on the Corporate Debtor, its creditors, guarantors, members, employees, statutory authorities and other stakeholders in accordance with Section 31 of the Code, and shall be given to and implemented, without any deviation, pursuant to the order of this Hon'ble Tribunal;
- c. In favour of the Resolution Applicant absolving it from/of all/any financial/statutory liabilities of the M/s. Suzuki Textiles Limited accrued prior to the commencement of the CIRP except whatever stated in the Resolution Plan in accordance to section 32A of the Code;
- d. Vacating the moratorium on Suzuki Textiles Limited imposed under Section 14 of the Code;
- e. Approving the appointment of the monitoring agency as stipulated in the Resolution Plan;
- f. Discharging the Resolution Professional, Mr. Prashant Agrawal from the duties of the resolution professional of CD;
- g. Granting the requisite relief as sought under the Resolution Plan and
- h. Pass such other necessary order(s)/direction(s) as this Hon'ble Tribunal may deem fit and proper.

True Copy of the Resolution Plan submitted by M/s Sai Leela Synthetics Private Limited. has been annexed.

2. The Applicant submits that:



- 2.1 Vide admission order dated 31.01.2022, this Hon'ble Tribunal had admitted Suzuki Textiles Limited (Corporate Debtor) into Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC), and vide the said admission order, the Applicant herein, Mr. Prashant Agrawal was appointed as the Interim Resolution Professional.
- 2.2 In compliance with Section 13 and Section 15 read with Regulation 6 of the CIRP Regulations, a public announcement under Form- A was made in following newspaper for disseminating and inviting claim at a wider scope:
- a. Jaipur edition of the Economic Times, a leading English newspaper, in English language on 03.02.2022. (Jaipur edition covers Bhilwara region)
  - b. Udaipur edition of Dainik Bhaskar, a leading Hindi newspaper, in English language on 03.02.2022. (Udaipur edition covers Bhilwara region)
  - c. Udaipur edition of Dainik Bhaskar, a leading Hindi newspaper, in Hindi language on 04.02.2022. (Udaipur edition covers Bhilwara region)
  - d. Surat edition of Jandesh, a leading Gujarati newspaper, in Gujarati language on 11.02.2022.
  - e. Surat edition of Silvasa Mirror, an English newspaper, in English language on 11.02.2022.

The Corporate Debtor has place of business in Surat was received post hoc, therefore, the public announcement was made in Surat at a later stage.

- 2.3 On receipt of claims, the IRP verified and collated the claims received by him and prepared the list of creditors and constituted Committee of Creditors (COC) on 19.02.2022 and filed the report under Regulation



17(1) of the CIRP Regulation qua constitution of COC before this Hon'ble Tribunal vide IA No. 98/JPR/2022 and the same was taken on record by this Hon'ble Tribunal on 29.03.2022.

- 2.4 In the first meeting of the Committee of Creditors held on 01.03.2022, the Interim Resolution Professional was confirmed and appointed as the Resolution Professional by the Committee of Creditors. Further, the Hon'ble Tribunal vide its order dated 11.05.2022 and 24.05.2022 in I.A. No 154/JPR/2022 confirmed the appointment of the Applicant as the Resolution Professional of the Corporate Debtor.
- 2.5 Pursuant to Regulation 27(1) of the CIRP Regulations, the Resolution Professional appointed registered valuers for all the class of assets within prescribed time limit.
- 2.6 In pursuance to Section 29 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 36(1) of the CIRP Regulations. The resolution professional, issued Information Memorandum to the committee of creditors after receipt of confidential undertaking. The issuance of Information memorandum was made within prescribed time limit of 54 days.
- 2.7 The Resolution Professional, presented Eligibility Criteria for Prospective Resolution Applicant, Evaluation Matrix and Request for Resolution Plan (RFRP) for approval of Committee of creditors in their second meeting dated 21.04.2022, which were approved by the committee with 84.02% voting.
- 2.8 The Applicant pursuant to Section 25(2)(h) of the Code read with Regulation 36A of the CIRP Regulations, published the Form-G for invitation of expression of interest ("MID) for submission of resolution plan on 16.04.2022 in following newspapers
  - a. Jaipur edition of the Economic Times (The edition covers Bhilwara region)



- b. Udaipur edition of Dainik Bhaskar (The edition covers Bhilwara region)
  - c. Surat edition of Jandesh in Gujarati language
  - d. Surat edition of Silvasa Mirror in English language.
- 2.9 Various expression of interests was received in pursuance to the publication of Form-G, which were eligible as per section 25(2)(h) and were made a part of provisional and final list of Prospective Resolution Applicants, however no resolution plan was received till the last date of submission of Resolution Plan, i.e., 15.06.2022, but just one resolution plan was received but after the last date of submission.
- 2.10 The Resolution Professional in the third meeting of CoC dated 23.06.2022, apprised the Committee of Creditors about the progress in the CIRP and that no resolution plan has been received until the last date and that one plan was received thereafter. The committee of creditors decided to extend the CIRP timeline with 79.69% voting shares and directed the RP to republish the Form-G. The republication of Form-G was made on 01.07.2022 in the following newspapers:
  - a. Jaipur Edition of the Economic Times (The edition covers Bhilwara region)
  - b. Udaipur Edition of Dainik Bhaskar (The edition covers Bhilwara region)
  - c. English Edition of Financial Express in its Surat edition
  - d. Gujarati Edition of Financial Express in its Surat edition
- 2.11 Meanwhile, the Resolution Professional, on the direction of the Committee of Creditors, filed an application before this Hon'ble Tribunal bearing IA No. 326/JPR/2022 for seeking exclusion of time period for the period 31.01.2022 to 28.02.2022 and extension of time period of 90 days under section 12(2) of Insolvency & Bankruptcy Code, 2016. The Hon'ble Tribunal in its order dated 27.07.2022 graciously allowed the exclusion



of 29 days and extension of time period of 90 days and declared the CIRP ending date to be 20.11.2022. The order mentions the approval of exclusion and extension of the sought time period, however, the order inadvertently recorded the CIRP end date to be 20.11.2022, instead of 26.11.2022.

2.12 Pursuant to the publication of Form-G published on 01.07.2022, the Resolution Professional received 24 Expression of Interest (EOI), however, after verification, only 23 EOI's were found to be eligible and were made part of provisional and final list of PRAs. The provisional list of eligible Prospective Resolution Applicants (PRAs) was issued on 23.07.2022, and no objection was received by the RP in response to the list issued. Thereafter, the Resolution Professional issued Information Memorandum and Request for Resolution Plan (RFRP), along with Evaluation Matrix to the PRAs vide email dated 28.07.2022, and through email dated 04.08.2022, the RP issued the final list of PRAs with 23 entries. It was proactively informed to all the PRAs the last date of submission of Resolution Plan, i.e., 27.08.2022.

2.13 In the Fifth (5th) CoC meeting held on 29.08.2022, the applicant informed the CoC that he has received 7 resolution plans till the last date of submission of Resolution Plan, out of which 6 have been received as per the prescribed format as mentioned in the RFRP, however, one of the resolution plans has been received over email in an encrypted mode and the same was not considered by the CoC as it was not submitted in the manner prescribed by the RFRP. The list of Resolution Applicants, who submitted Resolution Plan within prescribed time period in prescribed format as per RFRP are as follows:

- (i) M/s Shivam Sulz Private Limited
- (ii) M/s Salasar Dyeing and Printing Mills Private Limited, jointly with M/s Dravya Capital Services Private Limited



- (iii) M/s Mukesh Suitings Private Limited
- (iv) M/s Mahalaxmi Textiles
- (v) Mr. Kapil Mantri
- (vi) M/s Sai Leela Synthetics Private Limited

- 2.14 The Applicant appointed M/s Signal X to ascertain the eligibility of the Resolution Applicant(s) under the Section 29A of the Code. During the scrutiny of Resolution Plans submitted by the Resolution Applicants and on the basis of information shared by the Signal X, the Resolution Professional sought various information, documents and undertaking in regards to litigations, relationship etc. for ascertaining whether resolution applicant is eligible as per provisions of IBC, 2016 and RFRP.
- 2.15 The Resolution Professional came to know that the directors of one of the Resolution Applicants, M/s Mukesh Suitings Private Limited are relatives of the suspended directors of the corporate debtor. The Resolution Professional sought explanation from the Resolution Applicant in this regard by sending various emails, but neither confirmation, nor any denial to the fact was received from the Resolution Applicant
- 2.16 In the 7th meeting of CoC held on 29.09.2022, all Resolution Applicants were invited to present, discuss and negotiate their Resolution Plans before the COC, and after presentation by all the RAs, it was decided by the committee to issue a checklist to the RAs where they were asked to give specific responses to the parameters/elements of the checklist, backed by supporting documents. It was decided by the Committee of Creditors that the response of above-mentioned parameters/elements shall be submitted by the respective RAs in a sealed envelope to the Resolution Professional and that the same would be opened by the Resolution Professional in the second phase of the seventh meeting of COC on 06.10.2022.



- 2.17 The Resolution Applicant, Mukesh Suitings Private Limited was also invited in order to seek clarification where the relationship between the directors of RA with those of the corporate debtors was a correct fact or not. During the presentation, Mr. Gulab Chand Soni (director) of Mukesh Suitings Private Limited affirmed the truthfulness of the fact that his wife is the sibling/sister of the suspended directors of the corporate debtor. In light of the mentioned confirmation, the COC suggested the Resolution Professional to take a legal opinion whether the confirmation makes the RA ineligible under section 29A of the Code, 2016, which the Resolution Professional complied with and took legal opinion for the same, by which, it was established that relationship of RA with the Corporate Debtor does make the RA ineligible under section 29A of the Code, 2016 and thereafter, during the second phase of the seventh meeting of COC, it was decided by the Committee of creditors to not consider the Resolution Plan submitted by Mukesh Suitings Private Limited.
- 2.18 In the second phase of the 7th meeting of the CoC held on 06-10-2022, the sealed envelopes received from all the resolution applicants were opened before the Committee of Creditors.
- 2.19 The CoC decided not to consider resolution plan submitted by Shivam Sulz Private Limited, and the reasons assigned and recorded for the same in the proceedings of seventh meeting of COC. The true copy of minutes of seventh meeting of COC dated 29.09.2022 and 06.10.2022 have been annexed.
- 2.20 The resolution plans, along with addendum submitted by the RA were considered by the committee of creditors. The same were discussed among the members of committee. It was discussed in the meeting for setting up a score pattern of qualitative scores of evaluation matrix for all Resolution Applicants to have a uniform standard of scoring. The



Resolution Applicants were given scores as per evaluation matrix, which are as follows:

**Table A: Statement of Comparative Evaluation Matrix for Quantitative Parameters**

Particulars	Max. Score	Mr. Kapil Mantri	Mahalaxmi Textiles	Sai Leela Synthetics Private Limited	Salasar Dyeing and Printing Mills Private Limited, jointly with Dravya Capital Services Private Limited
<b>A. Quantitative Measures</b>					
1. Upfront Cash Recovery	50	6.58	50.00	48.53	30.88
2. Net Present Value	40	12.68	29.56	40.00	28.64
3. Term of Resolution Plan	10	0.67	4.44	10.00	10.00
Total Quantitative Score	100	19.92	84.00	98.53	69.52
<b>Weightage of Quantitative Score</b>	<b>80</b>	<b>15.94</b>	<b>67.20</b>	<b>78.82</b>	<b>55.61</b>

**Table B: Statement of Comparative Evaluation Matrix for Qualitative Parameters**

Particulars	Max. Score	Mr. Kapil Mantri	Mahalaxmi Textiles	Sai Leela Synthetics Private Limited	Salasar Dyeing and Printing Mills Private Limited, jointly with Dravya Capital Services
<b>A. Qualitative Measures</b>					



Experience in Textile Industry	10	0.00	6.00	10.00	8.00
Financial Strength of RA	80	40.00	40.00	80.00	40.00
Acquisition made by RA in last 5 years	10	10.00	0.00	10.00	10.00
Total Qualitative Score	100	50.00	46.00	100.00	58.00
Weightage of Qualitative Score	20	10.00	9.20	20.00	11.60

**Statement of conclusive score based on Table A and Table B**

Particulars	Max. Score	Mr. Kapil Mantri	Mahalaxmi Textiles	Sai Leela Synthetics Private Limited	Salasar Dyeing and Printing Mills Private Limited, jointly with Dravya Capital Services Private Limited
Quantitative Parameters	80	15.94	67.20	78.82	55.61
Qualitative Measures	20	10.00	9.20	20.00	11.60
<b>Total Score as per Evaluation Matrix</b>	<b>100</b>	<b>25.94</b>	<b>76.40</b>	<b>98.82</b>	<b>67.72</b>

2.21 On the basis of above-mentioned scoring, M/s Sai Leela Synthetics Private Limited was declared as the highest bidder (H1) by the Committee of Creditors and it was further decided to call the H1 Bidder to submit the



final resolution plan and to not consider other RAs and their plan for the purpose of approval of Resolution Plan.

**2.22** The Resolution Professional received the final resolution plan from the RA vide email dated 13.10.2022 and hardcopy of the plan on 14.10.2022. The same had been shared with the committee of creditors vide email dated 14.10.2022. The Resolution Professional vide his email dated 17.10.2022 apprised the committee of creditors about the final resolution plan being compliant of the provisions of the Insolvency & Bankruptcy Code, 2016 and all the relevant rules and regulations, **for which the RP issued the compliance status report. The copy of compliance status report has been annexed.**

**2.23** In the first phase of 8th meeting of committee of creditors held on 18.10.2022, it was decided by the CoC to seek further explanations from the H-1 Resolution Applicant in the matter of treatment of assenting and dissenting financial creditor in respect of sharing of proceeds of pending insurance claim and realization of trade receivables, and monitoring process proposed by him for the realization made from pending insurance claim and trade receivables. The committee decided to defer the meeting for the next day in order to give an opportunity to the Resolution Applicant to clarify his stand on the mentioned elements.

**2.24** In the second phase of the Eighth meeting of Committee of creditors dated 19.10.2022, the RP apprised the committee that he has received clarification from the RA and the same was presented before the committee. Further, during the discussion in the meeting of COC, following discussion were made in respect of assessment of compromise or arrangement as per regulation 39BA of the CIRP Regulations, 2016:

*“The Resolution Professional apprised in the first phase of the 8th meeting of committee of creditors held on 18.10.2022 to the committee that he has not received any proposal or communication*



*during the entire period of the Corporate Insolvency. Resolution Process of the Corporate Debtor, from its suspended board of directors, who are holding its major shareholding regarding any opportunity to explore the compromise or arrangement in respect of the current CIRP. Further, the suspended directors have not even cooperated with the Resolution Professional for conducting the undergoing corporate insolvency resolution process, therefore, an application under section 19(2) of the Code, 2016 bearing IA No. 90/JPR/2022 is already pending before the Hon'ble NCLT, Jaipur bench.*

*The committee of creditors considered the provisions of the regulation 39BA of the CIRP Regulations, 2016 and opined that the onus was on the suspended board of the corporate debtor to initiate compromise and arrangement before the committee with a suitable proposal for consideration, since there, has been no sincere effort of any kind of such proposal from the suspended board of director to RP or COC, instead they have been non-cooperating in the process of corporate insolvency resolution of the Corporate Debtor, therefore, the committee stated that they do not foresee any chance of compromise or arrangement in the present case, and the same may be noted by the RP while filing of the appropriate application for liquidation, if any, in compliance to regulation 39BA of the CIRP Regulations, 2016.”*

- 2.25 Further, in compliance with the regulation 39B of the CIRP Regulations, 2016, the Resolution Professional had presented the agenda before COC in the second phase of the seventh meeting dated 06.10.2022 and the second phase of the eighth meeting dated 19.10.2022 for their discussion and voting in respect of the best estimate of the amount required to meet the liquidation cost in the event this Hon'ble Tribunal does not approve the Resolution Plan as approved by the COC, however the committee decided to defer the agenda and to discuss and decide over it only in the event where the need for the same arises.
- 2.26 Furthermore, in compliance with the regulation 39C of the CIRP Regulations, 2016, the Resolution Professional had presented the agenda



before COC in the second phase of the seventh meeting dated 06.10.2022 and the second phase of the eighth meeting dated 19.10.2022 for assessing for sale as a going concern in the event this Hon'ble Tribunal does not approve the Resolution Plan as approved by the COC, however the committee decided to defer the agenda and to discuss and decide over it only in the event where the need for the same arises.

2.27 Similarly, in the seventh and eighth meeting of COC, where the Resolution Professional presented the agenda, in compliance with the regulation 39D of the CIRP Regulations, 2016, to decide over the fee of the liquidator in the event this Hon'ble Tribunal does not approve the Resolution Plan as approved by the COC, however the committee decided to defer the agenda and to discuss and decide over it only in the event where the need for the same arises.

2.28 The Committee of Creditors, in the second phase of the Eighth meeting of dated 19.10.2022, discussed the final resolution plan submitted by M/s Sai Leela Synthetics Private Limited in its entirety and found that the resolution plan fulfils the mandatory contents of the Resolution Plan as provided for in regulation 38 of the CIRP Regulations, 2016 and in accordance to sub-regulation (4), the plan is demonstrating that:

- a. it addresses the cause of default;**
- b. it is feasible and viable;**
- c. it has provisions for its effective implementation;**
- d. it has provisions for approvals required and the timeline for the same;**
- e. The resolution applicant has the capability to implement the resolution plan.**

2.29 The Registered Valuers appointed by the Applicant submitted their respective valuation reports for all the classes of assets of the Corporate Debtor. The Average of the fair and liquidation value of the Corporate



Debtor calculated on the basis of said valuation report(s) are provided herein below:

- (i) Average Fair Value of the Corporate Debtor: Rs. 29,77,44,887.00
- (ii) Average Liquidation Value of the Corporate Debtor: Rs. 22,63,18,645.00

The true Copy of the Summary of Valuation Reports has been annexed.

**2.30** Accordingly, COC in the second phase of the eighth meeting dated 19.10.2022 decided to put the resolution for approval of the Final Resolution plan, along with its addendum (Final Plan) submitted by M/s Sai Leela Synthetics Private Limited for e-voting and the voting window was kept open till 09.11.2022. **The voting Result revealed that the following relevant resolutions were approved by the committee of creditors with 99.99% voting shares**

- (a) *"RESOLVE THAT the final resolution plan received from M/s Sai Leela Synthetics Private Limited is hereby approved by the committee of creditors in compliance with section 30(4) of the Insolvency & Bankruptcy Code, 2016 in the corporate insolvency resolution process of Suzuki Textiles Limited."*
- (b) *"RESOLVE FURTHER THAT the Resolution Professional be and is hereby authorised to file an application for approval of the final Resolution Plan submitted by M/s Sai Leela Synthetics Private Limited, as approved herein above, to Adjudicating Authority in compliance of section 30(6) of the Insolvency & Bankruptcy Code, 2016 along with compliance certificate in Form H of the Schedule and to do all such acts and deeds as may be necessary and expedient relating thereto, in the corporate insolvency resolution process of Suzuki Textiles Limited."*
- (c) *"RESOLVE FURTHER THAT Resolution Professional be and is hereby authorised to issue Letter of Intent (LOT) to the-Successful Resolution Applicant as per the terms contained in RFRP and Resolution Plan, as approved hereinabove by the CoC"*.
- (d) *"RESOLVE FURTHER THAT after and on approval of Resolution Plan submitted by M/s Sai Leela Synthetics Private Limited,*



*successful resolution applicant, by the Committee of Creditors and further approval of Resolution Plan by the Hon'ble Adjudicating Authority, none of the guarantors (personal guarantor as well as corporate guarantor) of the Corporate Debtor shall be released from their liability to the due amount under the Guarantee Bond executed by them in favour of financial and other creditors. The Personal Guarantors and Corporate Guarantor to the Corporate Debtor shall continue to be liable to pay the due amount under the guarantee bond executed by them."*

The true Copy of the minutes of the 8th meeting, along with voting results of COC held on 18.10.2022 and 19.10.2022 has been annexed.

3. The Applicant further submits:

3.1 The brief contour of the approved resolution plan of M/s Sai Leela Synthetics Private Limited for convenience:

(a) The Implementation Schedule:

<b>PARAMETERS</b>	<b>CONTENTS OF RESOLUTION PLAN</b>
Revised Total Value of Resolution Plan	Rs. 31.70 crores (inclusive of all payments under the Resolution Plan)
Upfront payment within 30 days from the date of Approval of Resolution Plan by Hon'ble NCLT	Rs. 9.70 crores
Balance Payment	Rs. 22.00 crores within 4 months from the date of approval of Resolution Plan. (The Performance bank guarantee of Rs. 3.17 Crores will be adjusted with the last trench of payment)

(b) The Financial Outlay of the Resolution Plan:

<b>Category of Creditor</b>	<b>Claimed Amount (Rs. in Lakhs)</b>	<b>Claim Admitted Amount (Rs. in Lakhs)</b>	<b>Payment as per the Resolution Plan (Rs. in Lakhs)</b>	<b>Timeline</b>



CIRP Cost	145	145	145	<ul style="list-style-type: none"><li>• Within 30 days of the approval of the Resolution Plan by Hon'ble AA, NCLT Jaipur bench.</li><li>• We understand that the Corporate Debtor has a bank balance of Rs. 1,45,00,000.00 in the CD account which is sufficient to meet the CIRP expenses.</li><li>• In case the CIRP cost exceeds this balance, the deficit amount will be borne by the Resolution Applicant.</li><li>• In case the actual CIRP cost incurred is less than the said amount, the surplus amount will be additionally distributed to Secured Financial Creditor over and above the amount provided by the RA for them.</li><li>• The CIRP cost includes CIRP Exp., Performance link pay-out to RP, Remuneration to RP and any fees</li></ul>
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				to be paid to IBBI, which is part of CIRP exp. shall be included for this purpose.
Secured Financial Creditors	1950831	19356.76	3001.00	<ul style="list-style-type: none"><li>• Rs. 8,01,00,000- Within 30 days of the approval of Resolution Plan by Hon'ble M, NCLT Jaipur bench; and</li><li>• Rs. 22,00,00,000 (Including Performance Guarantee that will be adjusted with the final payment of the Resolution Plan)- Within 120 days of the approval of the Resolution Plan by the Hon'ble AA, NCLT Jaipur bench.</li></ul>
Unsecured Financial Creditors	92.22	17.04	0.50	<ul style="list-style-type: none"><li>• Within 30 days of the approval of the Resolution Plan by Hon'ble AA, NCLT Jaipur bench.</li></ul>
Employees	104.15	31.11	5.00	<ul style="list-style-type: none"><li>• Within 30 days of the approval of the Resolution Plan by Hon'ble AA, NCLT Jaipur bench.</li></ul>
Workmen	54.33	13.76	5.00	<ul style="list-style-type: none"><li>• Within 30 days of the approval of the Resolution Plan by Hon'ble</li></ul>



				AA, NCLT Jaipur bench.
Government Dues:				
a) Govt. Dues	13258.32	10771.42	1.85	<ul style="list-style-type: none"> <li>• Within 30 days of the approval of the Resolution Plan by Hon'ble AA, NCLT Jaipur bench.</li> </ul>
b) Provident Fund and ESIC dues	13.95	5.20	11.15	<ul style="list-style-type: none"> <li>• Within 30 days of the approval of the Resolution Plan by Hon'ble AA, NCLT Jaipur bench.</li> </ul>
Operational Creditors other than Govt. Dues	3708.30	2167.80	0.50	<ul style="list-style-type: none"> <li>• Within 30 days of the approval of the Resolution Plan by Hon'ble AA, NCLT Jaipur bench.</li> </ul>
<b>Total</b>	<b>36884.58</b>	<b>32508.09</b>	<b>3170.00</b>	
Towards Working Capital	-	-	1000.00	<ul style="list-style-type: none"> <li>• Rs. 10.00 crores will be infused in the Corporate Debtor within the next 12 months from the effective date for maintenance and capacity upgradation of the existing machineries</li> </ul>
<b>Total</b>			<b>4170.00</b>	

(c) Additional Essential Provisions:

Treatment of Pending Insurance Claim	The sharing would be 75:25 where 75% of the net proceeds (after
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	deducting all the expenses incurred for its realisation) will be shared with assenting Secured Financial Creditors and rest will be retained by the Resolution Applicant.
Treatment of Realisations made from Trade Receivables	The sharing would be 50:50 where 50% of the net proceeds (after deducting all the expenses incurred for its realisation) will be shared with assenting secured financial creditors and rest will be retained by the Resolution Applicant.
Treatment of recovery made from application filed by the RP under section 43, 45, 66, 67 of the IBC Code, 2016	The RA provides that in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan by the Resolution Applicant and the proceeds, if any, from such proceedings shall be distributed to the Secured Financial Creditors.
Treatment of Dissenting and Assenting Secured Financial Creditors	As per RA, it was stated: <i>"We are currently paying Rs. 30,01,00,000.00 to Secured Financial Creditors against their admitted claims of Rs. 195,08,31,164.00 which amounts to roughly 15.38% of their admitted claims. We hereby clarify that we will make a payment to dissenting Secured Financial Creditors amounting to 12% against their admitted claims and the surplus amount will be paid to Assenting Secured Financial Creditors. Further, in case this value comes to less than the payment which would have been payable in the event of liquidation, we will pay the Dissenting Secured Financial Creditors, the amount which would have been payable in the event of liquidation."</i>



	<i>Please note that wherever the reference to Dissenting Financial Creditor has been made, that term means those Financial Creditors who do not ,vote in favor of the resolution plan, which includes the creditor who abstains from voting and shall also be treated as the creditor who does not vote in favour of resolution plan.”</i>
Monitoring of realization made from pending insurance claim and trade receivables and PUEF Application	The Resolution Applicant, on the advice of committee of creditors, proposes to furnish quarterly update and six-monthly CA certification to the secured financial creditors as to the progress made in the respective sharing elements.
Charge on assets of Corporate Debtor	Secured financial creditor shall continue to have charge on the assets of the CD, till the full and final payment is made as per the approved resolution plan:
Constitution of Monitoring Committee	The monitoring committee shall consist of three members i.e. a. Resolution Professional, b. one member of secured financial creditor c. one member of RA. The fees and expenses of the Committee will be borne by the Resolution Applicant. The Resolution Professional who will act as Chairman of the Monitoring Committee will be paid Rs. 1,50,000.00 per month till the implementation of the plan is completed.

The true Copy of the approved resolution plan of M/s Sai Leela Synthetics Private Limited has been annexed.

- (d) Details of Claims received from different categories of creditors and the amount to be distributed amongst them as per the resolution plan



(Amount in Rs. in Lakhs)

#	Category of Stakeholder	Sub-category of stakeholder	Amount claimed	Amount admitted	Amount Provided under the plan	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	<b>Secured Financial Creditors</b>	(a) Creditors not having a right to vote under sub-section (2) of Section 21	Nil	Nil	Nil	Nil
		(b) Other than above:				
		(i) Who did not vote in favour of the resolution plan	Nil	Nil	Nil	Nil
		(ii) Who voted in favour of the resolution plan	19508.31	19356.76	3001.00	15.38
		<b>Total(a)+(b)]</b>	<b>19508.31</b>	<b>19356.76</b>	<b>3001.00</b>	<b>15.38</b>
2.	<b>Unsecured Financial Creditors</b>	(a) Creditors not having a right to vote under Sub-Section (2) of Section 21	Nil	Nil	Nil	Nil
		(b) Other than above:				
		(i) Who did not vote n favor of the	2.00	2.00	0.06	3.00



		resolution Plan				
		(ii) Who voted in favor of the Resolution Plan	19.05	15.04	0.44	2.31
		(iii) Whose claims were not admitted	71.17	0.00	0.00	0.00
		<b>Total[(a)+(b)]</b>	<b>92.22</b>	<b>17.04</b>	<b>0.50</b>	<b>0.54</b>
<b>3.</b>	<b>Operational Creditors</b>	(a) Related Party of Corporate Debtor	Nil	Nil	Nil	Nil
		(b) Other than (a) above:				
		(i) Government				
		(a)EPF	13.95	5.20	11.15	79.93
		(b)Other Govt. Claims	13258.32	10771.42	1.85	0.01
		Workmen	54.33	13.76	5.00	9.20
		Employees	104.15	31.11	5.00	4.80
		Other Operational Creditors	3708.30	2167.80	0.50	0.01
		<b>Total [(a)+(b)]</b>				
<b>4.</b>	<b>Other debts and dues</b>	Nil	Nil	Nil	Nil	Nil
<b>Grand Total</b>			<b>36739.58</b>	<b>32363.09</b>	<b>3025.00</b>	<b>8.23%</b>

3.2 The Resolution Applicant has submitted its affidavits as required under Regulation 39(1) of the CIRP Regulations confirming its eligibility in



terms of Section 29A of the Code. The affidavit provided by the RA has been annexed.

- 3.3 Pursuant to the approval of the Resolution Plan by the COC, the RP issued a Letter of Intent dated 11.11.2022 to the Resolution Applicant. The Resolution Applicant accepted the letter of Intent unconditionally on 12.11.2022. The Resolution Applicant was given time to file the performance guarantee till 17.11.2022 as part of the Letter of Intent, which has been unconditionally accepted by the RA.
- 3.4 As required under Regulation 39 (4) of the CIRP Regulations, the RP **has filed the Compliance Certificate in 'Form H'** of the schedule of CIRP Regulation with the present Application. Compliance Certificate in Form H has been annexed.
- 3.5 Section 30(6) of the Code mandates that the Resolution Professional to submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority for approval under Section 31(1) of the Code. Accordingly, as the resolution plan submitted by the Successful Resolution Applicant has been duly approved by the COC with 99.99% vote casted in favor, therefore, present Application is being filed by the Applicant seeking approval of this Hon'ble Tribunal which is the Adjudicating Authority under the Code.
- 3.6 The Resolution Plan has been approved taking into consideration of all the stakeholders as well as creditors of Corporate Debtor equated with the revival of the Corporate Debtor. It is submitted that it shall be in the best interest of all the stakeholders including creditors as well as Corporate Debtor if the said resolution plan is approved by this Hon'ble Tribunal without any modification. Further, it is submitted that the Resolution Plan contains necessary provisions for its effective implementation.



4. The Applicant/RP has under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, submitted the **Compliance Certificate Form H** as stated below:

4.1 Section 30 (1) and (2) of the Code:

<b>Provisions under Section 30(1) and (2) of the Code, 2016</b>	<b>Compliance under Resolution Plan</b>				
<p>Section 30 (1): A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under Section 29A to the resolution professional prepared on the basis of the information memorandum.</p>	<p>Yes, the resolution Applicant has submitted an affidavit under section 29A of the Code, 2016 regarding its eligibility to submit the Resolution Plan.</p>				
<p>Section 30(2) (a) Provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor</p>	<p>Yes, The Resolution Plan provides Rs. 1,45,00,000.00/- for payment of resolution process cost. Since the bank account of Corporate Debtor has balance of approx. 1.45 Crore, therefore, the RA has proposed to consider the bank balance for payment of CIRP expenses. In case the bank balance suffers from shortfall, the RA has undertaken to pay the difference. However, in case where the balance of bank balance remains after payment of all the CIRP expenses. In such case, the excess will be provided to the secured financial creditors on proportionate basis.</p>				
<p>(b)(Part-A) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-</p> <p>(i) The amount to be paid to such creditors in the event of a liquidation of</p>	<p>The Resolution Plan provides for the dues of operational creditors belonging to Workmen, Employees and Government Dues and other operational creditors, as follows:</p> <table border="1" data-bbox="804 1912 1401 2002"> <tbody> <tr> <td data-bbox="804 1912 1098 1957">Workmen</td> <td data-bbox="1098 1912 1401 1957">Rs. 5,00,000.00</td> </tr> <tr> <td data-bbox="804 1957 1098 2002">Employees</td> <td data-bbox="1098 1957 1401 2002">Rs. 5,00,000.00</td> </tr> </tbody> </table>	Workmen	Rs. 5,00,000.00	Employees	Rs. 5,00,000.00
Workmen	Rs. 5,00,000.00				
Employees	Rs. 5,00,000.00				



<p>the corporate debtor under Section 53; or</p> <p>(ii) The amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53 whichever is higher.</p>	Provident Fund	Rs. 11,15,285.00
	Other Governmental Dues	Rs. 1,84,715.00
	Other Operational Creditors	Rs. 50,000.00
<p>(Part-B) provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of Section 53 in the event of a liquidation of the corporate debtor.</p>	<p>Since the liquidation value is estimated to be significantly lower compared to admitted claims of the Secured Financial creditors alone. In case of liquidation, the entire proceeds would be utilized/recovered towards due of secured financial creditor alone and no amount would be expected to be Paid/realized by operational creditors. Therefore, this satisfied the compliance of provisions of Section 30 (2)(b) of the Code, 2016.</p>	
	<p>The Resolution Plan through its addendum provides that the RA proposes 15.38% of admitted claim to all the secured financial creditors.</p>	
	<p>Further, for those financial creditors who do not vote in favour of the resolution plan, they propose payment of 12% against their admitted claims, and in a case where the value comes lesser than the payment which would have been payable in the event of liquidation to the dissenting secured financial creditors.</p>	
<p>However, such payment would be made at a priority to the secured financial creditor who has not voted in favour of the resolution plan.</p>		



	<p>Further, in respect of sharing of proceeds of pending insurance claim and realization of trade receivables are concerned, they propose to share the decided percentage only with the assenting secured financial creditors.</p>
<p>(c) Provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan</p>	<p>Yes, the Resolution Plan provides for the management of the corporate debtor after the approval of the resolution plan.</p> <p>The Resolution plan provides that a Monitoring Committee shall supervise the Implementation of Resolution Plan after the approval of the resolution Plan.</p>
<p>(d) The implementation and supervision of the resolution plan</p>	<p>Yes, the Resolution Plan provides for the implementation and supervision of the resolution plan. The Resolution Plan provides that:</p> <ul style="list-style-type: none"><li>• A monitoring Committee shall be constituted to supervise the implementation of the Resolution Plan by the RA, which constitutes of Resolution Professional as Chairperson, a representative of secured financial creditor, a representative of Resolution Applicant.</li><li>• The new Board shall take over management of the Corporate Debtor and function under the supervision of the Implementation and Monitoring Committee until the complete payment of consideration proposed under the plan is made and complete implementation of Plan and handover of the corporate debtor to the Resolution Applicant is done.</li></ul>
<p>(e) Does not contravene any of the provisions of the law for the time being in force</p>	<p>The Resolution Plan does not contravene any of the provisions of the law for the time being in force.</p>





<p>not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.</p>	<p>15.38% of admitted claim to all the secured financial creditors.</p> <p>Further, for those financial creditors who do not vote in favour of the resolution plan, they propose payment of 12% against their admitted claims, and in a case where the value comes lesser than the payment which would have been payable in the event of liquidation they propose to pay the amount which would have been payable in the event of liquidation to the dissenting secured financial creditors.</p> <p>However, such payment would be made at a priority to the secured financial creditor who voted in the favour of the resolution plan.</p> <p>Further, in respect of sharing of proceeds of pending insurance claim and realization of trade receivables are concerned, they propose to share the decided percentage only with the assenting secured financial creditors.</p>
<p>Regulations 38(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor</p>	<p>Yes, the resolution plan includes a statement as to how it has dealt with the interests of all the stakeholders of the corporate debtor.</p>
<p>Regulation 38 (1B) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the</p>	<p>Yes, the resolution plan includes a statement “<i>the Resolution Applicants or any of their related parties have not failed to implement or contributed to the failure of implementation of any other resolution plan approved by Adjudicating Authority at any time in the past.</i>”</p>



Adjudicating Authority at any time in the past.	
Regulation 38(2): A resolution plan shall provide: a. The term of the plan and its implementation	The Resolution Applicant proposes the term of 120 days from the NCLT approval date and expects to complete the implementation during the said period itself.
Regulation 38(2): b. The management and control of the business of the corporate debtor during its term	The Resolution Applicant shall constitute a new board and/or identify and Monitoring Committee will help the board to manage the affairs of the company on a day-to-day basis. After the implementation period, suitable management will be appointed by the Resolution Applicant.
Regulation 38(2) A resolution plan shall provide c. Adequate means for supervising its implementation	Yes, the Resolution plan has adequate means for supervising its implementation after approval of the resolution plan by the Hon'ble NCLT which will be through a Monitoring Committee.
Regulation 38(2) A resolution plan shall provide: d. Provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.	The Resolution Plan provides that the proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed to Secured Financial Creditors.
Regulation 38(3): A resolution plan shall demonstrate that: a. It address the cause of default	Yes, the resolution plan provides for the same.
Regulation 38(3):	Yes, the resolution plan is feasible and viable.



A resolution plan shall demonstrate that: b. It is feasible and viable	
Regulation 38(3): A resolution plan shall demonstrate that: c. It has provisions for its effective implementation	Yes, the resolution plan is feasible and viable.
Regulation 38(3): A resolution plan shall demonstrate that: d. It has provisions for approvals required and the timeline for the same.	Yes, the resolution plan is feasible and viable.
Regulation 38(3): A resolution plan shall demonstrate that: e. The resolution applicant has the capability to implement the resolution plan	Yes the resolution applicant has the capability to implement the resolution plan.

4.3 Requirement of Regulations 39(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is as under:

Regulations 39(1): A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulations 36B along with	
a. An affidavit stating that it is eligible under section 29A to submit resolution plans;	Yes, the resolution applicants have submitted affidavit under section 29A regarding his eligibility to submit the resolution plan



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

4.4 Therefore, the Resolution plan is complete as per the provisions of the Insolvency and Bankruptcy Code, 2016, read with relevant rules and regulations.

5. In accordance to the Bench's order dated 29.11.2022, the Resolution Professional submits that:

5.1 In accordance with order dated 29.11.2022, the RP called ninth meeting of Committee of creditors on 05.12.2022 where the Successful Resolution Applicant was also invited and the observation recorded in the order dated 29-11-2022 were placed before the committee of creditors. In the ninth meeting of committee of creditors dated 05.12-2022, the committee of creditors considered the points recorded in the Hon'ble Bench's order dated 29-11- 2022 and based upon the discussion, following conclusions were made:

**i. The claim amount shown in Resolution plan is Rs. 3,25,08,09,3001 and the amount approved by COC in resolution plan is shown Rs. 41,70,00,000. The reason of such hair cut?**

**Response:**



- a. The committee of creditors submitted that during the CIRP, the Resolution Professional, published Form-G for inviting expression of interests from Prospective Resolution Applicants on 16.04.2022, however, no resolution plan was received till the last date of submission of the plan. Thereafter, the COC in their third meeting dated 23.06.2022 decided to extend the CIRP time period and re-publish Form - G for exploring one more time expressions of interests from PRAs.
- b. During the second round of Invitation to PRAS, 24 EOIs were received, out of which only 6 resolution applicants submitted their resolution plan till the last date of submission of plan. The same were presented before the committee of creditors and all the resolution plans were discussed and negotiated with the respective Resolution Applicants.
- c. In the seventh meeting of COC dated 29.09.2022, the Resolution Professional invited all the resolution applicants to present their plans and negotiate the terms before the committee of creditors for consideration of Resolution Plans in term of section 30(5) of the Code, 2016.
- d. Upon considering all the plans and their feasibility and viability, the M/s Sal Leela Synthetics Private Limited as the H1 bidder in the second phase of the seventh meeting of COC dated 06.10.2022, where the committee considered various factors including of the value of the plan of H1 Bidder being more than the fair value of the corporate debtor.
- e. Thereafter, the committee of creditors further clarified that they had internally analysed the value of resolution plan against the debt owed by the corporate debtor to them. It was explained by the lead banker that the claimed and admitted amount is inclusive of interest, penal



Interest and penalties and legal charges, etc., which shows a haircut of 84.50% against their admitted claim of Rs. 193.57 Crores, however, the total aggregate outstanding debt against the corporate debtor is Rs. 101.73 Crores as on the date of declaration of Corporate Debtor as NPA in their books. **Therefore, the effective hair cut undertaken by the secured financial creditors is 70.50%, instead of 84.50%**

- f. Further, the Supreme Court in its judgement dated 03-06-2022 in the matter of *Vallal RCK v. Siva Industries and Holdings Limited* sought to hold, once again, that the commercial wisdom of the Committee of Creditors CoC is supreme. Apart from the paramountcy of the commercial wisdom of the CoC, the Court also noted the tremendous importance of safeguarding a corporate debtor from being liquidated and providing it a chance of revival.
- g. Similarly, the Supreme Court in its judgment dated 22-06-2020 in the matter of *Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh* held that where once a resolution plan has been approved by committee of creditors statutory mandate on Adjudicating Authority under section 31(1) is to ascertain that a resolution plan meets requirement of sub-sections (2) and (4) of section 30 thereof and there is no provision in Code or Regulations that bid of any resolution applicant has to match liquidation value.
- h. The committee of creditors relied its decision of approval of resolution plan on all the factors that were needed to be taken into account for determining whether or not corporate debtor could be kept running as a going concern and stated that as established by the judgment of the Apex Court In the case of *Karad Urban Co-operative Bank Ltd. versus, Swapnil Bhingardevay*, that where the COC has taken such factors into consideration that would keep the



corporate debtor as going concern, and accordingly decided to approve the resolution plan, the Adjudicating Authority could not have interfered with decision of CoC.

**ii. CIRP cost is shown Rs. 1,45,00,000 which seems to be in higher side.**

**Response:**

a. The CIRP incurred till the date of the present affidavit is as follows:

S. No.	Nature of Expenses	Amount (in Rs.)			
1	Public Announcement consisting of publication of Form-A and publishing / re-publishing of Form G.	1,15,529.00			
2	Remuneration of Interim Resolution Professional/Resolution Professional	16,52,000.00			
3	Security Expenses which include round the clock security of premises of corporate debtor, which Includes its plant & machinery, Inventory at the following three units: i. Factory Premise at Khari ka Lambha at Village Gulabpura ii. Factory Premise at Gudda at village Mandal iii. Factory Premise at Village Palsana, Surat. Total security guards deployed at above mentioned units are 22, which includes 8 gunmen.	63,56,247			
4	Travelling and conveyance expenses.	1,34,978.00			
5	Remuneration of Legal and other professionals, such as: <table border="1" data-bbox="475 1803 1038 1930"><tr><td>1</td><td>Registered Valuer (Entity 1)</td><td>1,48,680.00</td></tr></table>	1	Registered Valuer (Entity 1)	1,48,680.00	13,92,250.07
1	Registered Valuer (Entity 1)	1,48,680.00			



	2	Registered Valuer (Entity 2)	1,41,600.00	
	3	Additional Valuer appointed for land & Building	24,780.00	
	4	Transaction Auditor	2,95,000.00	
	5	Accounting Services	35,000.00	
	6	Due Diligence Agency	88,500.00	
	7	Sec 29A compliance check	1,63,690.07	
	8	Legal Counsel of RP	4,95,000.00	
6	Other miscellaneous expenses			4,79,813.00
	<b>Total Expenses incurred till the date of this present Affidavit</b>			<b>1,01,30,817.07</b>

b. Further, the CIRP cost of Rs. 1,45,00,000.00 shown in the Resolution Plan is based on the estimation. The Resolution Applicant has further in his resolution plan in clause 6.1. (Financial Outlay Under Resolution Plan) provided that in a case where the estimated CIRP cost is more than the actual CIRP cost, the difference amount will be additionally distributed to the Secured Financial Creditors over and above the amount provided by the RA to them.

**iii. There is a provision of only Rs. 5,00,000 for the employees which is in lower side.**

**Response:**



- a. The Resolution Applicant has proposed to increase the amount for the class of employees and workmen. The summary of the details are as follows:

Class of Creditors	Amount Admitted in Rs.	Amount Earlier Proposed in Rs.	Revised Amount Proposed in Rs.	% of amount proposed against that admitted claim
Employees	31,11,403.00	5,00,000.00	16,00,000.00	51.42%
Workmen	13,75,568.00	5,00,000.00	7,00,000.00	50.89%

- b. The above- mentioned increase of amount distributable as proposed in the resolution plan to the class of employees and workmen **is over and above the Resolution Plan value of Rs. 31.70 Crores.** The undertaking/affidavit to this effect has been provided by the Successful Resolution Applicant and the same has been annexed.
- c. The enhancement in the resolution plan was acknowledged by the Resolution Professional and the committee of creditors further considered the observation of the Hon'ble Apex Court in the matter of *Committee of creditors of Essar Steel India Limited versus. Satish Kumar Gupta* that there is no residual equity jurisdiction in Adjudicating Authority or Appellate Tribunal to Interfere in merits of a business decision taken by requisite majority of Committee of Creditors; though a certain minimum figure may be paid to different classes of operational and financial creditors it will still be commercial wisdom of Committee of Creditors to determine what amounts are to be paid to different classes.

**iv. Provident Fund claims shown is only Rs. 11,15,285 in Resolution plan.**

**Response:**



- a. The Resolution Applicant submitted vide its affidavit/undertaking that the claims of Employee Provident Fund Organization were inadvertently mentioned as Rs. 11,15,285.00 as admitted claim, instead of Rs. 5,20,484.00. The revised summary of the EPFO's claim are as follows:

Class of Creditors	Amount Claimed in Rs.	Amount Admitted in Rs.	Amount Proposed in Rs.	% of amount proposed against the amount claimed
Employees Provident Fund Organization	13,95,012.00	5,20,484.00	13,95,012.00	<b>100%</b>

- b. Irrespective of admission of EPFO claim or not, the Resolution Applicant proposes to pay the claimed amount of EPFO in its entirety. The consequence of the change would be enhancement of value of resolution plan by Rs. 2,79,727.00/- and the same is made as a part of undertaking/affidavit.
- v. **No provision has been made with regard to distribution of proceeds from avoidable transactions**

**Response:**

- a. The Resolution Applicant in the clause 10.4.9. of its resolution plan has proposed that in respect of avoidance transaction, if any, under chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan by the Resolution Applicant and the proceeds, if any, from such proceedings shall be distributed to the Secured Financial Creditors.



- b. Further, the same has been made part of financial outlay of the resolution plan, which can be seen in clause (xvii) of notes to clause 6.1., which states,

*“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. Further any avoidance applications relating to the Corporate Debtor pending with the Adjudicating Authority, NCLT Jaipur bench will be further pursued by the Resolution Applicant.”*

- c. Furthermore, the Resolution Applicant in the addendum to the Resolution Plan has provided about the monitoring mechanism in this aspect, which Includes furnishing quarterly update and six-monthly CA certification to the secured financial creditors.

**vi. RP is also directed to submit an affidavit with regard to of the Judgment of Hon'ble Supreme Court passed in the matter of State Tax Officer vs. Rainbow Papers Limited in civil Appeal No. 1661 & 2568/2020.**

**Response:**

The Resolution Professional affirms that the resolution plan submitted by M/s Sai Leela Synthetics Private Limited is in compliance of the judgement of the Hon'ble Supreme Court passed in the matter of State Tax Officer vs. Rainbow Papers Limited in civil Appeal No. 1661 & 2568/2020. The basis of the affirmation is as follow:

- a. In the order of Hon'ble Supreme Court dated 6th September, 2022 in the matter of Sales Tax Officer Vs. Rainbow Papers Limited, wherein in para 52 of the order, the Hon'ble Apex court has observed as under:

*"If the resolution plan ignores the statutory demands payable to any State Government or a legal authority altogether, the*



*Adjudicating Authority is bound to reject the Resolution Plan.”*

The basic premise of the extract of the order had been the ignorance of statutory dues in the resolution plan in its entirety. Whereas in the present case, the Resolution Plan has not ignored the statutory demand altogether, which can be also be seen that the Resolution Applicant has made provision of 100% payment to the EPFO Irrespective of admission of their claim or not. It has made a provision for payment of statutory demands be it CGST or EPFO claim as per priority determined in the provisions of section 53 of Insolvency & Bankruptcy Code, 2016.

- b.** Further, the Insolvency & Bankruptcy Code, 2016 has overriding effect under its section 238, which has also been acknowledged, accepted, contemplated and considered under section 82 of the Central Goods and Services Tax Act, 2017, while there were no such provisions of non-obstante cause under the provisions of Section 48 of the GVAT Act. The fact that the provision of Insolvency & Bankruptcy Code overrides the provisions of CGST Act is acknowledged both in IBC, 2016 and the CGST Act, 2017. The extract of section 48 of the GVAT Act and section 82 of the CGST Act is produced here for the reference:

**(i) Section 48 of GVAT Act: Tax to be first charge on property:** Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person on account of tax, interest or penalty for which he is liable to pay to the Government shall be a first charge on the property of such dealer, or as the case maybe, such person.



**(ii)Section 82 of CGST Act: Tax to be first charge on property:** Notwithstanding anything to the contrary contained in any law for the time being in force, **save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016)**, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

c. Furthermore, the reason that the provision of GVAT Act does not apply in the present case can be understood by bare reading of para 56 and 57 of the judgment, which states:

*56. Section 48 of the GVAT Act is not contrary to or inconsistent with section 53 or any other provisions of the IBC. Under section 53(1)(b)(1), the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.*

*57. As observed above, the State is a secured creditor under the GVAT Act, Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority.*

The provision would apply where the security interest has been created by the State or any of its machinery by the operation of law (attachment) as per para 5 of the judgement, which is not the case in the present matter. The extract of the order in respect of para 5 is reproduced here for your kind indulgence:

*“5. On or about 8th July, 2016, recovery proceedings were initiated against the respondent, in respect of its dues for the*



*year 2011-2012, and the appellant attached the property of the respondent being land at Survey No. 2379 and 2381 situated at Rajpur, Taluka Kadi on 8th October, 2018.”*

- d. The outcome of the judgment in the matter of ***Sales Tax Officer Vs. Rainbow Papers Limited*** has not effected any amendment in the provisions in the substantive law, including of alteration in the priority of Government dues as prescribed under section 53 of the Code, 2016. The changes have not been effected in section 5(21) of the Code, 2016, which has specifically included dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority as operational debt. The definition is reproduced herewith for the reference:

*"Section 5 (21) of the Insolvency & Bankruptcy Code, 2016: Operational debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority"*

The intent of the Code, 2016 is still unaltered even after the judgment in the matter of Sales Tax Officer Vs. Rainbow Papers Limited, which is evident from the fact that no amendment has been introduced in this effect.

- e. A due light needs to be thrown on the preamble of the Insolvency & Bankruptcy Code, 2016, which has explicitly provided for alteration to the order of priority to the payment of Government dues. The preamble of the Code provides:

*“An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and Individuals in a time bound manner for maximization of value of assets of such persons,*



*to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.”*

f. Lastly, the section 30(2)(b) of the Code, 2016, provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

In the present case, the liquidation value of the Corporate Debtor is not even sufficient to cover the entire dues of the secured financial creditors, and workmen's dues for the period of twenty-four months. Therefore, the compliance of section 30(2)(b) read with section 53 of the code is complied in the present case.

**5.2 The consequence of enhancement of proposed amount to the above-mentioned class of creditors is increase in the value of the final resolution plan by Rs. 15,79,727.00. Accordingly, the value of the Resolution plan is now Rs. 31,85,79,727.00 exclusive of funds to the**



**extent of Rs. 10.00 Crores estimated to be allocated for working capital in running the units of the corporate debtor.**

6. The following IAs are pending before this bench for adjudication in this matter:

6.1 **IA No. 90/JPR/2022** has been filed by the RP under Section 19 r/w 60(5)(c) r/w Rule 11 of the NCLT Rules 2016 seeking following necessary directions against the respondents:

- i. To direct the Respondents/erstwhile directors of the suspended board to submit all the documents sought by the IRP vide his email dated 02.02.2022 and 05.02.2022 at the earliest.
- ii. Any other directions or the orders that this Hon'ble Tribunal may be pleased to pass.

6.2 **IA No. 220/JPR/2022** has been filed by the Suspended Director of CD, Mr. Rajendra Prasad Maheswari with the following prayer:

- a. the present application may kindly be allowed and the registration of sale certificate by Respondent No. 4 in favour of Respondent No. 3 (Shorya Business (India) Ltd.) be declared null & void ab-initio and contrary to the provisions of section 14 of IBC.
- b. Any other order or directions which this Hon'ble Tribunal may deem fit in the facts and circumstances of the case may also be passed in favour of the Applicant.

6.3 **IA No. 323/JPR/2022** has been filed by the RP under section 25 of the Insolvency and Bankruptcy Code, 2016 for taking control and possession of the assets of the corporate debtor, seeking the following reliefs:

- a. Direct the Respondent No. 1 to 3 to provide the Applicant-Resolution Professional with the current whereabouts of all the vehicles registered in the name of the Corporate Debtor along with all relevant details.



- b. Direct the Respondent No. 1 to 3 to handover the control and possession of the vehicles over to the Applicant-Resolution Professional.
- c. Any other direction/order in favour of the Applicant that this Hon'ble Tribunal may deem fit and proper.

6.4 **IA No. 327 /JPR/2022** has been filed by the RP under section 43, 45, 66 & 67 of the Insolvency and Bankruptcy Code 2016 seeking avoidance of certain transactions being Preferential, Undervalued Fraudulent in nature, with the following prayer:

- a. Declare the transactions undertaken by the Respondent No. 1 to 3 on behalf of the Corporate Debtor amounting to Rs. 399.75 Lakhs, Rs. 704.82, Rs. 6809.69 Lakhs, Rs. 431.14 Lakhs and Rs. 1179.92 Lakhs as fraudulent transactions u/s 66 of the Code.
- b. Declare the transactions undertaken by the Respondent No. 1 to 3 on behalf of the Corporate Debtor amounting to Rs. 172.91 Lakhs as preferential transactions u/s 43 of the Code.
- c. Declare that the Respondent No. 1 to 3 were carrying on the business of the Corporate Debtor in contravention with the provisions of the Code and with the intent to defraud the creditors of the Corporate Debtor and were knowingly the parties to the transactions which were both fraudulent and preferential in terms of Section 66 and 43 of the Code.
- d. Direct the Respondent No. 1 to 3 to make necessary contributions to the asset of the Corporate Debtor to the tune of Rs. 9698.23 Lakhs.
- e. To direct the Respondent No. 1 to 3 to provide the Applicant with all requisite documents to enable a comprehensive transaction audit.
- f. Pass any other order or direction in favour of the Applicant that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.



**6.5 IA No. 401/JPR/2022** has been filed by Mr. Amar Chand Soni under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 challenging the Order of Rejection by the RP of the claim filed by the Applicant herein, with the following prayer:

- a. The Hon'ble Bench be pleased to allow the instant Application U/s 60 (5) of the Insolvency and Bankruptcy Code, 2016 and to direct the Resolution Professional to consider the Claim of the Applicant on merits rather than the only technical glitch of belated inadvertent filing
- b. The Hon'ble Bench be pleased to condone the delay in submission of the Claim before the Resolution Professional by considering the mis-happening on account of the sad demise of Applicant's wife which is a natural consequence and beyond the control of the Applicant and also of false assurances of the Resolution Applicant;
- c. Any other Order as this Hon'ble Tribunal may deem fit and proper in the interest of Justice.

**6.6 IA No. 519/JPR/2022** has been filed by Employees Provident Fund Organization under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking directions from this Hon'ble Tribunal for taking the "Proof of Claim" filed by the Applicant "Employees Provident Fund Organization, RPFC, Jaipur" vide "Form B" before the Insolvency Resolution Professional Mr. Prashant Agarwal, seeking the following reliefs to:

- a. Allow the present application and may please to direct the Resolution Professional Respondent to admit the claim of Applicant and the Respondent may be directed to pay the outstanding claim amount of the applicant EPFO as first charge giving priority on payment of



Provident Fund over all other debts or else the applicant shall suffer irreparable loss and injury.

- b. This application may kindly be allowed, in these facts and circumstances looking to the merits of the case and the delay of 59 days may be condoned in the interest of justice
- c. Any other direction/order in favour of the Applicant that this Hon'ble Tribunal may deem fit and proper.

**6.7 IA No. 581/JPR/2022** has been filed by Mr. Kailash Chand Jethlia under sec 60 (5) of the Insolvency and Bankruptcy Code, 2016, seeking adjudication of the claim of the Applicant herein and issuing necessary direction to the RP to revise the entire amount of the Applicant with the following prayer:

- a. the present application may kindly be allowed and the claim of the applicant may be adjudicated by this Hon'ble Tribunal and the RP may further be directed to admit the entire amount of the claim of the applicant including the amount of interest as per the direction passed in the Order dated 04.03.2021 by the Comptroller Authority, payment of Gratuity Act.
- b. Any other order or direction, which this Hon'ble Tribunal may deem fit in the facts & circumstances of the case, may also be passed in favour of the Applicant/Corporate Debtor.

**6.8 IA No. 602/JPR/2022** has been filed by Shivam Sulz Pvt. Ltd. under section 60(5) of IBC, 2016 seeking the following reliefs:

- a. The present application may kindly be allowed and the decision of the CoC in approving the resolution plan of the M/s. Sai Leela Synthetics Pvt. Ltd. may be quashed and set aside and the CoC may be directed to consider and approve the resolution plan of the applicant.
- b. Any other direction/order in favour of the Applicant that this Hon'ble Tribunal may deem fit and proper.



## ORDER

7. The Insolvency and Bankruptcy Code, 2016, defines Resolution Plan as a plan for Insolvency Resolution of the Corporate Debtor as a going concern. **The Resolution Plan must resolve insolvency (rescue a failing, but viable business); should maximize the value of assets of the 'Corporate Debtor', and should promote entrepreneurship availability of credit and balance the interests of all the stakeholders.**

8. In the backdrop of the object of the IBC, it is amply clear that the **Resolution is Rule and the Liquidation is an Exception.** Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. **IBC therefore, does not allow liquidation of a corporate debtor directly.** It allows liquidation only on failure of corporate insolvency resolution process. It rather facilitates and encourages resolution in several ways.

9. Keeping in view such object behind the enactment of the Code, intention of the Legislature is that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for bringing a Resolution Plan were failed or it cannot be found workable in the larger public interest. Hence, now the approval of Resolution Plan by this Adjudicating Authority is rule as per the apex court's decision in the matter of *K. Saahidhar Vs. Indian Overseas Bank & Ors.*

10. Resolution Plan was heard by this Bench on 29.11.2022 at length in the presence of the CoC members, RP, SRA and their learned Counsels and this



Bench had sought certain clarifications from them relating to the reason for accepting such higher percentage of haircut by the CoC, keeping higher side provision of CIRP cost for the CIRP period of less than one year, Possibility of infusion of additional funds, in addition to the total present offer made in the plan submitted, from the RA for the total claims of the employees & Employees Provident Fund, application of the Judgment of Hon'ble Supreme Court passed in the matter of State Tax Officer vs. Rainbow Papers Limited in civil Appeal No. 1661 in the Resolution Plan approved and submitted, distribution of recovery proceeds, if any, from the avoidable transactions & dealing of IAs No. 90/JPR/2022, 323/JPR/2022, 327/JPR/2022, 401/JPR/2022, 519/JPR/2022 and IA No. 581/JPR/2022. As observed by this Bench, the RP had called the ninth meeting of Committee of creditors on 05.12.2022 along with the Successful Resolution Applicant and the committee of creditors deliberated upon and considered all the points for which the clarifications were sought for by this Bench on 29.11.2022. Thereafter, the RP has filed the Affidavit on the basis of the discussions held at the CoC and the said affidavit has been taken on record as part of the Resolution Plan submitted.

**11. On perusal of the records, it is found that the Resolution Plan confirms to the criteria as provided under clauses (a) to (f) in section 30(2) of the Code and the CoC approved the Resolution Plan by 99.99% voting. The value offered by the Resolution Plan is higher than the value of liquidation. The Resolution Plan also confirms to such other requirements as may be specified by the Board. The Resolution Professional has also certified that the Final Resolution Plan is in conformity with the provisions of the IBC. Further, vide the ninth meeting of committee of creditors dated 05.12.2022, the value of the Resolution plan has been increased to Rs. 31,85,79,727.00 exclusive of funds to the extent of Rs. 10 Crores estimated to be allocated for working capital in running the units of the Corporate Debtor.**



**In addition, it is also found that the Financial Creditors have also realized Rs. 11,68,00,000.00 under SARFAESI by sale of property mortgaged before the commencement of CIRP.**

12. IA No. 90/JPR/2022 (Application Section 19 r/w 60(5)(c) r/w Rule 11 of the NCLT Rules 2016), IA No. 323/JPR/2022 (Application u/s 25 of the Code); IA 327/JPR/2022 (Application u/s. section 43, 45, 66 & 67 of the Insolvency and Bankruptcy Code 2016) **are pending before us.** With regard to these IAs, as per the clause 10.4.9 of the Resolution Plan and also as discussed and agreed in the 9<sup>th</sup> CoC meeting that the Successful Resolution Applicant would pursue the Applications before this Tribunal and any amount to be realized from the Applications shall be distributed as per the resolution plan among the secured financial creditors in accordance with the provisions of the code. The Suspended Directors are still not cooperating the RP and **these IAs have no bearing on the approval of the Resolution Plan. Hence, the IA No. 90/JPR/2022, IA No. 323/JPR/2022 and IA 327/JPR/2022 are kept outside of the Resolution Plan and the same shall be heard and disposed of by this Bench later on. The Registry is directed to list these three IAs on 07.02.2023 for hearing.**

13. **IA 220/JPR/2022** has been filed under sec. 14 read with sec. 60(5) of IBC, by the Suspended Director of CD, Mr. Rajendra Prasad Maheswari with a prayer to declare the registration of sale certificate by the Respondent No. 4 in favour of Respondent No. 3 (Shorya Business (India) Ltd.) null & void ab-initio as the same is contrary to the provisions of section 14 of IBC.

13.1 The Applicant submits that an application filed by M/s. Sangam (India) Ltd. under Section 9 of IBC was admitted on 31.01.2022 and even though the Sale Certificate came to be issued on 14.08.2020, however, no registration of the sale deed was effected till the passing of the CIRP Order dated 31.01.2022 by the Hon'ble NCLT, Jaipur Bench. Despite the



existence of moratorium and prohibition of initiating any action under Securitization Act, 2002, the IDBI Bank Ltd. and the Sub-Registrar, Tonk got registered the Sale Certificate in favour of Shorya Business (India) Ltd. on 14.03.2022. The aforesaid action of the Non-Applicant is violation of Section 14 of the IBC and therefore, registration of the Sale Certificate by the Respondent No. 4 is null & void ab-initio.

13.2 On the other hand, the Resolution Professional of the CD, Mr. Prashant Agarwal and Respondent No. 2 IDBI Bank submit that:

- i. The corporate Debtor had taken various financial assistance from Consortium of Banks in lieu of which security interest was created in the property of the Corporate Debtor in favour of the Banks. The accounts of the Corporate Debtor were declared as Non-Performing Assets by all the member banks and action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was initiated.
- ii. On 08.11.2019, Respondent No. 2/IDBI Bank issued a notice under Section 13(4) of the SARFAESI act read with Rule 81(1) of the Security Interest (Enforcement Rules), 2002.
- iii. On 26.12.2019, the District Magistrate U/s 14 of the SARFAESI Act passed an order for taking possession of Property. However, the same was challenged and after round of litigation before the Ld. Debt Recovery Tribunal and the Hon'ble Rajasthan High Court at Jaipur, the auction of the Property **was conducted on 30.07.2020 as under Section 13(4) of the SARFAESI Act before the initiation of moratorium under Section 14 of the Code on 31.01.2022.**
- iv. **The auction was conducted in favour of the Successful Auction Purchaser who duly deposited the entire sale consideration on 14.08.2020 where after the Sale Certificate was issued by the IDBI Bank for the Property. The copy of the Sale confirmation letter**



**dated 31.07.2020 in favour of the Successful Auction Purchaser has been annexed.**

- v. Thereafter on 20.08.2020, the Successful Auction Purchaser duly deposited the Stamp Duty and Registration fee amounting to Rs. 1,02,78,400.00 in all, with the concerned sub-registrar, pursuant to which the physical and vacant possession of the Property was handed over to the Successful Auction purchaser on 21.08.2020. A copy of the challan reflecting the deposit of the stamp duty and the registration fee has been annexed. Notably the deposit of stamp duty and registration fee with the office of sub-registrar was also done before the commencement of CIRP by the successful auction purchaser.
- vi. On 21.08.2020, the Successful Auction Purchaser presented the Sale Certificate to the office of the Sub-Registrar for registration, however, the same was refused by the Registrar due to the objections filed by the Rajasthan Housing Board.
- vii. On 24.08.2020 the Hon'ble High Court of Rajasthan in SBCWP No. 8404/2020 granted an ex-parte stay and restrained the Bank from conducting the auction proceedings, **which already stood concluded.** Notably, the aforesaid writ Petition was filed by Rajasthan Housing **Board while concealing the fact the auction for the Property by this time had already been concluded on 30.07.2020 and Sale Certificate Stood issued on 14.08.2020.**
- viii. Thereafter on 25.08.2020, the Hon'ble Rajasthan High Court vide an interim order observed that sale, if made, shall not be treated as confirmed and the amount, if received, shall be kept separately and not utilized.
- ix. On 15.03.2021, the stay order dated 25.08.2020 of the Hon'ble High Court was vacated and therefore the member banks become entitled



to receive the disbursement of their respective shares from the sale proceed received from the sale of the property.

- x. Meanwhile, an application came to be filed under Section 9 of the Code, against the Corporate Debtor by M/s Sangam (India) Limited before this Hon'ble NCLT wherein this Hon'ble NCLT vide its **admission order dated 31.01.2022**, directed for commencement of CIRP and imposition of moratorium against the Corporate Debtor.
- xi. Thereafter, on 21.02.2022, the Hon'ble Rajasthan High Court vacated its stay order dated 24.08.2020 as Rajasthan Housing Board withdrew the writ Petition.
- xii. The auction was completed on 31.07.2020 and the Sale Certificate was issued on 14.08.2020, which was presented to the sub-registrar on 21.08.2020 pursuant to the deposit of the stamp duty and registration fees on 20.08.2020, and therefore by **the time moratorium u/s 14 of the Code was imposed upon the Corporate Debtor, the entire process and formalities relating to transfer and registration process, on part of the Successful Auction Purchaser, under the SARFAESI Act and the Registration Act, 1908 already stood completed.**
- xiii. The only remaining aspect was the formal registration of the Property in favour of the Successful Auction Purchaser by the Office of the sub-registrar. It is imperative to state here that the effect of moratorium applies to foreclosure, recovery or enforcement of any security interest of the Corporate Debtor, however, in the instant matter all actions relating to the foreclosure recovery and enforcement of the security interest i.e. the property was already concluded as on 14.08.2020 when the Sale Certificate was issued in favour of the Successful Action Purchaser. Therefore, since the Sale Certificate, deposit, of the Stamp duty and registration fee and the other



formalities were concluded way before the commencement of CIRP on 31.01.2022, the effect of moratorium would not apply on the actions in relation to the formal registration of the property.

- xiv. Non-registration of Sale Certificate does not affect the sale of the Property as the same already stood concluded upon the issuance of the Sale certificate to the Successful Auction Purchaser. In terms of Section 47 of the Registration Act, a document is deemed to have been operated from the date of its execution and not from the date of its registration.
- xv. Since the Sale Certificate was issued way before the commencement of CIRP, and a document is deemed to be in effect from the date of its execution, and since the transfer and possession of Property has already been given to the Successful Auction Purchaser on 21.08.2020, mere formality of registration, which admittedly was initiated on 21.08.2020 to the concerned sub-registrar and which was delayed due to the operation of stay order of the High Court, would not be considered an an enforcement of the security interest of the Corporate Debtor and therefore would not fall under the provisions of Section 14 of the IBC Code.
- xvi. Further, the stay order of the Hon'ble High Court dated 25.08.2020 stating that the sale to the Successful Auction Purchaser shall not be treated as confirmed was vacated on 15.03.2021, way before the commencement of the CIRP. Upon the vacation of the said order, the sale was immediately confirmed as on 14.08.2020 and the member banks became entitled to receive the disbursement of the sale proceeds received from the sale of the Property.
- xvii. The law in this regard is well settled that once a Sale Certificate has been issued, the sale stands completed and the registration of the same is a mere consecutive action, and the date of execution and effect of



the sale is deemed from the date of issuance of the Sale Certificate. The same has been affirmed by the Hon'ble Supreme Court in the matter of ***B. Arvind Kumar vs Govt. Of India and Ors*** wherein the Hon'ble Supreme Court has held that “*It has been held that a sale certificate is issued to the purchaser only when the sale becomes absolute*”. Further in the matter of ***Shakeena and Anr. us Bank of India and Ors.***, it has been held by the Hon'ble Supreme Court that “*Sale certificate issued in favour of the Respondent No. 3 did not require registration and the sale process was complete on the issuance of the sale certificate*”.

13.3 Further the Respondent No. 3 submits that:

- i. The present Application is nothing but sheer abuse of process of law and considering the facts averred in the Application, the same should be dismissed in limine with heavy cost. The Applicant, being a suspended director of the Corporate Debtor has no locus to file the present Application.
- ii. The Respondent No. 2 i.e., IDBI Bank Ltd. being a secured creditor of the Corporate Debtor and in terms of provisions stipulated in Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 exhausted its remedy by inviting the public for the sale of the property in question vide public notice dated 17.06.2020 for auction. The Respondent No. 3 participated in the said auction and was declared as the successful bidder and purchased the property for a sum of Rs. 11,68,00,000.00. Accordingly, a sale confirmation letter was issued by Respondent No. 2 vide letter dated 31.07.2020 in favour of Respondent No. 3. Upon receipt of complete payment, Respondent No. 2 issued a Sale certificate dated 14.08.2020 in favour Respondent No. 3 and also handed over the possession of the property on 21.08.2020.



- iii. Respondent No. 3 paid the applicable stamp duty total amounting to Rs. 91,10,400.00 (Rupees Ninety-One Lakhs Ten Thousand Four Hundred Only) and submitted the necessary documents before the Sub-Registrar, Tonk for the issuance of Sale Deed in favour of Respondent No. 3. However, due to ex-parte restraining order granted by the Hon'ble High Court of Rajasthan, Jaipur Bench in S.B. Writ Petition (Civil) No. 8404 / 2022 (*Rajasthan Housing Board vs. IDBI Bank Ltd. & Ors.*) vide its Order dated 24.08.2020, the Ld. Sub-Registrar, Tonk expressed its difficulty to execute the sale deed. Nevertheless, the vide Order dated 21.02.2022, the aforesaid restraining order stood vacated as the Rajasthan Housing Board withdrew its petition.
- iv. Consequently, the Ld. Sub-Registrar was pleased to register the sale certificate in favour of the Respondent No. 3 and issued the Sale Deed dated 15.03.2022.
- v. Pertinently, it has been well settled by catena of judgments that the Sale certificate issued in favour of the auction purchaser conveys the right, title and ownership of the said Purchaser and is evidence of the title. The Hon'ble Supreme Court in the case of ***B. Arvind Kumar Vs. Government of India and Ors.*** [2007 (5) SCC 745] has held that
- “12... When a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. In this case, the sale certificate itself was registered though such a sale certificate issued by a court or an officer authorized by the*



*court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a civil or revenue officer does not fall under the category of non-testamentary documents which require registration under Sub-section (b) and (c) of Section 17(1) of the said Act. We therefore hold that the High Court committed a serious error in holding that the sale certificate did not convey any right, title or interest to plaintiff's father for want of a registered deed of transfer”*

Hence, the sale of the property in question stood complete and all the rights, titles and ownership vested upon the Respondent No. 3 post issuance of the sale certificate in favour of the Respondent No. 3. This Hon'ble Tribunal vide its Order dated 31.01.2022 had admitted the Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 for the commencement of Corporate Insolvency Resolution Process of the Corporate Debtor and also imposed Moratorium according to Section 14 of the Code which is much after the issuance of Sale Certificate in favour of the Respondent No. 3.

- vi. The allegation of the Applicant that the sale of the property in question is in violation of moratorium is mere illusory and moonshine averment with no basis and contrary to the settled law. There has been no violation of the moratorium period by either Respondent No. 2 or Respondent No. 3 for the reason that the possession of the said property was already handed over to the Respondent No. 3 and the sale certificate was issued on 14.08.2020 which was almost two years before the commencement of the moratorium period.
- vii. Further allowing this present application will create absurdity in the eyes of law as the property in question is not the property of the Corporate Debtor anymore after issuance of Sale Certificate dated 14.08.2020 in favour of Respondent No. 3. The Respondent No. 3 is a third party who happens to be a stranger to the CIRP proceedings.



Therefore, the Respondent No. 3 cannot be fastened with the liability of the Corporate Debtor.

- 13.4 Heard both sides. Considering the materials made available, arguments of learned counsels of the Petitioner and Respondents and the facts mentioned hereinabove, it is found that the Corporate Debtor had taken various financial assistance from **the Consortium of Banks** in lieu of which security interest was created in the said property of the Corporate Debtor in favour of the Banks. **The accounts of the Corporate Debtor were declared as Non-Performing Assets by all the member banks** and action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was initiated issuing public auction notice for the sale of the property in question vide public notice dated 17.06.2020. The Respondent No. 3 was declared as the successful bidder and purchased the property for a sum of Rs. 11,68,00,000.00. Accordingly, a sale confirmation letter was issued by Respondent No. 2 vide letter dated 31.07.2020 in favour of Respondent No. 3. Upon receipt of complete payment, Respondent No. 2 issued a Sale certificate dated 14.08.2020 and also handed over the possession of the property on 21.08.2020. Respondent No. 3 paid the applicable stamp duty and submitted the necessary documents before the Sub-Registrar, Tonk for the issuance of Sale Deed in favour of Respondent No. 3. It is a well settled law that Sale certificate issued in favour of the auction purchaser conveys the right, title and ownership of the said Purchaser. Once the sale of a secured asset is completed in public auction as per Section 13(4) of SARFAESI Act which ended in issuance of a sale certificate as per Rule 9(7) of the 2002 Rules, the same is complete and absolute. **In this matter, the entire process right from the public auction notice for sale, payment of sale consideration, issuance of the Sale Certificate and handing over the possession of the property has been completed**



between 17.06.2020 to 21.08.2020 when the commencement of CIRP of the Corporate Debtor started almost after one and half year i.e., on 31.01.2022. SARFAESI action is an independent proceeding of the CIRP proceedings which was initiated by the Lenders and closed well before the commencement of the CIRP. Moreover, the Resolution Plan received has been approved by the same members of CoC with 99.99% voting share and the plan has been submitted before us for approval. The realisation of Rs. 11,68,00,000.00 is in addition of the amount offered in the plan by the RA.

13.5 It is further found that the Applicant here is a suspended Director of the Corporate Debtor and IAs No. 90/JPR/2022 (Application Section 19 r/w 60(5)(c) r/w Rule 11 of the NCLT Rules 2016), IA No. 323/JPR/2022 (Application u/s 25 of the Code); IA 327/JPR/2022 (Application u/s. section 43, 45, 66 & 67 of the Insolvency and Bankruptcy Code, 2016) filed for non-cooperation of the suspended management, non-availability of the assets to take possession, reported transactions under Preferential, Undervalued Fraudulent in nature for Rs. 172.91 Lakhs, Rs. 399.75 Lakhs, Rs. 704.82, Rs. 6809.69 Lakhs, Rs. 431.14 Lakhs and Rs. 1179.92 Lakhs **are pending before us**. It is clear that present Application filed by the Suspended Director is with malafide intention to delay the CIRP and derail the IBC proceedings.

13.6 **Hence, we don't find any reason to entertain this IA. It is a fit case to dismiss the IA with heavy penalty on the Suspended Director but we take a lenient view and the IA 220/JPR/2022 in CP(IB) 275/9/JPR/2019 is hereby summarily rejected without putting any penalty on the Suspended Director.**

14. **With regard to IAs No. 401/JPR/2022, IA NO. 519/JPR/2022, IA 581/JPR/2022**, during the course of hearing of these matter, it has been agreed



by the SRA that the same % payment is to be made these claimants. Further, as per the Ninth CoC meeting, the SRA has proposed

- a. to increase the amount for the class of employees and workmen
- b. to pay the claimed amount of EPFO in its entirety and
- c. In the case of IA 581/JPR/2022, the claimant is to be paid Rs. 1,11,306.00 with simple interest @12% per annum on the amount of Rs. 1,11,306.00 from 19.11.2016.

The same have been incorporated in the Resolution Plan and as a consequence, the value of the Resolution plan is now Rs. 31,85,79,727.00. The undertaking/affidavit to this effect provided by the Successful Resolution Applicant, agreed by the CoC and filed by the Resolution Professional is taken on record.

**Since the SRA has already agreed to pay the claims during the course of hearing and the same has also been incorporated in the Resolution Plan as discussed in the Ninth CoC meeting, IA No. 401/JPR/2022, IA NO. 510/JPR/2022, IA 581/JPR/2022 have become infructuous and hence stand disposed of accordingly.**

15. **IA No. 602/JPR/2022** has been filed by Shivam Sulz Pvt. Ltd. under section 60(5) of IBC, 2016, an unsuccessful RA, praying for the rejection of the decision of the CoC in approving the resolution plan of the M/s. Sai Leela Synthetics Pvt. Ltd submitted before this Bench for approval and direction to the CoC to consider the resolution plan of the applicant. Heard both sides and it is found that the applicant was given sufficient opportunities by the RP/CoC to submit a viable Resolution Plan but the applicant has failed to do show. It is also further found from the records submitted, the applicant has a very small amount of net worth, not submitted any concrete source of funds for the plan submitted, depending mainly on the probable sanction of loan from the bank and sale of the non-core assets of the CD under CIRP. The CoC has rightly rejected the proposal



of the Applicant and we don't find any merit in this IA to consider the prayer. It is also observed that the Resolution Plan submitted by the Applicant here is a sham one and the intention of the applicant is only to delay the CIRP. **Hence it is a fit case to dismiss the IA with heavy cost but we take a lenient view and the IA is dismissed so as to no cost.**

16. On perusal of the Resolution Plan, we are of the considered view that the Resolution Plan meets the requirement of Section 31 r/w Section 30(2) of the Code. **Therefore, the present application IA (IBC) No. 590/JPR/2022 is allowed and the Resolution Plan is approved with the certain observations and compliances of the following Conditions:**

- 16.1 Approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/ Corporate Debtor as those are the subject matter of the concerned Competent Authorities having their proper/own jurisdiction to pass any appropriate order as the case may be. The Resolution Applicant on approval of the Plan may approach those Competent Authorities/ Courts /Legal Forums/ Offices - Govt. or Semi Govt./State or Central Govt. for appropriate reliefs sought for in the plan. This is not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant has liberty to approach Competent Authorities for any concession, relief or dispensation as the case may be.
- 16.2 **The Monitoring Committee would be three members monitoring committee consisting of one member/representative of the SRA, (ii) representative of Financial Creditor having highest voting share in the CoC and (iii) Mr. Prashant Agarwal Resolution Professional, as Head of Monitoring Committee.** The Resolution Professional is hereby appointed as the Head/Chairman of the monitoring Committee for



supervision of the implementation of the Resolution Plan. **The Monitoring Committee needs to be wound up at an early date on implementation of the Resolution Plan.** Fees of the RP as the Chairman of the Monitoring Committee is to be Rs. 1,50,000.00 per month till the full implementation of the Resolution Plan and the same shall be borne by SRA.

17. **It is further directed that:**

17.1 **The approved Resolution Plan shall come into force with immediate effect.**

17.2 The moratorium order passed under section 14 of the Code on Suzuki Textiles Limited shall cease to have effect from today;

17.3 The Resolution Professional, Mr. Prashant Agrawal is discharged from the duties of the resolution professional of the CD but he is to work as the Chairman of the Monitoring Committee till the Plan is implemented.

17.4 This Adjudicating Authority holds that it is beyond its scope to grant any Concessions/waivers etc. in respect of any dealings/transactions between the different parties, and/or as regards any statutory obligations/liabilities that are visualized or may arise subsequently while giving effect to the Plan, as the same would be dealt with by the SRA.

17.5 The Resolution Plan shall be subject to the various existing laws in force and shall also conform to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.

17.6 The Resolution Applicant shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws for the time being in force **within a period of one year from** the date of approval of the Resolution Plan by the Adjudicating Authority under section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.



- 17.7 All relevant parties in relation to the Final Resolution Plan are to be bound by the terms and conditions mentioned therein in accordance with Section 31(1) of the IBC 2016.
- 17.8 All relevant parties are directed **to extend full cooperation to carry out** the terms and conditions of the Final Resolution Plan. If there is any deviation in implementing the Final Resolution Plan, the concerned parties/entity will be liable for punishment as per Chapter 7 (Offences and penalties) of the IBC, 2016.
- 17.9 **The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.**
18. **Accordingly, IA (IBC) No. 590/JPR/2022 in CP No. (IB)-275/9/JPR/2019 is allowed and the Resolution Plan is approved with the above Observations and Directions.**

DEEP  
CHANDRA  
JOSHI

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JOSHI  
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**[DEEP CHANDRA JOSHI],  
JUDICIAL MEMBER  
& ADJUDICATING AUTHORITY**

PRASANTA  
KUMAR  
MOHANTY

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Date: 2023.01.18  
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**[PRASANTA KUMAR MOHANTY],  
TECHNICAL MEMBER  
& ADJUDICATING AUTHORITY**