



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 97/KB/2024

And

IVN.P. (IB) No. 22/KB/2024

And

I.A. (IB) No. 1849/KB/2024

And

I.A. (IB) No. 2080/KB/2023

And

I.A. (IB) No. 1322/KB/2023

And

I.A. (IB) No. 2046/KB/2023

And

I.A. (IB) No. 522/KB/2024

In

Company Petition (IB) No. 157/KB/2021

IN THE MATTER OF:
CENTRAL BANK OF INDIA

... Financial Creditor.

Versus

SASA MUSA SUGAR WORKS PRIVATE LIMITED

... Corporate Debtor.

And

I.A. (IB) No. 97/KB/2024 and IVN. P. (IB) No. 22/KB/2024

***Applications under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016, read with Rule 11 of The National
Company Law Tribunal Rules, 2016.***

IN THE MATTER OF:
Mr. Shahid Ali

... Applicant.

Versus

**1. Kuldeep Verma, the Resolution Professional of Sasa Musa
Sugar Works Private Limited**

2. Central Bank of India

... Respondents.



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I.A. (IB) No. 522/KB/2024

In
Company Petition (IB) No. 157/KB/2021

And

I.A. (IB) No. 1849/KB/2024

***An Application under Rule 11 of The National Company Law
Tribunal Rules, 2016.***

IN THE MATTER OF:

Central Bank of India

... Applicant.

Versus

Sasa Musa Sugar Works Private Limited

... Respondent.

And

I.A. (IB) No. 2080/KB/2023

***An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016, read with Rule 11 of The National
Company Law Tribunal Rules, 2016.***

IN THE MATTER OF:

SJPB Sugar and Refinery Private Limited

... Applicant.

Versus

**1. Kuldeep Verma, the Resolution Professional of Sasa Musa
Sugar Works Private Limited**

2. Central Bank of India

... Respondents.

And

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***An Application under Regulation 12 of the Insolvency and
Bankruptcy Board of India (Insolvency Resolution Process for
Corporate Persons) Regulations, 2016 read with Rules 11, 14,
and 15 of The National Company Law Tribunal Rules, 2016.***

IN THE MATTER OF:

**Sugarcane Industries Department through its Secretary
... Applicant.**

Versus

**Kuldeep Verma, the Resolution Professional of Sasa Musa Sugar
Works Private Limited**

... Respondents.

And

I.A. (IB) No. 2046/KB/2023

***An Application under Section 33 of the Insolvency and
Bankruptcy Code, 2016.***

IN THE MATTER OF:

**Kuldeep Verma, the Resolution Professional of Sasa Musa Sugar
Works Private Limited**

... Applicant.

And

I.A. (IB) No. 522/KB/2024

***An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.***

IN THE MATTER OF:



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In
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Kuldeep Verma, the Resolution Professional of Sasa Musa Sugar Works Private Limited

... Applicant.

Date of Pronouncement: February 20, 2025.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

**For the Consortium of
Mr. Shahid Ali & Ors.
(Resolution Applicant):**

Mr. J. Patnaik, Adv.

**For the Applicant in
I.A. (IB) No. 2080/KB/2023:**

**Mr. Rohit Kumar Keshri Adv.
Mr. Ankit Chaurasia, Adv.**

**For the Applicant in
I.A. (IB) NO.1322/KB/2023:**

**Mr. Surendra Kumar, Adv.
Mr. Ghanshyam Pandey, Adv.**

For the Resolution Professional:

**Ms. Manju Bhuteria, Ar. Adv.
Mr. Rahul Auddy, Adv.
Mr. Aditya Gooptu, Adv.**

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COMMON ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through a hybrid mode.

A BRIEF BACKGROUND

2. The Central Bank of India preferred a petition under Section 7 of Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code” on March 09, 2021, against the Corporate Debtor Sasa Musa Sugar Works Private Limited, which was admitted into Corporate Insolvency Resolution Process (“CIRP” in short), on November 17, 2022, by this Adjudicating Authority and Mr. Sachin Gopal Jathar was appointed as Interim Resolution Professional (IRP).

3. In compliance of the Order for admission dated 17.11.2022, the IRP made a public announcement in “Form A” on 19.11.2022 inviting the claims from various creditors of the corporate debtor. Based on the claim received, the IRP constituted

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the Committee of Creditor (CoC) and accordingly, filed a progress report by way of an application being I.A. (IB) No. 1602/KB/2022, which was taken on record by this Adjudicating Authority on 15.12.2022. The CoC constituted by the IRP comprised of sole member i.e., the Central Bank of India.

4. The first meeting of Committee of Creditors was convened on 15.12.2022, and in the same meeting the CoC decided to replace the IRP with Mr. Kuldeep Verma and accordingly, an application being I.A. (IB) No. 183/KB/2023 was preferred which was allowed on 13.03.2023, by this Adjudicating Authority, and Mr. Kuldeep Verma was appointed as the Resolution Professional (RP) of the corporate debtor.

5. Meanwhile, the erstwhile IRP had published “Form G” for invitation for Expression of Interest (EoI) on 01.03.2023, and the last date for receiving the EoI was fixed on 30.03.2023, however, no EoI was received. Thereafter, the new RP Mr. Kuldeep Verma published one “Form G” on 28.04.2023, and the last date for submission of EoI was fixed as 15.05.2023. Pursuant to the Form G publication, 5 EoIs were received, and the final list of Prospective Resolution Applicants (PRAs) were issued on 10.06.2023.

6. The RP has admitted the following claims:

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SN	Creditors	Claim Admitted
1.	Financial Creditors – Secured (Principal due: Rs. 40,57,05,970/-)	Rs. 86,76,75,684/-
2.	Operational Creditors – Excluding Employees, Workmen and Statutory Dues	Rs. 43,77,61,457/-
3.	Operational Creditors – Employees & Workmen	Rs. 6,29,68,342/-
4.	Operational Creditors – Statutory Dues	Rs. 75,52,704/-
	Total	Rs. 137,59,58,187/-

7. That, the corporate debtor had substantial stock of sugar as its inventory/ current asset which was perishable in nature. The RP published three sale notices on 10.05.2023, 13.06.2023 and 14.07.2023, and sold the same vide public e-auction on 28.07.2023 to one Kumar Trading Company.

8. As on 21.08.2023, two resolution plans were received by the RP from consortium of Shahid Ali & Ors. who were the directors of the corporate debtor, the corporate debtor being a MSME and one M/s. SJPB Hathua Sugar & Biorefinery Pvt. Ltd. which were put for voting conducted from October 09, 2023, to October 11, 2023, and the CoC by 100% voting approved one resolution plan of M/s. SJPB Hathua Sugar & Biorefinery Pvt. Ltd. on October 11, 2023. The LoI was accordingly issued to M/s. SJPB Hathua Sugar & Biorefinery

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Pvt. Ltd. on October 13, 2023, which was unconditionally accepted on 16.10.2023 by SRA M/s. SJPB Hathua Sugar & Biorefinery Pvt. Ltd. the said SRA sought 21 days to furnish Performance Bank Guarantee (PBG) of Rs. 5 Crore.

9. On 30.10.2023, SRA deposited Rs. 15 Lakh as a part of PBG and assured to deposit the balance amount in time. As on 07.11.2023, SRA did not pay the balance amount, the CoC at its 15th meeting convened on 08.11.2023, after due deliberations and discussions, revoked the LoI issued to the SRA M/s. SJPB Hathua Sugar & Biorefinery Pvt. Ltd. and forfeited its EMD as well as the part PBG totalling to Rs. 65 Lakh and the intimated the suspended directors i.e., Mr. Shahid Ali & Ors. about the CoC's decision to reconsider their plan as SJPB's plan had failed.

10. At 16th CoC meeting convened on 15.11.2023, one plan was received from the consortium of Mr. Shahid Ali & Ors. At the 18th CoC meeting convened on 02.12.2023, the resolution plan of the consortium of Mr. Shahid Ali & Ors. was discussed in detail along with its feasibility and viability, by the CoC. The CoC requested to improve the financial offer of the consortium of Mr. Shahid Ali & Ors. as the same was too low. The consortium of Mr. Shahid Ali & Ors. agreed to the same.

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11. At the 19th CoC meeting convened on 06.12.2023, the CoC decided to put up a resolution for approval of Resolution Plan submitted by the Ali Family as well as consequential resolution for liquidation of the corporate debtor through e-voting from December 09, 2023, to December 11, 2023. Ali Family sent an addendum on 08.12.2023 to the RP which was shared by the RP to the CoC. The e-voting concluded on 12.12.2023, the CoC with 100% voting passed a resolution recommending liquidation of the corporate debtor.

I.A. (IB) No. 97/KB/2024 and IVN. P. (IB) No. 22/KB/2024

12. Both the applications have been preferred by Mr. Shahid Ali, the “Applicant”, under Section 60(5) of the I&B Code against Mr. Kuldeep Verma, Resolution Professional (RP) of Sasa Musa Sugar Works Private Limited (Corporate Debtor), hereinafter referred to as “Respondent No. 1” (R 1) and Central Bank of India, hereinafter referred to as “Respondent No. 2” (R 2).

13. By way of **I.A. (IB) No. 97/KB/2024**, the applicant Mr. Shahid Ali would pray for the following reliefs:

- a) *The respondents be directed to reconsider the proposal of the applicant.*
- b) *The applicant be allowed to renegotiate with the members of the CoC.*
- c) *The applicant be allowed to revise the financial proposal submitted earlier.*

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- d) *The time for resubmission of revised financial be extended.*
- e) *The members of CoC and/or the respondents be directed to accept the revise financial proposal of the applicant.*
- f) *The hearing of I.A. (IB) No. 2046/KB/2023 (seeking for approval of liquidation of the corporate debtor) be stayed.*
- g) *Cost of/ and/or incidental to this application.*
- h) *Such further and/or other order(s) be passed.*

14. And by way of the intervention application being **IVN. P. (IB) No. 22/KB/2024**, the applicant has prayed for:

- a) *Leave be granted to intervene in the I.A. No. 2046/KB/2023.*
- b) *The applicant be allowed further time to meet the requirement of the CoC.*
- c) *The applicant be allowed to modify or amend the resolution plan submitted.*
- d) *The respondents be directed not to take any steps for liquidation of the corporate debtor.*
- e) *Such further and/or other order(s) be passed as may be deemed fit and proper.*

15. The common submissions of the Applicant are that:

- i. The Section 7 petition preferred by the R 2 Bank was wrongfully admitted as several payments were made after December 14, 2017, and the date of default was wrongly declared.

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- ii. The CoC has unreasonably and illegally rejected the resolution plan of the applicant's consortium by alleging that the applicant did not submit the complete resolution plan as well as failed to submit the PBG as per the statutory requirements.

16. It is submitted that in case the liquidation of the corporate debtor is allowed, the industrial activities of the corporate debtor will be closed forever, the entire assets, plans and machineries etc. of the corporate debtor will be disposed of in piecemeal resulting in shutting down of industrial activities, the entire sugarcane growers, workers, labourers, wage earners in the locality will suffer, further, realisation from such liquidation will be very low.

17. Applicant would contend that the liquidation is to be opted only in two scenarios i.e., when no resolution plan is submitted, or the resolution plans submitted are not up to the mark. Since, a viable resolution plan is available, it will be in the interest of all the stakeholders that the corporate debtor be put back on its feet rather than sending it to liquidation. Reliance was placed before us on the following judgments:



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a) **Anil Kumar, Suspended Director, SK Elite Industries India Ltd. v. Jayesh Sanghrajaka, RP, SK Elite Industries India Ltd.** in Company Appeal (AT)(Insolvency) No. 513 of 2023 & IA No.1666 of 2023 at paras 33 and 34.

b) **Swiss Ribbons Private Limited v. Union of India** in WRIT PETITION (CIVIL) NO. 99 OF 2018 at para 11, pages 37-38.

18. Further reliance was placed on the following judgments:

a) **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors.** reported in MANU/SC/1577/2019, wherein it has been held that:

“However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation...”

(Emphasis Added)

b) **West Bengal Financial Corporation v. Bijoy Murmuria RP of the Dimension Steel & Alloys Pvt.**

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plan and a direction upon the RP to proceed further with liquidation of the corporate debtor in accordance with law.

A. Submissions made by the Applicant Central Bank of India:

21. The Applicant Central bank of India would submit that after rejection of the plan of SJPB, the proposal submitted by the consortium of Shahid Ali & Ors. was re-considered and accordingly, the consortium of Shahid Ali & Ors. once again submitted its plan dated 05.12.2023, together with an addendum dated 16.02.2024, further revised on 29.02.2024.

22. The said fresh proposal and addendums indicates that the plan of the consortium of Shahid Ali & Ors. was not compliant with the provisions of the Code. Further, the consortium of Shahid Ali & Ors. did not submit the Comfort Letter from any Financial Institute or Bank in support of their financial strength.

23. It is further contended that plan submitted by consortium of Shahid Ali & Ors. was of Rs. 89 Crore whereas the net worth of the consortium members itself is only Rs. 42 Crore. The consortium of Shahid Ali & Ors. have failed to justify how they would arrange the residual amount and bridge the financial gap of Rs. 47 Crore.

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24. Applicant submits that the consortium of erstwhile directors of the corporate debtor also failed to submit the Performance Bank Guarantee (PBG) to the RP as per statutory requirement.

25. It is asserted that the lacunae of the resolution plan submitted by the consortium of Shahid Ali & Ors. have been brought out by way of a Supplementary Affidavit dated 20.04.2024 and served upon the RP and also upon the consortium of Shahid Ali & Ors. The supplementary affidavit along with the copy of the email service are annexed at pages 36-40 to the application. Despite service of such supplementary affidavit, the consortium of erstwhile directors has neither taken any steps to deal with the said lacunae nor has come up with a commercially viable resolution plan.

26. The applicant Bank has thus sought for rejection of the said re-submitted proposal dated 05.12.2023 along with the addendum dated 16.02.2024, the revised 2nd addendum dated 29.02.2024 submitted by the consortium of Shahid Ali & Ors. and a direction upon the RP to proceed further for liquidation of the corporate debtor.

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B. Arguments advanced by the Consortium of Suspended Directors:

27. *Per contra*, Ld. Counsel Mr. J. Patnaik appearing on behalf of the consortium of Shahid Ali & Ors. / Suspended Directors would submit that the allegation averred by the sole CoC member Central Bank of submitting incomplete resolution plan is incorrect, as the RP never issued any letter asking for any document or information to complete their resolution plan.

28. Further, that performance bank guarantee (PBG) is required only after the issuance of LoI which is stated in RFRP. Thus, the allegation of failure to furnish of PBG as per statutory requirements is incorrect.

29. It is asserted that comfort letter from any bank or financial institute is not mandatory as per law but is an additional document required by the bank. Further, that the allegation of no justification of how the financial gap of Rs. 47 Crore would be bridged, is illegal, as the resolution plan specifically provides how the said financial gap of Rs. 47 Crore will be arranged.

30. Further, it is asserted that the RP did not write to the consortium of erstwhile directors asking for any documents or information to cure defect in their resolution plan.

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31. This application has been preferred under Section 60(5) of the I&B Code by SJPB Sugar and Refinery Private Limited, hereinafter referred to as “Applicant”/ “SJPB” against Mr. Kuldeep Verma, the RP, hereinafter referred to as “Respondent No. 1 (R 1)”/ “RP” and the Central Bank of India, hereinafter referred to as “Respondent No. 2 (R 2)”/ “Bank”, praying for the following reliefs:

- a) *The Respondents be directed to forthwith accept the balance payment of Rs. 4,35,00,000/- from the applicant and to treat the same as compliance of the applicant’s obligation to put in performance security pursuant to approval of its resolution plan by the CoC.*
- b) *The purported revocation of the letter of intent dated 09.11.2023 by the RP be quashed and set aside.*
- c) *Injunction restraining the respondents from taking any step or further step on the basis of the revocation of the applicant’s letter of intent, including but not limited to injunction restraining them from placing any other resolution plan for voting or approval or taking steps for liquidation of the corporate debtor.*
- d) *Ad-interim orders in terms of the prayers above.*
- e) *Such other or further orders be passed as may be deemed fit and proper.*

32. Ld. Counsel Mr. Rohit Kumar Keshri appearing on behalf of the applicant SJPB would submit that due to some unforeseen situations beyond control, the applicant faced a temporary liquidity crunch which is now resolved. There was thus a minor delay in submitting the requisite security amount and the

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same ought not to have been used as a ground by the respondents to terminate the LoI, especially without considering the applicant's request grant for a short extension of time. The RP has acted in a manner that will prejudice the CIRP itself since the best resolution plan as approved by the CoC is being side-lined for a minor delay.

33. It is submitted that the applicant is ready and willing to deposit the entire balance performance of bank guarantee (PBG) amount of Rs. 4,35,00,000/- towards performance security forthwith which will regularize the matter and allow the plan to be implemented without any default or failure. It is submitted that indicating the willingness to submit that balance PBG by December 28, 2023, the applicant on behalf of SJPB Hathua Sugar & Bio Refinery Private Limited had issued an email on 14.12.2023 to the RP and the sole member of CoC, annexed at pages 95-96 to this application.

I.A. (IB) No. 1322/KB/2023

34. Sugarcane Industries Department through its Secretary has preferred this application under Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, for brevity "IBBI (CIRP) Regulations" read with Rules 11, 14, and 15 of the National

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Company Law Tribunal Rules, 2016, against the RP of the corporate debtor, for the following reliefs:

- (a) *Direction upon the resolution professional of the Corporate Debtor to admit the claim of the Applicant herein.*
- (b) *Direction setting aside the resolution professional's letter/mail dated 22nd April, 2023 (Annexure B) and 30th May, 2023 (Annexure D) rejecting the claim submitted by the applicant herein on account of locus standi of the Applicant and that claim is a disputed claim as pleaded in the present application hereinabove.*
- (c) *Direction upon the resolution professional for consideration of the claim submitted by the applicant by its claim submitted in Form B dated 15th February, 2023 (Annexure A) in accordance with law.*
- (d) *Ad interim orders in terms of prayers above.*
- (e) *Such further and/or other order or orders be passed, direction or directions as may be deemed fit and proper.*

35. Ld. Counsel appearing on behalf of the applicant Sugarcane Industries Department, would submit that the applicant lodged its claim with the erstwhile RP of Rs. 59,93,93,572/- in the requisite form as prescribed under Regulation 7 of the IBBI (CIRP) Regulations on February 15, 2023, annexed at pages 18-21 to the application, however, the same was accepted in part only for a sum

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of Rs. 75,52,704/- and the remaining amount was rejected by the erstwhile RP by way of an email dated April 22, 2023, annexed at pages 24-28 to this application.

36. Reasons quoted by the RP to reject the amount of Rs. 59,18,40,868/- in the letter dated April 22, 2023, are the following that:

- i. Sugarcane Department is not an operational creditor for the cane supplied by farmer in terms of Sections 5(20) and 5(21) of the I&B Code.
- ii. There is a pre-existing dispute as on insolvency commencement date 17.11.2022 in respect of certificate cases enclosed in the claim documents.
- iii. Claim of Rs. 727,99,386/- filed by the operational creditor/ farmers has already been admitted by the IRP and in future, any claim received from the farmers during the course of CIRP would be dealt with under the provisions of I&B Code.
- iv. RP having only the administrative power to verify and collate claims cannot adjudicate upon of any claim alike a quasi-judicial authority as held by the Hon'ble Apex Court in ***Swiss Ribbon Private Limited***.

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37. Ld. Counsel for the applicant would assert that the applicant is empowered under Section 43 of the Bihar Cane (Supply and Purchase Regulations) Act, 1981 to recover the amount from the sugar mills on behalf of the farmers. It is further asserted that the farmers are poor and do not have the wherewithal to lodge their claim against the corporate debtor. The State of Bihar under the Act has to see that the farmers are not exploited by the sugarcane mills and their rights are protected and as such under the relevant regulations, the applicant department as an operational creditor has the power to take all steps for recovery of dues of the farmers who are the tillers of the soil.

I.A. (IB) No. 2046/KB/2023

38. RP Mr. Kuldeep Verma has preferred this application under Section 33 of the I&B Code, praying for liquidation of the corporate debtor and appointment of a liquidator.

39. Ld. Sr. Counsel Ms. Manju Bhuteria appearing on behalf of the RP would submit that at the 19th CoC meeting convened on 06.12.2023, it was noted that only one resolution plan dated 05.02.2023 was received from the consortium of Shahid Ali & Ors. at the cut-off date. After a lot of negotiation and deliberations on the resolution versus liquidation scenario, it was agreed by both CoC

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and the resolution applicant (the consortium of Shahid Ali & Ors.), that the resolution applicant would submit an improved financial offer by 07.12.2023 and accordingly the meeting was adjourned on 06.12.2023 till 07.12.2023. The consortium of Shahid Ali & Ors. sent an addendum on 08.12.2023 to the RP which was shared by the RP to the CoC.

40. It is submitted that the revised financial offer provides the proposed amount of Rs. 74,58,21,046/- against the total admitted amount of Rs. 137,59,58,187/- leading to a 54.20% recovery. The e-voting concluded on 12.12.2023, and after due deliberations and discussions, the CoC with 100% voting share dissented to the financial offer and disapproved the resolution plan of the consortium of Shahid Ali & Ors. and accordingly, approved the liquidation of the corporate debtor. The copy of the minutes of 19th CoC meeting along with the RP's communication to the CoC and the resolution applicant intimating the decision of the CoC by way of e-voting is annexed at pages 110-133 to the application.

I.A. (IB) No. 522/KB/2024

41. By way of this application preferred under Section 60(5) of the I&B Code, the RP Mr. Kuldeep Verma has prayed for an exclusion of 86 number of days from 12.12.2023 till 07.03.2024 and further period between 07.03.2024 till the date of allowing this

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application and a period of 45 days from the date of order allowing exclusion.

42. Ld. Sr. Counsel appearing on behalf of the RP would assert that the sole CoC member by way of an email dated 06.03.2024, requested the RP to file an application for exclusion of time and to call for a meeting immediately to consider the plan along with addendums submitted by the consortium of Shahid Ali & Ors. on March 01, 2024. Copy of the email dated 06.03.2024 is annexed at pages 94-95 to the application.

43. It is stated that the meeting is scheduled to be held on 08.03.2024. Since the CIRP period has already expired on 12.12.2023, no decision taken by the CoC can be treated as effective unless the period of CIRP is excluded by this Adjudicating Authority. It is further stated an exclusion of the days as indicated above from the calculation of the CIRP period should be allowed for successful resolution of corporate debtor.

44. We have heard the parties and considered the rival contentions and perused the documents on record.

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Analysis and Finding:

45. We find that the corporate debtor has been admitted into CIRP on 17.11.2022 and the 330 days from commencement of insolvency was over on 12.10.2023. Vide Order dated 16.11.2023, this Adjudicating Authority has allowed an exclusion of 60 days from 13.10.2023, and in terms of the Order dated 16.11.2023, the CIRP period has ended on 12.12.2023.

46. It is evident that as on 21.08.2023, two resolution plans were received by the RP Mr. Verma from the consortium of erstwhile directors Shahid Ali & Ors. and one from SJPB Hathua Sugar & Biorefinery Pvt. Ltd. Both the plans were put for voting conducted on 09.10.2023, that continued till 11.10.2023 and the CoC by 100% voting shares approved SJPB's plan on 11.10.2023. Accordingly, the RP upon instruction of CoC issued LoI on 13.10.2023, which was unconditionally accepted 16.10.2023.

47. It is evident that the SJPB deposited performance bank guarantee (PBG) partly of Rs. 65 Lakh out of total PBG of Rs. 5 Crore. Despite repeated communications are done from the RP to SJPB to deposit the PBG, SJPB failed to pay the balance PBG in time. Thus, the CoC at its 15th CoC meeting convened on 08.11.2023, after due deliberations and discussions, revoked the LoI issued to the SJPB and informed the unsuccessful resolution applicant i.e., the

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consortium of Shahid Ali & Ors. about the CoC's decision to reconsider their plan upon revocation of the SJPB's LoI.

48. Visibly at the 16th CoC meeting convened on 15.11.2023, the resolution plan of the consortium of Shahid Ali & Ors. was discussed and the CoC requested the consortium of Shahid Ali & Ors. to improve the financial proposal as the same was not acceptable within the commercial wisdom of CoC. The consortium of Shahid Ali & Ors. agreed to improve the offer. At the same meeting, RP intimated the CoC that SJPB requested by way of letters dated 09.11.2023 and 11.11.2023, for further time for the payment of balance PBG, however, after deliberations, the CoC decided to stand by its earlier decision that is to revoke or cancel the LOI dated 13.10.2023 issued to SJPB.

49. Notably, at the 17th CoC meeting convened on 29.11.2023, the revised plan of the consortium of Shahid Ali & Ors. was discussed. The revised plan proposed an amount of Rs. 70.68 Crore towards full and final settlement against the total admitted claim of Rs. 137.60 Crore. At the 18th CoC meeting convened on 02.12.2023, the revised plan of the consortium of Shahid Ali & Ors. was discussed, the feasibility and viability were examined by the CoC. The CoC again requested the consortium of Shahid Ali & Ors. to improve its financial offer as the same was too low and the same was agreed by the resolution applicant.

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50. At the 19th CoC meeting convened on 06.12.2023, again the plan was discussed, and after a lot of deliberations and negotiations, considering the “resolution” versus “liquidation” scenario, it was agreed by the CoC and the consortium of Shahid Ali & Ors. that an improved financial offer would be submitted by 4:00 PM on 07.12.2023 and the meeting was adjourned till 4:00 PM on 07.12.2023. The 19th meeting was resumed on 07.12.2023, and the RP informed the CoC that he has received no improved plan and accordingly, after discussions on the feasibility and viability of last received plan, the CoC decided to put resolution for approval of the plan as well as consequential resolution for liquidation of the corporate debtor through e-voting which started on 09.12.2023 at 10:00 AM and concluded on 11.12.2023 at 07:00 PM. It is submitted that the consortium of Shahid Ali & Ors. sent an addendum on 08.12.2023 to the RP which was shared by the RP to the CoC. The Addendum to the plan proposed Rs. 74.58 Crore as total plan value against the total admitted claim of Rs. 137.60 Crore.

51. The e-voting concluded on 12.12.2023, which is the last date of CIRP after exclusion allowed by this Adjudicating Authority on 16.11.2023. The CoC with 100% voting shares approved the liquidation of the corporate debtor and rejected the plan of the consortium of Shahid Ali & Ors. as the liquidation value was way higher than the plan value.

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52. We find that rejection of the plan of SJPB as well as of the consortium of Shahid Ali & Ors. was done by the CoC after due deliberations and discussions and the same was not unreasonable or impermissible. We failed to decipher any discrepancies or irregularity in the conduct of the CoC, albeit that the CoC constituted of the sole financial creditor.

53. We are mindful of the objective of the I&B Code that ‘time’ and ‘speed’ are paramount along with maximization of value of the assets of the corporate debtor. RP by way of Form H, annexed at pages 134-140 to the application being I.A. (IB) No. 2046/KB/2023, would indicate the fair value of the corporate debtor is Rs. 128.60 Crore and the liquidation value of the corporate debtor is Rs. 105.35 Crore. We note that as per the last improvisation in the plan, the consortium of Shahid Ali & Ors. proposed Rs. 74.58 Crore as total plan value against the total admitted claim of Rs. 137.60 Crore, leading to 54.20% recovery.

54. We are conscious of the legal position that the Adjudicating Authority being NCLT has a limited scope to question or interfere into the “Commercial Wisdom” of the CoC, especially when it comes to approval of a resolution plan, yet it is incumbent upon this Adjudicating Authority to restrict itself to the four corners of the statute keeping the legislative intent intact and not to render

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a decision contrary to the established principles as propounded by the Hon'ble Apex Court. We would refer to the judgment of the Hon'ble Apex Court in ***Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.*** reported in (2022) 1 SCC 401: MANU/SC/0206/2021 at Para 216, which has succinctly laid down that:

“The Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by Committee of Creditors.”

(Emphasis Added)

55. Further, in ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta*** reported at (2020) 8 SCC 531: MANU/SC/1577/2019, the Hon'ble Apex Court has propounded that:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is

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*finally accepted after negotiation of its terms by such
Committee with prospective resolution applicants.”*

(Emphasis Added)

56. Further, as per Section 33(2) of the I&B Code, where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors, approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of Section 33 of the Code.

57. In ***Yavar Dhala v. JM Financial Asset Reconstruction Company Ltd. & Ors.*** in Company Appeal (AT) (Insolvency) No. 13 of 2019, the Hon'ble NCLAT has observed that:

“3. In the situation where a Resolution Applicant succeeds as Corporate Debtor but if fails to comply its assurance in terms of the resolution plan, what step is to be taken has been already been laid down in Sub-section (3) of Section 33 of the I&B Code, which reads as follows:-

“33. (3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-

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clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”

4. In view of the specific provision made under the I&B Code, we are of the view that the Adjudicating Authority had no option but to pass order of liquidation and could not have resorted to revival of the Corporate Debtor by taking fresh resolution plans.”

(Emphasis Added)

58. Further, in ***Manoj Kumar Ram & Ors. Vs. M/s. Stesalit Ltd. & Ors.*** in Company Appeal (AT) (Insolvency) No. 882 of 2019 reported in (2019) ibclaw.in 474 NCLAT, the Hon’ble NCLAT has observed as under:

*“2. Learned counsel appearing on behalf of the Appellants submits that **the Appellants are the employees, but the ‘Successful Resolution Applicant’ has not yet implemented the ‘Resolution Plan’ and the plan is also detrimental**, therefore, the present appeal has been preferred.*

3. It is further submitted that the Appellants moved before an appropriate forum for providing relevant documents and having no order passed therein, filed the present appeal. However, as this Appellate Tribunal has no jurisdiction to condone the delay beyond 15 days’ after passing of 30 days for preferring the appeal, in terms of proviso to sub-section (2) of Section 61 of the Insolvency and Bankruptcy Code, 2016, hence this appeal being not maintainable, we are not inclined to interfere with the impugned order dated 20th July, 2018.

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4. However, if the ‘Resolution Plan’ having approved by the Adjudicating Authority but has been contravened by the concerned ‘Corporate Debtor’ (‘Successful Resolution Applicant’), any person whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation in terms of Section 33(3), which may be decided uninfluenced by the order passed by this Appellate Tribunal.

The appeal stands disposed of with aforesaid observation. No costs.”

(Emphasis Added)

59. In the present case, SJPB’s plan was approved earlier and LoI was issued accordingly, but SJPB failed to furnish the full performance bank guarantee in terms of the resolution plan and accordingly, SJPB’s LoI was revoked, and its plan was dismissed by the CoC. The CoC does not seem to violate any statutory provisions. Further, the plan of the consortium of the suspended directors/ promoters was also rejected after due deliberations and discussions by the CoC in its commercial wisdom. The CoC accordingly passed and approved a resolution for liquidation of the corporate debtor way back in December 2023. An argument was advanced that in the event of the liquidation, the entire assets, plans and machineries etc. will be disposed of in piecemeal resulting in shutting down the industrial activities, and the entire sugarcane growers will suffer and the workers, labourers, wage earners in the locality will also suffer.

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We find that this argument is purely based on assumptions and no evidence has been placed on record in support of this argument.

60. We find that by way of an application being I.A. (IB) No. 522/KB/2024, the RP has sought for exclusion of time from the CIRP period to consider the plan of the consortium of the erstwhile directors/ promoters.

61. We would note that on 02.02.2024, this Adjudicating Authority, at request of Mr. Vikash Kumar, Regional Manager/Regional Head of the Central Bank of India along with his Ld. Counsel Ms. Usha Doshi has allowed two weeks' time to consider the fresh proposal.

62. Further, on 11.03.2024, this Bench upon seeking by the Ld. Counsel appearing on behalf of the Central Bank of India also allowed a three weeks' time as a final opportunity to consider a fresh proposal.

63. Further, on 22.04.2024, this Court has recorded the submission made by the Ld. Counsel for the Central Bank of India that “[...] *an application has been filed by the Bank for placing on record its response to the proposal as indicated in the Order dated 11th March 2024. However, this application is under scrutiny. Post the matter again on 13.06.2024.*”

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64. As this Adjudicating Authority on innumerable occasions provided reasonable opportunities to the parties, at this stage when the 330 days from commencement of insolvency was completed on 12.10.2023, we are not inclined to allow any further extension or exclusion or enlargement of the CIRP period when statute is very clear of its objective that the CIRP is a time bound process with balancing the interests of all the stakeholders.

65. At this juncture, it would be apt to refer to the judgment of the Hon'ble Apex Court in ***State Bank of India & Ors. v. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr.*** in Civil Appeal Nos. 5023-5024 of 2024, reported in 2024 INSC 852, wherein it has been laid down that:

“157. Rule 15 of the NCLT and NCLAT Rules, 2016 grants power to the NCLT and NCLAT respectively, to extend the time limits for doing any act which have been fixed, either by the rules or by an order, as the justice of the case may require. **However, such power must not be exercised mechanically without any application of mind. An extension on the strict timelines fixed under the resolution plan must be done by adequately weighing the period of extension sought with the consequences of such extension on the continued implementation of the Resolution Plan.** After all, such a discretion cannot be exercised to the detriment of the resolution



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*plan and its implementation itself. While one of the reasons supporting the grant of extension would be to ensure the **successful revival of the corporate debtor, multiple extensions may seriously hamper the economic feasibility of the Resolution Plan and also lead to an increase in the debts of the corporate debtor.** Not to mention, during the extended period, there are several costs incurred towards maintaining the corporate debtor as well. The **feasibility and practicability** of the resolution plan adjudged by the “commercial wisdom” of the CoC might no longer remain in cases where incessant extensions are granted by the NCLT and NCLAT under their discretionary powers.*

(Emphasis Added)

66. In view of above, we allow the liquidation of the corporate debtor. Accordingly, we order as follows:

- a. Prayers as sought for in the application being **I.A. (IB) No. 2046/KB/2023**, is **allowed** and the Corporate Debtor **SASA MUSA SUGAR WORKS PRIVATE LIMITED** is **ordered to be liquidated** in terms of Section 33(1) of the I&B Code.

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DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 97/KB/2024;
IVN.P. (IB) No. 22/KB/2024;
I.A. (IB) No. 1849/KB/2024;
I.A. (IB) No. 2080/KB/2023;
I.A. (IB) No. 1322/KB/2023;
I.A. (IB) No. 2046/KB/2023;
I.A. (IB) No. 522/KB/2024

In
Company Petition (IB) No. 157/KB/2021

- b. Mr. Manish Jain** having Registration No. IBBI/IPA-001/IP-P00582/2017-2018/11023, email: ipcamanishjain@gmail.com, Contact No. 9830248684, is hereby appointed as Liquidator. We direct **Mr. Manish Jain** to file his/her consent form along with AFA on record as provided under Section 34(1) of the I&B Code within seven days.
- c.** The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d.** Public Notice shall be issued in the newspapers stating that the Corporate Debtor is in liquidation.
- e.** All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- f.** The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.



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I.A. (IB) No. 1322/KB/2023;
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I.A. (IB) No. 522/KB/2024

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- g.** On initiation of the liquidation process but subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.
- h.** In accordance with Section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- i.** In terms of Section 33 (1) (b) (iii), the Liquidator shall file a copy of this Order with the Registrar of Companies within whose jurisdiction the Corporate Applicant is registered as well as the IBBI.

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I.A. (IB) No. 1322/KB/2023;
I.A. (IB) No. 2046/KB/2023;
I.A. (IB) No. 522/KB/2024

In
Company Petition (IB) No. 157/KB/2021

SUMMARIZATION:

67. **I.A. (IB) No. 97/KB/2024** and **IVN. P. (IB) No. 22/KB/2024** preferred by Mr. Shahid Ali, suspended director of the corporate debtor seeking re-consideration of their plan by CoC and intervention in the I.A. (IB) No. 2046/KB/2023, are accordingly **dismissed**.

68. **I.A. (IB) No. 1849/KB/2024** preferred by the Central Bank of India, praying for rejection of the plan of the consortium of Mr. Shahid Ali & Ors. is **allowed** and **disposed of**.

69. **I.A. (IB) No. 2080/KB/2023** preferred by SJPB for a direction upon CoC to accept the balance performance of bank guarantee and allow its plan is accordingly **dismissed**.

70. **I.A. (IB) No. 522/KB/2024** filed by the RP for exclusion of time from the CIRP period is **not allowed** and accordingly **disposed of**.

71. As we allow the liquidation of the corporate debtor, **I.A. (IB) No. 1322/KB/2023** preferred by the Sugarcane Industries Department against the RP prayed for a direction to admit their claim, is **disposed of** with liberty to the applicant Sugarcane Industries Department to file its claim, if any, before the liquidator



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I.A. (IB) No. 2080/KB/2023;
I.A. (IB) No. 1322/KB/2023;
I.A. (IB) No. 2046/KB/2023;
I.A. (IB) No. 522/KB/2024

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appointed here in accordance with law. Accordingly, **I.A. (IB) No. 1322/KB/2023** is **disposed of**.

72. The application being **I.A. (IB) No. 2046/KB/2023** is **allowed** and **disposed of** in accordance with the above directions.

73. List the main company petition being **C.P. (IB) No. 157/KB/2021** for reporting progress on **04/04/2025**.

74. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsels for information and for taking necessary steps.

75. Certified copy of this order may be issued, if applied for with the Registry, upon compliance of all requisite formalities.

Sameer Kakar
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on 20th Day of February 2025.

Bose, R. K. [LRA]