

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

**I.A. No. 1400 of 2022
IN
C.P. No. 4686 of 2019**

In the matter of an Application under
Section 30(6) and Section 31 of the
Insolvency and Bankruptcy Code,
2016

In the matter of

Punjab National Bank

... Financial Creditor

v/s

**Ammanarul Spinners Private
Limited**

... Corporate Debtor

I.A. No. 1400/2022

Mr. Manoj Anant Mainkar

**Resolution Professional
of Corporate Debtor**

**Ammanarul Spinners Private
Limited**

...Applicant/Resolution Professional

Reserved for orders on: **13.01.2023**

Order pronounced on: **09.02.2023**

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Amir Arsiwala a/w Adv. Abdullah Qureshi,

Advocate and Mr. Arjun Sathees, Advocate i/b
Indialaw LLP, Advocate for Resolution Professional

Per: H. V. Subba Rao, Member (Judicial)

1. This is an Application filed under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant Mr. Madhav Dhir, which was approved by 100% voting share of the members of the Committee of Creditors (hereinafter referred to as 'COC').
2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') of the Corporate Debtor was initiated by this Bench by an order dated 12.08.2021 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Vinod Kumar Pukhraj was appointed as the Interim Resolution Professional (hereinafter referred to as 'IRP'). Subsequently Mr. Manoj Anant Mainkar (hereinafter referred to as 'the Applicant') was appointed as Resolution Professional of the Corporate Debtor replacing the IRP vide Order dated 22.10.2021 passed by this Hon'ble Tribunal in I.A. 2430/2021.
 - b. The erstwhile IRP published the Public Announcement in 'Form A' on 19.08.2021, inviting the claims from the creditors of the Corporate Debtor.
 - c. In the 3rd CoC Meeting dated 17.10.2021, the erstwhile IRP informed the members of the COC that the Form G was to be published by 01.11.2021 as per the timelines. The COC members dissented on the resolution placed for publication of Form G and the eligibility criteria for submission of detailed invitation for

- submission of Expression of Interest (hereinafter referred to as 'the EoI').
- d. The erstwhile IRP to abide the timelines published Form G in the newspapers namely Free Press Journal and Navakal (Mumbai Edition), New Indian Express and Dinamani (Salem, Tamil Nadu Edition) and Business Standard and Gujarat Edition (Silvassa Edition) on 01.11.2021 inviting EoI from the Prospective Resolution Applicant (hereinafter referred to as 'PRAs') wherein the last date for receipt of EoI was 22.11.2021. Pursuant to publication of Form G, emails expressing interest were received from the following parties:
- i. CA Dharmendra Dhelariya
 - ii. JMVD Legal
 - iii. CA Khushal Agarwal
 - iv. MG Textiles
 - v. Mr. Sandesh Rathi
- e. Subsequently in the 4th COC Meeting dated 15.11.2021 by the Applicant the eligibility criteria for detailed invitation for submission of EoI, request for resolution plan and evaluation matrix was approved of COC the modified Form G was issued on 23.11.2021, extending the last date for submission of EoI until 07.12.2021. Upon receiving the request from interested parties for extension of time. The last date for submission of EoI was further extended to 14.12.2021, as per the approval of the COC.
- f. Upon the extended period on 14.12.2021, only 1 (one) EoI was received by the Applicant. Accordingly, provisional PRAs list was issued on 24.12.2021 and the final list of PRAs was issued on 05.01.2022. The said final list comprised only 1 (one) PRA i.e., M/s Radha Krishna Textiles and Consortium applying through consortium. The EMD received with the EoI was deposited in the

bank in a fixed deposit. The last date for submission of Resolution Plan was 03.02.2022 but after an email requesting extension of 10 (ten) days for submission of the Resolution Plan was made by the PRA vide email dated 02.02.2022.

- g. The sole Resolution Applicant submitted its Resolution Plan on 18.02.2022 thereby the primary observations and comments of the Resolution Professional with respect to the compliance with provisions of the Insolvency and Bankruptcy Code, 2016 as well as Regulations therein and the observations with respect to compliance with the provisions of request for Resolution Plan were shared with the Resolution Applicant.
- h. The Resolution Applicant while addressing the same submitted an addendum to the Resolution Plan dated 15.03.2022 with the Applicant.
- i. In the 7th COC meeting held on 24.03.2022, it was decided that a further 5 (five) days i.e., until 28.03.2022 be granted to the Resolution Applicant to submit the revised Resolution Plan. Accordingly, the COC meeting was adjourned to 31.03.2022. The Resolution Applicant submitted revised Resolution Plan on 28.03.2022, which was considered on the 7th COC meeting which resumed and concluded on 31.03.2022.
- j. The Resolution Professional issued Letter of Intent dated 02.05.2022 addressed to the Resolution Applicant *interlaia* for intimation of approval of Revised Resolution Plan dated 28.03.2022. the said letter recorded that the COC at its meeting held on 24.03.2022 and concluded on 31.03.2022 pursuant to Section 30(4) of the Code and the Regulations made thereunder, has approved the Resolution Plan dated 28.03.2022 submitted by M/s Radha Krishna textiles & Consortium dated 29.04.2022 and

the Resolution Applicant has qualified as the “Selected Resolution Applicant”.

- k. The Applicant submits the claims received and admitted by Resolution Professional as under:

Summary of Claims (Amount in Crores)			
Sr. No.	Class of Creditor	Amount Claimed	Amount Admitted
1	Financial Creditors (Secured)	38.58	38.58
2	Operational Creditors (Government Dues)	0.21	0.21
3	Operational Creditors	7.98	2.75
4	Other Creditors	4.33	NIL
Total Claims		51.12	41.56

1. The CoC decided to appoint registered valuers for Land & Building Mr. Manoj Kumar Satyanarayn Sharma and Mr. Prabhakarn; for Plant & Machinery Mr. V. Karthikeyan and Mr. Prabhakaran and for Financial Assets Mr. Prashant Jain and Mr. Shyamsundar Das to determine the fair value and liquidation value of the Corporate Debtor, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. The Liquidation and Fair Value of the Corporate Debtor is as follows:

Sr. No.	Particulars	Fair Value (In Crores)	Liquidation Value (In Crores)
1.	Land	Rs. 5.42	Rs. 4.33
2.	Building	Rs. 2.57	Rs. 1.79
3.	Amenities & Services	Rs. 0.08	Rs. 0.05
Total		Rs. 8.07	Rs. 6.19

m. The COC in its 7th meeting held on 24.03.2022/ 31.03.2022 considered the final Resolution Plan of M/s. Radha Krishna Textiles in Consortium with Mr. Rajiv Agarwal, Mrs. Kamal Agarwal, J. C. Agarwal HUF Karta Mr. Rajiv Agarwal, M/s Growel Syntex Proprietor J. C. Agarwal HUF) Karta Mr. Rajiv Agarwal, Manish Agarwal & M/s. Ganesh Syntex Proprietor J. C. Agarwal HUF) Karta Mr. Rajiv Agarwal and approved the Plan with a voting share of 100%. Thereafter, the Applicant issued compliance certificate in Form "H" was issued by the Resolution professional.

3. **The Salient Features of the Resolution Plan are as under:**

- a. The Resolution Applicant is M/s Radha Krishna Textiles in Consortium with Mr. Rajiv Agarwal, Mrs. Kamal Agarwal, J.C. Agarwal HUF Karta Mr. Rajiv Agarwal, M/s. Growel Syntex (Proprietor J. C. Agarwal HUF) Karta Mr. Rajiv Agarwal, Manisha Agarwal & M/s. Ganesh Syntex (Proprietor J. C. Agarwal HUF) Karta Mr. Rajiv Agarwal (hereinafter referred to as 'Successful Resolution Applicant') (SRA).
- b. Ammanarul Spinners Private Limited (hereinafter referred to as 'ASPL') is a Private Limited Company registered with Registrar of Companies Mumbai, incorporated in 1995. The Corporate Debtor is engaged in the business of manufacturing cotton yarn, synthetic yarn, nylon yarn, cotton yarns, synthetic yarns and nylon yarns. It is one of the Prominent & Leading Manufacturer from Salem, we offer cotton yarn, synthetic yarn, nylon yarn, cotton yarns, synthetic yarns and nylon yarns.
- c. **Cancellation of Existing Shareholding and Issue of fresh Equity Shares:** Immediately after Effective Date, all the existing shares of Corporate Debtor shall stand cancelled without any payment to existing shareholders. Corporate Debtor shall issue

to the Resolution Applicant such number of equity shares as may be suitable on the basis of capital structure requirement of the Corporate Debtor. In terms of the circular (ref IBC/01/2017) dated 25th October, 2017, issued by the Ministry of Corporate Affairs, India, approval of the erstwhile shareholders of the Corporate Debtor to the transaction contemplated under the instant Resolution Plan, including the transfer/extinguishment of the entire existing share capital, shall deemed to have been given without any further act and deed immediately upon sanction of the Resolution Plan by the Adjudicating Authority.

d. **Implementation and Supervision of the Resolution Plan:**

- i. Implementation of the Plan:
 - a. Since the Corporate Debtor is already running as a going concern, the same shall be continued as a going concern and the funds shall be infused as and when required.
 - b. The authorized share capital of the Corporate Debtor shall stand increased to the amount necessary, if required, in order to accommodate the issuance of the New Equity Shares in accordance with this resolution plan, and the provisions for the same shall be completed within 90 (ninety) days from the Effective Date.
 - c. The Job Work Agreements shall be renewed/ ratified/ entered into by the Resolution Applicant within 30 (thirty) days of the Effective Date.
 - d. The requisites consents/ approvals/ licenses shall be obtained within 6 (six) months, i.e., 180 days from the Effective Date.
 - e. The Monitoring Committee shall supervise the implementation of the Plan as per the timeline laid out by the Plan.

- ii. Supervision of the Plan
 - a. The Resolution Applicant shall constitute the monitoring committee, which shall comprise 1 (one) representative of the Resolution Applicant, 1 (one) representative of the COC and existing Insolvency Resolution Professional as appointed by COC, which shall monitor the implementation of the Plan after the Effective Date and until completion of Resolution Plan.
 - b. Resolution Applicant shall constitute Monitoring Committee comprising some members of the Board as also Senior Management Personnel for proper and timely implementation of the plan.
 - i. To supervise implementation of Resolution Plan as approved by NCLT by the new management of the Company.
 - ii. To provide regular updates to the lenders.
 - iii. To provide updates, if any, to Insolvency and Bankruptcy Board of India (IBBI) as and when required.
 - iv. To ensure disbursement of dues to financial and operational creditors as per the approved plan.
 - v. All other responsibility for the smooth implementation of the Resolution Plan.
 - vi. Extend full co-operation in implementation of the Resolution Plan.
 - c. The Resolution Professional shall provide such information on the implementation of the Plan as may be reasonably requested by the Resolution Applicant.

- e. **Effective Date (E):** “Effective Date” means the date being the date on which approval of the Resolution plan by NCLT u/s 31(1) of the Code is received by the Resolution Applicant.
- f. The Resolution Plan proposes a total Consideration of **Rs. 1,718.00/- (in Lakhs)** (Rupees One Thousand Seven Hundred Eighteen Lakhs only).

4. **Interest of All the Stakeholders the details of the proposed payments are as follows:**

A) CORPORATE INSOLVENCY RESOLUTION PROCESS COSTS

- i. The Resolution Applicant undertakes to pay the unpaid CIRP costs in full and in priority to other creditors at actuals as on Effective Date.

B) SECURED FINANCIAL CREDITORS

The Secured Financial Creditors shall be paid the following amounts in full and final settlement:

- i. The settlement amount to the tune of Rs. 1301.00 Lakhs (Rupees One Thousand Three Hundred and One Lakhs only) respectively; and
- ii. Out of the said settlement amount of Rs. 1301.00 Lakhs to Punjab National Bank shall be paid by means of adjustment of EMD and balance shall be payable within 6 (six) months from the effective date by way of adjustment of PGB as well as remaining to be paid through DD/RTGS i.e., in below manner:
 - a. Rs. 125.00 Lakhs upfront by way of adjustment of EMDs submitted along with the Expression of Interest and Resolution Plan together, and Rs. 75.00 Lakhs as

- upfront payment through DD/RTGS within 2 (two) months from effective date.
- b. Upfront payment of Rs. 901.00 Lakhs within 6 (six) months from Effective Date.
 - c. Rs. 200.00 Lakhs as the last instalment within 6 (six) months from the effective date by the way of Adjustment of PBG.
- iii. PNB shall issue a No Due Certificate in favour of the Corporate Debtor on receipt of payment of Rs. 1301.00 Lakhs in terms of this Resolution Plan.

Financial Creditors will be at liberty to realize and recover the residual amount to be written off, out of enforcement of security of assets owned by third party for its loan. However, Financial Creditors shall have no right to recover any money other than settlement amount of Rs. 1301.00 Lakhs from the Corporate Debtor and thus Financial Creditors shall issue No Due Certificate in favor of the Corporate Debtor and release charge on assets of Corporate Debtor on receipt of payment of Rs. 1301.00 as per the terms of this Resolution Plan.

The rights of the Secured Financial Creditors to take any action as against the Personal/ Corporate Guarantors shall continue even after the issue of No Dues Certificate in favour of the Corporate Debtor.

C) PROPOSAL FOR STATUTORY CREDITORS

Statutory Creditors shall be paid Rs. 2.00 lakhs (Rupees Two Lakhs only) in lieu of their respective outstanding claims.

The said amount shall be paid on priority immediately after the payment of CIRP Cost in full and in priority to all other including financial creditors.

The balance residuals amount shall be written off.

D) PROPOSAL FOR WORKMEN

There are no Workmen Dues in the Company and if any arises in future then it shall be treated as past dues and the Resolution Applicant will not be liable for the same.

E) PROPOSAL FOR OPERATIONAL CREDITORS

Operational Creditors shall be paid Rs. 10.00 Lakh (Rupees ten Lakhs only) in lieu of their respective outstanding claims which amount is expected to be more than the amount to be paid to such creditors in the event of a liquidator of the Corporate Debtor under Section 53; or

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.

The said amount shall be paid on priority immediately after payment of CIRP Cost in full and in priority to all other including Financial Creditors.

The balance residual amount shall be written off.

F) PROPOSAL FOR SHAREHOLDES

As the Shareholders are the first one to take any write off, existing Equity Shares issued by the Company shall be written off to tune of 100% equity share held by erstwhile promoters shall be written off. New Equity Shares shall be issued to Resolution Applicant and consortium constitutes along with their friends, relatives and associates.

G) CAPITAL RESTRUCTURING

Current Share Capital –

Existing Securities shall be written off and no payment shall be made to Existing Security Holders, it is clarified that any infusion and/or arrangement of additional funds as may be required for working capital and capital expenditure requirements of the Company, provided that any infusion shall be in compliance of the following, unless otherwise agreed to by the CoC:

- i. In the event of infusion of debt, such debt shall be arranged without any obligation on members of CoC to provide such funds;
- ii. Such funds shall be arranged without any recourse to the assets of the Company; and
- iii. Any equity infusion to meet such requirements shall be in the form of fresh issuance of equity shares of the Company. However, the CoC may allow creation of (a) pari passu charge to secure such new debt, on the new current assets created pursuant to such debt; and (b) exclusive charge to secure such new debt, on any new fixed assets created pursuant to such debt;
- iv. Existing shares shall be written off by 100% shares in the hands of existing shareholders. Nominal Value of remaining equity shares shall be considered as Rs. 10/- per equity share.

Proposed Corporate Restructuring-

ITEMS	PARTICULARS
Control of Board	<ul style="list-style-type: none">• On acquisition of almost entire stake in the Company by the Resolution Applicant, the existing Board of Directors shall be reconstituted by procuring resignation of all the existing board members of ASPL and the

	Resolution applicant along with other consortium members shall nominate the new directors on board of ASPL
Boards of Directors (*)	<ul style="list-style-type: none"> • Resolution applicant shall appoint Board of Directors post acquisition of Company from Effective Date; • As long as the lenders hold debt in ASPL, they shall continue to have a right, if any, to appoint nominee directors on board; • Lenders will cease to have any nominee director, if any, on board of ASPL once the entire restructured debt is redeemed by ASPL • Key Managerial persona (KMP) shall be appointed by Board of Directors.
Charge of Auditors	<ul style="list-style-type: none"> • Resolution Applicant shall have the right to replace the existing Statutory & Internal auditor (s) of ASPL and appoint new auditors as deemed fit in accordance with the provisions of the relevant law.

The proposed composition of Board of Directors and KMP post Effective Date of the company is as under:

Sr. No.	Name	Designation	Profile
1	Rajeev Agarwal	Managing Director	Resolution Applicant is having vast experience of more than 20 years of running various business units.

2	T. Vijayan	Director	Resolution Applicant is having vast experience of more than 20 years of running various business units.
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- All the employees and workers of the corporate debtor shall continue to be in service on the same terms and conditions as are currently applicable to them.
- The RA/CD plans to recover the outstanding receivable either by settling the amount by issuing them credit notes or through legal means. A separate strategy will be worked out on case to case basis for each customer, keeping in view of their association upon revival of the Unit's production.
- A detailed revival plan will be prepared for both existing and balance facilities of enhanced productions capacities including statutory approvals or licenses that are required to operate deploying an experience and expert technical team. Revival plan includes requirement of machinery, parts and assembles, time required for revival of the unit and estimated funds requirement for revival of the existing unit and commencement of enhanced production capacity.

Pursuant to the NCLT order approving this Plan-

- i. The existing equity shares capital stand extinguished by 100% on effective date without envisaging any compensation or consideration to be paid to the holders of such equity shares;
- ii. The authorized share capital of the Corporate Debtor shall stand increased to the amount necessary, if required, in order to accommodate the issuance of the New Equity Shares in accordance with this resolution plan and the capital clause of the Memorandum of Association of the Corporate Debtor shall stand accordingly amended;

- iii. The New 1 (one) crore equity shares of Rs. 10/- (ten) each shall stand allotted to the following persons:
 - a. Mr. Rajiv Agarwal
 - b. Mr. T. Vijayan
- iv. All existing directors shall stand resigned and the following persons shall stand appointed as new Directors of the Corporate Debtor:
 - a. Mr. Rajiv Agarwal
 - b. Mr. T. Vijayan

The Resolution Applicant shall deliver consent letters and directors identification numbers duly allotted by the MCA of the Persons to be nominated by the Resolution Applicant on the Board of the Corporate Debtor.

The Resolution Applicant shall reconstitute the committee of the Board of the Corporate Debtor by appointing nominee directors of the Resolution Applicant and consortium on such committees in the manner specified by the Resolution Applicant.

All powers of attorney issued by the Corporate Debtor to any Person to enable such Person to carry out various functions, to sign and execute various documents and/ or represent the Corporate Debtor shall stand automatically revoked.

The Corporate Debtor while going through the above mention stages shall file the relevant e-forms with the registrar of companies in relation to the actions taken on the Effective Date within the time period prescribed under the Applicable Law in order to inform the registrar of Companies of such changes.

5. **SOURCES OF FUNDS:**

The Resolution Applicant proposes to raise through issuance of fresh equity share capital and Unsecured Loan and issuance of New Term

Loan which will be infused by the Resolution Applicant in the business. The same has been explained by the Resolution Applicant as follows:

Sr. No.	Source of Funds	Amount (INR Lakhs)
1.	Promoters' Funding – Fresh Equity Share Capital and Unsecured Loan	1,318.00
2.	New Term Loan/ Infusion by Resolution Applicant	400.00
Total		1718.00

- *The Successful Resolution Applicant has obtained an In-Principal offer letter of IndusInd Bank of proposed facilities of Rs. 400.00 Lacs (Rs. Four Hundred Lacs only), which was submitted by the Successful Resolution Applicant along with the Revised Resolution Plan.*
- *RA shall be allowed to sell/dispose of any assets of CD during implementation of plan subject to proceeds of such sale are used for payment for completion of this plan in full and final.*

6. FINANCIAL PLAN:

The Resolution Professional has submitted and estimated outlay of the Financial Plan is Rs. 1,718.00 Lacs (Rupees One Thousand Seven Hundred Eighteen Lacs only) the following chart showing the details of the Financial Plan under Resolution Plan as under:

Particulars	Amount (in Lakhs)
Plant & Equipment including repairs/ replacements	200.00
Corporate Insolvency Resolution Process Cost (As on effective date)	At Actuals
Resolution of Debt of Secured Financial Creditors – Punjab National Bank	1,301.00
Settlement of the dues of Statutory Creditors	2.00
Settlement of the dues of Workmen and Employee	0.00
Contingencies, in any	5.00
Settlement of Operational Creditors and other balance dues	10.00
Margin Money for Working Capital	200.00
Total	1,718.00

7. The Indicative Term and Implementation Schedule:

- i. The term of the Resolution Plan shall commence on the date of the approval of the plan by the Tribunal in accordance with the provisions of the Code and Rules and Regulations thereto, and the same shall be in force from the said date till the date of satisfaction of all the claims as provided for as per the Resolution Plan i.e., for 6 (six) months.
- ii. The Tentative timelines for approvals/ consents to be taken post approval is reproduced as under:

Sr. No.	Activity	Time Line
1	Consent to Operate (Effective Date)	T (Effective Date)
2	Registration Certificate of establishment	T + 30 Days
3	Factory License	T + 90 Days
4	Fire NOC	T + 90 Days
5	Weights and Measures Approval	T + 90 Days
6	Test Certificate of Equipment – Competent Person under Factories Act	T + 90 Days
7	Licenses of Existing Contractor – Under Contract Labour (Regulation & Abolition) Act	T + 90 Days
8	Letter of allotment of Establishment Code under ESI Act – DY Director ESI	T + 90 Days
9	Letter of allotment of PF Code for Establishment – Astt. Provident Fund Commissioner	T + 90 Days
10	Registration Certificate – Dist. Labour Officer under Contract Labour (Regulations & Abolition) Act, 1970	T + 90 Days
11	GST Registration	T + 90 Days
12	Water and Air Pollution consent orders	T + 90 Days
13	Electrical license and inspection renewal fee	T + 90 Days

**T means the Effective Date*

8. The Resolution Applicant is eligible to submit resolution plan. The Successful Resolution Applicant has given an Affidavit satisfying the eligibility criteria as per the provisions under Section 29A of the Insolvency & Bankruptcy Code, 2016.

9. **IMPLEMENTATION PROVISIONS:**

- i. The issue and allotment of the New Equity Shares by the Corporate Debtor is being effected as an integral part of and in accordance with the Plan and shall be deemed to have been carried out without any further deed or action required by the Corporate Debtor or any other person as if the procedures laid down under Section 42, Section 62 (1)(c) and other provisions of the 2013 Act and related rules and other Applicable Laws Including the SEBI (Listing Obligations and Disclosures) Regulations, 2015 are duly complied with.
- ii. In terms of the circular (ref IBC/01/2017) dated 25 October 2017 issued by the Ministry of Corporate Affairs, read with explanation to section 31(e) of the Code inserted by Act No.26 of 2018, sec.23 (ii) (B) (w.e.f. 6-6-2018), approval of the shareholders of the Corporate Debtor to the transactions contemplated under the Plan including the offer and Issuance of the New Equity Shares shall be deemed to have been given on the approval of the Plan by the NCLT.
- iii. It is clarified that the approval of the NCLT and the Committee of Creditors shall constitute adequate approval for Issuance of new shares in accordance with the Section 42 and Section 62 (1) (c) of 2013 Act and other applicable Law and accordingly, no approval/ consent shall be necessary from any other Person in relation to either of these actions under any agreement, the

constitution documents of the Corporate Debtor or under any Applicable Law.

- iv. For the purpose of providing information to the Registrar of companies in respect of the offer and issuance of new Equity Shares:
 - a. The Corporate Debtor shall, if applicable, cause the Corporate Debtor to, file the copy of the record of the private placement offers in Form PAS-5 along with the private placement offer letter in Form PAS-4 with the registrar of companies within the time prescribed under Applicable Law.
 - b. After the issue and allotment of the New Equity Shares in terms thereof, within the time period prescribed under Applicable Law, the Corporate Debtor shall, if applicable, file the return of allotment in Form PAS-3 with the registrar of companies.

10. OBSERVATIONS AND FINDINGS:

- i. As per IBC Code 30(2)(a) – A Resolution Plan 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.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. The Resolution Applicant has agreed to meet the cost of project from existing resources including infusion of equity/debt through the parent company, from sale of

unsold inventories and if required from raising finance through external sources.

- iv. The Resolution Applicant has also agreed that dissenting Financial Creditors shall be paid in priority and not less than the value they would have been paid in the event of liquidation of the Corporate Debtor. The Respondent has proposed to liquidation value to Unsecured Financial Creditors who dissent from the plan.
- v. Provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- vi. Provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2)(d) & Regulation 38(2)(c).
- vii. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- viii. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - please include a statement to this effect in the Resolution Plan as per Section 30(2)(e).
- ix. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- x. As per IBBI Guidelines 38(1)(b) - The amount payable under a Resolution Plan - to the financial creditors, who have a right to vote under Sub-section (2) of Section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.

- xi. The Resolution Applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- xii. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors [Regulation 38(1)].
 - b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2)(c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company [Regulation 38(1)(a)].
 - d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - e. The amount payable under a resolution plan to the Financial Creditors, who have right to vote under Sub-section (2) of Section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
 - f. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions

of Applicable Law and is in compliance with the Code and the CIRP Regulations.

- g. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
- h. Provides for the management and control of the business of the Corporate Debtor during its term.
- i. All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
- j. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
- k. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other Creditors, Guarantors, Members, Employees and other Stakeholders of the Company, keeping in view the objectives of the Code [Regulation 38(1A)].

11. The Resolution Plan has been approved in the 7th COC meeting held on 29.04.2022 with 100% voting in accordance with the provisions of the Code.

12. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon'ble Apex Court held that

if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is 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.

13. The Hon'ble Apex Court at para 42 in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online***, clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

*"Para 42- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra)."*

14. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.
15. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- i. The Interlocutory Application No. 1400 of 2022 is allowed. The Resolution Plan submitted by **M/s Radha Krishna Textiles & Consortium**, is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.
- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and

shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in **Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited**, the relevant para's of which are extracted herein below:

“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be

effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- iii. We shall clarify here that any amount recovered under any avoidance applications relating to the Corporate Debtor being allowed by the Adjudicating Authority would ensure unto the benefit of the Resolution Applicant.
- iv. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- v. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- vi. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.

- vii. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- viii. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- ix. The Interlocutory Application No. 1400 of 2022 is accordingly **allowed** and **disposed of**.

Sd/-
MADHU SINHA
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)