

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No301

IA/368(AHM)2023 in
CP(IB)/208(AHM)2021

Proceedings under Section 30(6) & 31 IBC r.w Rule 39 IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016

IN THE MATTER OF:

Shreyansh Jain RP For Bindal Fashion Private LimitedApplicant

Vs.

Consortium Of Dravya Capital Services Pvt. Ltd. & Ors.Respondent

Order delivered on 21/07/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Ajai Das Mehrotra, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-SD-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
(COURT NO. II)**

**IA 368(AHM) of 2023
In
CP (IB)/ 208(AHM) 2021**

(Application under Section 30(6) & Section 31 of the Insolvency and Bankruptcy Code, 2016, read with the Rule 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

In the Matter of:

**Mr. Shreyansh Jain,
(Resolution Professional of Bindal Fashion Pvt. Ltd.)**

...Applicant

Versus

**Consortium of M/s. Dravya Capital Services Pvt. Ltd.
And Mrs. Aruna Shah & Ors.**

...Respondents

AND

In the Matter of:

**Kirtida Silk Mills
(Proprietor Rameshwar Textile Mills Ltd.)**

...Operational Creditor

Versus

Bindal Fashion Private Limited

...Corporate Debtor

Order Pronounced On: 21.07.2023

Coram:

**SHAMMI KHAN,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

Mr. Shreyansh Jain

Resolution Professional of
Bindal Fashion Private Limited
Address: 505 Silver Coin Apartment, Behind Aakashwani,
Paota C Road, Jodhpur, Rajasthan- 342001.

...Applicant

Versus

1. The consortium of M/s. Dravya Capital Services Pvt. Ltd.

And Mrs. Aruna Shah and Ors.
Address: Office No. 505, 5th Floor, 21st Century Business Centre,
Ring Road, Surat- 395002, Gujarat.

...Respondent No.1

2. Income Tax Department

address: Aaykar Bhawan Majura Gate,
Opp. New Civil Hospital,
Surat- 395001.

...Respondent No.2

3. Mr. Manojkumar Dhanraj Bindal

Suspended Director of Corporate Debtor
B-106 Green Avenue Complex, Behind Union Park,
Goddod Road Surat- 395008.

...Respondent No.3

4. Mrs. Kavitadevi Rajendrakumar Bindal

Suspended Director of Corporate Debtor
B-106 Green Avenue Complex, Behind Union Park
Goddod Road Surat- 395008.

...Respondent No.4

Appearance:

For the RP : Mr. Mayur Jugtawat, Advocate a/w. Mr. Nipun Singhvi,
Advocate.

For the SRA : Ms. Pragati Tiwari, Advocate a/w. Mr. Vishal Dave,
Advocate.

ORDER

1. This application has been filed by Mr. **Shreyansh Jain**, Resolution Professional of M/s. Bindal Fashion Private Limited under Section 30(6) & Section 31 of the Insolvency and Bankruptcy Code, 2016, read with the Rule 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as **IBC, 2016**) for approval of the Resolution Plan.
2. The facts, in brief, are that the Corporate Debtor M/s. Bindal Fashion Private Limited was admitted into CIRP by this Adjudicating Authority vide order dated 08.07.2022 in an application filed by the operational creditor [M/s. Kirtida Silk Mills (Proprietor Rameshwar Textile Mills Limited)] u/s 9 of the IBC, 2016, wherein the moratorium was declared, and the Corporate Insolvency Resolution Process (hereinafter referred to as '**CIRP**') was initiated. Mr. Shreyansh Jain was appointed as Interim Resolution Professional (hereinafter referred to as '**IRP**'), who made a public announcement in Form-A on 11.07.2022, and collated claims and constituted

a Committee of Creditors (hereinafter referred to as CoC) comprising of Sole Financial Creditor, viz., Axis Bank.

3. It is submitted by the applicant that the CoC, in its 1st meeting held on 02.08.2022, resolved and appointed IRP Mr. Shreyansh Jain to work as a Resolution Professional (hereinafter referred to as **RP**), which was confirmed vide order dated 09.01.2023 in IA 954 of 2022.
4. It is submitted by the Applicant that in the 2nd CoC meeting, the CoC passed the resolution with respect to the appointment of the registered valuer for the valuation of the assets of the Corporate Debtor. The Applicant published Form-G on 21.09.2022, inviting Expression of Interest (EOI) for submission of the Resolution Plan, and the same was also published on the website of the IBBI. The last date of receipt of EOI was 06.10.2022, and the said date of submission of EOI was extended till 28.10.2022.
5. After the publication of Form G, the Resolution Professional received 5 EOIs from the Prospective Resolution Applicants (PRAs). As per Regulation 36A(10) of the CIRP Regulation, 2016, the Resolution Professional prepared the provisional list of five eligible Prospective Resolution Applicants, and said list was shared with CoC on 29.10.2022. A copy of the same is annexed with the application.
6. It is submitted by the applicant that the Resolution Professional prepared the final list of PRAs with four qualified PRAs, namely, 1. Nakshatra Corporate

Advisors Limited, 2. Ananthari Industries Private Limited, 3. Dravya Capital Services Private Limited & Aruna Shah, 4. Shefali Silk Mills Private Limited, as per regulation 36A(12) of CIRP Regulation, 2016, and the said final list was shared with the CoC on 06.11.2022. A copy of the same is annexed with the application.

7. The 3rd CoC meeting was held on 17.10.2022 by the Resolution Professional, and the provisional qualified list of Prospective Resolution Applicants was shared with CoC.
8. The Resolution Professional conducted the 4th CoC meeting on 11.11.2022, and Resolution Professional appraised the CoC and discussed about the RFRP('Request For Resolution Plan'). The CoC gave some suggestions for modification in RFRP, and the modified RFRP was shared with the PRAs. The CoC also rectified the expenses incurred by the RP.
9. In the 5th CoC Meeting held on 16.12.2022, the RP informed the CoC that on 11th December 2022, RP had received the Resolution Plan from Ananthari Industries Pvt. Ltd., and the same was opened before the CoC Members.
10. The RP held the 06th CoC Meeting held on 21.12.2022 to discuss and brief the CoC about his understanding on the Resolution Plan received by him. The RP also informed CoC regarding the timeline of CIRP, and the CoC asked the RP to file an application before the Hon'ble NCLT for an extension of CIRP timeline. In pursuant to said meeting, the RP filed an IA 44 of 2023

for an extension of CIRP by further 60 days which was allowed by Adjudicating Authority vide order dated 18.01.2023

11. The Applicant called the 07th CoC Meeting held on 12.01.2023 and informed the CoC regarding the resolution plan submitted by another RA i.e., Consortium of Dravya Capital Services Private Limited and Mrs. Aruna Shah to which the CoC decided to extend the last date for submission of resolution plan for all the PRA as per the final list of PRA issued by the Applicant on 07.11.2022. The RP intimated the same to the all the PRAs.
12. The 08th CoC meeting was held on 27.01.2023, during which the Applicant intimated the CoC regarding the resolution plan submitted by two of the RA's, i.e. (i) Shreyansha on behalf of Dravya Capital Services Private Limited and Aruna Shah; (ii) Dheeraj Garg on behalf of Ananthari Industries Private Limited which were opened and discussed with the CoC during the meeting.
13. The RP conducted the 09th CoC Meeting on 31.01.2023 and presented the financial proposals and other main contents of the Resolution Plan received from the PRAs.
14. The RP conducted the 10th CoC Meeting on 10.02.2023, which was adjourned to 13th February 2023; and further to 16.02.2023. During the 10th CoC Meeting, the Applicant requested both the RA's to submit and discuss their resolution plan and financial proposal. After the discussion, the CoC requested to PRAs to submit their revised financial proposal and adjourned

the 10th CoC Meeting till 13th February 2023. Mr. Shreyansh Shah, on behalf of Dravya Capitals and Mrs. Aruna Shah, sent an email to the RP requesting to postpone the 10th CoC Meeting to 16.02.2023, which was considered by the RP. Before the commencement of the proceedings of the 10th CoC Meeting, Mr. Dheeraj Garg, the authorized representative of Ananthari Industries Pvt. Ltd., requested some time to share their revised proposal as they need to understand the implication of the new Finance Act, 2023 on CD post-acquisition. The Applicant called the meeting and requested the RA's to share their revised proposal, to which Mr. Shreyansh Shah, on behalf of Dravya Capital Services Private Limited and Aruna Shah, has submitted and quoted their revised financial proposals. After the discussion with Mr. Shah, the Applicant requested Mr. Dheeraj Garg, Authorized Representative of Ananthari Industries Private Limited, to share their revised proposal, to which Mr. Garg referred to his email seeking some time to share their revised proposal due to the reason mentioned above. Therefore, with the consent of the CoC, the Applicant allowed further time and requested the RA to discuss their revised financial proposal at CoC Meeting on 21st February 2023.

15. The RP called the 11th CoC meeting on 21.02.2023 and requested Mr. Dheeraj Garg, Authorized Representative of Ananthari Industries Private Limited, to discuss their revised proposal, to which Mr. Garg mentioned their

revised plan. Pursuant to the discussion, the RP via mail requested both the RA to share their Final Resolution Plan along with the Revised Financial Proposal before 23rd February 2023.

16. The 12th CoC Meeting was held on 28.02.2023 by RP, and informed the CoC that Ananthari Industries Private Limited has failed to submit their final resolution plan and that he has received only one resolution plan via hand delivery from Dravya Capital Services Private Limited and Aruna Shah on 23.02.2023. The CoC discussed the Resolution Plan submitted by the Consortium of M/s. Dravya Capital Services Pvt. Ltd. and Mrs. Aruna Shah, which was put before the CoC for voting, and the said plan was approved by the CoC with 100% voting share. In the said meeting, the CoC also resolved and authorized the RP to act as a liquidator if the resolution plan was rejected by the Adjudicating Authority.
17. After approval of the resolution plan by the CoC in the 12th Meeting, the RP issued the letter of intent in favor of the Successful Resolution Applicant, i.e., Consortium of M/s. Dravya Capital Services Pvt. Ltd. and Mrs. Aruna Shah on 15.03.2023.
18. The resolution professional filed an application for approval of the resolution plan on 22.03.2023. The notice was issued by the Adjudicating Authority against the Respondents vide order dated 31.03.2023, and in the compliance

of said order, the resolution professional filed affidavit of service on 28.04.2023, but no response was received from the side of respondents.

19. The matter was listed for the hearing on 04.05.2023. Learned Counsel Mr. Mayur Jugtawat appeared for the applicant. Learned Counsel Ms. Pragati Tiwari appeared for the SRA. The applicant was directed to submit how the Resolution Plan, which is less than the liquidation value, be accepted, and also to clarify how the Plan is in compliance of the judgment of the Hon'ble Supreme Court in the case of Rainbow Papers Limited.
20. In compliance of the order dated 04.05.2023, learned counsel for the applicant, Mr. Mayur Jugtawat, filed an affidavit, along with compilation of judgments on 15.05.2023 and clarified the queries raised by the Bench, which are as follows:
 - a. How a resolution plan which is lesser than the liquidation value be accepted?
 - b. How the plan is in compliance of the judgement of Hon'ble Supreme Court in the case of Rainbow Papers Limited?
 - i. It is submitted that no government claims, as per the judgment of the Hon'ble Supreme Court in State Tax Officer (1) v. Rainbow Papers Limited (Civil Appeal No. 1661 OF 2020), have been received from any government department/statutory dues. Further, no

government/statutory dues are reflected in the books of accounts of Corporate Debtor as available with RP.

- ii. With respect to the resolution plan being lower than the liquidation value, it is submitted that following judgments categorically hold that the commercial wisdom of the CoC to approve a resolution plan of lesser than the liquidation value cannot be challenged.

Serial No.	Particulars	Relevant Paragraphs and Page No.
1.	Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh & Ors.(Civil Appeal No. 4242 of 2019). Judgement Dated- 22.01.2020.	Para 25-27, Page 33 and 34.
2.	State Bank of India Vs. M/s. Accord Life Spec Private Limited through Director & Ors.(Civil Appeal No. 9036/2019). Judgement Dated 28.02.2020.	Para 4, Page-1.
3.	Innova Home Buyers Neyveli Association VS. P dot G Construction Pvt. Ltd. & Ors. (Company Appeal (AT) (Insolvency) No. 215 of 2020). Order dated- 13.12.2022.	Para 30, Page-18

4.	Mr. Anurag Goel, Resolution Professional of M/s. Amzen Machines (P) Ltd. Vs. RKG Assets Management LLP(IA-2971/2022 IN (IB) – 2058(ND)/2019). Order Dated-17.04.2023.	Para 2, Page-6 Para 5.2,Page-13
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21. During the hearing on 12.05.2023, Learned Counsel Mr. Nipun Singhvi appeared along with Learned Counsel Mr. Mayur Jugtawat for the RP and informed that there is no objection from any quarter regarding this Resolution Plan. They informed that Resolution Plan is approved by the Sole Member of CoC; viz, Axis Bank. To our specific query, as the value of Resolution Plan is Rs.33.25 Lakh compared to liquidation value of Rs.33.45 Lakh, Learned Counsel stated that Hon'ble Supreme Court in Maharashtra Seamless Ltd. Vs. Padmanbhan Venkatesh & Ors. (Civil Appeal No.4242 of 2019) dated 22.01.2020 and in the case of State Bank of India Vs. Accord Life Spec P. Ltd. & Ors. (Civil Appeal No.9036/2019) dated 28.02.2020, have stated that there is no provision in the Code or Regulations requiring matching of liquidation value. The learned counsel also took us through the Hon'ble NCLAT judgment in the case of Innova Home Buyers Neyveli Association Vs. P. Dot. G. Construction Pvt. Ltd. & Ors. (Company Appeal (AT) (Ins) No.215 of 2020) dated 13.12.2022 wherein Hon'ble NCLAT had

allowed the approval of Resolution Plan below the liquidation value. He further submits that in this case, the Resolution Plan value is only slightly less by Rs.20,000/- and that the Resolution Applicant has also promised to bring capital infusion of Rs.20 Lacs towards the working capital as stated in page no.219 of the application. Learned Counsel also clarified that the judgment of Hon'ble Supreme Court in the case of State Tax Officer (1) Vs. Rainbow Papers Ltd. in Civil Appeal No.1661 of 2020 and Civil Appeal No.2568 of 2020 dated 06.09.2022 is not **applicable** as there are no Statutory / Government dues payable. Learned Counsel also confirmed that there are no IAs pending for claims.

22. In compliance of Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the applicant filed the Form-H with the application stating that the amount provided to stakeholders under resolution plan is as follows:

(Amount in Rs. lakh (

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:				

		(i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	Rs. 10,48,62,671/-	Rs. 10,42,65,752/-	Rs. 33,25,000/-*	2.23%
		Total[(a) + (b)]	Rs. 10,48,62,671/-	Rs. 10,42,65,752/-	Rs. 33,25,000/-*	2.23%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:	-	-	-	-
		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	-	-	-	-
3	Operational Creditors	(a) Related Party of Corporate Debtor				
		(b) Other than (a) above:			Issue of 140 Compulsory Convertible Debentures issued at face value of Rs. 10 and at a premium of Rs.	-
		(i) Government				
		(ii) Workmen				
		(iii) Employees				
		(iv)	Rs. 1,42,68,383/-	Rs. 1,42,68,383/-		

					99,990.00 which will be compulsorily converted into 140 equity shares of the corporate debtor 20 years after the effective date.	
		Total[(a) + (b)]	Rs. 1,42,68,383/-	Rs. 1,42,68,383/-	-	-
4	Other debts and dues	Working Capital & Capex	-	-	Rs. 20,00,000/-	-
Grand Total			Rs. 11,91,31,054/-	Rs. 11,85,34,135/-	Rs. 33,25,000/-	-

[# Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

*That as per Resolution plan the RA has proposed the payment of Rs. 10,00,000/- towards CIRP cost and Rs. 23,25,000/- towards the claim of Secured Financial Creditor, however the RA has also provided clarity that "Any upside or downside in the amount of Rs. 10,00,000 proposed as CIRP Cost shall be adjusted with the dues of the sole Secured Financial Creditor", thus in present case sufficient liquid asset were available so the amount proposed towards the payment of CIRP cost will be diverted towards the payment of Secured Financial Creditor.]

23. Heard submissions and perused the documents and judgments relied upon. It is noted that Form-H has been filed by Resolution Professional with the application wherein all information as regards the conduct of CIRP, as well

as the process adopted for the Resolution Plan, has been given affidavit under Section 29A of IBC, 2016 has been filed. Resolution Plan approved by CoC complies with all the requirements of Section 30(2) of IBC, 2016, and relevant regulations made thereunder. We also went through the judgments passed by the Hon'ble Supreme Court and Orders passed by the Hon'ble NCLAT relied upon by the applicant and cited supra wherein superior courts have approved resolution plans where plan value was below the liquidation value, on the grounds of commercial wisdom of Committee of creditors and in the interest of keeping corporate debtor as a going concern. In the present case, plan value is less than liquidation value by only Rs.20,000/-. Further, the SRA has promised to infuse fresh capital of Rs. 20 lakh. Considering this, we accept the plan value as it is duly approved by CoC. Further, our attention was drawn to the reliefs and concessions claimed, which are mentioned under serial 8 on page No. 32 in the Resolution Plan. However, the Bench, in respect of such relief and concessions, made it clear that only such reliefs would be granted, which this Adjudicating Authority is empowered to in view of the decision of the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors.*** (Civil Appeal No. 8129 of 2019) dated 13/04/2021, which is reproduced hereinbelow:

“86.The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and

is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

87. We have no hesitation to say, that the word “other stakeholders” would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief.....”

24. It is further noted that a certificate regarding the eligibility of the resolution applicant under Section 29A, along with the undertaking of the Resolution Applicant to this effect, has been filed. We have also perused the contents of the Resolution Plan and are of the view that all requirements provided under Section 30(2) of IBC, 2016 and Regulations 36 to 39 of CIRP Regulations, 2016 have been complied with. We also find that the Resolution Plan addresses the cause for the default and also contains measures to run the Corporate Debtor in the future. We also find that the Resolution plan is both feasible and viable as held by CoC, and it also contains provisions for its effective implementation. Accordingly, we, being satisfied, approve the Resolution Plan and pass the following order:

- I. The approved ‘Resolution Plan’ shall become effective from the date of passing of this order.

- II. The order of moratorium dated 08.07.2022 passed by this Adjudicating Authority under Section 14 of IBC, 2016 shall cease to have effect from the date of this order.
- III. The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, and other stakeholders involved in the Resolution Plan.
- IV. The monitoring committee, as proposed in clause 6.2 Term, Implementation Schedule and Monitoring of the Resolution Plan at page 19 of the resolution plan, shall be constituted for supervising the effective implementation of the Resolution Plan.
- V. The Resolution Professional, Mr. Shreyansh Jain, shall be released from the duties of the resolution professional of the Corporate Debtor as per the provisions of the IBC, 2016 and rules/regulations made thereunder.
- VI. The Resolution Professional shall forthwith send a copy of this Order to the participants and the resolution applicant(s).
- VII. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

VIII. As regards to various reliefs and concessions which are being sought, we hereby grant the following reliefs and concessions only as against reliefs and concessions claimed by the resolution applicant:

- a) After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders prior to CIRP against the corporate debtor shall stand permanently extinguished, and other claims, including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;
- b) From the date of this order, all claims against the corporate debtor, except those provided in the resolution plan of the Corporate Debtor, stand extinguished.
- c) From the date of this order, all encumbrances on the assets of the Corporate Debtor before the plan shall stand permanently extinguished.
- d) For reliefs and concessions sought from the Government/Statutory Authorities, including environmental clearance as well as stamp duty, we direct the resolution applicant to approach the concerned Authorities. The concerned Authorities may decide the matter as per

applicable provisions of law for effective implementation of the Resolution Plan.

- e) As regard to reliefs prayed under various provisions of the Income Tax Act, 1961, the corporate Debtor/ resolution applicant may approach the Income Tax Authorities, who shall take a decision on relief and concessions sought by the resolution applicant in accordance with the provisions of Income Tax Act, 1961.
- f) The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the resolution applicant for the smooth running of the business of the Corporate Debtor;
- g) The Board of Directors of the Corporate Debtor shall also be reconstituted, and procedural compliances shall be done to give effect to such reconstitution;
- h) The resolution applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 or within such period as provided for in such law, whichever is later, as the case may be;
- i) All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the

resolution plan as regard to the restructuring of capital shall be binding on them. For concession of stamp duty as prayed in the resolution plan, the resolution applicant may approach the concerned Government Authority.

- j) With respect to the grant of license/ Government approval, if the license or approval is terminated, suspended, and revoked, the resolution applicant may approach the concerned Department/ Authorities for such approval/ renewal, and Government Authorities may consider the request of the resolution applicant as per applicable provisions of law for effective implementation of the resolution plan.

25. Accordingly, IA 368 of 2023 is allowed within terms of the above directions and stands disposed of.
26. A certified copy of this order, if applied for, is to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

Abhishek Singh/LRA