

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-IV

I.A.1528/ND/2022

IN

C.P. No. IB-1526/ND/2019

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

IN THE MATTER OF:

M/S AMRITVANI EXIM PRIVATE LIMITED

...Financial Creditor

Vs.

M/S AJANTA OFFSET AND PACKAGING LIMITED

...Corporate Debtor

AND

IN THE MATTER OF:

MR. SATYA NARAYANA GUDDATI

RESOLUTION PROFESSIONAL OF

M/s. AJANTA OFFSET AND PACKAGING LIMITED

ORDER DELIVERED ON:17.08.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: SH. DHARMINDER SINGH, MEMBER (JUDICIAL)

The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') on behalf of the Resolution Professional (RP), seeking approval of the Resolution Plan submitted

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Resolution Applicant'/ 'Suspended Board of Director') member of the suspended board of directors.

2. Briefly stated, the facts as averred by the applicant in the application are stated are as follow:

- a) The applicant submits that Corporate Insolvency Resolution Process (CIRP) was initiated against the M/s. Ajanata Offset and Packaging Private Limited ('Corporate Debtor') vide order dated 04.02.2020 passed by this Adjudicating Authority, pursuant to an application filed by M/s. Amritvani Exim Private Limited, financial creditor under Section 7 of the Code and Mr. Satya Narayana Guddeti was appointed as Interim Resolution Professional.
- b) The applicant submits that the applicant carried out public announcement of initiation of CIRP on 07.02.2020 in Form A, after collation of claims and determination of the financial position of the corporate debtor, Committee of Creditors ('CoC') was duly constituted by the applicant on 27.02.2020. The applicant further submits that the first COC meeting was held on 05.03.2020, wherein CoC was appraised about various matters including but not limited to take note of claims received by IRP, constitution of the CoC, action taken by IRP under the Code, status of business operations of corporate debtor, expenses incurred towards CIRP cost and confirmation of the appointment of IRP as RP.
- c) The applicant submits that below are the financial creditors of the corporate debtor, being members of the COC and distribution of the voting right of the COC members are as follow:-

Name of the Financial Creditor	Percentage
Amritvani Exim Private Limited	0.45%
Canara Bank	26.01%
Union Bank of India(Formerly Corporation Bank)	40.39%
State Bank of India	15.75%
Exim Bank	2.29%
Todi Investors (India) Private Limited	0.47%
Vinayak Dealer Private Limited	2.71%
South City Projects (Kolkata) Limited	1.50%
EOCL Infrastructure Limited	8.43%

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- d) The applicant further submits that in the second COC meeting held on 13.07.2020, wherein the COC have approved the publication of Form G, Evaluation Matrix, Request for Resolution Plan (RFRP), Information Memorandum
- e) The applicant submits that expression of interest was published in prescribed Form G on 19.08.2020 in Financial Express (*English Edition*) and Jansatta (*Hindi Edition*) news. The applicant further submits that in response to the publication, the applicant had received expression of interests from two (2) Prospective Resolution Applicants ('PRA's) who are also the financial creditors to the corporate debtor. Consequently the prospective and final list of prospective resolution applicants were published on 19.09.2020 and 24.09.2020 respectively.
- f) The applicant submits that the COC members in the third, fourth and fifth COC Meeting after due deliberations and recommending alterations in the proposed resolution plans were of the opinion that the proposed resolution plans submitted by the PRAs are not feasible and viable and decided not to put the resolution plans for voting.
- g) The applicant submits that after the plans submitted by both the PRA's were rejected by COC and the CIRP period of 330 days had expired on 18.06.2021, the COC in its 5th COC Meeting had unanimously passed a resolution for liquidation of the corporate debtor. Accordingly, the applicant had filed an application bearing I.A. No. 2710/2021 for liquidation of the Corporate Debtor under section 33 of the Code before the NCLT on 18.06.2021.
- h) The applicant submits that the suspended directors of the corporate debtor had filed an I.A.4388/ND/2021 seeking directions for consideration of the resolution plan dated 03.09.2021 submitted by the ex-directors (eligible as the promoters of the corporate debtor, being an MSME) to the applicant and to put the same before COC for consideration and also seeking extension of the CIRP period by further 90 days.
- i) The applicant submits that this Tribunal vide order dated 28.09.2021, had directed the applicant to call a COC meeting for taking decision and deliberate on whether more Resolution Applicants may be invited and considering the insolvency resolution of the corporate debtor, the further extension of CIRP period was granted for 150 days from 18.06.2021(from expiry of 330 days of CIRP).
- j) The applicant submits that the applicant received an unsigned copy of the resolution plan from the suspended directors on

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19.10.2021 which was put before the COC members in the 6th COC meeting held on 20.10.2021. The applicant further submits that the COC after discussion granted time to the suspended directors to submit a revised resolution plan.

- k) The ex-directors submitted final signed copy of the Resolution Plan on 03.11.2021. Accordingly, the CoC meeting was convened on 05.11.2021. During the said meeting the Resolution Plan was discussed and deliberated upon at length by the members of the CoC and e-voting upon the resolution plan was concluded in 30.12.2021 and the resolution plan submitted by the suspended directors was approved by 67.34% of voting share of the COC.
- l) The applicant submits that this Tribunal vide order dated 22.11.2021 in I.A 5345/2021 had allowed further extension of 45 days from 15.11.2021. The applicant further submits that Hon'ble NCLAT in Company Appeal(Ins)(AT)/268/2022 vide order dated 23.02.2022 granted one weeks' time from the date of the order for submission of Performance Bank Guarantee from the Successful Resolution Applicant.
- m) The applicant further submits that the Successful Resolution Applicant ('SRA') has submitted an undertaking under Regulation 39(1)(c) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP regulations) 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.

3. We have heard the submissions made by the Ld. Counsel for the applicant and have meticulously gone through the documents produced on record. Before, examining the Resolution Plan vis-à-vis with the mandatory compliance under the Code and the Regulations made thereunder, the following issues need to be determined: -

I. Whether the Corporate Debtor undergoing Corporate Insolvency Resolution Process ('CIRP'), which was not earlier registered as MSME, can be registered as an MSME during the Corporate Insolvency Resolution Process, to enable the promoter of the Corporate Debtor to submit the Resolution Plan in view of Section 240A of the Code, 2016?

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II. Whether the Promoter of the Corporate Debtor under the guise of MSME be eligible to directly submit the Resolution Plan before the COC without submitting the 'Expression of Interest' as provided under Sub-Regulation 5 of Regulation 36(A) of the CIRP Regulations, 2016 and without following the other due procedures as laid down in Chapter X (Resolution Plan) of the CIRP Regulations?

III. Whether the Resolution Plan submitted by suspended board of directors i.e., Mr. Govind Prasad Todi & Mr. Siddhartha Todi is compliant in terms of the mandatory provisions as envisaged in Code, 2016 and CIRP Regulations and thereby, should be approved in view of Section 31(1) of the Code, 2016?

FINDING WITH REASONS

ISSUE NO I

4. At this Juncture, it would be appropriate to go through Section 29 A and Section 240 A of the code, which are reproduced in verbatim as below:-

29A. Persons not eligible to be Resolution Applicant. -

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);

(c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to nonperforming asset accounts before submission of resolution plan:

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Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I.- For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed], prior to the insolvency commencement date.

Explanation II.— For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;

(d) *****

(e) *****

(f) *****

(g) *****

(h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part

(i)*****

(j)*****

240A.Application of this Code to micro, small and medium enterprises. –

(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process or pre-packaged insolvency resolution process of any micro, small and medium enterprises.

(2) *****

(3) *****

(4) *****

(5) *****

(6) *****

5. Section 29A of the Code relates to ineligibility of the 'Resolution Applicant', which stipulates that any person ineligible in terms of the said provision will not be eligible to submit a 'Resolution Plan'. However, relaxation is

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provided to the Promoters of the Corporate Debtor which is a Micro, Small or Medium Enterprise ('MSME') by exempting them from the clauses (c) and (h) of Section 29A of the Code, to bid for the resolution plan for the MSME.

6. From a conjoint reading of the aforesaid provisions, it is clear that a Promoter of the Corporate Debtor can get rid of ineligibility under clause (c) and (h) of Section 29A of the Code to submit a resolution plan only and only if the Corporate Debtor is registered as a Micro, Small or Medium Enterprise, in view of Section 240A of the Code. Thus, it is clear that other than the exemption as provided under Section 240 A of the Code, no other special treatment will be available and no special right is vested into the suspended board of directors.

7. Section 5(25) of the Code, 2016 defines the term **“Resolution Applicant”** -
 "Resolution Applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25 or pursuant to section 54K, as the case may be;

8. Section 5(26) of the Code, 2016 defines the term **“Resolution Plan”** –
 “Resolution Plan” means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II.”

9. Section 25 of the Code,2016 relates to “Duties of Resolution Professional”.
 Clause (h) of sub-section (2) of Section 25 reads as follows:

“25. Duties of resolution professional —

(1) *****

(2) *For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: —*

(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.”.

10. Regulation 39 of the CIRP Regulation, 2016 provides for approval of Resolution Plan -

(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

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time given in the request for resolution plans under regulation 36B along with (a) an affidavit stating that it is eligible under section 29A to submit resolution plans;

(1A) *****

(1B) **The committee shall not consider** any resolution plan-
(a) received after the time as specified by the committee under regulation 36B; or
(b) **received from a person who does not appear in the final list of prospective resolution applicants;** or
(c) does not comply with the provisions of sub-section (2) of section 30 and sub regulation (1).].

11. We observe that Sections 25, 29A and 30 talk of 'Resolution Plan' but do not provide for submission of any 'Expression of Interest' as was called for by 'Resolution Professional'. The 'Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 while deals with 'Information Memorandum' (Regulation 36), and 'Resolution Plan' (Regulation 37), 'Mandatory Contents of 'Resolution Plan' (Regulation 38) and 'Approval of 'Resolution Plan' (Regulation 39), no provision was made therein for submission of 'Expression of Interest'.

12. However, vide Notification No. IBBI/2018-19/GN/REG031, dated 3rd July, 2018 (w.e.f. 04-07-2018), the expression in Regulation 36A which deals with the '**Invitation of Resolution Plans**' was substituted by Regulation 36 A '**Invitation for Expression of Interest**'. On a perusal of substituted Regulation 36 A of CIRP regulation, 2016 '**Invitation for Expression of Interest**', the resolution professional is required to publish an invitation for submitting Expression of Interest (EOI) in Form G by the Seventy Fifth (75) day of insolvency commencement date specifying basic information about the Corporate Debtor, the criteria (*which has been approved by Committee under Section 25 of the Code*), ineligibility (*as stated under Section 29A of the code*), last date for submission of the EOI, documents required to be submitted along with EOI and such other details as required. The resolution professional after receiving of the EOI will be required to conduct due diligence based on material on record and issue a provisional list of prospective resolution applicants within 10 days of the last date of submission of EOI with Committee and to all Prospective Resolution



Applicants who have submitted the EOI. Any objection w.r.t provisional list needs to be made within five days from the date of issue of the provisional list. The final list of the prospective Resolution Applicant needs to be issued within 10 days of the last date for receipt of objections.

13. The Regulation 39(1B)(b) of the CIRP Regulations, 2016 makes it clear that Committee of Creditors shall not consider any resolution plan which was received from a person who does not appear in the final list of prospective resolution applicants.

14. On a collective construction of definitions of Resolution Applicant, Resolution Plan as defined in the Code, provisions made under the Code and CIRP Regulations thereunder, it can be easily inferred that **publication of invitation seeking 'Expression of Interest' as to submit a Resolution Plan is the very first stage of the process of the approval of Resolution Plan**. Receiving the Expression of Interest along with required undertakings as provided in Regulation 36A (7) of the CIRP Regulations from the PRA is the Second Stage. Resolution Professional conducting due diligence as provided in Regulation 36A (8) to check the eligibility of the Prospective Resolution Applicant in term of the criteria decided by the COC and ineligibility under Section 29A of the Code is the Third stage. Issue of Provisional list of eligible Prospective Resolution Applicant/s is Fourth Stage. Issue of Information Memorandum, Evaluation Matrix and Request for Resolution Plan to prospective Resolution Applicant is Fifth Stage. After considering the objections if any, issue of final list of Prospective Resolution Applicant is Sixth Stage. The Submission of Resolution Plan to the Resolution Professional by a Prospective Resolution Applicant whose name was in the final list is Seventh Stage. Examination of the Resolution Plan submitted by the Resolution Applicant and presenting before COC will be final stage before resolution plan can be put to vote before COC.

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15. The Hon'ble Supreme Court in the matter of Arcelormittal India Private Limited v. Satish Kumar Gupta & Ors., [Civil Appeal No. 9402-9405 of 2018] wherein it was held that:

74. Regulation 40A of the CIRP Regulations presents a model timeline of the corporate insolvency resolution process, on the basis that the time available is 180 days. It states as follows:- "40A. Model time-line for corporate insolvency resolution process....."

76. Given the timeline referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. **This is also made clear by the first proviso to Section 30(4), whereby a Resolution Professional may only invite fresh resolution plans if no other resolution plan has passed muster.**

77. However, it must not be forgotten that a Resolution Professional is only to "examine" and "confirm" that each resolution plan conforms to what is provided by Section 30(2). Under Section 25(2)(i), the Resolution Professional shall undertake to present all resolution plans at the meetings of the Committee of Creditors. **This is followed by Section 30(3), which states that the Resolution Professional shall present to the Committee of Creditors, for its approval, such resolution plans which confirm the conditions referred to in sub-section (2). This provision has to be read in conjunction with Section 25(2)(i), and with the second proviso to Section 30(4), which provides that where a resolution applicant is found to be ineligible under Section 29A(c), the resolution applicant shall be allowed by the Committee of Creditors such period, not exceeding 30 days, to make payment of overdue amounts in accordance with the proviso to Section 29A(c). A conspectus of all these provisions would show that the Resolution Professional is required to examine that the resolution plan submitted by various applicants is complete in all respects, before submitting it to the Committee of Creditors. The Resolution Professional is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the Committee of Creditors, who may or may not approve it. The fact that the Resolution Professional is also to confirm that a resolution plan does not contravene any of the provisions of law for the time-being in force, including Section 29A of the Code, only means that his prima facie opinion is to be given to the Committee of Creditors that a law has or has not been contravened. Section 30(2)(e) does not empower the Resolution**

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Professional to “decide” whether the resolution plan does or does not contravene the provisions of law. Regulation 36A of the CIRP Regulations specifically provides as follows:- “(8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with- 120 (a) the provisions of clause (h) of sub-section (2) of section 25; (b) the applicable provisions of section 29A, and (c) other requirements, as specified in the invitation for expression of interest. (9) The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence under sub-regulation (8). (10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest. (11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list. (12) On considering the objections received under sub regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.”

78. Thus, the importance of the Resolution Professional is to ensure that a resolution plan is complete in all respects, and to conduct a due diligence in order to report to the Committee of Creditors whether or not it is in order. Even though it is not necessary for the Resolution Professional to give reasons while submitting a resolution plan to the Committee of Creditors, it would be in the fitness of things if he appends the due diligence report carried out by him with respect to each of the resolution plans under consideration, and to state briefly as to why it does or does not conform to the law.

79. **Take the next stage under Section 30. A Resolution Professional has presented a resolution plan to the Committee of Creditors for its approval, but the Committee of Creditors does not approve such plan after considering its feasibility and viability, as the requisite vote of not less than 66% of the voting share of the financial creditors is not obtained. As has been mentioned hereinabove, the first proviso to Section 30(4) furnishes the answer, which is that all that can happen at this stage is to require the Resolution Professional to invite a fresh resolution plan within the time limits specified where no other resolution plan is available with him. It is clear that at this stage again no application before the Adjudicating Authority could be entertained as there is no vested right or fundamental right in the resolution applicant to have its resolution plan approved, and as no adjudication has yet taken place.**

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80. It is the Committee of Creditors which will approve or disapprove a resolution plan, given the statutory parameters of Section 30. Under Regulation 39 of the CIRP Regulations, subclause (3) thereof provides:-

“(3) The committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit: Provided that the committee shall record the reasons for approving or rejecting a resolution plan.”

This regulation shows that the disapproval of the Committee of Creditors on the ground that the resolution plan violates the provisions of any law, including the ground that a resolution plan is ineligible under Section 29A, is not final. The Adjudicating Authority, acting quasi-judicially, can determine whether the resolution plan is violative of the provisions of any law, including Section 29A of the Code, after hearing arguments from the resolution applicant as well as the Committee of Creditors, after which an appeal can be preferred from the decision of the Adjudicating Authority to the Appellate Authority under Section 61.

16. We have noticed that for inviting prospective resolution plans in terms of clause (h) of sub-section (2) of Section 25, the Resolution Professional has with the approval of 'Committee of Creditors', issued Form-G on 19.08.2020, in response of which the Resolution Professional had received 2 expressions of interest. Pertinent to mention here that both the parties are financial creditors of the corporate debtor. Consequently, the Resolution Professional had issued a provisional and final list of the Prospective Resolution Applicants. The Prospective Resolution Applicants namely (i) Amritvani Exim Private Limited and (ii) EDCL Infrastructure Limited had submitted their resolution plans on 16.10.2020 and 18.10.2020 respectively within the time frame as per Form-G. The COC after deliberation on the resolution plans submitted by the Prospective Resolution Applicants had rejected the resolution plan submitted by Amritvani Exim Private Limited in its 4th COC Meeting and in the 5th COC Meeting decided not to put the resolution Plan of EDCL Infrastructure to vote being not in compliance of the provisions of the Code.

17. The application I.A. No. 4388/ND/2021 was filed by the Suspended Board of Directors of the corporate debtor on 24.09.2021 more than three months after the I.A No. 2710/ND/2021 seeking liquidation was filed by the Resolution Professional on 18.06.2021 with the COC's Approval in their 5th

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meeting upon completion of the maximum time period prescribed under CIRP Regulations, seeking directions for commencement of the liquidation.

18. The Suspended Board of Directors during the course of hearing of I.A. No.2710/ND/2021 on 06.09.2021, submitted before this Tribunal that they are interested in submitting a Resolution Plan. Accordingly, this Tribunal vide order dated 29.09.2021 in I.A. No. 4388/ND/2021 had directed "***the Resolution Professional to call Lender's Meeting for taking appropriate decision and deliberate on whether more Resolution Applicants may be invited. While going through application, it is seen that the present application seeking 90 days' extension if granted from the date of expiry of 330 days also has expired on 16.09.2021 and present application is filed on 23.09.2021. Be that as it may, while considering the Resolution and probably the maximization of value and also the interest of employees and workmen, we direct that the extension of CIRP will be granted for 150 days from the expiry of 330 days which will now offer roughly 50 days period to complete the process and achieve Resolution. Prayer 'd' cannot be considered at this stage seeking dismissal of liquidation application as if the Resolution Plan is approved by CoC; then the same will be considered. Application is disposed of in terms of the above order.***"

19. The Resolution Professional conducted the 6th COC meeting on 20.10.2021 which was concluded on 05.11.2021, wherein the Resolution Professional apprised the COC Members about the NCLT order dated 29.09.2021 and receipt of the unsigned copy (word file) of the Resolution Plan submitted by the Suspended Board of Directors vide an email dated 19.10.2021.

20. We observe that COC in Item No.5 of the 6th COC Meeting discussed, "**To take note of extension of the CIRP Period till 15.11.2021 and discuss whether more Resolution Applicants can be invited**". The relevant extract of the minutes of Item No.5 of the 6th CoC Meeting is reproduced herein below: -



Furthermore, in the meantime, the promoter has preferred an application before the Hon'ble NCLT, for issue of necessary directions to the Resolution Professional and the CoC, to consider the Resolution Plan submitted by him, and to extend the CIRP period to enable to the Resolution Professional and the CoC to consider and discuss upon the Resolution Plan submitted by him. The said application was listed for hearing on 28-09-2021, along with the application preferred by the Resolution Professional for Liquidation of the Corporate Debtor.

The Hon'ble Bench considering the application preferred by the promoter, has directed the Resolution Professional to call upon the lenders meeting, to consider the Resolution Plan submitted by the Promoter and also to explore whether more Resolution Applicants can be invited. The Hon'ble Bench has also allowed extension of the CIRP Period till 15-11-2021 to enable the Resolution Professional and the CoC, to consider the Resolution Plan.

The members present therein inquired from the Resolution Professional about the availability of timelines and feasibility of calling more Resolution Plan. In response to the which the Resolution Professional clarified that currently considering the available time period, dis not feasible to invite more Resolution Plan's However, the members of the CoC may consider the Resolution Plan submitted earlier and by the promoter himself in due course of the time.

Thereafter, the members of the CoC collectively deliberated upon and decided to consider the Resolution Play submitted by promoters themselves as per the directions of the Adjudicating Authority.

21. However, on perusal of the minutes of the 6th COC Meeting, we find that the Resolution Professional as well as COC were in grave error while interpreting the order dated 29.09.2021, wherein the Resolution Professional and COC were directed to deliberate on whether more Resolution Applicants may be invited. By no means whatsoever, we are able to concur with the view taken by the Resolution Professional and COC, that this Tribunal had directed to consider the Resolution Plan submitted by the Promoters without following the procedure laid down in the Code and the CIRP Regulations. It was the duty of the Resolution Professional to consider the Resolution Plan submitted by the Suspended Board of Directors after complying the procedure laid down by the IBBI in the Code and the CIRP regulations.

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2. At this juncture, it will be beneficial to refer the timeline of CIRP of the Corporate Debtor as provided in Form-H submitted by the Resolution Professional to better appreciate the facts of the present issue:-

SNo.	Particulars	Description
1	Name of the CD	AJANTA OFFSET AND PACKAGING LIMITED
2	Date of Initiation of CIRP	04-02-2020
3	Date of Appointment of IRP	04-02-2020
4	Date of Publication of Public Announcement	07-02-2020
5	Date of Constitution of CoC	27-02-2020
6	Date of First Meeting of CoC	05-03-2020
7	Date of Appointment of RP	09-06-2020
8	Date of Appointment of Registered Valuers	05-05-2020
9	Date of Issue of Invitation for EoI	19-08-2020
10	Date of Final List of Eligible Prospective Resolution Applicants	24-09-2020
11	Date of Invitation of Resolution Plan	18-09-2020 (Date of Issue of RFRP)
12	Last Date of Submission of Resolution Plan	18-10-2020
13	Date of Approval of Resolution Plan by CoC	30-12-2021
14	Date of Filing of Resolution Plan with Adjudicating Authority	28-03-2022
15	Date of Expiry of 180 days of CIRP	02-08-2020
16	Date of Order extending the period of CIRP	Exclusion of 230 days vide order dated 01-06-2021 Exclusion of 90 days vide order dated 01-06-2021 Exclusion of 150 days vide order dated 28-09-2021 Exclusion of 45 days vide order dated 22-11-2021
17	Date of Expiry of Extended Period of CIRP	30-12-2021

23. Indeed, the COC was fully authorized to either accept or reject the Resolution Plan or negotiate with the Resolution Applicants in the exercise of its power under commercial wisdom. But in the exercise of commercial wisdom, COC was not authorized to arbitrarily consider and approve the resolution plan submitted by the Promoter of the Corporate Debtor or for that matter by any one, who has not submitted the Expression of Interest in compliance as enumerated in the Code and the CIRP Regulations. Because in the absence of submission of the Expression of Interest by the Promoters, the Promoters cannot get the status of a "Resolution Applicant" as defined under Section 5(25) of the Code, which defines Resolution Applicant as a person, who individually or jointly with any other person,

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submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25.

24. What we find from the Form G invitation seeking 'Expression of Interest' dated 19.08.2020 to submit a 'Resolution Plan' for 'M/s. Ajanta Offset and Packaging Limited' published on 19.08.2020 is the first stage of 'Resolution Plan'. Therefore, we hold that 'Expression of Interest' is part of the 'Resolution Plan', and therefore the date of submission of the 'Expression of Interest' should be treated to be the date of eligibility of the person to be a Resolution Applicant as envisaged under Section 29A of the Code read with Section 240A of the Code , for submission of the 'Resolution Plan'.
25. The Successful Resolution Applicant herein never underwent the rigors of compliance before the COC by submitting the expression of interest with other prospective Resolution Applicants. It is further observed from the perusal of the records of the minutes of COC Meeting, that the Successful Resolution Applicant being the suspended director attended the meeting of the COC and therefore was well aware of the Resolution Plan amount offered by the Prospective Resolution Applicants whose plans were rejected by the COC and accordingly the Successful Resolution Applicant has proposed to submit the resolution plan after the expiry of 330 days of the CIRP in the guise of maximization of realization.
26. After expiry of the deadline for submission of EOI, CoC was fully competent to republish the invitation for expression of interest in Form G, to consider the resolution plan submitted by the suspended board of directors of the CD and other Prospective Resolution Applicants. It could have done so by following the Rules and Regulations as per due process. We have noticed that earlier, the RP had issued notices in 'Form G' for inviting Expression of Interest only once on 19.08.2020. As to why the same procedure was not adopted in accepting the Resolution Plan of successful Resolution Applicant/ Suspended Board of Director is not understood at all.

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27. The Hon'ble NCLAT in **Binani Industries Ltd.' V. 'Bank of Baroda and Anr.'** reported in 2018 SCC online NCLAT 565 wherein it is observed and held as under: -

"34. Section 25(2)(h) provides invitation of prospective lenders, investors and any other persons to put forward a 'Resolution Plan'. Submission of revised offer is in continuation of the Resolution Plan already submitted and accepted by the Resolution Professional. It is not in dispute that after invitation was called for, the Ultra Tech Cement Ltd. submitted the revised Resolution Plan on 12th February, 2018 i.e. well within the time. It is not the case of the Committee of Creditors that the Plan of the Ultra Tech Cement Ltd. was in violation of Section 30(2) of the I&B Code. The Resolution Plan having submitted by Ultra Tech 41 Cement Ltd. within time on 12th February, 2018 it was open to the Committee of Creditors to notice the revised offer given by Ultra Tech Ltd. on 08th March, 2018. The Committee of Creditors has taken note of revised offer given by the 'Rajputana Properties Private Limited' on 07th March, 2018 but refused to notice the revised offer submitted by Ultra Tech Cement Limited on 08th March, 2018 i.e. much prior to the decision of the Committee of Creditors (14th March, 2018).

39. On a careful reading of the aforesaid clauses, it is clear that all the Resolution Plan' which meet the requirements of Section 30(2) of the 'I&B Code' are required to be placed before the 'Committee of Creditors' and the Resolution Professional' can review the Resolution Plan' and the 'Committee of Creditors' is entitled to negotiate and modify with consent of the Resolution Applicant. To apply this clause there is no time limit prescribed except that the Resolution Process should be completed within the stipulated period of 180 days or maximum 270 days."

46. We appreciate the aforesaid submissions made by Mr. Gopal Subramanian, Ld. Senior Counsel that the Committee of Creditors, **Resolution Professional and all Resolution Applicants are bound by the process documents prepared under the mandate of Section 25(2)(h) of the I&B Code but non-adherence to process stipulated in terms of Section 25(2)(h) of the 'I&B' Code and to stipulation made in the process documents will render such decision illegal.**"

28. We strongly express our reservations on the decision of CoC as well as RP in this regard as a level playing field was not created for all the 'Prospective Resolution Applicants' as well as there was breach of the due process of the provisions of the Code and the CIRP Regulations. At the cost of repetition, we reiterate that illegal exercise of power by the Resolution

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Professional in conducting CIRP cannot be treated as an exercise of power for maximization of value under Commercial Wisdom.

ISSUE NOs II and III

29. Facts which are material to the issue raised may first be noted.

- 29.1. The Corporate Debtor i.e., M/s. Ajanta Offset and Packaging Limited is a listed Company incorporated on 25.09.1969 having CIN: L74950DL1969PLC005126 and registered office situated at Madani Hall, 1 Bahadur Shah Zafar Marg, New Delhi -110002 having Paid- up share capital of Rs.29,58,17,000.
- 29.2. The Corporate Debtor was engaged in the business of designing, pre-press and printing services to a wide range of private professionals and corporate clients.
- 29.3. The Corporate Debtor was running on multiple locations i.e,2 units at Faridabad and 1 unit at ITO Delhi.
- 29.4. The COC in is 2nd COC Meeting held on 13.07.2020 in Item No.2 had resolved to appoint two Registered Valuers for each class to determine the liquidation and fair market value of the corporate debtor. The COC with 100% voting have approved two valuers namely Mr. N.R. Sharma and Mr. Alok Kaushik for carrying out the valuation of the Plant and machinery (Class of Asset) of the Corporate Debtor.
- 29.5. On perusal of Form-H, we observe that no application under Section 43, 45, 50 and 66 of the Code, 2016 has been filed before this Tribunal. We further observe that the fair market value of the corporate debtor is Rs.57.25 crores and the liquidation value of the corporate debtor is Rs.42.49 crores.
- 29.6. The Suspended Directors, during the pendency of I.A No. 2710/ND/2021 seeking liquidation of the Corporate Debtor, get the Corporate Debtor registered as a Micro Enterprises on 30.08.2021 having Udyam Registration No. UDYAM-HR-03-0022917.

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29.7. The Suspended Board of Director consequently filed I.A. 4388/ND/2021 submitting that in view the Corporate Debtor being MSME, they are eligible under section 29A and interested to submit resolution plan for the corporate debtor

29.8. This Adjudicating Authority upon hearing the facts and submissions made by the respondent passed a detailed order dated 28.09.2021 allowing the extension of 150 days from 18.06.2021 to allow the COC to ***deliberate on whether more Resolution Applicants may be invited.***

29.9. The COC in its 6th COC meeting deliberated on the resolution Plan submitted by the Suspended Board of Director and the same resolution plan was approved by 67.34% of voting share of the COC.

30. In so far as the approval of the resolution plan is concerned, this authority is not sitting on an appeal against the decision of the Committee of Creditors and this Adjudicating Authority is duty bound to follow the judgement of the **Hon'ble Supreme Court in the matter of K.Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow:-

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

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requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

31. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code.
32. In respect of the compliance of Section 30(2)(e) and Section 30(2)(f), Clause 4.2 of the Resolution Plan submitted by the Successful Resolution Applicant declares the eligibility of the Resolution Applicant wherein it was stated that, *“Further, the Resolution Applicants are eligible to submit a resolution Plan in terms of Invitation seeking Resolution Plan for “Ajanta Offset and Packaging Ltd.” Published in IBBI Website. The Resolution Applicants have obtained a copy of Information Memorandum along with other information available with the Resolution Professional, after satisfying the Resolution Professional in respect of EOI conditions by submitting necessary documents and KYC documents.”*
33. We find that the Suspended Board of Directors/Promoter on 19.08.2020 i.e., date of publication of the Form-G under Regulation 36(A)(1) of the

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CIRP Regulations, 2016 for inviting the Expression of Interest to submit the Resolution Plan for the corporate debtor, the corporate debtor was not a registered MSME and therefore, its suspended directors were not eligible to participate and submit the resolution plan in view of the bar contained in Section 29A of the Code, 2016. Resultantly, the Promoters being not eligible to be a Resolution Applicant, they haven't submitted the expression of Interest.

34. However, the Suspended Board of Directors got the corporate debtor registered as MSME on 30.08.2021, pertinently more than 2 months after 330 days of the initiation of CIRP which already got over on 18.06.2021, and consequently got eligible to bid for the Corporate Debtor in view of the relaxation provided under Section 240A of the Code. Now, the question to be considered is that whether **the Suspended Board of Directors in view of being Registered as MSME after the lapse of original period of 330 days were entitled to take the shield of Section 240A retrospectively i.e., when the invitation for submitting the expression of interest was published on 19.08.2020 wherein the last date of submission of Resolution Plan was indicated to be 18.11.2020.**
35. At this juncture, it will be relevant to refer to the judgement of the Hon'ble Supreme Court in **the case of M/S. Silpi Industries v. Kerala State Road Transport Corporation (Civil Appeal Nos. 1580-1578 of 2021) and M/s. Khyati Engineering v. Prodigy Hydra Power Pvt Ltd. (Civil Appeal Nos. 1620-1622 of 2021) (judgment dated June 29, 2021)** wherein it was held that, "insofar as it holds that to claim the benefit of provisions under the *Micro, Small and Medium Enterprises Development Act, 2006* (MSMED Act), the seller should have registered under the provisions of the Act, as on the date of entering into the contract and supply of material shall be subsequent to the registration". The relevant extract of the judgement is reproduced herein below:-

"By taking recourse to filing memorandum under sub-section (1) of Section 8 of the Act, subsequent to entering into contract and supply of goods and services, **one cannot assume the legal status of being classified under MSMED Act, 2006, as an enterprise,**

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to claim the benefit retrospectively from the date on which appellant entered into contract with the respondent. The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of MSMED Act 2006, by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. **If any registration is obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a party not intended by legislation**".

36. In terms of Government of India Gazette Notification S.O. 2119 (E) dated June 26, 2020 the definition of 'Micro, Small and Medium Enterprises' is as under:



- "(i) A micro enterprise is an enterprise where the investment in plant and machinery or equipment does not exceed ₹1 crore and turnover does not exceed ₹5 crore;*
(ii) A small enterprise is an enterprise where the investment in plant and machinery or equipment does not exceed ₹10 crore and turnover does not exceed ₹50 crore; and
(iii) A medium enterprise is an enterprise where the investment in plant and machinery or equipment does not exceed ₹50 crore and turnover does not exceed ₹250 crore."

37. On a perusal of Udyam Registration Certificate of the Corporate Debtor, we observe that in the column 'Investment in Plant and Machinery or Equipment', the written down 'value' of the Plant and Machinery of the Corporate Debtor was mentioned as 'Zero'. Surprisingly, in the resolution Plan submitted by the Suspended Board of Directors, the suspended board of directors had proposed to sell the non-core machineries having an estimated value of Rs. 400 lacs for repayment of dues. Further, it is mentioned that the mother printing and binding machines which are in use can give a production of more than Rs. 40 Crore. Therefore, selling these few machines will not affect the sales target. The relevant portion of the resolution plan and Udyam Registration Certificate is reproduced overleaf:

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 भारत सरकार Government of India सूक्ष्म, लघु एवं मध्यम उद्यम मंत्रालय Ministry of Micro, Small and Medium Enterprises		 MSME सूक्ष्म, लघु एवं मध्यम उद्यम Micro, Small & Medium Enterprises	
Udyam Registration Number : UDYAM-IR-03-0022917			

Type of Enterprise	MICRO	Major Activity	Manufacturing
Type of Organisation	Public Limited Company	Name of Enterprise	M/S AJANTA OFFSET & PACKAGINGS LIMITED
Owner Name	M/S AJANTA OFFSET & PACKAGINGS LIMITED	PAN	AAACA0245Q
Do you have GSTIN	Yes	Mobile No.	9810606172
Email Id	gptodi77@gmail.com	Social Category	General
Gender	Male	Specially Abled(DIVYANG)	No
Date of Incorporation	25/09/1969	Date of Commencement of Production/Business	25/09/1969

Bank Details

Bank Name	IFS Code	Bank Account Number
Bank of India	BKID0006058	603820110000867

Employment Details

Male	Female	Other	Total
110	10	0	120

Investment in Plant and Machinery OR Equipment (in Rs.)

S.No.	Financial Year	Enterprise Type	Written Down Value (WDV)	Exclusion of cost of Pollution Control, Research & Development and Industrial Safety Devices	Net Investment in Plant and Machinery OR Equipment [(A)-(B)]	Total Turnover (A)	Export Turnover (B)	Net Turnover [(A)-(B)]	Is ITR Filled?	ITR Type
1	2019-20	Micro	0.00	0.00		0.00	1497347.00	0.00	No	NA

Unit(s) Details

SN	Unit Name	Flat	Building	Village/Town	Block	Road	City	Pin	State	District
1	M/S AJANTA OFFSET & PACKAGINGS LIMITED	PLOT NO-61	AJANTA OFFSET & PACKAGINGS LIMITED	FARIDABAD	SECTOR-27 C	FARIDABAD	FARIDABAD	121003	HARYANA	FARIDABAD

Official address of Enterprise

Flat/Door/Block No.	PLOT NO-61	Name of Premises/ Building	AJANTA OFFSET & PACKAGINGS LIMITED
Village/Town	FARIDABAD	Block	SECTOR-27 C
Road/Street/Lane	FARIDABAD	City	FARIDABAD
State	HARYANA	District	FARIDABAD, Pin : 121003
Mobile	9810606172	Email:	gptodi77@gmail.com

National Industry Classification Code(S)

SNo.	Nic 2 Digit	Nic 4 Digit	Nic 5 Digit	Activity
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(Particulars of MSME Certificate of the Corporate Debtor)

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(Pg no. 29 of the Resolution Plan giving details of estimated value of Non-Core Machineries)(Below)

The secured financial creditor's total outstanding of Rs 10422.91 lakhs shall be settled under this Resolution Plan at a total consideration of Rs 4000.00 lakhs to be paid by resolution applicant by way of unsecured loan from friends and relatives or co promoters or strategic investors or banks, from sale of non-core assets and from internal accruals from the date of approval of Resolution Plan in the manner as provided in *Annexure A*. The decision in relation to the identification of machineries and other assets to be sold will be taken by Resolution Applicant after discussion with the monitoring committee. The Resolution Applicant proposes opening of a designated account to be operated by the Monitoring Committee, within 30 days of the 'Effective Date'. The necessary agreement with respect to opening of a designated account shall be executed between the members of the Monitoring Committee. The said Monitoring Committee will be in charge of supervising the implementation of the Resolution Plan.

The list of non-core machineries to be sold by the Resolution applicant for repayment of dues -

	Estimated Value (in lacs)
a) Collating Machine UK made	10.00
b) Automatic Callendar making machine	20.00
c) Two Colour Perfector Rollant make printing machine (28*40 inch.)	100.00
d) Four Colour Rollant make printing machine (28*40 inch.)	100.00
e) Five Colour Rollant make printing machine (28*40 inch.)	40.00
f) Automatic Kolbus make Case Maker	50.00
g) Three Knife Trimmer Muller Martini make	40.00
h) Swiss make Gilding Machine	40.00
TOTAL	400.00

Note: All the above-mentioned machines are not of much use and sitting idle for quite a long time. Our mother printing and binding machines which are in use can give us a production capacity of more than Rs. 40 crore. Therefore, selling these few machines will not affect our sales targets at all.

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8. The Hon'ble NCLAT in case "**Amit Gupta Vs. Yogesh Gupta**" [**Company Appeal (AT) (Ins.) No. 903 of 2019**] dated **20.12.2019**, observed in Para 14 as under:

"14. Section 7 itself shows that the Central Government has to "classify" any class or classes or enterprises either as micro or small or medium on the basis of parameters fixed in Section 7. The Appellant has not brought on record that the Corporate Debtor has been classified by Central Government and if yes, under which parameter. **In the Summary Procedure under IBC, the Resolution Professional and Adjudicating Authority are not expected to go into accounts and investigate if and in which category an application falls under Section 7 examining Notifications under Explanation 2 or Sub-Section 9 of Section 7 of MSME Act.**"

39. The proceedings of the Adjudicating Authority being summary in nature, therefore, we cannot go into deciding the detailed question of deciding the category of the corporate debtor, however, on the basis of the records shown, it belies common sense, logic and legal provisions that a listed company engaged in the business of manufacturing and services of printing press had **Zero** (000) **investment** in the plant and machinery as per the MSME certificate obtained, whereas the Resolution Professional had appointed two registered valuers to conduct the valuation of Plant and Machinery and the Promoters in their Resolution Plan had themselves admitted the existence of Plant and Machinery owned by the Corporate Debtor.

40. Just because a direction was given by this Tribunal vide order dated 29.09.2021 to consider and deliberate, whether Resolution Applicants may be invited, does not take away the right and responsibility of the COC or Resolution Professional to examine and go deep into the fact to know whether the Corporate Debtor was actually registered as MSME or not? Apparently, this fact was not examined thoroughly by the resolution professional at the time of proposing the Resolution Plan before COC for the approval. Hence the Suspended Board of Directors/ Successful Resolution Applicant cannot take the mileage that the order dated 29.09.2021 passed by this Tribunal was for deliberation and consideration

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of the resolution plan of the suspended board of directors. Moreover, the fact that the Corporate Debtor is a registered MSME in accordance with the law has to be examined thoroughly at the time of the approval of the Resolution Plan by the COC, in order to determine the eligibility in accordance with the procedure laid down in the Code and the CIRP regulations therein. Though, the resolution professional and the COC were in gross error while examining all the related facts which were necessary to verify the authenticity of the MSME status of the Corporate debtor and failed to follow the due procedure as laid down in the Code and Regulations at the time of approval of the resolution plan submitted by the Suspended Board of Directors.

41. The Hon'ble Supreme Court in the case of **Chitra Sharma & Ors. Vs Union of India & Ors. (Writ Petition (Civil) No. 744 of 2017)** has described the insertion of Section 29A in the code as a 'plugging loophole' and has ruled that strict adherence to Section 29A is mandatory and that wilful defaulters shall not be permitted to participate in the CIRP. The relevant pr. 31 of the judgement is reproduced below:-

Parliament has introduced Section 29 A into the IBC with a specific purpose. The provisions of Section 29 A are intended to ensure that among others, persons responsible for insolvency of the corporate debtor do not participate in the resolution process. The Statement of Objects and Reasons appended to the Insolvency and Bankruptcy Code (Amendment) Bill 2017, which was ultimately enacted as Act 8 of 2018, states thus: "2. The provisions for insolvency resolution and liquidation of a corporate person in the Code did not restrict or bar any person from submitting a resolution plan or participating in the acquisition process of the assets of a company at the time of 30 liquidation. Concerns have been raised that persons who, with their misconduct contributed to defaults of companies or are otherwise undesirable, may misuse this situation due to lack of prohibition or restrictions to participate in the resolution or liquidation process, and gain or regain control of the corporate debtor. This may undermine the processes laid down in the Code as the unscrupulous person would be seen to be rewarded at the expense of creditors. In addition, in order to check that the undesirable persons who may have submitted their resolution plans in the absence of such a provision, responsibility is also being entrusted on the committee of creditors to give a reasonable period to repay overdue amounts and become eligible." (emphasis

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supplied) Parliament was evidently concerned over the fact that persons whose misconduct has contributed to defaults on the part of bidder companies misuse the absence of a bar on their participation in the resolution process to gain an entry. Parliament was of the view that to allow such persons to participate in the resolution process would undermine the salutary object and purpose of the Act. It was in this background that Section 29 A has now specified a list of persons who are not eligible to be resolution applicants.


42. On perusal of Resolution Plan submitted by the Successful Resolution Applicant specifically clause 4.2 of the plan, we observe that with regard to the Compliance of Section 29A of Code, 2016, it was mentioned that the Resolution Plan has been considered under specific directions passed by the Hon'ble NCLT, New Delhi Bench vide order dated 28.09.2021. At the cost of repetition, we reiterate that this Tribunal vide order dated 28.09..2021 had directed the COC to consider ***whether more Resolution Applicants may be invited and no specific direction to consider the Resolution Plan proposed by the Suspended Directors was given. Therefore, the RP, COC as well as the promoters were duty bound to follow the procedure as laid down by the IBBI in the Code and CIRP Regulations.***

CONCLUSION

43. In light of the reasons stated above, after giving careful consideration to the entire matter, hearing the arguments of the applicant and upon appreciation of the documents placed on record to substantiate the eligibility of the Successful Resolution Applicant and compliance of the Resolution Plan in terms of the provisions laid down in the Code, 2016 and regulations made thereunder, we without any hesitation find that –
- (i) Successful Resolution Applicant' are the promoter of M/s. Ajanta Offset and Packaging Limited (Corporate Debtor) which was not a registered MSME at the time of issue of invitation of expression of interest i.e., 19.08.2020, therefore, cannot be categorized as a resolution applicant eligible to submit the Resolution Plan as no

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fresh invitation of expression interest was published by the Resolution Professional after the corporate debtor obtaining the status of MSME. .

- (ii) Non disclosures of correct details in the MSME certificate creates a serious dent on the MSME status obtained by the Corporate Debtor by providing false information which are evident on record and therefore, there are serious doubts on the eligibility of the Suspended Board of Directors to be eligible to submit the Resolution Plan in view of the ineligibility of the Resolution Applicant as envisaged under Section 29A read with Section 240A of the Code.
- (iii) Moreover, the resolution plan submitted by the Successful Resolution Applicant is not compliant in terms of Section 30(2)(e) and Section 30(2)(f) as the procedures laid down in the IB Code, 2016 and CIRP Regulation, 2016 specifically Regulation 36A of the CIRP Regulations were not complied with and the resolution plan submitted by the Promoter of the Corporate Debtor was arbitrarily considered and approved. Pertinent to mention, it was open to the COC to issue the fresh Expression of Interest when the promoters are registered as MSME and consider the feasibility and viability of the resolution plan submitted by the Promoters along with any other Resolution Plan that might have been submitted by any other prospective resolution applicant.

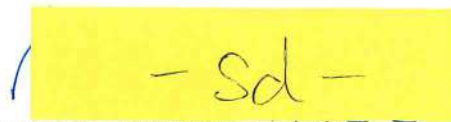
ORDER

44. In view of the above, ***I.A. 1528/ND/2022 stands dismissed as to no orders to cost. Accordingly pursuant to Section 33(1)(b) of the Code, 2016,*** it is hereby ordered that liquidation of the corporate debtor, namely M/s.Ajanta Offset and Packaging Limited shall be commenced in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

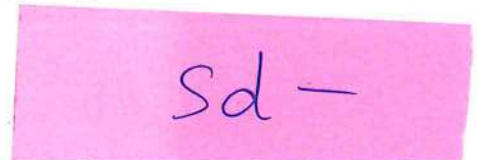




- a. Mr. Satya Narayana Guddeti, registered insolvency professional having registration number IBBI/IPA-001/IP-P00632/2017-18/11086 and email id gsnhyd@rediffmail.com, is appointed as Liquidator in terms of Section 34(1) of the Code.
- b. Mr. Satya Narayana Guddeti, is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Regulations);
- c. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d. The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Code shall commence;
- e. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Code and in accordance with the relevant regulations.
- f. The liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (l) of the Code.
- g. The liquidator shall also follow pending application, if any, for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Regulations.
- i. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.



(DR.BINOD KUMAR SINHA)
MEMBER (T)



(DHARMINDER SINGH)
MEMBER (J)