

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT – 1

ITEM No. 301- IA(Plan)/4(AHM)2024 With
ITEM No. 302- IA/861(AHM)2023 in IA/884(AHM)2022
ITEM No. 303 - IA/224(AHM)2024 in CP(IB) 633 of 2018

**Order Under Section 30(6) r.w 31 IBC Reg. 39(4) of IBBI (CIRP) Regulations, 2016
r.w Rule 11 of NCLT Rules, 2016**

In the matter of IA(Plan)/4(AHM)2024 WITH

Chirag R. Shah RP of ARC Lamcraft Private Limited

.....Applicant

Order Under Section 60(5)(a) IBC r.w Rule 11 of NCLT Rules, 2016

In the matter of : IA/861(AHM)2023 in IA/884(AHM)2022

MP Resources

....Applicant

V/s

Chirag Shah RP For ARC Lamcraft Pvt Ltd & Ors

...Respondent

Order Under Section 12 IBC r.w Rule 11 of NCLT Rules, 2016

In the matter of : IA/224(AHM)2024

Chirag R. Shah RP of ARC Lamcraft Private Limited
Bhavesh Narumalani

....Applicant

Order delivered on: 05/04/2024

Coram:

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

Mr. Sameer Kakar, Hon'ble Member (T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

-SD-

**SAMEER KAKAR
MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

Rajeev/P.S

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I, AHMEDABAD**

**IA(Plan)/4(AHM)2024 with
IA/861(AHM)2023 in IA/884(AHM)2022
IA/224(AHM)2024 in
CP(IB) 633 of 2018**

In the matter of *ARC Lamicraft Private Limited*

IA(Plan)/4(AHM)2024

[An application under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India, Regulations, 2016 read with Rule 11 of the NCLT Rules, 2016]

CHIRAG RAJENDRAKUMAR SHAH,
RP of ARC Lamicraft Private Limited (in CIRP),
Having address at:
208, Ratnaraj Spring, Opp. HDFC Bank House,
Besides Navnirman Co-op Bank,
Navrangpura, Ahmedabad-380009.

... Applicant

IA/861(AHM)2023 in IA/884(AHM)2022

[Application under Section 60(5)(a) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016]

MP Resources
Having its address at:
B/164, Sakar-VII, Nr. Nehru Bridge Corner,
Ashram Road, Ahmedabad-380009.

....Applicant/Operational Creditor

VERSUS

1. CHIRAG R SHAH,
RP for ARC Lamicraft Pvt. Ltd.
Having address at:
208, Ratnaraj Spring,
Opp. HDFC Bank House,

Besides Navnirman Co-op Bank,
Navrangpura, Ahmedabad-380009

....Respondent No.1

2. **SOLE MEMBER OF COC,
Union Bank of India,**

....Respondent No.2

3. **SUN CHEMICALS**
Resolution Applicant,
Having address at:
Shop No.1, Nidhi Park,
Near Sadguru Cotton,
Rajpar Kanpur Road,
Rajpar, Rajkot-363641

....Respondent No.3

IA/224(AHM)2024

[Application filed under Section 12 of the IBC, 2016 r.w. Rule 11 of the NCLT Rules, 2016 seeking exclusion of period of CIRP process for period of 36 days]

CHIRAG RAJENDRAKUMAR SHAH,
RP of ARC Lamicraft Private Limited (in CIRP),
Having address at:
208, Ratnaraj Spring, Opp. HDFC Bank House,
Besides Navnirman Co-op Bank,
Navrangpura, Ahmedabad-380009

....Applicant

Order Pronounced on: 05.04.2024

Appearance:

For the Applicant : Mr. Pratik Thakkar, Advocate a. w. Mr. Chirag R.
Shah present in person (in IA(Plan)/4(AHM)2024)
: Mr. Ishan P Shah, Ld. Adv. (in IA/861(AHM)2023)

For the State Tax Dept: Mr. R.V. Jadeja

CORAM:

MR. SHAMMI KHAN, MEMBER (JUDICIAL)
MR. SAMEER KAKAR, MEMBER (TECHNICAL)

COMMON ORDER
[PER: BENCH]

1. **IA/4(AHM)2024** is filed under Sections 30(6) and 31 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) read with Regulation 39(4) of IBBI Regulations, 2016 and Rule 11 of the NCLT Rules, 2016 seeking the following prayers:-

- a. *That this Hon’ble Adjudicating Authority may be pleased to approve the Resolution Plan submitted by the successful RA ie. Sun Chemicals under Section 30(6) along with Section 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 read with Rule 11 of NCLT Rules, in the interest of justice;*
- b. *That this Hon’ble Adjudicating Authority may be pleased to pass any further necessary orders as the Hon’ble Adjudicating Authority deems fit in the interest of justice.*

2. **IA/861(AHM)2023 in IA/884(AHM)2022** is filed under Section 60(5)(a) of the IBC, 2016 r.w. Rule 11 of the NCLT Rules, 2016 seeking the following prayers:-

- a) *Your Lordship be pleased to allow the present application.*
- b) *Your Lordship be pleased to reject/dismiss the resolution plan dated 29.7.2022 by Sun Chemicals; as same is filed by the related party.*
- c) *Your Lordship be please to pass order in the light of Section 65 of the Code, 2016.*
- d) *Pass any other order to protect the interests of the Applicants as this Hon’ble Tribunal may deem fit in the facts and circumstances of the present case.*

3. **IA/224(AHM)2024** is filed under Section 12 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking the following prayers:-

- a. *That this Hon'ble Adjudicating Authority may be pleased to grant an exclusion of 40 days in CIRP process under Section 12 of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of NCLT Rules.*
- b. *That this Hon'ble Adjudicating Authority may be pleased to condone the delay in filing the present application.*
- c. *That this Hon'ble Tribunal may be please to pass any further necessary orders as the Hon'ble Tribunal deems fit in the interest of justice.*

Facts in IA(Plan)/4(AHM)2024

4. It is stated that: -

- I. The Corporate Debtor – ARC Lamicraft Private Limited admitted to the Corporate Insolvency Resolution Process (“CIRP”) in a company petition, bearing CP(IB) No. 186 of 2020 filed by Operational Creditor – MP Resources under Section 9 of the IBC, 2016 vide order of this Tribunal dated 03.06.2020 wherein Mr. Pinakin Shah was appointed as Interim Resolution Professional (“IRP”).
- II. The IRP made a public announcement on 05.06.2020 and invited claims from the creditors. Pursuant to the public announcement, the IRP received the claims from the creditors and pursuant to Section 21 of IBC, 2016 constituted the Committee of Creditors

(“CoC”) and filed the list of creditors. The final list of members of CoC with their respective voting shares are as under:-

<i>Sr. No.</i>	<i>Financial Creditors</i>	<i>Voting Shares</i>
1.	<i>Union Bank of India</i>	100%

- III. The first meeting of the CoC was held on 01.07.2020 wherein the CoC passed the resolution for the continuation of IRP as RP.
- IV. The CoC in its second meeting held on 29.07.2020 passed the resolution for the replacement of RP and to continue with Mr. Chirag Rajendrakumar Shah. Accordingly, this Tribunal vide its order dated 31.08.2020 passed in IA No. 451 of 2020 replaced the RP. In the said 2nd CoC meeting, the CoC further resolved the appointment of an auditor to identify transactions under Sections 43,45,50 and 66 of IBC, 2016.
- V. The 3rd CoC meeting was held on 18.09.2020 wherein the CoC resolved for publication of Form-G for inviting the Expression of Interest (“**EoI**”). Accordingly, Form-G was published on 21.09.2020 with the last date for submission of the resolution plan as 23.11.2020.
- VI. In the 4th CoC meeting held on 07.11.2020, the Applicant informed the CoC that he has received two EoIs from the Prospective Resolution Applicants (“PRAs”)

- VII. In the 5th CoC meeting held on 24-25.11.2020, the Applicant informed the CoC that the Applicant received Resolution Plans from two Resolution Applicants (“RA”), namely, (i) Atul Projects India Private Limited, and (ii) Sun Chemicals. Further, the CoC resolved to file an extension application under Section 12 of IBC, 2016. Accordingly, IA No. 876 of 2020 was filed seeking an extension of 90 days in the CIRP of the Corporate Debtor which was allowed vide order of this Tribunal dated 18.12.2020.
- VIII. The CoC in its 6th meeting held on 04.01.2021 discussed the Resolution Plans.
- IX. The CoC in its 7th meeting held on 11.01.2021 requested the Applicant to send an email to RA to revise the Resolution Plan.
- X. The 8th CoC meeting was held on 16.02.2021 wherein the Applicant informed that he received a revised resolution plan from one of the Resolution Applicants and CoC was to consider both plans after the Applicant verifies the eligibility of the RAs.
- XI. In the 9th CoC meeting held on 26.02.2021, the Applicant informed the CoC that IA No. 181 of 2021 has been filed under Sections 43,45,50 and 66 of IBC, 2016. The CoC resolved in the meeting to file a liquidation application in the absence of approval of Resolution Plan.

- XII. In the 10th CoC meeting held on 22.04.2021, the CoC discussed regarding liquidator's fee and liquidation costs etc.
- XIII. Thereafter, the Applicant filed IA No. 227 of 2021 seeking liquidation of the Corporate Debtor. However, after filing IA No. 227 of 2021, one RA submitted a revised Plan and the same was stated before this Tribunal on 15.11.2021 and this Tribunal granted three weeks' time to consider the Resolution Plan. The order dated 15.11.2021 records as under:-

“This application is filed by the RP for passing order of liquidation. However, representative of Financial Creditor appears and submits that he has received two plans which are under consideration. The period of 330 days has already expired but in view of the objects of IBC, 2016, giving reference to resolution above liquidation, three weeks' time is granted to consider the resolution plans...”

- XIV. Mr. Rajendra Ratilal Ashara – RA filed IA No. 323 of 2022 for direction to the CoC to consider his Resolution Plan. As per the direction of this Tribunal dated 30.05.2022 passed in IA No. 323 of 2022, the Applicant held the 12th CoC on 01.06.2022. The CoC after considering, rejected the Plan of the RA. Accordingly, this Tribunal vide its order dated 29.06.2022 disposed off the said IA as infructuous.
- XV. On the basis of the revised plan received from SRA, the CoC filed IA No. 704 of 2022 to consider such plan. However, this Tribunal

on 06.09.2022 disposed off the said IA directing the Applicant to hold a CoC meeting on the pending plan.

- XVI. Thereafter, the 13th CoC meeting was held on 19.09.2022 wherein the CoC approved the Revised Resolution Plan dated 29.07.2022 a.w. Addendum dated 03.09.2022 and 07.09.2022 submitted by Sun Chemicals.
- XVII. Thereafter, IA No. 227 of 2021 which was pending for liquidation had disposed off as withdrawn by vide order of this Tribunal dated 26.09.2022.
- XVIII. IA No. 884 of 2022 was filed seeking approval of the Resolution Plan. It is stated that the said plan was not compliant with the judgment of the Hon'ble Apex Court in the case of State Tax Officer Vs. Rainbow Papers Ltd., qua the dues of the State Tax Authorities. On account of the pendency of the review application the said approval application was kept pending and, thereafter, by an order dated 28.11.2023, this Tribunal directed the Applicant to conduct a CoC meeting within 15 days to decide the aforesaid issue.
- XIX. The Applicant had intimated the CoC and sent email on 04.12.2023, thereafter, reminders on 11.12.2023, 13.12.2023 and 15.12.2023 requesting for a tentative date for the meeting. The

CoC on 15.12.2023 replied that they need time as they are in negotiation with the Personal Guarantor of the Corporate Debtor.

- XX. The SRA also sent an addendum dated 19.12.2023 with the revised distribution in compliance with the judgment of the Hon'ble Apex Court in the case of State Tax Officer Vs. Rainbow Papers Ltd. Thereafter, the 14th meeting of CoC was held on 26.12.2023 and the Revised Resolution Plan dated 29.07.2022 a.w. addendum dated 03.09.2022, 07.09.2022 and 19.12.2023 was discussed and put for e-voting.
- XXI. On 20.01.2024, the CoC with 100% votes approved the Revised Resolution Plan dated 29.07.2022 a.w. addendum dated 03.09.2022, 07.09.2022 and 19.12.2023 on 20.01.2024. Copy of the E-voting results and minutes of the 14th meeting (after e-voting result⁰ of CoC is annexed as Annexure-Z/2.
- XXII. The Applicant has verified the requisite compliances. As per Regulation 39(4) of IBBI (CIRP) Regulations, 2016, the compliance certificate in Form-H is annexed as Annexure-Z/3.
- XXIII. The SRA has provided the security deposit for an amount of Rs.30 Lakh i.e., 7.89% of the Resolution Plan being Rs.380.33 Lakh.
- XXIV. The Applicant has provided an affidavit stating that he is eligible under Section 29A of the IBC, 2016 which is annexed as Annexure – Z/5.

XXV. The SRA (Sun Chemicals) has already deposited the Earnest Money Deposit (“EMD”) amount to Rs.30,00,000/- and the said amount was deposited into the bank account of the Corporate Debtor.

Facts of IA/861(AHM)2023 in IA/884(AHM)2022

5. It is stated that :-

- I. This application is filed by MP Resources – the Original Operational Creditor seeking rejection of the Resolution Plan dated 29.07.2022 submitted by Sun Chemicals as the same is filed by the related party.
- II. Sun Chemicals is a partnership company and Mr. Rajendra Ashara is the partner of the partnership firm. As per the balance sheet of the Corporate Debtor Company wherein it is specifically mentioned under the head of **“Unsecured-Loans & Advance from Related Parties, Shareholders & Directors and their Relatives”** that Mr. Rajendra Ashara had given loan facilities to the Corporate Debtor Company. The copy of the Annual Report along with the Audited Balance Sheet and Profit & Loss Account for the year ended 2015, 2016, 2018 and 2019 are annexed as Annexure-C.
- III. Through the balance sheet, it is clearly seen that Respondent No.3 (Sun Chemicals) had given loan facilities to the Corporate

Debtor Company and by misrepresentation, Respondent No.3 is trying to get the approval of the plan which is barred under law.

- IV. Further, the Corporate Debtor is not registered as MSME and, therefore, the related party cannot participate the resolution process.

Reply

6. The RP has filed a reply to the IA 861 of 2023 under inward Diary No.D3245 dated 28.08.2023 stating that:-

- I. The Corporate Debtor is a MSME unit registered as small enterprise and thus, by virtue of Section 240A clauses (c) and (h) of Section 29A will not be applicable to the Resolution Plan of the Corporate Debtor. A copy of MSME Certificate is annexed as Annexure-R-1.
- II. The partner of Sun Chemical Mr. Rajesh Ashara is not a related party as alleged in the application. In fact, Mr. Rajesh Ashara was an employee with the Corporate Debtor around 2013-2014 and, thereafter, he started his own business. Further, the Corporate Debtor had taken financial assistance from Rajesh Ashara which has been settled in the Financial Year 2019-20. A copy of the Audit Report for the F.Y. 2019-20 is annexed as Annexure-R-2.
- III. Mr. Rajesh Ashra was never in the management of the Corporate Debtor and was never related party to any of the Suspended

Management of the Corporate Debtor. Only in the books of the Corporate Debtor financial assistance by Rajesh Ashara was shown in the category of unsecured loan and advances from related parties, shareholders and directors and their relatives and the same entry will not make any reason relative if they are not related. The only relation which is found is that Mr. Rajesh Ashara was an employee at one point of time and, thus, he cannot be termed as a related party as defined under Section 5(24) of IBC, 2016.

Rejoinder

7. Rejoinder was filed under inward diary no. D1855 dated 01.03.2024 stating that:-

I. The Corporate Debtor was admitted to CIRP on 03.06.2020. However, the Corporate Debtor was classified as MSME after the date of admission. It appears from the record that no discussion pertaining to the same took place in the CoC meeting and, therefore, no approval of the same was granted by the CoC for the same purpose. Hence, the Corporate Debtor had wrongly been classified as an MSME Company.

II. Mr. Rajendra Ashara is the related party by virtue of Section 76(2)(ix) of the Companies Act, 2013 according to which a 'related party' is a key managerial personnel of the holding

company. According to the letter dated 28.06.2018 attached at page no. 256 in IA 861 of 2023, Mr. Rajendra Ashara has addressed himself as the Manager of the Corporate Debtor. As per the said letter dated, it is evident that Mr. Rajendra Ashra was working in the capacity of the Manager with the Corporate Debtor.

- III. It is further evident by Annexure-A at page no. 240 showing the public hearing held on 23.03.2011, participant no. 8 of the statement mentions Mr. Rajendra Ashara which further shows that he was associated with the Corporate Debtor since 2011. Hence, the Resolution Plan dated 29.07.2022 is required to be rejected.
- IV. The unsecured debt of Rs.14,50,000/- in various financial years procured by the Corporate Debtor from Mr. Rajendra Ashara in the years is categorically mentioned under the heading of **“Loans and Advances from Related Parties, Shareholders & Directors and their Relatives”**.

Facts of IA/224(AHM)2024

8. It is stated that:-

- I. In compliance of the order of this Tribunal dated 28.11.2023 wherein this Tribunal had directed the Applicant to conduct the

CoC meeting within 15 days from the date of the order, the Applicant informed the CoC through email on 04.12.2023.

II. The Applicant had given reminders to the CoC about the direction of this Tribunal through email on 11.12.2023 and, thereafter on 15.12.2023. The CoC replied that as negotiation is going with the Personal Guarantor they need some time to finalize the date of the CoC meeting.

III. In the between, the SRA had given an addendum dated 19.12.2023 and the same was kept for discussion in the 14th CoC meeting held on 26.12.2023 whereby the CoC discussed the direction given by this Tribunal and SRA had also submitted the Revised Resolution Plan in compliance with the Judgment of Hon'ble Apex Court in the matter of State Tax Officer Vs. Rainbow Papers Ltd.

IV. The Revised Resolution Plan was put for voting by the CoC and the CoC had voted on the Resolution Plan on 20.01.2024.

9. We have heard the various counsels in all IAs and perused the documents produced before us. We thought it fit to decide IA/861(AHM)2023 first.

10. The main objection raised by the Operational Creditor of the Corporate Debtor in IA/861(AHM)2023 in IA/884(AHM)2022 is that this Resolution Plan does not comply with Section 29A of the IBC, 2016 as

the MSME certificate was issued after the date of admission of the Corporate Debtor and Mr. Rajendra Ashara is a related party of the Corporate Debtor.

11. With regard to MSME, certification and issue of MSME certificate post initiation of the CIRP, we rely upon the judgment of the Hon'ble **Supreme Court** in the matter of **Hari Babu Thota** in Civil Appeal No. 4422 of 2023 decided on 29.11.2023 wherein under para 22 the Hon'ble Supreme Court has held that “ *the cut off date will be the date of submission of resolution plan*”. Relying upon the above, we are of the view that as on the date of submission of the Resolution Plan, the Corporate Debtor was already MSME and hence can take benefit of Section 240A. Moreover, Rajendra Ashara was not in the management of the company and was only an employee and his dues had been paid before the initiation of the CIRP. With the above observations, IA/861(AHM)2023 in IA/884(AHM)2022 is hereby **dismissed**.
12. Further, IA/224(AHM)2024 is field seeking exclusion of 40 days from CIRP Period and condonation of delay. In view of the object of principle of natural justice, and keeping in view the resolution over liquidation, we hereby grant the exclusion of 40 days and condone the delay. Accordingly, IA/224(AHM)2024 stands allowed and disposed off.
13. Now, we are taking up IA(Plan)/4(AHM)2024 seeking approval of the Plan.

14. In the Resolution Plan, the RA has proposed a Plan of Rs.380.33 Lakhs, Rs.15 Lakhs towards CIRP costs, Rs.363 Lakhs towards Secured Creditors (Secured Financial Creditors and Secured Operational Creditors) and Rs.1.83 Lakh towards Operational Creditors (Excluding Secured Creditors) and Rs.0.50 Lakh towards Contingent Liabilities (if any) that would be paid within 75 days from the effective date of implementation of the Resolution Plan.

15. Key Features of the Plan are stated to as under:-

I. Indicative timelines for implementation of the Resolution

Plan:-

<i>Step</i>	<i>Action</i>	<i>Timeline (in business days)</i>
<i>Step 1</i>	<i>Approval of the Resolution Plan by Adjudicating Authority</i>	<i>T</i>
<i>Step 2</i>	<i>Payment of CIRP costs</i>	<i>T+30 business days</i>
<i>Step 3</i>	<i>Capital reduction of equity share capital of the company</i>	<i>T+30 business days</i>
<i>Step 4</i>	<i>Infuse of funds by ways of equity or convertible securities or subordinate convertible loans or any other appropriate means</i>	<i>T+30 business days</i>
<i>Step 5</i>	<i>Upfront Payment to the Financial Creditors of the Company</i>	<i>T+30 business days</i>
<i>Step 6</i>	<i>Payment of Deferred Amount of Secured Financial Creditors</i>	<i>As per Payment Terms as set out in Para 3.3(a)</i>
<i>Step 7</i>	<i>Receipt of NOC/No Due Certificate upon payment of amount proposed in this plan.</i>	<i>T+75 Days+ 15 business days</i>

T means date of approval of the Resolution Plan by the NCLT. All Dates are tentative dates and are subject to change.

II. Capital Reduction

- a. *As provided earlier in this Resolution the Liquidation value of the Company is not sufficient to cover debt of the Financial Creditors of the Company in full. Therefore, the Liquidation Value of the Equity Shareholder is estimated to be Nil.*
- b. *It is proposed that the entire equity share capital of the company shall be fully cancelled and stand reduced to Zero.*
- c. *The Capital reduction shall be affected as part of this Resolution Plan itself, without having follow the process under Section 66 of the CA 2013 separately, and the order of the NCLT sanctioning this Resolution Plan shall be deemed to be an and order under Section 66 of the CA 2013 confirming the capital reduction. The Company will comply with any procedural requirement with respect to filing of requisite forms if required with the office of Registrar of Companies and providing necessary information to the stock exchange(s) where the equity shares of the Company are presently listed.*
- d. *The approval of this Resolution Plan by the NCLT shall be deemed to have waived all the procedural requirement in terms of Section 66 of CA 2013 and the NCLT (Procedure for Reduction of Share Capital) Rules 2016.*
- e. *The amount of reduction in the equity share capital of the Company shall be credited to Capital Reserves of the Company.*
- f. *For Avoidance of doubt, the approval of COC to the Resolution Plan shall be deemed to be the consent of the all the authorities from whom such approval is necessitated whether arising from agreement or applicable laws.*

III. Infusion of Fund by Applicant

- (i) *To enable the implementation of the Resolution Plan, Applicant may incorporate / use a Special Purpose Vehicle ("SPV"). The SPV shall be funded by way of equity infusion by Applicant or its Promoters/Relatives/ Associates/ Investors ("Subscribers") and debt raised at the SPV/ Applicant Level.*
- (ii) *Simultaneously, with the Capital Reduction, the Applicant will make necessary subscription for allotment of 6,00,000 (Six Lakh) equity shares of Rs. 10 each at par aggregating to Rs. 60,00,000*

(Rupees Sixty Lakhs only) in order to enable the Company to make necessary allotment of equity shares to the Subscribers.

(iii) It is clarified that the approval of NCLT shall constitute adequate approval for issuance and allotment of equity shares by the Company to the Subscribers in accordance with Section 42 and Section 62(1) (c) of CA 2013 and accordingly, no approval or consent shall be necessary under any Applicable Law for making such allotment other than from the Board of Directors of the Company constituted post approval of the Resolution Plan.

IV. Thereafter, an addendum dated 03.09.2022 to the Resolution Plan dated 29.07.2022 was filed by the said SRA. As per the said addendum the changed/modified Source of Funds is as under:-

<i>SN</i>	<i>Particulars</i>	<i>FY21</i>
<i>A</i>	<i>Source of Funds</i>	
<i>1</i>	<i>EMD with RP</i>	<i>0.30</i>
<i>2</i>	<i>Equity/Unsecured Loan from Applicant</i>	<i>6.00</i>
	<i>Sub Total</i>	<i>6.30</i>
<i>B</i>	<i>Uses of Funds</i>	
<i>1</i>	<i>Payment towards CIRP cost</i>	<i>0.15</i>
<i>2</i>	<i>Payment to Secured Creditors</i>	<i>3.60</i>
<i>3</i>	<i>Payment to Operational Creditors</i>	<i>0.05</i>
<i>7</i>	<i>Initial expenditure to start factory</i>	<i>0.50</i>
<i>8</i>	<i>Working Capital requirement</i>	<i>2.00</i>
	<i>Sub Total</i>	<i>6.30</i>

The Resolution Applicant proposed to infuse Rs.6.30 Crore inform of fresh equity of Rs. 0.60 Crore and Rs. 5.70 Crore as Unsecured Loan to meet the payment proposed to be made to various stakeholders and to meet initial expenditure to start operation and initial working capital requirement to run the unit as set out in the Business Plan annexed with the resolution plan in Annexure-3.

Details of Sources of Fund

The Resolution Applicant proposed to infuse Equity Capital of Rs. 0.60 Crore from the partners of the firm and their relatives.

It is also proposed infuse Rs. 5.70 Crore in form of unsecured Loan from partners of the firma and from their relatives.

V. Performance Security

*The Applicant undertake that in case the Resolution Applicant is selected as the Successful Resolution Applicant and it's Resolution Plan is approved under sub-section (4) of Section 30 of the code, **shall provide performance security deposit amounting to 5% of the Resolution Plan Value (Rs. 19 Lacs) by way demand draft/pay order/ bankers cheque/ bank guarantee drawn in favour of Designated Lender issued by any Bank, payable at par or in form of an unconditional FBG in favour of Union Bank of India within 2 (two) working days from the date of issue of Letter of Intent.***

VI. Accounting Treatment

“5.1 The principle to be followed for accounting treatment of the Corporate Debtor from Insolvency Commencement date to Plan approval date are as Follows:-

5.1.1 Upon approval of Resolution Plan by NCLT, the Resolution Applicant to be permitted to draw up the financial statement of the Corporate Debtor for a period starting from Insolvency Commencement Date and ending on the Plan approval Date in compliance with applicable accounting standard to not only determine the CIRP cost during the said CIRP period and to reflect the claims verified and the realizable fair value of the assets as may be determined by the board of directors of the Resolution Applicant.

5.1.2. For the above purpose Resolution Applicant shall be permitted to carry out necessary write off assets, creation of any additional liabilities or expenses or write back of liability or provision (as the case may be) in the books of account of the Corporate Debtor.

5.1.3. Pursuant to the order of the NCLT approving this Resolution Plan, any debit or credit being the balancing figures, arising as a result of giving effect to the Plan approval date actions, shall be adjusted by Corporate Debtor in the capital reserve account at its sole discretion and the same shall be deemed to be in compliance with the applicable accounting standards.”.

VII. Payment of CIRP Cost

4.1 (1) As per the IBC, the CIRP costs are to be paid in priority over payments to be made to any other creditors and the CIRP costs shall, among other things, include the costs, fees and charges

incurred by Resolution Professional, in running the operations of the company as a going concern.

(2) Applicant has estimated the CIRP cost to be Rs.15,00,000 (Rupees Fifteen Lakh Only) Any change in the CIRP cost (increase or decrease) would be proportionately adjusted against the payments to be made to Secured Financial Creditors so that overall financial obligation of the Resolution Applicant remains unchanged.

VIII. Feasibility and Viability

The plan is submitted by Resolution Applicant is with an objective to revive the Corporate Debtor and to maximize the value of assets. The Resolution Applicant is confident that the Corporate Debtor can be turn around and be a viable unit. The feasibility of revival and resolution of Corporate Debtor is on account of large experience of the Resolution Applicant in the line of business and having their presence in the laminate industry with sound track record. The applicant's projected revenue are as under:-

Particulars	FY-1	FY-2	FY-3	FY-4	FY-5
Revenue/Sales	9.00	10.80	11.88	13.07	14.37
Operating Profit	0.46	0.56	0.63	0.70	0.77
Profit Before Tax	0.22	0.32	0.39	0.46	0.53
Profit after Tax	0.15	0.23	0.27	0.32	0.37

IX. Capability of RA to implement the Resolution Plan:-

The Resolution Plan would be implemented under the personal supervision of the Resolution Applicant & the Monitoring Committee as provided in Section 3.7 & Section 4.8 of this Resolution Plan and a team of professionals who have expertise of running such business verticals and carrying out operations efficiently. With rich experience in the same line of activity and team of professionals having both financial and technical capabilities, the Resolution Applicant is confident of successfully turning-around the Corporate Debtor.

X. Proposal for Acquiring Management Control

“4.8.1. Upon approval of the Resolution Plan by the Adjudicating Authority and payment of the first instalment as envisaged under

this Resolution Plan, the Resolution Applicant shall be handed over the charge and operations of the Company and all assistance in this regard would be provided by the Resolution Professional and Committee of Creditors for the same.

4.8.2. The existing Board of Directors of the Company shall resign from the Board and co-operate with the Resolution Applicant in complying with the provisions of the Companies Act, 2013 with regards to filing of necessary forms with the office of Registrar of Companies. If the existing Board of Directors fail to submit their resignation, they shall be deemed to have ceased to be the Directors of the Company and Company would be entitled to file necessary forms with the office of ROC. If any technical issues arise for such filing the office of the Registrar of Companies shall provide necessary assistance to the Resolution Applicant for the change of Board including but not restricted to opening of special window to permit the incoming directors to complete the change in Director(s) as envisaged under the present Resolution Plan.

4.8.3 Simultaneously with the resignation / cessation of the existing Board the Resolution Applicant shall nominate such number of Directors (including independent Directors) as are necessary to comply with the provisions of the Companies Act, 2013.

XI. Supervision and Implementation of the Resolution Plan.

“..3.7 (b) Supervision of Plan: On or after approval of this Resolution Plan by NCLT and until the Plan Implementation Date, Monitoring Committee consists of One Representative from Consenting Secured Financial Creditor, One Representative of Resolution Applicant and Resolution Professional to be supervise the Implementation of Plan. All major business decisions impacting the interest of Secured Financial Creditors shall be made by said committee in consultation with Resolution Applicant only. Examples of major decision include but not limited to, sale of assets, assuming of non-trade liabilities etc.

Monitoring Committee shall decide about remuneration payable to the Resolution Professional, the frequency of reporting and meetings to have effective implementation and supervision of Resolution Plan. It is proposed that Applicant will bear the cost of Monitoring Committee..”.

16. With respect to avoidance transactions, it is stated that:-

If the Adjudicating Authority reverses or sets aside any avoidable transaction under Sections 43, 45, 47, 49, 50 or 66 of the Code, then such assets or proceeds from transaction shall be pass-through to the Secured Financial Creditor in the ratio of their claims admitted and accordingly are hereby assigned for the benefit of such Financial Creditors. Such proceeds shall be over and above the total amount proposed in this resolution plan by the Applicant.

17. Pursuant to the order of this Tribunal dated 28.11.2023 in the light of the order of Hon’ble Supreme Court’s decision in the matter of Rainbow Papers Ltd., the RP has filed an Addendum dated 19.12.2023 to the Resolution Plan dated 29.07.2022 vide inward Diary No. D1232 dated 14.02.2024 as under:-

<i>Proposed amended offer</i>			
<i>Payment proposed towards</i>	<i>Amount proposed to be paid (Rs. In lacs)</i>	<i>Terms of Payment</i>	
<i>CIRP Costs (Estimated)</i>	<i>15.00</i>	<i>Payable within 30 days of Approval of Resolution Plan by Adjudicating Authority</i>	
<i>Secured Creditors (Secured Financial Creditors and Secured Operational Creditors)</i>	<i>363.00#</i>	<i>The amount proposed to be paid shall be paid in a period of 75 Days with upfront payment of Rs.62.00 Lacs (Including EMD of Rs. 60 Lacs) within 30 days from approval of the plan by Adjudicating Authority</i>	

		and balance of Rs.300.00 Lacs to be paid within 75 days from approval of plan by Adjudicating Authority
Operational Creditors (Excluding Secured Creditors)	1.83*	Payable within 30 days of Approval of Resolution Plan by Adjudicating Authority
Contingent Liabilities if any	0.50	
Total	380.33	

Based on the information available with us we are given to understand that the admitted claim of Gujarat Commercial Tax Department is subject to change upon completion of Assessment proceeding. Accordingly, we propose that the Amount so proposed to secured creditors shall be distributed in a ratio of their admitted claim after adjustment if any on account of completion of Vat Assessment.

2. The applicant pleased to insert following clause in page no. 10 after clause 3.10:-

"3.11 The Resolution Applicant may change the portfolio of goods or services produced by the Corporate Debtor and change in technology used by the Corporate Debtor for revival of the Corporate Debtor in the best interest of society. [Regulation 34(h)]".

3. The Applicant proposed release of charge on factory land & building situated at Revenue Survey No. 148 paiki 2 of village Rajpar, Taluka: Morbi, District Morbi in Sub para (7) of Para 4.3 of Resolution Plan dated 29th July 2022. The Applicant pleased to revised said sub-para. The said sub-para shall read as under:-

"(7) The Applicant further propose that upon full and final payment of amount proposed to Secured Creditors as envisaged in this Resolution

Plan, the Secured Creditor shall release their charge on all the assets of Corporate Debtor.

It is also proposed that upon approval of the Resolution Plan by the Adjudicating Authority and payment of the upfront amount as envisaged under the Resolution Plan read with this addendum, the Resolution Applicant shall be handed over the possession and operations of the Company and all assistance in this regard would be provided by the Resolution Professional and Committee of Creditors for the same. It is also proposed that the encumbrance / charge on the assets of the Corporate Debtor of Secured Financial Creditors shall remain till the full and final payment of amount proposed to be paid to Secured Financial Creditors.

18. The RP has filed revised Form-H vide inward Diary No.D1695 dated 27.02.2024. As per Form-H:-

i. The list of Financial Creditors of the Corporate Debtor being members of the CoC and distribution of voting share among them is as under:-

<i>SL No.</i>	<i>Name of Creditor</i>	<i>Voting Share (%)</i>	<i>Voting for Resolution Plan (Voted for/Dissented/Abstained)</i>
<i>1.</i>	<i>Union Bank of India</i>	<i>100</i>	<i>Voted for</i>

ii. The position of claims is as under:-

(Amount in Rs. Lakhs)

Sr. No.	Description	Amount claimed	Amount admitted	Amount provided under the Plan	Amount provided to amount claimed (%)

1	Secured Financial Creditor1	616.41	616.41	246.45	37.88%
2	Unsecured Financial Creditor	-	-	-	-
3	Secured Operational Creditor	291.51	291.51	116.55	37.88%
	Unsecured Operational Creditors	611.41	601.63	1.83	0.30%
	Government	-	-	-	-
	Workmen/Em ployees (if any eligible under Section 53)	-	-	-	-
	Contingent Liability	-	-	0.50	-
4	Other Debts and Dues	NA	-	-	-
	Total	1519.33	1509.55	365.33	-

iii. The interests of existing shareholders have been altered by the Resolution Applicant as under:-

SL No.	Category of Shareholder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting share (%) held before the CIRP	Voting Share (%) held after the CIRP
1	Equity	10,80,000	NIL	100	NIL
2	Preference	NIL	NIL	NIL	NIL

iv. The Compliance of the Resolution Plan is as under:-

The compliance of the Resolution Plan is as under:

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Sr No.	Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
1.	Section 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?	Resolution Applicant meets the eligibility criteria as approved by the CoC and Resolution Applicant demonstrated in the Resolution Plan its capabilities having regard to the complexities and scale of business of CD since they are in the industry.	Yes
2.	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, the Resolution Applicant has given affidavit under Section- 29A showing that the resolution applicant is eligible to submit resolution plan. Statement for Compliance of Section 29A is provided in Point No. 9.3, Page no. 24 of Resolution Plan dated 29.07.2022.	Yes
3.	Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes, Resolution Applicant has submitted an affidavit that it is eligible to submit the Resolution Plan.	Yes
4.	Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?	Point No. 4.1 of the Resolution Plan dated 29.07.2022 Accordingly, as envisaged in the Addendum dated 19.12.2023 to the Resolution Plan dated 29.07.2022, Rs. 1.83 lakhs proposed to be paid to operational creditors. Proposed Amended Offer on Page No. 2 of the Addendum dated 19.12.2023 to the Resolution Plan dated 29.07.2022. N.A as no Financial Creditors have rejected the Resolution Plan. Point No. 3.6 of Resolution plan dated 29.07.2022. Point No. 3.7 of Resolution plan dated 29.07.2022. The Resolution Applicant has prepared Resolution Plan taking into consideration of compliance of all applicable laws.	Yes Yes N.A Yes Yes No
5.	Section	Whether the Resolution Plan	According to COC, the	Yes

		(b) has been approved by the CoC with 66% voting share?	It is approved by COC by 100% voting share of the total Financial Creditor and 100% of those voted for the Resolution Plan.	Yes
6.	Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Point No. 3.4 (c) on Page No. 8 of Resolution Plan along with Point No. 3.7 on Page No. 9 of Resolution Plan dated 29.07.2022.	Yes
7.	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. Application is being filed before the Hon'ble NCLT, Ahmedabad Bench.	Yes
8.	Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Yes. the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors. Please refer Point No. 3.1 of Resolution Plan dated 29.07.2022.	Yes
9.	Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Yes. the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders. Please refer Addendum dated 19.12.2023 to the Resolution Plan dated 29.07.2022.	Yes
10.	Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	The Resolution Applicant has confirmed that it by itself nor any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. Since the answer to the above is in negative this is not applicable.	No
11	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?	Point No. 3.6 of Resolution Plan dated 29.07.2022. Point No. 3.6 of Resolution Plan dated 29.07.2022. Point No. 3.7 of Resolution Plan dated 29.07.2022.	Yes Yes Yes
12	Regulation 38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default?	(a) The Resolution Plan provides in detail about the cause of default. Please refer to Point No. 3.4(a) of Resolution Plan dated	Yes

		(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?	(c) Point No. 3.4 (c) & 4.8 of Resolution Plan dated 29.07.2022. (d) Point No. 3.4(d) read with Annexure-2 of the Resolution Plan. (e) Point 3.4(e) read with 3.7 & 4.8 of the Resolution Plan.	Yes Yes Yes
13	Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes. RP has filed Interlocutory Applications under Section 43,45 & 66 of the Code before the Hon'ble Adjudicating Authority.	Yes
14	Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Security deposit of an amount of Rs. 30 lakh is provided by the Resolution applicant.	Yes

v. Details of Section 66 or avoidance applications filed/pending is are as under:-

<i>SL No.</i>	<i>Type of Transaction</i>	<i>Date of filing with Adjudicating Authority</i>	<i>Date of Order of the Adjudicating Authority</i>	<i>Brief of the Order</i>
1	<i>Preferential Transactions under Section 43</i>	23-02-2021	Awaiting Adjudication	
2	<i>Undervalued Transactions under Section 45</i>	23-02-2021	Awaiting Adjudication	
3	<i>Extortionate Credit transaction under Section 50</i>	23-02-2021	Awaiting Adjudication	
4	<i>Fraudulent Transactions under Section 66</i>	23-02-2021	Awaiting Adjudication	

19. The Applicant has filed a purshish under inward Diary No. D2772 and as per the said purshish the EMD amount is lying in the Fixed Deposit with the Union Bank of India and further stated that the application of avoidance transaction will be proceeded by the Financial Creditor.

20. Relief and Concession:

Sr. No.	Particulars	Concessions / Reliefs / Directions sought	Orders thereon
1	Exemption of taxes under Income Tax	The Central Board of Direct Taxes (CBDT) or any other relevant Government Authority to exempt the Resolution Applicant and the Company from the applicability of and payment of all Taxes under the Income Tax Act, 1961 (including Section 115.JB), including any liability under the Minimum Alternate Tax which may arise on account of the transactions envisaged under this Resolution Plan either on the Resolution Applicant. the Acquiring entity or the Company or any other Person who is likely to be impacted due to implementation of the Resolution Plan, The Adjudicating Authority shall pass the order to that effect.	RA to approach concerned Authorities who may pass orders keeping in view the object of IBC, 2016.
2	To allow future tax benefits deduction, exemption etc. to the Company	The CBDT and or any other Government Authority to allow the Company to enjoy and avail in future any tax benefits, deductions, exemptions as per the relevant provisions of the applicable law which the Company and /or ARC was entitled to as on the Plan Effective Date for the balance period as per the relevant provisions of the Applicable Law.	RA to approach concerned Authorities who may pass orders keeping in view the object of IBC, 2016.
3	Extension and renewal of expired /to be expired licenses and	All license and Government Approvals held by the Company, which expires prior to the Plan Effective Date or within a period	Granted in terms of Ghanashyam Mishra vs.

	government approvals	of six (6) months thereafter, shall be renewed/extended by the relevant Government Authorities, and the Company shall be permitted to continue to operate its business and assets in the manner operated prior to submission of this Resolution Plan until renewal/extension of such licenses and approvals. The relevant Government Authorities will provide a reasonable period of time after the Plan effective Date in order for the Resolution Applicant to assess the status of the licenses and Governmental Approvals required by the Company and to procure that the Company applies for the same.	Edelweiss ARC
4	Exemption from Stamp Revenue Department	The Collector of Stamps, Revenue Department, of any State Government and the Ministry of Corporate Affairs to exempt the Resolution Applicant and the Company, from the levy of Stamp Duty and fees applicable in relation to this Resolution Plan and its implementation, including any stamp duty and registration costs, as applicable.	RA to approach concerned Authorities who may pass orders keeping in view the object of IBC, 2016.
5	Approval from State Pollution Control Boards	The relevant State Pollution Control Boards to approve renewal of the Consents to operate obtained by the Company under the applicable provision of the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981.	RA to approach concerned Authorities who may pass orders keeping in view the object of IBC, 2016.
6	To waive all past Non-Compliances of the Company	All Government Entities to waive all past Non-Compliances of the Company under Applicable Laws, and the Company, Applicant shall not be liable for any Non-Compliances under Applicable Laws for the period prior to the Plan Effective Date	Granted in terms of Ghanashyam Mishra vs. Edelweiss ARC

7	Assignment of all fuel supply to the Company	All fuel supply agreement entered into by ARC, shall be assigned to the Company on approval of this Resolution Plan pursuant to operation of Law and without requiring any act or deed either on part of the Company and /or ARC.	RA to approach concerned Authorities who may pass orders keeping in view the object of IBC, 2016.
8	Extinguishment of rights of any person to call for the allotment, issue, sale or transfer of shares or loan capital of the Company	The right of any Person (whether exercisable now or in the future and whether contingent or not) to call for the allotment, issue, sale or transfer of shares or loan capital of the Company or the Applicant, whether on a change of control, or otherwise, shall stand unconditionally and irrevocably extinguished.	Granted in terms of Ghanashyam Mishra vs. Edelweiss ARC
9	Entitlement of review, modify or terminate contracts	The Company shall entitle to review, modify or terminate contracts (including contracts with parties that were related parties of the Company) prior to the Insolvency Commencement Date which impose onerous conditions hindering the restructuring for the Company.	Granted in terms of Ghanashyam Mishra vs. Edelweiss ARC
10	Exemption from all taxes under CGST Act, 2017	The relevant Government Authority to exempt the Resolution Applicant and the Company from the applicability of and payment of all Taxes under the Central Goods and Service Tax Act, 2017 which may arise on account of the transaction envisaged under this Resolution Plan either on the Resolution Applicant, the Acquiring Entity or the Company or any other Person who is likely to be impacted due to implementation of the Resolution Plan, and the Adjudicating Authority shall pass an order to that effect	RA to approach concerned Authorities who may pass orders keeping in view the object of IBC, 2016.
11	Approval of Capital reduction without compliance of Section 66(1) and	NCLT Approves the Capital Reduction as contemplated under this Resolution Plan of the equity share of the Company, without requiring compliance with	Granted in terms of Ghanashyam

	(2) of Co. Act, 2013	the provision of Section 66(1) and (2) of the Companies Act, 2013.	Mishra vs. Edelweiss ARC
12	Waiver from all Tax dues including interest and penalty on such litigations.	The CBDT to consider to provide relief to the Company from all direct tax litigation pending at different level and provide waiver from all Tax dues including interest and penalty on such litigations.	RA to approach concerned Authorities who may pass orders keeping in view the object of IBC, 2016.
13	Relief to the Company from all litigation pending at different levels and provide waiver from tax dues including interest and penalty on such litigation.	The Central Board of Excise and Customs / respective value-added Tax/ Entry Tax authorities / Director General of foreign trade to consider and providing relief to the Company from all litigation pending at different levels and provide waiver from tax dues including interest and penalty on such litigation.	RA to approach concerned Authorities who may pass orders keeping in view the object of IBC, 2016.
14	Relief from applicability of and payment of Taxes under Provisions of the Goods and Service Taxes	The Respective Government Authorities to consider providing relief from applicability of and payment of Taxes under Provisions of the Goods and Service Taxes which may arise as a result of implementation of the Resolution Plan either on the Resolution Applicant or the Company or SPV or any other Person who is likely to be impacted due to implementation of the Resolution Plan.	RA to approach concerned Authorities who may pass orders keeping in view the object of IBC, 2016.
15	Waive the Non-Compliances of the Company prior to the Plan Effective Date	All Government Authorities to waive the Non-Compliances of the Company prior to the Plan Effective Date, including but not limited to CA 2013, the Industrial Disputes Act, 1947, and the relevant shops and establishment acts and rules, circulars and regulations of each of the above legislations.	Granted in terms of Ghanashyam Mishra vs. Edelweiss ARC
16	To waive any Non-Compliances by the Company	The Ministry of Environmental, Forest and Climate Change, the Central Pollution Control Board,	RA to approach

	under Applicable Law pertaining to environmental and forests (including but not limited to the Environmental Protection Act, 1986	the Gujarat Pollution Control Board and all other Government Authorities concerned to waive any Non-Compliances by the Company under Applicable Law pertaining to environmental and forests (including but not limited to the Environmental Protection Act, 1986. Indian Forest Act, 1927, The Forest Act, 1980, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the rules made there under each of the aforesaid legislations)	concerned Authorities who may pass orders keeping in view the object of IBC, 2016.
17	To grant any relief, concessions or dispensation as may be required for implementation of the transactions contemplated under Resolution Plan	All Government Authorities to grant any relief, concessions or dispensation as may be required for implementation of the transactions contemplated under Resolution Plan in accordance with its terms and conditions	Granted in terms of Ghanashyam Mishra vs. Edelweiss ARC

21. The Implementation and Monitoring Committee shall supervise the implementation of the Resolution Plan with the help of the newly constituted board till the implementation of the proposed transaction under the Resolution Plan i.e., payment of the committed amount to the Secured Financial Creditors/Operational Creditors. The Committee shall include a total of 3 members comprising one representative from the consenting Secured Financial Creditor, one representative from the Resolution Applicant, and the Resolution Professional.

22. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

- 1) It is seen from Form – H that the Liquidation Value of the Corporate Debtor is arrived at 2.34 Crore and the corresponding Fair Value is arrived at Rs.3.76 Crore. The Resolution Plan is for an amount of Rs.380.33 Lakh.
- 2) Further, it is seen from Form – H that presently application under Sections 43, 45, 50 and 66 of IBC, 2016 is pending on the file of this Tribunal.
- 3) In so far as the approval of the Resolution Plan is concerned, this Authority is convinced on the decision of the Committee of Creditors, following the Judgment of Hon’ble Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank (2019) 12 SCC 150**, wherein in para 19 and 62 it is held as follows;

“19..... In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).

62.In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the “commercial/business decision” of the financial creditors taken

collectively or for that matter their individual opinion, as the case may be, on this count.”

- 4) Further the Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors.** (2019) 12 SCC 150 has lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as follows;

“55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B

Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters “other than” enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.”

(emphasis supplied)

- 5) The Supreme Court in its recent decision in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors.**, in *Civil Appeal no. 3395 of 2020* dated 24.03.2021 has held as follows;

“..76. The expositions aforesaid make it clear that the decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial creditors. Differently put, in regard to the insolvency resolution, the decision as to whether a particular resolution plan is to be accepted or not is ultimately in the hands of the Committee of Creditors; and even in such a decision making process, a resolution plan cannot be taken as approved if the same is not approved by votes of at least 66% of the voting share of financial creditors. Thus, broadly put, a resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.

77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2)

of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.

77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board

77.6.1. The assessment about maximisation of the value of assets, in the scheme of the Code, would always be subjective in nature and the question, as to whether a particular resolution plan and its propositions are leading to maximisation of value of assets or not, would be the matter of enquiry and assessment of the Committee of Creditors alone. When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority; and there is no valid reason in law to question the decision so taken by the Committee of Creditors, the adjudicatory process, whether by the Adjudicating Authority or the Appellate Authority, cannot enter into any quantitative analysis to adjudge as to whether the prescription of the resolution plan results in maximisation of the value of assets or not. The generalised submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

78. To put in a nutshell, 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 read with the parameters delineated by this Court in the decisions above referred. The jurisdiction of the Appellate Authority is also circumscribed by the limited grounds of appeal provided in Section 61 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 the CoC. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposted by this Court.

- 6) Thus, from the catena of judgments rendered by the Supreme Court on the scope of approval of the Resolution Plan, it is amply made clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors.
- 7) On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 100% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 8) As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under Section 31(4) of the Code.

- 9) The Resolution Plan in question is hereby **approved** by this Adjudicating Authority, subject to the observations made in this order. The Resolution Plan shall form part of this Order. The Resolution Plan is binding on the Corporate Debtor and other stakeholders.
- 10) The Resolution Applicant is directed to make payment of the entire Resolution Plan amount within the time period stipulated under the Resolution Plan, failing which the entire amount paid by the Resolution Applicant (*including the Performance Bank Guarantee*) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.
- 11) Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
- 12) Liberty is hereby granted for moving any application if required in connection with the implementation of this Resolution Plan.
- 13) A copy of this Order is to be submitted to the concerned Office of the Registrar of Companies.
- 14) Accordingly, IA/4(AHM)2024 stands allowed and **disposed off**.
- 15) The Monitoring Committee is directed to file a status report after 180 days from the approval of the Resolution Plan.

- 16) The **Registry** is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps. Files be consigned to the record.

**-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)**

**-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)**

Rajeev/P.S