



**A.K. Traders** ...Applicant  
**Versus**

**Kailash Shah** ...Respondent No.1

**Dr. G.S. Purohit**  
**Proprietor**  
**M/s Purohit Textile & Processors**  
...Respondent No.2

**IA No. 187 of 2023**  
*In the Application of*

**Research India** ...Applicant  
**Versus**

**Kailash Shah** ...Respondent No.1

**Dr. G.S. Purohit**  
**Proprietor**  
**M/s Purohit Textile & Processors**  
...Respondent No.2

**IA No. 389 of 2023**  
*In the Application of*

**Mahavir Pack Plast** ...Applicant  
**Versus**

**Kailash Shah** ...Respondent No.1

**Dr. G.S. Purohit**  
**Proprietor**  
**M/s Purohit Textile & Processors**  
...Respondent No.2

**IA No. 1295 of 2023**  
*In the Application of*

**Sadhana Trading Corporation** ...Applicant  
**Versus**

**Kailash Shah** ...Respondent No.1

**Dr. G.S. Purohit**  
**Proprietor**  
**M/s Purohit Textile & Processors**  
...Respondent No.2

**IA No. 2280 of 2022**  
*In the Application of*

**Mr. Kailash Shah,**

**Resolution Professional of “New Empire Textile Processor Private Limited”**

**..Applicant/Resolution Professional**

*In the matter of*

**Yogesh Wrapper Agency**

**...Petitioner/Operational Creditor**

Versus

**New Empire Textile Processor Private Limited**

**...Corporate Debtor**

**Order Delivered on :- 22.11.2023**

***Coram:***

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

Hon’ble Member (Technical) : Mr. Prabhat Kumar

***Appearances:***

For the Resolution Professional : Mr. Rohit Gupta a/w Ms. Prashansa, Advocates

For the Applicant in Objection Applications : Mr. Nausher Kohli a/w Mr. Jayesh Rathod, Advocates

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. Before we deal with the Application for approval of the Resolution Plan, it is important to deal with the **IA No. 3269 of 2022, IA No. 3821 of 2022, IA No. 170 of 2023, IA No. 187 of 2023, IA No. 389 of 2023, IA No. 1295 of 2023** hereinafter referred to as (Objection Applications) to the Resolution Plan, filed by Operational Creditors. The bone of contention and relief sought in all Six (6) Applications are identical, therefore, the said Applications are decided vide a common order herein below.

**Brief Facts of Objection Applications:**

(IA No. 3269 of 2022, IA No. 3821 of 2022, IA No. 170 of 2023, IA No. 187 of 2023, IA No. 389 of 2023, IA No. 1295 of 2023)

2. The Applicants are Operational Creditors of Corporate Debtor. The Applicants lodged their claim in the on-going CIRP of the Corporate Debtor by filing a Form B, the claim forms are placed on record in the respective Applications. The Respondent No.1 (Resolution Professional) admitted claims of the Applicants i.e. Operational Creditors.
3. Thereafter, sometime in October, 2022, the Applicants learnt that the Proposed Resolution Plan submitted by Respondent No.1 has been approved by the CoC on 13.02.2020. The Applicants submit that during the course of the on-going CIRP, one of director of Corporate Debtor paid a sum of Rs. 2.41 Crores to RP in connection with one the Flat purchased by him pursuant to Order passed by this Bench in one of Avoidance Transaction.
4. Pursuant to Proposed Resolution Plan submitted by RP, it was revealed that an additional amount Rs. 2.41 Crores has been received by RP which exceeded the current Liquidation Market Value price of Rs. 14 Crores to 16 Crores. Further, in the lenders meeting held on 1<sup>st</sup> October, 2022 charges amounting of Rs. 55,36,000/- was approved by the Lenders to pay MIDC towards regularizing the unauthorized construction carried out on the leased plot of Corporate Debtor.
5. The Applicant further learnt, to its complete shock and surprise, that the Proposed Resolution Plan proposes a payment of Rs. NIL to Operational Creditors such as the Applicant being trade creditors. The monies received by the Resolution Professional under Avoidance transactions should be distributed to the Operational Creditors.
6. It is submitted that the Proposed Resolution Plan in so far as it ascribes a NIL value towards the Operational Creditors cannot be sustained. As compared to the NIL value ascribed towards Operational Creditors, the Financial Creditors are getting 100% of their

dues. The Applicant submits that the Liquidation Value as disclosed to this Tribunal is suppressed with a view to push through the Proposed Resolution Plan. The Liquidation Value placed for consideration does not consider that during the course of the on- going CIRP, the Corporate Debtor received vast sums of monies in excess of Rs. 2.41 Crores. These monies received in the Bank Accounts of the Corporate Debtor must necessarily be included within the Liquidation Value.

7. The Respondent No.1 (Resolution Professional) argues that, one of the Applicant is Radha Krishna Trading Co. in (IA No. 3269 of 2022) who was also the unsuccessful Resolution Applicant. It is argued that he has with other Applicant being Operational Creditors filed 6 Identical Applications.
8. It is submitted that the Resolution Professional had filed MA No. 357 of 2020 impugning transactions of preferential and fraudulent nature. Ms. Deepa Kiran Mehta was a related party in one such transaction relating to a residential flat in Thane, Maharashtra. In the interim, proposal of settlement was received from Ms. Deepa for settlement of the matter amicably for an amount of Rs.2,41,11,845/- towards sale consideration of the said flat. The said proposal of settlement was placed before the CoC for consideration and the CoC with 97.38% approved the proposal of settlement.
9. The Respondent No.1 submits that the proceeds received from PUFEE transactions are to be distributed amongst the stakeholders as per the provisions of section 53 of the Code.
10. As far as, the issue of MIDC is concerned, it submitted that if charges for regularization are not paid, it would lead to termination of the lease eventually leading to zero valuation. The Respondent submits that in the event of Liquidation under section 53 the Operational Creditors will be entitled to 'nil' amount.

11. The RP submits that the amount claimed by creditors is more than the amount available for distribution, the operational creditors under section 53(1)(f) would be entitled to nil amount in the event of Liquidation.
12. We have perused the following judgments relied on by the RP.
- i. India Resurgence ARC Private Limited vs Amit Metaliks Limited and Anr. 2021 SCC Online SC 409. Paragraphs 13 and 14.
  - ii. Gail India vs Ajay Joshi, 2021 SCC Online NCLAT 359 paragraph 73.
  - iii. Excel Engineering and Ors vs Mr. Vivek Murlidhar Dabhade, Company Appeal No. 85-86 of 2020 paragraph 13.
13. The Respondent argues that there is no embargo in classification of Operational Creditors into separate and different class for deciding the way in which money is to be distributed. This remains within the domain of the CoC. In the present case, workers and employees is one class, electricity and water is categorized as another class and trade creditors as a separate class. As far as MIDC dues and statutory dues are concerned, they are no longer required to be paid, as they have been settled out of proceeds of the Avoidance Transactions, and therefore this categorization cannot be a subject matter of dispute.
14. The Respondent during the course of hearing submitted a note on revised distribution amount under the plan. The Resolution Plan contemplates the following payments:

Particulars of Claim	Amount proposed in the Plan
CIRP Cost	Rs. 60 lakh (As estimated at the time of sanction of plan) Note: Now this stands revised to Rs. 2,70,00,000/-, due to pendency and other circumstances.
Secured Financial Creditors	Rs. 1159.67 lakh

	Note: this is 100% payout. Total claim admitted is Rs. 1159.67, entire claim is being paid in 4 months' time
Unsecured Financial Creditors	Rs. 47.43 lakh Resolution Applicant proposed only an amount of Rs. 47.43 lakh. There is no change in the amount under the plan. It is on account of additional funds being available that they are now getting an amount of Rs. 1,37,24,728/-.
Workers and Employees (Category of Operational Creditor)	Rs. 59.47 lakh They are getting 100% of outstanding dues admitted
Statutory Dues (Service Tax) (Category of Operational Creditor)	Rs. 28.16 lakh [Being paid 'nil' as having been settled during pendency of application before this Bench] Note: Though the Resolution Plan proposed payment to Service Tax, however, during CIRP, RP with the approval of COC availed benefit of amnesty scheme and closed the dues on payment of Rs. 1.85 lac. Therefore, this amount no longer exists as debt.
MIDC (Lessor of Property) (Category of Operational Creditor)	Rs. 15.00 lac [Payment – 'Nil'] Note: Though the Resolution Plan proposed payment to MIDC, however, during CIRP, RP with approval of COC paid the entire dues for regularization by filing terms with MIDC. Therefore, this amount no longer exists as debt.
Pending Water Charges and Pending Electricity Charges (Essential for running of Co.) (Operational Creditor)	Rs. 11.72 lakh and Rs. 29.55 lakh (Note: These are the only two payments which are being made to category of operational creditors. See submission below.)
Trade Creditors (Operational Creditor)	NIL Resolution Plan proposes no amount to this category of operational creditors. Claim of Rs. 17.72 Cr. was made.

15. The funds available for distribution are summarized herein below:

- I. Resolution Plan Amount Aggregate Plan as proposed by the Resolution Applicant is for Rs. 14.11 cr.
  - II. Additional amount through PUFEE Application - In addition to the Plan amount there is an amount of Rs. 2.41 crores received from the settlement arrived pursuant to Application under Section 66 of the Code.
  - III. Tax Refund - Over and above the amount of Rs. 2.41 crores there is tax refund of Rs. 94.30 lakhs.
16. Before, we proceed to analyze the Objection Applications, it is important to examine the Resolution Plan, to examine the issue before us holistically.

**IA No.2280 of 2020**

17. The present application is moved by Resolution Professional **Mr. Kailash Shah** (hereinafter called as “the Applicant”) under section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the resolution plan of M/s Purohit Textiles & Processors (hereafter called as the “**Successful Resolution Applicant/SRA**”) under the provisions of Section 31(1) of the code, for the Corporate Debtor and for passing order/appropriate direction that this Tribunal may deem fit in the present matter.
18. The CIRP was initiated against the Corporate debtor vide Order dated 26.08.2019. Mr. Kailash Shah was appointed as the Interim Resolution Professional (hereinafter referred to as the IRP). Mr. Kailash Shah was appointed as the RP in the 1<sup>st</sup> CoC meeting held on 10.10.2019
19. The CoC in its 2<sup>nd</sup> COC meeting held on 13.11.2019 approved the Evaluation Matrix and decided to publish Form G for inviting Expression of Interest (EOI). The Resolution



Professional made a public announcement in Form G on 21.11.2019 inviting EOI of the Resolution Plans. The Last date for submission of EOI was 07.12.2019 and Resolution Plan was fixed on 16.01.2020.

20. Pursuant to the issuance of EOI, Five Resolution Plans were received from the Resolution Applicants on 16.01.2020. The Provisional List of the Resolution Applicants were received from the Resolution Applicants on 16.01.2020. The Provisional List of Resolution Applicants were sent to the CoC members through email.
21. The Final List of Resolution Applicants was issued through email to CoC members on 19.12.2019. It is submitted that the Resolution Plans received from the 5 Resolution Applicants was tabled before the Committee of Creditors in 5<sup>th</sup> meeting of CoC held on 13.02.2020 for consideration and discussion of members of CoC. Thereafter, Resolution Plans submitted were evaluated by the CoC in accordance with the approved evaluation matrix. The Copy of the minutes of 5th meeting of Committee of Creditors are annexed as Annexure-F to the Application.
22. Further, in order to ascertain and discuss the feasibility and viability as well as the implementation schedule of the plans, the resolution applicants were called individually by the members of the COC for introduction, presentation of their resolution plan and interaction with the members of the COC.
23. After elaborate discussion and deliberation on the same, the Committee of Creditors in the 5<sup>th</sup> meeting approved the Resolution Plan of Dr. Gulabing Purohit Prop. Of M/s. Purohit Textiles & Processors with **97.38%** voting rights as per Section 30 (4) of the Insolvency & Bankruptcy Code 2016.
24. Further, in the same CoC meeting it was resolved that an Application for seeking extension of CIRP period be filed with this Tribunal. Accordingly, IA No. 764 was filed which was allowed by Tribunal thereby granting an extension of 90 days.

25. The Applicant submits that the Resolution Plan and the approval of the Resolution Plan are in accordance with all the provisions of the Code and CIRP Regulations and that it does not contravene any of the provisions of the law for the time being. The Successful Resolution Applicant has also confirmed its eligibility under Section 29A of the Insolvency Bankruptcy Code, 2016 ("Code").
26. The term of plan is 120 days from the date of approval of plan. The SRA has furnished a Performance Bank Guarantee of Rs.1,41,10,000/-.
27. The Applicant submits that the Average Liquidation value is Rs. 13.78 Crores. The RP has certified that the Resolution Plan complies with the requirements of the Code by providing a compliance certificate 'Form-H'. The RP further submits that the key requirements of the Code are complied with in the manner detailed hereinbelow:

**Section 30(2) of the Code**

28. In compliance of Section 30(2) of IBC, 2016, the Resolution Professional has examined the Resolution plan of the Successful Resolution Applicant and confirms that this Resolution Plan:
- a) Provides for payment of Insolvency Resolution Process cost in a manner specified by the Board in the priority to the payment of other debts of the corporate debtor;
  - b) Provides for payment of debts of operational creditor in such manner as may be specified by the board which shall not be less than
    - (i) The amount to be paid to such creditors in the event of liquidation of the corporate debtor under Section 53; or
    - (ii) The amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with sub-section (1) of Section 53 in the event of liquidation of the corporate debtor.

- c) Provides for management of the affairs of the Corporate Debtor after approval of Resolution Plan;
- d) The implementation and supervision of Resolution Plan;
- e) Does not prima facie contravene any of the provisions of the law for time being in force,
- f) Confirms to such other requirements as may be specified by the Board.
- g) As per the Affidavit, the Resolution Applicant is not covered under 29A.

29. In compliance of Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution plan provides that

- a) The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.
- b) It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the CD.
- c) A statement that neither the Resolution Applicants nor any related parties have failed to implement nor have contributed to the failure of implementation of any other Resolution Plan approved by the AA in the past.
- d) The terms of the plan and its implementation schedule.
- e) The management and control of the business of the CD during its term.
- f) Adequate means of Supervising its implementation.
- g) The Resolution Plan Demonstrate that it addresses
  - i. The cause of the Default
  - ii. It is feasible and viable
  - iii. Provision for effective implementation
  - iv. Provisions for approvals required and the time lines for the same.

v.Capability to Implement the Resolution Plan

30. It is important to understand in detail the distribution framework of the amounts provided in plan and subsequent changes in the said distribution, in order to ascertain the grievance of the Applicants in the objection Applications. The Resolution Plan provides for amount of Rs.14.11 Crore. The distribution of the said amount as stipulated in plan originally is tabulated herein below:

<b>Sr. No.</b>	<b>Particulars of Claim</b>	<b>Amount admitted (in Lakhs)</b>	<b>Settlement Amount (in Lakhs)</b>
1.	CIRP Costs (estimated)		60
2.	Secured Financial Creditors	1159.67	1159.67
3.	Unsecured Financial Creditors	284.15	47.43
4.	Workers and Employees	59.47	59.47
5.	Operational Creditors	1772.40	84.43
	<b>Total</b>	<b>3335.69</b>	<b>1411.00</b>

31. Subsequently an additional amount of Rs.2.41 Crores was received from settlement of a PUFEE transaction, and some of the claims were settled out of this amount after CoC approval and included in CIRP costs in the revised distribution matrix, thus necessitating the fresh re-allocation of the amounts which has been approved by CoC also. The revised distribution of amounts is as follows:

Sr. No.	Particulars of Claim	Settlement Amount
1.	CIRP Costs (at actuals)	2,54,46,117
2.	Secured Financial Creditors	11,59,67,000
3.	Unsecured Financial Creditors	1,37,24,728
4.	Workers and Employees	59,47,000
5.	Operational Creditors	41,27,000
	<b>Total</b>	<b>16,52,11,854</b>

**Details of CIRP Costs :**

- i. The total CIRP Costs incurred from the period of 2019-2020 to 25.03.2023 is Rs.1,71,41,266/-. Apart from the above, an amount of Rs.83,04,851/- is also incurred in the following manner:

Sr. No.	Particulars	Amount
1.	Unauthorized construction regularization (MIDC)	55,36,000
2.	Water Charges (MIDC)	21,016
3.	Property Tax (MIDC)	4,71,443
4.	Advocate Fees	8,00,000
5.	RP Fees and Others	14,76,392
	<b>Total</b>	<b>83,04,851</b>

- ii. Hence, the Total CIRP Costs Amounts to Rs.2,54,46,117/-.

32. The secured Financial Creditors are being paid the entire claim amount of Rs.1159.67 lakh within 4 months. Workmen and Employees are paid the entire amount of Rs.59.47 lakh within 30 days.
33. It is important to deal with the manner in which the Operational Creditors are being paid. The Resolution Plan proposes an amount of Rs.84.43 lakh to be distributed in the following manner within 30 days of approval of the plan in the following manner:

<b>Particulars</b>	<b>Total payout (in lakhs)</b>
Service Tax	28.16
Electricity Bill	29.55
Pending water charges	11.72
MIDC construction in margin area (charges/penalties)	15.00
<b>Total</b>	<b>84.43</b>

34. The Resolution Professional submits that the liability of Rs. 28.16 lakh towards service tax has been paid during CIRP with the approval of CoC under amnesty scheme and it got settled for a sum of Rs. 1.85 lac . Further, MIDC has agreed to accept an amount of Rs.55,36,000/- towards regularization of unauthorized construction, hence, the amount of Rs.15,00,000 is no longer required to be paid.
35. Therefore, an amount Rs.43.16 lakh was available for distribution. The RP submits that the said amount is to distributed amongst the unsecured financial creditors in accordance with the waterfall mechanism under Section 53 of the Code. However, the other operational creditors (trade creditors) are still being paid nil.

36. As far as, unsecured creditors are concerned the revised amount allocated to them under the plan is Rs.41.17 lakh.

37. The Learned Counsel for the Resolution Professional has heavily relied on paragraph 73 of Judgment of Hon'ble NCLAT in ***Gail India Limited vs Ajay Joshi Company Appeal (AT) (Ins) 492 of 2019*** which reads as under:

*“73. In reality, there is no embargo for the classification of Operational creditor(s) into separate/different classes for deciding the way in which the money is to be distributed to them by the ‘Committee of Creditors’ because of the fact, undoubtedly, they do have the subjective final discretion of ‘Collective Commercial Wisdom’ in relation to (1) The amount to be paid (2) The quantum of money to be paid, to a certain category or the incidental category of creditors, of course, nicely balancing the interests of the ‘Stakeholders’ and the ‘Operational Creditors’, as the case may be.....”*

38. Per contra, the Learned Counsel for the Respondent has placed reliance on the Judgment of the NCLAT dated 13.07.2023 in ***Akashganga Processors Private Limited vs Shri Ravindra Kumar Goyal & Ors. Company Appeal (AT) (Ins) No. 1148 of 2022*** has held as under:

*“.....6. There can be no dispute to the law as laid down by the Hon'ble Supreme Court in “Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors., (2020) 8 SCC 531” where it was held that there can be differential payment in payment of debts of Financial Creditors and Operational Creditors, however, there can be no difference in interse payment within a class of creditors. In Para 88 following has been laid down: “88. By reading paragraph 77 (of Swiss Ribbons) dehors the earlier paragraphs, the Appellate Tribunal has fallen into grave error. Paragraph 76*

*clearly refers to the UNCITRAL Legislative Guide which makes it clear beyond any doubt that equitable treatment is only of similarly situated creditors. This being so, the observation in paragraph 77 cannot be read to mean that financial and operational creditors must be paid the same amounts in any resolution plan before it can pass muster. On the contrary, paragraph 77 itself makes it clear that there is a difference in payment of the debts of financial and operational creditors, operational creditors having to receive a minimum payment, being not less than liquidation value, which does not apply to financial creditors. The amended Regulation 38 set out in paragraph 77 again does not lead to the conclusion that financial and operational creditors, or secured and unsecured creditors, must be paid the same amounts, percentage wise, under the resolution plan before it can pass muster. Fair and equitable dealing of operational creditors' rights under the said Regulation involves the resolution plan stating as to how it has dealt with the interests of operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately. Also, the fact that the operational creditors are given priority in payment over all financial creditors does not lead to the conclusion that such payment must necessarily be the same recovery percentage as financial creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors.*



7. Present is a case where admittedly the claims of two Operational Creditors - State Tax, Government of Gujrat and Central Excise, Government of India were filed as has been admitted by the learned counsel for the Resolution Professional. It was open for the Resolution Applicant not to allocate any amount to any of the Operational Creditor since under Section 53 no entitlement was there in accordance with the total amount available for distribution. However, when the Successful Resolution Applicant was making payment to other two Operation Creditors, there cannot be any discrimination between payment of one class of Creditors.

8. As far as the submission that payment was made to Gujarat Industrial Development Corporation and Surat Municipal Corporation to keep the Corporate Debtor as a going concern, the said payment can very well be made by the Corporate Debtor but not in the manner as adopted in the Resolution Plan. In the present case, the Resolution Plan was approved by the CoC on 06.08.2021 with 99.84% vote share, however, the Adjudicating Authority rejected the plan by the impugned order. It is also to be noticed that none of the Operational Creditors i.e. State Tax, Government of Gujrat and Central Excise, Government of India have come up in appeal.

10. In the facts of the present case, we are of the view that ends of justice be served in disposing of this appeal in directing that the amount of Rs.32,78,102/- be distributed to all the four Operational Creditors so as to save the plan from being invalidated. We, thus, are of the view that the Adjudicating Authority having found that there is discrimination in payment of Operational Creditors could have directed for compliance of provision of the Code by distribution of Rs.32,78,102/- without affecting the other terms and conditions of the plan. By this modification

*the plan shall be able to sail and implemented, which is approved by CoC with 99.84% vote share. The plan need to be implemented with modification as directed above.”*

39. It is seen that, there has been some changes in allocation of payments under the class of Operational Creditors and Unsecured Financial Creditors on account of realization under avoidance application during the pendency of Application for approval of the Resolution Plan.
40. It is noticed that, the RP has stated to have paid the whole of MIDC dues, amounting to Rs. 55,36,000/-, while these dues were estimated to be Rs.15,00,000/- in the plan besides the payment of service tax amounting to Rs. 1.85 Lacs towards final settlement of earlier dues of Rs. 28.16 lakh under Amnesty Scheme. Accordingly, under the revised payment allocation both the liabilities have ceased to exist and the same is stated to be approved by the CoC.
41. On thoughtful consideration of facts, it appears to us that the realization under avoidance transaction which legally belonged to the Financial Creditors in terms of settled law. In absence of specific averment, by discharging the liability towards MIDC dues, the indirect benefit has been passed to the SRA by a sum of Rs.40,36,000/- at the cost of the Financial Creditors on the ground that there was imminent danger to continuance of lease at the end of MIDC. Though we are aware that the revised allocation is approved by the CoC, which is formed of the Financial Creditors but it would have been appropriate if this allocation was made in the benefit of the left- out stakeholders. We are conscious that, we cannot interfere in the commercial wisdom of the CoC and hold that this Tribunal should not interfere in the revised allocation. Accordingly, we do not consider it appropriate this proposition. As regards payment proposing differential treatment to (i) payment of Electricity & Water dues, and (ii) Trade Creditors, both

falling under the Operational Creditors, we find that the Hon'ble NCLAT in the case of *Akashganga Processors Private Limited* (Supra) quoted from the Hon'ble Supreme Court in the case of Swiss ribbons, wherein it was laid down that *“This being so, the observation in paragraph 77 cannot be read to mean that financial and operational creditors must be paid the same amounts in any resolution plan before it can pass muster”*. The Hon'ble NCLAT held at para 7 that *“Present is a case where admittedly the claims of two Operational Creditors - State Tax, Government of Gujrat and Central Excise, Government of India were filed as has been admitted by the learned counsel for the Resolution Professional. It was open for the Resolution Applicant not to allocate any amount to any of the Operational Creditor since under Section 53 no entitlement was there in accordance with the total amount available for distribution. However, when the Successful Resolution Applicant was making payment to other two Operation Creditors, there cannot be any discrimination between payment of one class of Creditors”,* and finally it went on to hold that, *“we are of the view that ends of justice be served in disposing of this appeal in directing that the amount of Rs.32,78,102/- be distributed to all the four Operational Creditors so as to save the plan from being invalidated. We, thus, are of the view that the Adjudicating Authority having found that there is discrimination in payment of Operational Creditors could have directed for compliance of provision of the Code by distribution of Rs.32,78,102/- without affecting the other terms and conditions of the plan”*. Since, this decision has been delivered later in time, we consider it appropriate to rely on this decision. Accordingly, we hold that a sum of Rs. 41,27,000/- shall be distributed amongst the Creditors for Electricity & Water Charges and Trade Creditors in proportion of their claim.

42. The Resolution Professional has annexed Form H of the Application under Regulation 39(4) In FORM H of the CIRP Regulations to certify that the resolution plan as approved

by the CoC meets all the requirements of the IBC and its Regulations. The relevant extracts, as otherwise stated elsewhere in the order, are as follows -

### **FORM H COMPLIANCE CERTIFICATE**

Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India  
(Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The details of the CIRP are as under:

<b>Sl. No.</b>	<b>Particulars</b>	<b>Description</b>
1	Name of the CD	<b>NEW EMPIRE TEXTILE PORCESSOR PRIVATE LIMITED</b>
2	Date of Initiation of CIRP	26-08-2019
3	Date of Appointment of IRP	26-08-2019
4	Date of Publication of Public Announcement	14-09-2019
5	Date of Constitution of CoC	04-10-2019
6	Date of First Meeting of CoC	10-10-2019
7	Date of Appointment of RP	10-10-2019
8	Date of Appointment of Registered Valuers	17-10-2019
9	Date of Issue of Invitation for EOI	21-11-2019
10	Date of Final List of Eligible Prospective Resolution Applicants	19-12-2019
11	Date of Invitation of Resolution Plan	19-12-2019
12	Last Date of Submission of Resolution Plan	16-01-2020
13	Date of Approval of Resolution Plan by CoC	13-02-2020
14	Date of Filing of Resolution Plan with Adjudicating Authority	NA
15	Date of Expiry of 180 days of CIRP	22-02-2020
16	Date of Order extending the period of CIRP	03-03-2020
17	Date of Expiry of Extended Period of CIRP	22-05-2020
18	Fair Value	203202594/-
19	Liquidation value	137885308/-
20	Number of Meetings of CoC held	5

2. I have examined all the five Resolution Plans received from the Resolution Applicants and the Resolution Plan of Dr. Gulabing Purohit, Proprietor of M/s Purohit Textiles & Processors has been approved by the Committee of Creditors (CoC) of New Empire Textile Processor Private Limited.

3. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) the Resolution Applicant Dr. Gulabing Purohit, Proprietor of M/s Purohit Textiles & Processors has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made there under. The Resolution Plan has been approved by 97.38 % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) The voting was held in the meeting of the CoC on 13-02-2020 where 15 members of the CoC holding 97.38% vote share were present.

4. The list of financial creditors of the CD M/s New Empire Textile Processor Private Limited being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	HEENA K NARANG	0.89	VOTED FOR
2.	ALPA K NARANG	1.74	VOTED FOR
3.	KAJOL K NARANG	0.48	VOTED FOR
4.	KAMLESH M NARANG	0.52	VOTED FOR
5.	KAMLESH M NARANG HUF	1.24	VOTED FOR
6.	MOHAN LAL D NARANG	1.08	VOTED FOR
7.	MINI R MEHRA	2.45	VOTED FOR
8.	KETKI K VAKHARIA	0.37	VOTED FOR
9.	KANDARP R VAKHARIA	1.11	VOTED FOR
10.	PRIDE FINVEST COMPANY PVT. LTD	1.19	VOTED FOR
11.	BHARAT COOPERATIVE BANK (MUMBAI) LTD	53.92	VOTED FOR
12.	SUNDEEP SHAAH HUF	0.97	ABSENT
13.	RAJENDRA MUNSHIRAM AGARWAL	0.84	ABSENT
14.	SWETA M JAIN	0.07	VOTED FOR
15.	SHILPA M JAIN	0.43	VOTED FOR
16.	REKHA D SHAH	0.74	VOTED FOR
17.	INDIA BULLS CONSUMER FINANCE LTD	31.15	VOTED FOR
18.	SARITA PRANKISHORE MEHTA	0.81	ABSENT

5. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made there under.

6. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	1183332	1183332	100%	100%

2	Preference	NIL	NIL	NIL	NIL
3		NA	NA	NA	NA

7. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	YES	YES
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	YES	YES
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	YES	YES
Section 30(2)	Whether the Resolution Plan: (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment of the debts of operational creditors? (c) provides for the management of the affairs of the Corporate debtor? (d) provides for the implementation and supervision of the resolution plan? (e) contravenes any of the provisions of the law for the time being in force?	YES YES YES YES YES	YES YES YES YES YES
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	YES YES	YES YES
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	YES	YES
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	YES	YES
Regulation 38(1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the - (a) insolvency resolution process costs? (b) liquidation value due to operational creditors? (c) liquidation value due to dissenting financial creditors?	YES YES YES	YES YES YES
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	YES	YES

Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	YES YES YES	YES YES YES
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	YES YES YES YES YES YES	YES YES YES YES YES YES
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	YES	YES

8. The CIRP has been conducted as per the timeline indicated as under:

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	26-08-2019
Regulation 6(1)	Publication of Public Announcement	T+3	14-09-2019
Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	28-09-2019
Regulation 13(1)	Verification of Claims	T+21	02-10-2019
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	NA
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	04-10-2019
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	10-10-2019
Regulation 35A	Determination of fraudulent and other transactions	T+115	Jan 2020
Regulation 27	Appointment of two Registered Valuers	T+47	17-10-2019
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+57	19-12-2019
Regulation 36A	Invitation of EoI	T+75	21-11-2019
	Publication of Form G	T+75	21-11-2019
	Provisional List of Resolution Applicants	T+100	10-12-2019
	Final List of Resolution Applicants	T+115	19-12-2019
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	19-12-2019

Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	13-02-2020
Section 31(1)	Approval of Resolution Plan	T=180	13-03-2020

9. The time frame proposed for obtaining relevant approvals is as under:

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1	NA	NA	NA	NA
2	NA	NA	NA	NA
3	NA	NA	NA	NA

10. The Resolution Plan is not subject to any contingency. or

11. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued there under (If any deviation/ non-compliances were observed, please state the details and reasons for the same):

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1	NA	NA	NA	NA
2	NA	NA	NA	NA
3	NA	NA	NA	NA

12. The Resolution Plan is being filed 70 days before the expiry of the period of CIRP provided in section 12 of the Code.

13. Provide details of section 66 or avoidance application filed / pending.

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	Jan 2020	Order yet to receive	NA
2	Undervalued transactions under section 45	NA	NA	NA
3	Extortionate credit transactions under section 50	NA	NA	NA
4	Fraudulent transactions under section 66	NA	NA	NA

43. On perusal of the Resolution Plan, we find that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.



- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
  - c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
  - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
44. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.
45. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan has been approved by the CoC by majority of 97.38%.
46. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) 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 Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex 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.

47. 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 same needs to be approved. Hence ordered.

48. The Resolution Plan annexed to the Application is hereby approved in terms of our directions contained in Para 42 of this Order directing that a sum of Rs. 41,27,000/- shall be distributed amongst the Creditors for Electricity & Water Charges and Trade Creditors in proportion of their claim. It shall become effective from this date and shall form part of this order with the following directions:

- i. 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 the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned in 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:

“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. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra 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.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- vi. 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.
- vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

IA No. 2280 of 2022 is **allowed**. IA No. 3269 of 2022, IA No. 3821 of 2022, IA No. 170 of 2023, IA No. 187 of 2023, IA No. 389 of 2023, IA No. 1295 of 2023 are dismissed since these IAs seek rejection of the plan.

**Sd/-**  
**PRABHAT KUMAR**  
**Member (Technical)**  
22.11.2023  
Priyal

**Sd/-**  
**JUSTICE V.G. BISHT**  
**Member (Judicial)**