



**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-II**

**IA Nos. 2717/MB/2024, 2908/MB/2024 & (Plan) No.12/2024**  
**IN CP (IB) No.1738/2017**

*[Under Sections 60 (5), 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 & Rule 11 of the NCLT Rules, 2016]*

**IA No. 2717/MB/2024**

**Axis Bank Limited** )  
7<sup>th</sup> Floor, Axis House, )  
C-2 Wadia International Centre, Pandurang )  
Budhkar Marg, Worli, Mumbai – 400025. ) **...Applicant**

**VS.**

1. **Mr. Ajit Kumar** )  
Resolution Professional of )  
M/s. Omkar Specialty Chemicals Ltd. )  
1A, Sanskrit Apartment )  
GH – 22, Sector 56, Gurgaon, )  
Haryana – 122011. ) **...Respondent No. 1**
2. **M/s. Kshitij Polyline Limited** )  
Successful Resolution Applicant )  
8, Sona Udyog, Parsi Panchayat Road )  
Andheri East, Mumbai – 400069. ) **...Respondent No. 2**

**IA 2908/MB/2024**

**NKGSB Co-operative Bank Ltd.** )  
361, V.P. Road, Girgaum, )  
Grant Road (East), Mumbai – 400004. ) **...Applicant**

**VS.**

1. **Mr. Ajit Kumar** )  
Resolution Professional of )  
M/s. Omkar Specialty Chemicals Ltd. )  
 ) **...Respondent No. 1**
2. **Bank of Baroda Ltd.** )  
Through its Authorized Representative )  
Zonal Stressed Asset Recovery Branch, )  
Meher Chamber, Ground Floor, )  
Ballard Estate, Mumbai – 400001. ) **...Respondent No. 2**
3. **Axis Bank Limited** )  
 ) **...Respondent No. 3**
4. **M/s. Kshitij Polyline Limited** )  
Successful Resolution Applicant )  
 ) **...Respondent No. 4**



**IA (Plan) No. 12/MB/2024**

**Mr. Ajit Kumar** )  
Resolution Professional of )  
M/s. Omkar Specialty Chemicals Ltd. )  
 ) **...Applicant**

**IN THE MATTER OF**

**CP (IB) No. 1738/MB/2017**

**M/s. Ela Enterprise**  
14A, Karmyog Myureshwar CHS  
Near Police Station, Shivagi Chowk  
Kulgaon Badlapur East Thane  
Maharashtra 421503 **...Operational Creditor**

**Vs.**

**Omkar Speciality Chemicals Limited** **...Corporate Debtor**  
B-34, MIDC, Badlapur (East)  
Thane, Maharashtra – 421503

**CORAM:**

**HON'BLE SHRI ASHISH KALIA, MEMBER (JUDICIAL)**

**HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)**

**Appearances: Hybrid**

**For Applicant in IA 12/2024** : Adv. Shyam Kapadia

**For Applicant in IA 2908/2024** : Adv. Sagar Wagale

**For Applicant in IA 2717/2024** : Adv. Nausher Kohli

**For Respondent No.2 in**

**IA 2717/2024** : Adv. Viraj Parikh

**For Respondent No.1/RP IN**

**IA 2717/2024, IA 2908/2024** : Adv. Shyam Kapadia

**Pronounced on: 00.07.2025**

**ORDER*****[PER: Coram]*****1. BACKGROUND**

- 1.1 Omkar Speciality Chemicals Limited (hereinafter referred to as “the Corporate Debtor”) is a company incorporated under the Companies Act, 1956 on 24.02.2005. The Corporate Debtor has been engaged in the business of manufacture of speciality chemicals with manufacturing units in MIDC, Badlapur and Lote Parshuram Industrial Area, Chiplun, Maharashtra.
- 1.2 M/s. Ela Enterprises (hereinafter referred to as “the Operational Creditor”) filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) to initiate the Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of the Corporate Debtor. The Corporate Debtor was admitted into CIRP *vide* order of this Tribunal dated 05.12.2022 and Mr. Arun Ramchandra Gaikwad was appointed as the Interim Resolution Professional (“IRP”) of the Corporate Debtor.
- 1.3 Pursuant to the initiation of CIRP, the IRP made a public announcement in Form A on 22.12.2022, inviting claims from all the creditors of the Corporate Debtor. Consequently, the IRP received and collated the claims and constituted the Committee of Creditors (hereinafter referred to as “the CoC”). The finalized list of members of the CoC with their respective voting shares as on the date of filing the Plan application is as under : -

Sr. No.	Financial Creditors	Admitted Claims	Voting Share
1.	Bank of Baroda Ltd.	290,05,81,881.00	82.96%
2.	Axis Bank Ltd.	17,60,54,359.00	5.04%
3.	NKGSB Co-operative Bank Ltd.	41,98,42,132.94	12.00%
<b>Total</b>		<b>349,64,78,372.94</b>	<b>100%</b>



- 1.4 In the 2<sup>nd</sup> CoC Meeting held on 06.02.2023, the IRP was replaced by Mr. Ajit Kumar as the Resolution Professional (hereinafter referred to as “the RP”) of the Corporate Debtor. In the 3<sup>rd</sup> CoC Meeting held on 17.04.2023, the RP apprised the CoC that the public announcement dated 15.02.2023 in Form-G was published without the CoC’s approval of the Evaluation Matrix and Request For Resolution Plan (“RFRP”), on account of which the Expression of Interest (“Eol”) received pursuant to the Form-G published on 15.02.2023 would have to be rejected. The Earnest Money Deposit (“EMD”) received from the earlier participants shall be refunded. After the CoC’s approval, the RP submitted the Information Memorandum of the Corporate Debtor on 24.04.2023 and re-published the Form-G for a fresh public announcement on 27.04.2023 wherein the last date for receipt of Eols was 13.05.2023.
- 1.5 The RP received 12 Eols and as per Regulation 36A(10) of the CIRP Regulations, the RP published a provisional list of Prospective Resolution Applicants (hereinafter referred to as “PRAs”) on 23.05.2023 which consisted of 10 PRAs. After addressing the objections as per Regulation 36A(11) of the CIRP Regulations, 2 more PRAs were added to the list of PRAs. As per Regulation 36B(1) of the CIRP Regulations, the Information Memorandum, RFRP and Evaluation Matrix were issued to the PRAs and the last date for the submission of resolution plans was set for 27.06.2023 which was further extended until 12.07.2023. The RP received the Resolution Plans from following resolution applicants on 12.07.2023: (i) Delicare Lifesciences Pvt. Ltd.; (ii) Kshitij Polyline Ltd.; (iii) Vyapak Enterprises and (iv) Siddharth Carbochem Products Ltd.



- 1.6 After taking due approval from the CoC, the RP appointed the firm PRT & Associates to submit a due diligence report on all the resolution applicants with regard to their eligibility as per Section 29A of the Code. The due diligence report was submitted on 14.09.2023.
- 1.7 In the 7<sup>th</sup> CoC Meeting held on 18.09.2023, all the eligible resolution plans were placed before the CoC and discussed in detail. Since the CoC was not satisfied with the commercial offers, they requested the resolution applicants to improve the resolution plans in terms of value.
- 1.8 Kantikars Advisory LLP appointed by the CoC on 25.08.2023 to trace the immovable properties of the Corporate Debtor submitted a report on 25.09.2023, identifying certain assets of the Corporate Debtor which were not disclosed by the Suspended Board of Directors. Consequently, the RP updated the Information Memorandum of the Corporate Debtor on 20.10.2023 and included the newly identified assets of the Corporate Debtor. While the RP received 3 revised resolution plans on 25.10.2023, one resolution applicant withdrew from the resolution process vide email dated 30.10.2023.
- 1.9 In the 8<sup>th</sup> CoC Meeting held on 03.11.2023, the revised resolution plans were taken up for discussion. Although the three resolution applicants expressed their willingness to proceed with the challenge mechanism, the CoC was unwilling to proceed with the same owing to the significant disparity between the proposed resolution amounts payable under the resolution plans submitted by the Highest Bidder 1 (HB1) and Highest Bidder 2 (HB2). Post meeting, the RP received an email from Bank of Baroda, wherein it was requested that the voting on resolution



plan may be deferred since the distribution among the secured lenders was not decided. Resultantly, the voting on the resolution plans was deferred.

- 1.10 In the 9<sup>th</sup> CoC Meeting held on 13.12.2023, the CoC with 83% of majority resolved that the proceeds of the resolution plan shall be distributed in proportion to the value of the security interest vested with the respective CoC Member. Meanwhile, the RP apprised the CoC that a claim had been received from the Income Tax Department in Form B for an amount of Rs.75,61,04,475/- and the same had been verified and categorized as per Regulation 13(1B) of CIRP Regulations. Consequently, the Information Memorandum was updated on 20.12.2023 to include this claim. Based on the legal opinion and the approval of the CoC, the resolution applicants were allowed to submit their revised resolution plans latest by 27.12.2023.
- 1.11 In the 10<sup>th</sup> CoC Meeting held on 30.12.2023, Kshitij Polyline Limited expressed a commitment to furnish an addendum to its resolution plan by the end of the day. Accordingly, the CoC decided to put all three resolution plans along with their addendums for voting.
- 1.12 The voting on resolution plans resumed on 09.02.2024 and concluded on 16.02.2024. The CoC with 83% majority approved the resolution plan dated 27.12.2023 along with its addendum dated 30.12.2023 submitted by the resolution applicant, Kshitij Polyline Limited (hereinafter referred to as "Successful Resolution Applicant/SRA").
- 1.13 Mr. Ajit Kumar, RP of the Corporate Debtor filed the Plan IA No.12/2024 seeking approval of this Tribunal for the Resolution Plan submitted by the Successful



Resolution Applicant i.e., M/s. Kshitij Polyline Limited as per the provisions of Section 30(5) of the Code.

- 1.14 Meanwhile, Axis Bank Limited and NKSGB Co-operative Bank Ltd. (both members of the CoC) filed IA No.2717/2024 and I.A. No.2908/2024 respectively objecting to the manner of distribution of resolution plan amount and the repeated modifications to the Resolution Plan made by the Successful Resolution Applicant. Both the objection IAs are being dealt with in detail in the forthcoming paragraphs.

**I.A. No. 2717/2024**

**2. AVERMENTS MADE BY THE APPLICANT**

- 2.1 This IA has been filed by Axis Bank Limited (hereinafter referred to as the “Applicant”) as per the provisions laid down under Section 60(5) of the Code read with Rule 11 the NCLT Rules objecting to the Resolution Plan and praying that the Plan may be returned to the CoC for reconsideration by treating the Applicant herein as a Secured Financial Creditor of the Corporate Debtor and thereby distributing the Resolution Plan amount based on the voting share held by the respective Financial Creditors/members of the CoC.
- 2.2 The sequence of events from the filing of application under Section 9 of the Code to the submission of Resolution Plan presented by the SRA for approval of this Tribunal has been narrated in paras 1.2 to 1.13 above. This IA is primarily concerned with two issues, namely, re-classification of the Applicant from secured Financial Creditor to Unsecured Financial Creditor and the consequent distribution of proposed Resolution Plan amount based on the security interest held by the



individual creditors rather than the voting share of the respective Financial Creditors.

- 2.3 The Applicant has drawn attention to the “proposed payments to creditors” as per Annexure-B of the Plan (Page 67 of the Plan) which brings out the distribution of the Resolution Plan amount to the Financial Creditors, prior to the Addendum, as under :-

<b><i>Name of the Creditor</i></b>	<b><i>Amount Claimed (Rs.)</i></b>	<b><i>Amount of Claim Admitted (Rs.)</i></b>	<b><i>Payments proposed (Rs.)</i></b>
<i>Bank of Baroda, Fort Branch</i>	<i>290,05,81,881.00</i>	<i>290,05,81,881.00</i>	<i>18,07,64,000</i>
<i>Axis Bank Ltd.</i>	<i>17,60,54,359.00</i>	<i>17,60,54,359.00</i>	<i>1,09,72,000</i>
<i>NKGSB Co-operative Bank Ltd.</i>	<i>41,98,42,132.94</i>	<i>41,98,42,132.94</i>	<i>2,61,64,000</i>

- 2.4 In the 10<sup>th</sup> CoC Meeting held on 30.12.2023, the revised resolution plans were discussed in detail among the CoC members. Kshitij Polyline Limited, one of the PRAs expressed their commitment to furnish an addendum to its Resolution Plan by the end of the same day. Kshitij Polyline Limited submitted its addendum dated 30.12.2023 to the Plan. The Addendum to the Plan set aside the above distribution pattern and set out that the distribution of the Resolution Plan amount would be decided by the CoC by considering key factors like aggregate amount of admitted claims, the distinct characteristics of the loans provided and the security interests held by individual creditors. The aforementioned portion of the Addendum discriminates between the same class of creditors i.e. Secured Financial Creditors which is contrary to the settled law.





- 2.5 As per the Addendum, the Applicant herein and NKGSB Bank were treated as Unsecured Financial Creditors and the distribution pattern of the proposed settlement amount was revised in the following manner:-

<b><i>Name of the Creditor</i></b>	<b><i>Amount Claimed (Rs.)</i></b>	<b><i>Amount of Claim Admitted (Rs.)</i></b>	<b><i>Payments proposed (Rs.)</i></b>
<i>Bank of Baroda Ltd.</i>	<i>290,05,81,881.00</i>	<i>290,05,81,881.00</i>	<i>21,19,41,000</i>
<i>Axis Bank Ltd.</i>	<i>17,60,54,359</i>	<i>17,60,54,359</i>	<i>17,61,000</i>
<i>NKGSB Co-operative Bank Ltd.</i>	<i>41,98,42,133</i>	<i>41,98,42,133</i>	<i>41,98,000</i>

The reason why Bank of Baroda received comparatively a large share of the proceeds was that it held first charge on the majority of assets of the Corporate Debtor.

- 2.6 The voting on the Resolution Plans commenced on 09.02.2024 and concluded on 16.02.2024. The CoC with 82.96% majority approved the Plan and its Addendum submitted by Kshitij Polyline Limited, wherein Bank of Baroda holding voting share of 82.96% voted in favour of the Resolution Plan and the Addendum thereto. However, the Applicant holding 5.04% voting share and NKGSB Bank with a 14% share voted against the Plan and the Addendum since the distribution pattern of proceeds outlined in the Plan unfairly prejudiced their rights and the admitted claims.

- 2.7 The Applicant has placed on record the following facts to demonstrate its position as a Secured Financial Creditor: -

- a. In 2015, the Corporate Debtor sought financial support from the Applicant in terms of approval and disbursement of a Vendor Financing



Facility/Purchase Invoice Discounting Facility with the understanding that the Corporate Debtor would inform identified customers/dealers about their arrangement with the Applicant. On the basis of the requests of the Corporate Debtor, the Applicant agreed to extend following credit facilities to the Corporate Debtor as outlined in the Sanction Letter dated 13.11.2015:-

Sr. No.	Nature of Facilities	Limit (Rs. Crores)
1.	Vendor Financing Facility/Purchase Invoice Discounting Facility	25
2.	Sales Invoice Discounting Facility of Domestic Receivables	15

- b. The Corporate Debtor approached the Applicant on 20.11.2015 seeking certain modification in the terms of the Sanction Letter dated 13.11.2015 which was allowed vide letter dated 07.12.2015. In lieu of the credit facilities being granted, sanctioned and disbursed to the Corporate Debtor, multiple facility and security documents were executed in favour of the Applicant such as Demand Promissory Notes, D.P.Note Delivery Cum Waiver Letter, Factoring Agreement dated 15.12.2015, Management and Collection Agreement, Invoice Financing Agreement, two Undertakings dated 15.12.2015, Deed of Guarantee dated 15.12.2015 executed by its two Directors and Deed of Hypothecation of current assets (stock and book debts) dated 15.12.2015.
- c. Under the Deed of Hypothecation dated 15.12.2015, the Applicant created a security on the current assets of the Corporate Debtor on *pari*



*passu* basis. The charge was registered by the Applicant on the Ministry of Corporate Affairs (MCA) portal.

- 2.8 The reclassification of the Applicant's claim from secured to unsecured financial creditor, without any justification, violates Section 53 of the Code which lays down payment priority during liquidation. The Applicant's claim as 'secured financial creditor' was admitted by the IRP and RP and, therefore, its treatment as an 'unsecured' creditor is neither supported by evidence nor legal reasoning. The Applicant submits that the provision which treats the Applicant as an 'unsecured' creditor is contrary to the provisions of the Code. It is also submitted that the Plan fails to offer any explanation for such change indicating significant irregularity in the Plan since it defeats the rights of the Applicant as a 'secured creditor'
- 2.9 As per the Addendum, the distribution of the settlement amount would be decided by the CoC which granted Bank of Baroda holding majority voting share of 82.96% the ability to unilaterally determine the distribution amount. The Plan read with the Addendum does not secure the interest of the similarly situated financial creditors. The commercial wisdom of the CoC was replaced with the brute majority exercised by Bank of Baroda having 82.96% voting share to seek a revision of the Plan in the form of an Addendum giving the CoC the power to decide the distribution pattern of the settlement amount with the sole objective of appropriating the majority proceeds of the Plan to itself. The Plan along with the Addendum and the ongoing CIRP of the Corporate Debtor does not align with the objects of the Code.
- 2.10 In its Written Submissions, the Applicant has made further averments. It is stated that the Applicant's claim of Rs.17,60,54,359/- was duly admitted by the Resolution Professional as a Secured Financial Creditor. The secured status of



the Applicant was affirmed and accepted by this Tribunal vide its order dated 08.10.2024 passed in I.A. No.3 of 2024 filed by Bank of Baroda seeking classification of the Applicant and NKGSB Bank as unsecured financial creditors.

2.11 In the 8<sup>th</sup> CoC Meeting held on 03.11.2023, Bank of Baroda deferred voting on the revised plans, citing ambiguity in the distribution of proceeds among financial creditors. Subsequently, Bank of Baroda, via email requested the RP to include an agenda item in the 9<sup>th</sup> CoC Meeting to determine whether distribution should be based on security interest or voting share. This agenda was introduced by the Bank of Baroda with a mala fide intent.

2.12 In the 9<sup>th</sup> CoC Meeting held on 13.12.2023, Bank of Baroda approved a resolution to distribute proceeds based on 'security interest' despite the Applicant and NKGSB Bank voting in favour of a voting share-based distribution.

2.13 On 27.12.2023, Respondent No. 2 submitted a revised Resolution Plan based on the updated Information Memorandum dated 20.12.2023 pursuant to the admission of new claims. The revised Resolution Plan proposed equitable treatment with all three financial creditors i.e., Bank of Baroda, Axis Bank and NKGSB Bank, receiving a recovery of 6.23% of their admitted claims.

2.14 On 30.12.2023, the Successful Resolution Applicant submitted an Addendum to the Resolution Plan, leaving the distribution of the resolution proceeds among the secured financial creditors to the discretion of the CoC. The Addendum did not provide any calculation or specific amount that would be received by the secured financial creditors, if distribution was done based on security interest. For ease of reference, the calculation of the amount to be distributed to each of the three



creditors based on security interest has been reproduced in tabular form as under:-

Name of Creditor	Admitted Claim (Rs.)	Payments proposed (Rs.)	% of Recovery
Bank of Baroda	2,90,05,81,881/-	21,52,63,410/- (98.79%)	7.42%
Axis Bank	17,60,54,359/-	8,71,600/- (0.40%)	0.50%
NKGSB Bank	41,98,42,133/-	17,64,990/- (0.81%)	0.42%
<b>Total</b>	<b>3,49,64,78,373/-</b>	<b>21,79,00,000/-</b>	<b>8.34%</b>

2.15 Despite dissent from the Applicant and NKGSB Bank, the CoC, dominated by Bank of Baroda, approved the revised Resolution Plan and the Addendum between 09.02.2024 and 16.02.2024. The above tabular data presents a scenario where one secured financial creditor receives 93.03% of the total proceeds and 98.79% of the proceeds proposed for secured financial creditors while being the only CoC member approving the resolution plan which is not a reflection of fair commercial wisdom, but is, in fact, a blatant abuse of power.

2.16 The distribution mechanism adopted under the revised Resolution Plan and its Addendum violate the fundamental principles of fairness and equitable treatment of similarly situated creditors under the Code. The Hon'ble Supreme Court in **India Resurgence ARC Pvt. Ltd. Vs. Amit Metaliks Ltd.** [(2021) 19 SCC 672] has unequivocally held that similarly situated creditors must receive fair and equitable treatment and that the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment. In the present case, the Applicant and Bank of Baroda, both are secured financial creditors. The disproportionate allocation of 98.79% of the proceeds to Bank of Baroda while



relegating the Applicant and NKGSB Bank to negligible shares contravenes the principle of equitable treatment to similarly situated creditors.

- 2.17 The Applicant relies on the judgment of Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors. [(2020) 8 SCC 53]*** wherein it was emphasized that the CoC must ensure that the Resolution Plan balances the interests of all the stakeholders. Reliance is also placed on the judgment of Hon'ble NCLAT in ***Bank of Maharashtra VS. Videocon Industries Ltd. [2022 SCC OnLine NCLAT 6]*** wherein it was held that the CoC may reconsider its decision, if fairness is compromised and the Resolution Plan may be remitted for reconsideration. The Applicant submits that Bank of Baroda's actions, including manipulating the CoC's voting process and attempting to reclassify the Applicant as an unsecured creditor, reflect a blatant disregard for this mandate and the skewed distribution under the Addendum warrants such reconsideration by the CoC to ensure compliance with the objectives of the Code.

3. **AFFIDAVIT-IN-REPLY BY RP/ RESPONDENT No.1**

- 3.1 In the 4<sup>th</sup> CoC Meeting held on 05.06.2023, the RP informed the CoC that the Applicant was categorized as a secured creditor on the basis of its charge registered with Ministry of Corporate Affairs website, but the RP did not receive any NOC granted by Bank of Baroda in favour of the Applicant to mortgage/create charge on the properties/assets of the Corporate Debtor which were already mortgaged to Bank of Baroda. The RP and CoC sought legal opinion on the status of claim of the Applicant. As per the legal opinion received on 11.08.2023, the decision of the RP was affirmed in classifying the Applicant as 'Secured Creditor'. It was opined that the RP shall follow Regulation 21 of the Liquidation Process



Regulations while ascertaining the existence of security interest held by the Creditor and that the RP had no adjudicatory powers to determine the validity of creation of charge.

- 3.2 Bank of Baroda, holding 82.96% share in CoC, being aggrieved by the legal opinion filed an I.A. No.3 of 2024 to reclassify the claim of Applicant as unsecured creditor on account of its failure to obtain NOC. However, the status of the Applicant as a Secured Financial Creditor was upheld vide order of this Tribunal dated 08.10.2024 passed in I.A. No.3 of 2024.
- 3.3 In the 7<sup>th</sup> CoC Meeting held on 18.09.2023, all the eligible resolution plans were presented before the CoC in detail. Since the CoC was not satisfied with the commercial offers, they requested the resolution applicants to improve the resolution plans in terms of value. The Revised Resolution Plans received from the PRAs were then taken up for discussion in the 8<sup>th</sup> CoC Meeting held on 03.11.2023. Post-meeting, Bank of Baroda addressed an email wherein it was requested that voting on Resolution Plans shall be deferred, since the distribution among the secured lenders was yet to be decided. Consequently, the voting on the Resolution Plans was deferred.
- 3.4 In the 9<sup>th</sup> CoC Meeting held on 13.12.2023, the CoC with 82.96% of majority resolved that the proceeds of the Resolution Plan shall be distributed in proportion to the value of the security interest vested with the respective members of the CoC.
- 3.5 In the 10<sup>th</sup> CoC Meeting held on 30.12.2023, the revised Resolution Plans were discussed in detail. The CoC requested Kshitij Polyline Limited to provide an Addendum to the Resolution Plan regarding allocation of proceeds among



secured financial creditors. An Addendum dated 30.12.2023 was received by the CoC on the same day. All the Resolution Plans were put to vote and the voting concluded on 16.02.2024. The CoC approved with 83% majority the Resolution Plan dated 27.12.2023 along with its Addendum dated 30.12.2023 submitted by Kshitij Polyline Limited which emerged as the Successful Resolution Applicant/SRA.

- 3.6 The Applicant consciously chose to dissent to the approval of the Resolution Plan. Irrespective of whether the distribution is valid or not, if the Applicant being dissenting creditor is being paid more than liquidation of its security in terms of Section 30(2) of the Code read with Regulation 38 of CIRP Regulations, then the Applicant cannot maintain any grievance. As per the distribution pattern approved by the CoC, if the amount proposed under the Resolution Plan is distributed to the Applicant in proportion to value of its security, the Applicant is likely to get higher than the Liquidation Value of its security. In ***India Resurgence ARC Pvt. Ltd. Vs. Amit Metalliks Ltd., [(2021) SCC OnLine SC 409]***, the Hon'ble Supreme Court clarified that a dissenting financial creditor is entitled only to liquidation value and once this statutory minimum is met, it cannot have a legal grievance. The Applicant in the present case having been paid more than the liquidation value of its security interest, has no legitimate basis to assail the CoC-approved distribution mechanism. The RP/Respondent No.1 has cited a few more judicial precedents in support of its contentions both in the affidavit-in-reply and its written submissions.
- 3.7 As per Section 30(4) of the Code (post-amendment of 2019), the CoC is empowered to approve a resolution plan after considering the feasibility, viability





and manner of distribution, taking into account the priority and the value of security interests. The ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the CoC, as held by the Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta [(2019) SCC OnLine SC 1478]***. The Coc enjoys full freedom to pay secured creditors amounts based upon the value of their security. Once the CoC exercises its commercial wisdom in accordance with law, the same cannot be interfered with. NCLT is not endowed with the jurisdiction to analyse or evaluate the commercial decision of the CoC which is made non-justiceable, as held in ***K. Sashidhar Vs. Indian Overseas Bank [(2019) 12 SCC 150]***. Fair and equitable treatment does not mean equal payment to all. The CoC may approve differential treatment based on the value and nature of the security.

- 3.8 The distribution mechanism was approved in the 9<sup>th</sup> CoC Meeting held on 13.12.2023 with a majority of 82.96%. However, the Applicant failed to challenge the decision of the CoC at the relevant time. Therefore, any belated challenge to the Resolution Plan which merely adopts the distribution mechanism approved by the CoC is unsustainable.
- 3.9 The Code does not provide any distinction between a single-member and multi-member CoC. Regardless of the composition of CoC, the Code places the CoC in control of the insolvency resolution process. As regards approval of resolution plan, the Code provides for 66% vote share and once this threshold is met, the decision of the CoC, irrespective of whether it is a single-member or multi-member, becomes sacrosanct and binding on all stakeholders. Hence, the



dominant position of Bank of Baroda in the CoC does not invalidate its commercial decisions.

- 3.10 It is submitted that the Applicant had raised allegations concerning the actions of Bank of Baroda without impleading it as a party. This renders the Application fatally defective for mis-joinder of necessary parties.

4. **AFFIDAVIT-IN-REPLY BY RESPONDENT No.2/KSHITIJ POLYLINE LTD.**

- 4.1 Ms. Vineeta Jain, Director of Kshitij Polyline Ltd./SRA, duly authorised to file Reply on behalf of Respondent No.2 through Board Resolution dated 18.12.2024, has made the following submissions: -

- 4.2 Details of the security interest held by each CoC Member was provided to the SRA in the Information Memorandum. Bank of Baroda had an exclusive first charge over a sizeable chunk of the assets of the Corporate Debtor against its term loan, whereas the Applicant, Axis Bank had *pari-passu* charge over the stock-in-trade and pledge over certain shares held by the Corporate Debtor.

- 4.3 In the 9<sup>th</sup> CoC Meeting held on 13.12.2023, the item '*Approval of method of disbursement of funds in case resolution plan is approved.*' was put to vote before the CoC on whether the disbursement should be according to the liquidation value of security interest held by respective member of the CoC or according to vote share towards which the CoC voted with 82.96% share.

- 4.4 Pursuant to admission of new claims, the Information Memorandum was revised on 20.12.2023. Thereafter, the Resolution Applicants were informed to revise their resolution plans. Respondent No.2 submitted a revised resolution plan dated 27.12.2023 in which Section VII of the Plan dealt with treatment of secured financial creditors. Annexure B at Page No.67 of the Resolution Plan provided the



distribution amongst the secured financial creditors on the basis of the quantum of their admitted claims.

- 4.5 In the 10<sup>th</sup> CoC Meeting held on 30.12.2023, the CoC insisted upon certain changes and granted time to incorporate the changes to which the SRA adhered and submitted an Addendum to the Resolution Plan. As per the Addendum to the Plan, the distribution of the proposed settlement amount among Secured Financial Creditors shall be determined by the CoC. This assessment will consider key factors including the aggregate amount of admitted claims, the distinct characteristics of the loans provided and the security interest held by individual creditors.
- 4.6 In the 9<sup>th</sup> CoC Meeting held on 13.12.2023, 82.96% of the CoC voted in favour of the distribution between secured financial creditors in accordance with liquidation value of security interest. This distribution of proceeds amongst secured financial creditors was not challenged by the Applicant at the relevant time.
- 4.7 The Applicant being a dissenting financial creditor did not vote in favour of the Resolution Plan. It is a settled law that the only ground on which a dissenting financial creditor can challenge the Resolution Plan is that it is not receiving its entitlement as per Section 30(2) of the Code, which is not the case of the Applicant.
- 4.8 It is a settled law that no creditor can object to the approval of the Resolution Plan on the ground that it deserves more value although there is no legal grievance in that regard. The issue of whether value provided for in a resolution plan is sufficient and the manner in which it ought to be distributed fall exclusively and squarely in the domain of the commercial wisdom of the CoC.



- 4.9 Lastly, it is submitted that the SRA and the Resolution Plan do not take sides in the *inter se* disputes between members of the CoC. The Resolution Plan provides for both eventualities whether the Applicant is categorized as a secured financial creditor or as an unsecured financial creditor.

5. **ANALYSIS AND FINDINGS**

- 5.1 We have gone through the pleadings and records and heard the Ld. Counsel appearing on behalf of the parties at length. By way of this IA 2717/2024, the Applicant has challenged the Resolution Plan dated 27.12.2023 along with its Addendum dated 30.12.2023 presented by the Successful Resolution Applicant i.e., M/s. Kshitij Polyline Limited. The Applicant has prayed that the Plan should be returned to the CoC for reconsideration of status of the Applicant as a 'secured financial creditor' and for ordering the distribution of the settlement amount to the Applicant based on the voting share rather than the security interest held by it. The main issues raised in the present case are whether the Applicant is to be treated as a secured financial creditor under the Code and whether the manner of distribution under the Resolution Plan approved by the CoC by requisite majority under Section 30(4) of the Code can be interfered with at the behest of the applicant who is one of the dissatisfied/dissenting Creditors.

- 5.2 As per Section 3(30) of the Code, a 'secured creditor' means a creditor in favour of whom security interest is created. As per Section 3 (31) of the Code, "security interest" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing



payment or performance of any obligation of any person, provided that security interest shall not include a performance guarantee.

- 5.3 It is observed from the record that the security interest was created by the Corporate Debtor primarily in favour of the Bank of Baroda who was having 82.96% voting share on the basis of the security interest so created. It is an undisputed fact that Bank of Baroda held the first charge on the majority of Corporate Debtor's assets. Such charge was duly registered on the MCA portal. However, it is pertinent to note that the other two dissatisfied creditors viz. the Applicant and the NKGSB Co-operative Bank Limited have also got created security interest in their favour subsequently but without obtaining consent of the Bank of Baroda. The charge of the Applicant Bank in this IA cannot be considered at par with that of the Bank of Baroda, which holds a secured charge over a large chunk of assets of the Corporate Debtor. The charge created in favour of the Applicant herein cannot be regarded as being *pari-passu* in rank i.e., entitling it to an equal share in the distribution of the sale proceeds from the secured assets.
- 5.4 Knowing fully well that the first charge over the securities or assets of the Corporate Debtor was already registered in favour of the Bank of Baroda, the Applicant Bank has taken risk while extending the credit facilities to the Corporate Debtor. This was a conscious commercial decision on the part of the Applicant Bank. Therefore, it cannot now claim to be at par with the Bank of Baroda, which had extended credit facilities against unencumbered securities without taking any risk. This is a settled position of law that two unequals cannot be treated as equals before a court of law. The Applicant does not fall within the class of secured



creditors. So its claim to be treated at par with the Bank of Baroda has no legal standing.

5.5 A plain reading of the judgment of Hon'ble Apex Court in **Amit Metalliks** (*supra*), as relied upon by the Applicant, clearly establishes that there must be "*fairness of distribution among similarly situated creditors*." The emphasis is laid on "*similarly situated creditors*". As discussed above, the Applicant Bank is not in the category of similarly situated creditor vis-a-vis Bank of Baroda for want of unencumbered security interest. As it does not hold any unencumbered security interest in its favour, it cannot be regarded as holding a *pari passu* charge in comparison to the Bank of Baroda, which holds an unencumbered charge over the assets. The Applicant thus belongs to a distinct category and, therefore, cannot be treated as part of the same class of Secured Creditors as Bank of Baroda.

5.6 Further, it is observed from the record that the Applicant, being member of the Committee of Creditors, has not given its consent to the Resolution Plan. In other words, the Applicant has been a dissenting creditor and, accordingly, it is only entitled to the liquidation value of its security interest in terms of Section 30(2) of the Code. A dissenting creditor cannot seek a higher amount to be paid to it than what is prescribed under the Code. The law is now settled that a dissenting Financial Creditor is entitled only to liquidation value and once this statutory minimum is met, it cannot have a legitimate grievance. It is also well settled that fair and equitable treatment does not mean equal payment to all and that the CoC may approve differential treatment based on the value and nature of the security. Similarly, it has been held that if an "equity for all" approach recognizing the rights of different classes of creditors as part of an insolvency resolution process is



adopted, secured financial creditors will, in many cases, be incentivised to vote for liquidation rather than resolution, as they would have better rights if the corporate debtor was to be liquidated rather than a resolution plan being approved. This would defeat the entire objective of the Code which is to first ensure that resolution of distressed assets takes place and only if the same is not possible should liquidation follow **[K. Sashidhar (supra)]**.

5.7 It is now firmly established that commercial wisdom of CoC cannot be the subject matter of judicial review, unless similarly situated creditors are denied fair and equitable treatment. Full freedom and discretion have been given to the Committee of Creditors to so classify creditors and to pay secured creditors amounts which can be based upon the **value of their security**, which they would otherwise be able to realise outside the process of the Code, thereby stymying the corporate resolution process itself **[CoC of Essar Steel India Ltd. (supra)]**.

5.8 In view of the above discussion and after considering the contentions, perusing the pleadings and submissions and appreciating the applicable legal position, we are of the opinion that the present Interlocutory Application No.2717 of 2024 filed by the Applicant lacks merit. Section 30(4) of the Code explicitly permits CoC to consider both the “priority” and the “value of security interest” when approving a resolution plan. Therefore, the decision of the CoC in the present case to allocate the Plan proceeds proportionately to the value of security interest is consistent with the Code and judicial precedents and the said decision of the CoC being in accordance with the provision of Section 30(4) of the Code cannot be interfered with by this Adjudicating Authority. Accordingly, the objection raised by the Applicant /dissatisfied financial creditor is not legally sustainable and, hence, the



same stands rejected. Hence, **IA 2717/2024 filed by the Applicant/Axis Bank Limited is dismissed.**

**I.A. No.2908/2024**

6. **AVERMENTS OF THE APPLICANT**

- 6.1 This I.A. No.2908/2024 has been filed by NKGSB Co-operative Bank Ltd. (hereinafter referred to as the “Applicant”), as per the provisions laid down under Section 60(5) of the Code read with Rule 11 of the NCLT Rules, 2016 praying for a declaration that in terms of Regulation 39(1A)(a) of the CIRP Regulations, the SRA/Respondent No.4 could not have modified the Resolution Plan and for cancelling or annulling the modifications so made to the proposed Resolution Plan.
- 6.2 The Applicant is a multi-state co-operative society registered under the provisions of the Multi-State Co-operative Societies Act, 2002 and the Reserve Bank of India for providing banking services to its customers.
- 6.3 The Corporate Debtor i.e., Omkar Speciality Chemicals Limited earlier banking with Citi Bank, approached the Applicant in the year 2017, to take over the Cash Credit Facilities from Citi Bank. The Applicant vide Sanction Letter dated 03.05.2017 agreed to takeover Cash Credit Facilities from Citi Bank and sanctioned a Cash Credit facility of Rs.25,00,00,000/- (Rupees Twenty-Five Crore Only) to the Corporate Debtor for the purpose of Working Capital. The said facilities were secured by way of hypothecation of stock and Book Debts; registered mortgage of Non–Agricultural land bearing Survey No.9, Hissa No.2 at Kharwai owned by Mr. Pravin Herlekar and Mrs. Anjali Herlekar; pledge of Fixed Deposit of Rs.300.00 Lacs and Personal Guarantees of Mr. Pravin Shivdas Herlekar, Mrs. Anjali Pravin Herlekar and Mr. Rishikesh Pravin Herlekar.





6.4 Pursuant to the initiation of CIRP against the Corporate Debtor and admission of the Applicant's claim as a 'secured financial creditor', Form-G was published and Expressions of Interest were invited. Upon publication of Form-G, Resolution Plans were received among others from Respondent Nos.4 viz. Kshitij Polyline Limited. Pursuant to submission of the proposed resolution plan submitted by the Respondent No.4, it was permitted to be modified on several occasions which was completely contrary to mandate of the Code.

6.5 The repeated modifications not only resulted in delay in conducting the CIRP and the revision of the offers made under the proposed resolution plan but also had the effect of prejudicing the Applicant. A brief chronology of events pertaining to the proposed Resolution Plan submitted by Respondent No.4 is furnished as under: -

(a) In terms of Form G published by the RP, the Prospective Resolution Applicants/PRA's were required to submit their Expression of Interest/ EoI on or before 13.05.2023. Subsequently, along with other PRA's, Respondent No.4 submitted its proposed Resolution Plan. The Resolution Plans were formally unsealed and opened by the respective resolution applicants in the 5<sup>th</sup> CoC Meeting held on 18.07.2023.

(b) During the 7<sup>th</sup> CoC Meeting held on 18.09.2023, the members were of the view that the existing commercial offer under the Resolution Plans were not satisfactory, requiring improvement. The PRA's were instructed to come up with the maximum value that they could offer as per their respective Resolution Plans. Pursuant to the CoC's directive, the Resolution Plan was allowed to be modified once. Respondent No.4



submitted its Resolution Plan in terms of the directives of the CoC titled “Binding Resolution Plan” dated 25.10.2023.

(c) The Information Memorandum was revised and updated on several occasions. Pursuant to a clarification received from Bank of Baroda (hereinafter referred to as “Respondent No.2”) and a member of CoC with regard to property at C-43, Lote-Parshuram Industrial Estate at Village Awashi, Taluka Khed District Ratnagiri; the Information Memorandum was further updated to exclude the said property which promoted a second round of revision in the Resolution Plans and proposed Resolution Plans including the plan submitted by Respondent No.4 again on 25.10.2023 on the basis of the revised and updated Information Memorandum although the RFRP did not postulate any modifications to the RFRP. At this stage, the CoC questioned the permissibility of modifications/revisions to the Resolution Plan in view of the mandate contained in the Code. On the basis of the concerns raised by the CoC, RP sought legal opinion regarding the permissibility of PRAs to modify the resolution plan more than once. The legal opinion placed before the 9<sup>th</sup> CoC Meeting was that resolution applicants could be allowed to revise their plans after approval of CoC.

(d) The Applicant did not approve the resolution permitting the proposed resolution applicants to modify their respective resolution plans beyond the mandate of the Code since, the RFRP did not postulate such



modification. On 27.12.2023, Respondent No.4 furnished a further modified plan along with an Addendum to incorporate the outcome of the deliberations held during the course of the 9<sup>th</sup> CoC Meeting wherein the agenda relating to manner of distribution of proceeds under the Resolution Plan was put to vote. The Resolution Plan was modified pursuant to the framed Agenda item.

- 6.6 The RFRP did not permit modifications to the Resolution Plan and in view thereof, Respondent No.4 could not have been permitted to amend and/or modify the Resolution Plan in any event. The Applicant submitted that amongst other things, Regulation 39(1A) (a) of the CIRP expressly forbids modification of the Resolution Plan more than once. Modification of Resolution Plan (even once) is subject to the RFRP permitting modifications to the Resolution Plan in the first place which in the present case, it did not. In such an eventuality, the correct course of action would have been to publish a fresh Form G which course of action was never adopted by the RP. The above-mentioned provision was brought in force to ensure that the CIRP of the Corporate Debtor is not delayed. In the present case, Respondent No.4 was permitted to modify the Resolution Plan on several occasions leading to delay in the CIRP and causing grave prejudice to the Applicant.
- 6.7 If the intent of Respondent No.4 was to provide a better offer under the Resolution Plan by modifying the Resolution Plan, Respondent No.4 should have utilized the challenge mechanism under Regulation 39(1A)(b) to which a recourse was admittedly never made.
- 6.8 The Applicant is aggrieved by the factum and nature of modification of the Resolution Plan and the delay in CIRP. The Applicants were permitted to modify



the Resolution Plan based on the updated IM, the modifications had the effect of prejudicing the Applicant as a beneficiary under the proposed Resolution Plan. The Resolution Plan first received by the Applicant was prepared based on the Applicant being a Secured Financial Creditor and was entitled to receive monies as thereunder. The agenda relating to the manner of distribution of proceeds was placed for CoC for their approval at the 8<sup>th</sup> CoC Meeting, but the said agenda was deferred.

- 6.9 As on the date of receipt of the Resolution Plan, no claims of unsecured financial creditors had been submitted. Therefore, the Resolution Plan could not have made a provision for unsecured financial creditors. However, in the 4<sup>th</sup> modification of the Resolution Plan, a contingent provision for unsecured financial creditors was made. In this event, the Applicant was reclassified as an Unsecured Financial Creditor even after having proved the existence of security interest in its favour. It is pertinent to note that as on the date of this Application, IA No.03 of 2024 in CP(IB) No.1738/MB/2017 in relation to the aforesaid issues was pending consideration of this Bench.

## **7 AFFIDAVIT-IN-REPLY BY RP/ RESPONDENT No.1**

- 7.1 At the 4<sup>th</sup> CoC Meeting held on 05.06.2023, the Resolution Professional informed the CoC members that the Applicant was categorized as Secured Financial Creditor based on their charges registered with MCA. Since the Resolution Professional did not receive any NOC granted by Bank of Baroda/Respondent No.2 in favour of the Applicant to mortgage/create charge on the properties/assets of the Corporate Debtor which were already mortgaged to Respondent No.2, the



RP and the CoC decided to seek legal opinion on the status of claim of the Applicant.

- 7.2 As per the legal opinion, the Applicant continued to be classified as a Secured Creditor. Since Respondent No.2 was aggrieved by this classification, it filed I.A. No.3 of 2024 seeking reclassification of Applicant on account of failure to obtain NOC from Respondent No.2. Meanwhile, the RP published Form G on 27.04.2023 for the receipt of Expression of Interest (Eols) on or before 13.05.2023. The RP received 12 Eols in response to the Form G which eventually culminated into submission of 4 Resolution Plans being submitted by Prospective Resolution Applicants/PRAs.
- 7.3 After the eligible resolution plans were presented before the CoC in the 7<sup>th</sup> Meeting held on 18.09.2023, the CoC was not satisfied with the commercial offers. They requested the resolution applicants to improve the resolution plans in terms of value. The revised Resolution Plans were taken up for discussion in the 8<sup>th</sup> CoC Meeting held on 03.11.2023. Post meeting, Respondent No.2 requested the CoC to defer the voting on resolution plans and, consequently, the voting on the resolution plans was deferred.
- 7.4 A clarification was received from Respondent No.2 that Parshuram Industrial Estate at Village Awashi, Taluka Khed, District Ratnagiri, Maharashtra which was earlier included in the Information Memorandum as a contingent asset may not be a property of Corporate Debtor. The need arose to update the Information Memorandum and exclude the said property from the said Information Memorandum. Further, a claim of Income Tax Department was also



recommended by the CoC to be included in the list of creditors. The RP sought a legal opinion as to whether resolution applicants were allowed to revise their resolution plans on account of changes made in the Information Memorandum. Based on the legal opinion received by the RP and the approval of the CoC in 9<sup>th</sup> CoC Meeting dated 13.12.2023, the Resolution Applicants were allowed to revise their resolution plans and accordingly submit their revised plans.

- 7.5 In the 10<sup>th</sup> CoC Meeting, the CoC required the Successful Resolution Applicant to provide an Addendum to the resolution plan regarding allocation of proceeds among secured financial creditors. The Addendum was received on the same day and all the Resolution Plans were put to vote. The voting on Resolution Plans concluded on 16.02.2024 and the CoC with 83% majority approved the Resolution Plan dated 27.12.2023 along with its Addendum dated 30.12.2023 submitted by Respondent No.4/Successful Resolution Applicant/SRA i.e., Kshitij Polyline Limited.
- 7.6 Consequently, the present application was filed by the Applicant being aggrieved by the CoC and the RP allowing the Resolution Applicants to make changes in the Resolution Plan. Bank of Baroda filed IA No.3 of 2024 before this Tribunal seeking reclassification of the Applicant and Axis Bank's claims as unsecured creditors. The Tribunal vide order dated 08.10.2024 upheld the classification of the said claims as secured financial debts.
- 7.7 The modifications in the Resolution Plans were carried out on request and with the approval of the CoC. The need for modifications in the Resolution Plans were necessitated at the instance of the CoC and on account of changes made in the



Information Memorandum. It has been held under various judicial pronouncements that Regulation 39(1A) does not create any fetter on the powers of the CoC to discuss, deliberate and take further steps of negotiations with the Resolution Applicants and allow modifications in the Resolution Plans more than once. The said Regulation cannot overpower the commercial wisdom of the CoC and stipulations contained in RFRP which allow modifications in the Resolution Plans.

7.8 As per the legal opinion, Regulation 39(1A) of CIRP Regulation does not create an embargo to revise the resolution plan more than once, if the CoC requires it to be done so. This legal opinion was placed before the CoC in its 9<sup>th</sup> Meeting dated 13.12.2023 pursuant to which the CoC approved the modification in the Resolution Plan.

7.9 The CoC in the 9<sup>th</sup> CoC Meeting held on 13.12.2023 discussed the manner of distribution of proceeds of the Resolution Plan, wherein 83% of majority resolved that the proceeds of the Resolution Plan shall be in proportion to the value of the security interest vested with the respective member of the CoC.

8. **ANALYSIS AND FINDINGS IN IA No.2908/2024**

8.1 We have perused the pleadings and the documents on record and heard the Ld. Counsel for the parties. The sole issue for consideration in this IA is whether in view of Regulation 39(1A)(a) of the CIRP Regulations, the SRA/Respondent No.4 could have been permitted to modify the proposed Resolution Plan on occasions more than once. In this regard, we find that the contention of the Applicant that Regulation 39(1A)(a) of the CIRP Regulations prohibits modification of the resolution plan more than once is misplaced and contrary to the established legal



position. The Hon'ble NCLAT in ***Jindal Stainless Ltd. Vs. Mrs. Shailendra Ajmera, RP of Mittal Corp Ltd. & Ors.*** [Company Appeal (AT) (Ins) No. 1058 of 2022] has held that the Committee of Creditors retains the power to negotiate and allow multiple modifications to the resolution plans as part of its commercial wisdom. Further, in ***Vistra ITCL (India) Ltd. Vs. Torrent Investments Pvt. Ltd. & Ors*** [Company Appeal (AT) (Ins) Nos.132,133 & 134 of 2023], the Hon'ble NCLAT has clarified that Regulation 39(1A)(a) does not prohibit the Committee of Creditors from negotiating with resolution applicants or asking resolution applicants to further increase the Plan value. It is also pertinent to note that in its recent judgment in ***Sagar Stone Industries Vs. Sajjan Kumar Dokania and Ors.*** [CA (AT)(Ins) Nos.524 and 525 of 2025], the Hon'ble NCLAT has categorically held that Regulation 39(1A) does not bind the CoC which has unfettered right to ask for revision of plan or negotiate with all resolution applicants once or more. It is further held that the provision for holding challenge mechanism is an enabling mechanism for the CoC for value maximisation and not holding the challenge mechanism cannot be a ground on which approval of plan can be questioned.

- 8.2 In the present case, it is noticed that the CoC permitted two modifications and an addendum to the Resolution Plan, each justified and duly approved by majority vote. The first modification (18.09.2023, 7<sup>th</sup> CoC Meeting) was prompted by the CoC's dissatisfaction with the commercial value offered and was done to increase the financial offer. Clause 9.5 of the RFRP, while stating that a resolution plan is ordinarily irrevocable, expressly permits modification if allowed by the RP/CoC or in response to clarifications. Thus, it does not impose an absolute bar on modification of proposed resolution plans. In any case, the proposal to allow





multiple modifications was duly voted on and approved by the CoC. It is noticed from the record that the second revision was necessitated by material changes in the Information Memorandum, specifically, the removal of a non-owned asset, inclusion of a new Income Tax claim and distribution of Resolution Plan proceeds in proportion to value of the security interest vested with respective members of CoC and that such revision was allowed pursuant to legal advice and formal approval in the 9<sup>th</sup> CoC Meeting (13.12.2023). Further, the CoC in its 10<sup>th</sup> meeting directed the SRA to provide an addendum regarding manner of allocation of proceeds among Secured Financial Creditors.

- 8.3 Thus, we find that these modifications were not unauthorized but arose from genuine procedural and commercial necessities and were well within the ambit of Regulation 39(1A)(b) and binding CoC authority. It is also noticed from the record that when the revised resolution plans were discussed in the 8<sup>th</sup> CoC meeting held on 03.11.2023, the three resolution applicants had conveyed their willingness to proceed with the challenge mechanism. However, the CoC in its wisdom decided not to proceed with the same due to the vast difference between the proposed resolution amounts payable under the resolution plans furnished by the top two highest bidders. Further, it is found that all modifications to the Resolution Plan were carried out prior to the final approval of the Plan. Accordingly, we are of the considered view that the prayer of the Applicant to annul the modifications in the Resolution Plan allowed by the CoC on occasions more than once in terms of Regulation 39(1A)(a) of the CIRP Regulations is legally untenable and deserves only to be rejected.



- 8.4 In view of above discussions and the settled legal position on the issue, we find that IA 2908/2024 filed by NKGSB Co-operative Bank Limited is devoid of merit and the same is accordingly **dismissed**.

**9. IA (Plan) No. 12/MB/2024**

- 9.1 This Interlocutory Application (I.A.) (I.B.C) (Plan) No.12/2024 has been filed by Mr. Ajit Kumar, (hereinafter referred to as “the Applicant/Resolution Professional”), on behalf of the Committee of Creditors (hereinafter referred to as the “CoC”) of Omkar Speciality Chemicals Limited (hereinafter referred to as the “Corporate Debtor”), seeking approval of the Resolution Plan as per the provisions laid down under Section 30 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the “CIRP Regulations”) and Rule 11 of the NCLT Rules, 2016.
- 9.2 The Resolution Plan, submitted by Kshitij Polyline Limited, the Successful Resolution Applicant (hereinafter referred to as the “SRA”), was duly approved by the CoC with 83% voting share.
- 9.3 **BRIEF BACKGROUND OF CORPORATE DEBTOR :-** The Corporate Debtor was originally incorporated as a proprietorship concern under the name M/s. Omkar Chemicals in the year 1983. On 24.02.2005, it changed to a Private Ltd. Company known as “Omkar Specialty Chemicals Private Limited”. With its continuous growth, the company established itself as a Public Limited Company on 18.03.2010 with the name "Omkar Specialty Chemicals Limited". The company



has its registered address at Mahalsa Narayani, Ganesh Chowk Manjarli, Badlapur (W), Thane, Maharashtra - 421503.

9.4 The Company is mainly engaged in the manufacture and sale of Specialty Chemicals and intermediates for Chemical and Allied Industries, more specifically, Specialty Chemicals and Pharma Intermediates. It is associated with leading organizations in India and abroad and has expanded the existing product range and develop its new molecules as per the specific requirements of its valued customers.

9.5 As stated in paragraph 1.2 above, the Corporate Debtor was admitted to CIRP vide order of this Tribunal dated 05.12.2022. The chronology of events up to the submission of the Resolution Plan for approval before this Tribunal has already been narrated in paragraphs 1.3 to 1.13 above. During the CIRP period, the Applicant appointed registered valuers to determine the Fair value and Liquidation value of the assets of the Corporate Debtor. The summary of the valuation of assets of the Corporate Debtor is given below:-

Asset Type	Average Fair Value (Rs. Crores)	Average Liquidation Value (Rs. Crores)
Land & Building	12.66	9.83
Plant & Machinery	0.71	0.38
Financial Assets	7.95	2.94
<b>Grand Total</b>	<b>21.36</b>	<b>13.15</b>

9.6 **BRIEF BACKGROUND OF SRA:-** The SRA, i.e., Kshitij Polyline Limited, is a public limited company incorporated in 2008 under the Companies Act, 1956 the shares of which are listed on the NSE. The SRA is engaged in manufacturing and distribution of various products such as smart identity cards, binding and



lamination equipment and related material and accessories, along with stationery products such as file, folder and diary, make-to-order ID card with ribbon, notebooks with client logo and info, display materials for education, pharma, FMCG, finance and insurance sectors. The SRA has developed and launched more than 250 products and has a state-of-the-art manufacturing facility in Silvasa. SRA's Net Worth for F.Y. 2022-2023 was Rs.2,257.96 lakhs. Presently, the company supplies domestically to over 28 states through distributors and internationally to 10 countries such as Spain, Brazil, Tanzania, Qatar, Dubai, Nepal, Sri Lanka, Bhutan, Kuwait, Kenya.

**SALIENT FEATURES OF PLAN APPROVED BY CoC :-**

- 9.7** Resolution plan provides for upfront payments to financial and operational creditors and bringing external corporate debt and outside liabilities obtained by the Corporate Debtor to sustainable level for repayment of the same on the terms and conditions proposed in the Resolution Plan. In compliance with Section 30(2)(a) of the Code, 2016, the Resolution Plan under Section VII of Plan provides for the payment of insolvency resolution process costs in the manner specified by the IBBI with priority over all other debts of the Corporate Debtor. In further compliance with Section 30(2)(b) of the Code, the Plan ensures that the Operational Creditors will receive an amount not less than what they would be entitled to in the event of liquidation. The distribution of such amounts is in accordance with Section 53 of the Code.
- 9.8** The Plan also conforms to all other requirements as specified by the Board in accordance with Section 30(2)(f) of the Code. It further complies with Regulation 38(1) of the CIRP Regulations by ensuring that operational creditors are paid in



priority over financial creditors and dissenting financial creditors are paid in priority over those who voted in favour of the Plan.

**9.9** In line with Regulation 38(1A), the Resolution Applicant has considered the interests of all stakeholders including financial creditors, operational creditors and statutory authorities of the Corporate Debtor to the extent possible.

**9.10** In compliance with Regulation 38(3)(a) to 38(3)(e) of the CIRP Regulations, the Resolution Applicant has addressed the causes for default committed by the Corporate Debtor under Section III of the Resolution Plan and demonstrated that the Plan is feasible or viable as it provides the creditability of the SRA under Section VIII.

**9.11** The SRA will adopt various financial and operational turnaround strategies to stabilize its operations so as to enable the Corporate Debtor to generate value for its stakeholders in the long term, given SRA's rich technical experience.

**9.12** Terms of this Resolution Plan shall in no way affect the validity and enforceability of the third-party security and guarantee (including corporate and personal guarantees), letters of comfort executed by persons in the promoter group or any other third-party as of the Insolvency Commencement Date ("Third Party Security/Guarantees") and that the Financial Creditors of the Corporate Debtor shall be entitled to take all steps and remedies and recourse available to them under Applicable Law for the recovery of the unrecovered financial debt admitted by the Resolution Professional from such guarantors/security providers under their respective Third Party Security/Guarantees (including letters of comfort).

**10. AMOUNT PROPOSED TO BE INFUSED AND PAID UNDER THIS RESOLUTION PLAN AND TIMELINES**



10.1 The SRA shall infuse Rs.475 lakhs by way of equity capital and Rs.2190.00 lakhs by way of quasi-capital/ secured/ unsecured loans. Out of this, Resolution Plan provides Rs.2314.00 Lakhs towards payment of CIRP costs and admitted claims of creditors, in the order of priority under the Code, within period of 270 days from "*effective date*". The remaining amount of Rs.351.00 lakhs is proposed to be utilised towards capex and working capital requirements. Further, the SRA proposes to provide capital infusion from liquid investments held with the group and/or by obtaining secured loan and/or unsecured loans from friends/associates/ relatives.

10.2 The summary of the payments to be made under the Plan as proposed by the SRA is as follows:-

(Amount in Rs.Lakhs)

Type of Creditor	Amount Claimed	Amount Admitted	Amount proposed
Insolvency Resolution Process Costs (IRPC)			100.0
Secured Financial Creditors	34,964.78	34,964.78	2176.00
Unsecured Financial Creditors	2,773.01	2,773.01	2.75
Employees & its Authorized Representative	123.62	123.62	6.19
Operational Creditors (Other than Workmen, Employee & Statutory Dues)	1,390.22	1279.43	6.40
Operational Creditors (Statutory Dues)	9,829.53	9,829.53	19.66
<b>Total</b>	<b>41,503.74</b>	<b>41,392.96</b>	<b>2314.00</b>



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11. **MANAGEMENT OF THE CORPORATE DEBTOR DURING THE IMPLEMENTATION OF THE PLAN AND SUPERVISION OF THE PLAN BY MONITORING AGENCY**

11.1 The Key Management Team at Kishitij Polyline Ltd. shall appoint a highly experienced team and external advisors and market experts to run the operations of the Corporate Debtor. On the date of approval of the plan, the existing directors and board of directors shall vacate their offices and SRA shall appoint new directors as it deems fit. Further, the SRA shall obtain requisite statutory and regulatory approvals within the period of 1 year or such other extended period as may be prescribed by the regulatory authority and acceptable by the CoC and the Adjudicating Authority.

11.2 A Monitoring Committee (MC) may be formed comprising of a representative from Secured Financial Creditors (as decided by CoC), SRA, as well as any insolvency Professional (which could include existing Resolution Professional) / Consultant mutually agreed by representative of Secured Financial Creditors and SRA to supervise the implementation of the Plan (which shall be decided on or before the filing of the Plan to this Tribunal for approval) in terms of provisions of Section 30(2)(d) of the Code read with Regulations 38(2)(c) of CIRP Regulations. The appointment shall be at the mutually agreed terms with CoC Members and SRA for the period with effect from the Date of Approval of Resolution Plan by this Tribunal.

11.3 The scope of work of the Monitoring Committee / consultancy firm / Resolution Professional would be:



- a. Coordination amongst the stakeholders for smooth implementation of Resolution Plan;
- b. Monitoring various compliances of the Resolution Plan during implementation period; and
- c. Providing specified information to stakeholders regarding implementation of Resolution Plan.

11.4 Management Supervision shall vest with the MC up to the closing date as envisaged in this Resolution Plan. The cost of the supervision, at actuals, will be paid by the SRA. Such cost shall be over and above the financial contributions in the Resolution Plan. The Cost of Supervision will be decided mutually by the SRA and the MC.

12. **PERFORMANCE GUARANTEE** :- The SRA has provided a performance security of Rs.2,32,00,000/- by way of RTGS on 29.02.2024 in compliance with the provisions of the RFRP and Regulation 36B(4A) of the CIRP Regulations. A copy of the bank statement evidencing the payment of the performance security is annexed with the Application.

13. **RELIEFS AND CONCESSIONS** :- The Resolution Applicant has sought various reliefs and concessions at Clause J of Section XIII of the Plan which are claimed by the Applicant to be in line with the provisions of law for the time being in force.

14. The SRA has submitted an Affidavit affirming that it is eligible to submit the Resolution Plan for the Corporate Debtor in terms of the provisions of Section 29A of the Code. Further, in compliance with the applicable provisions, the Applicant has filed Form-H dated 25.02.2024, detailing the compliances under the Proposed Resolution Plan and outlining the key developments in the CIRP.





Accordingly, the Applicant submits that the Resolution Plan proposed by the SRA is in conformity with the requirements of Section 30 of the Code and the relevant provisions of the CIRP Regulations. As the Resolution Plan has been duly approved by the CoC with 83% voting share, the same is placed before this Bench for its approval.

**15. ANALYSIS AND FINDINGS: -**

**15.1** We have heard the Ld. Counsel for the Applicant and perused the Plan and related documents submitted along with the I.A.

**15.2** On perusal of the Resolution Plan, we notice that the Plan is in compliance with the provisions of Section 30 of the Code in that it provides for:

- a) priority of payment of CIRP cost to the payment of other debts of the Corporate Debtor as specified under Section 30(2)(a) of the Code;
- b) payment of debts of the Operational Creditors as specified under Section 30(2)(b) of the Code;
- c) the management of the affairs of the Corporate Debtor after approval of the Plan as specified under Section 30(2)(c) of the Code; and
- d) the implementation and supervision of the Plan as specified under Section 30(2)(d) of the Code.

**15.3** Further, in compliance with Section 30(2)(b) read with Regulation 38(1)(b) of the CIRP Regulations, it is noted that Clause O under Section XIII of the Resolution Plan specifically provides for the treatment of financial creditors who did not vote in favour of the Plan. It also records that the unpaid CIRP costs of Rs.100 lakhs, includes regulatory fees payable under Regulation 31A of the CIRP Regulations, in priority over all other debts of the Corporate Debtor.



15.4 It is observed that the SRA has submitted an affidavit affirming its eligibility under Section 29A of the Code to submit a Resolution Plan along with the requisite authorization and undertaking in compliance with Regulation 39(1)(c) of the CIRP Regulations. Further, the Applicant has placed on record a due diligence report issued by PRT & Associates (Companies Secretaries), which confirms the SRA's eligibility under Section 29A of the Code.

15.5 In accordance with Section 25(2)(j) of the Code and based on the Transaction Audit Report dated 10.10.2023 of the Corporate Debtor, the Applicant has filed I.A. No.5035 of 2023 under Section 43 and I.A. No.486 of 2024 under Section 66 of the Code in relation to avoidance transactions. These applications are currently pending before this Tribunal. In this regard, we find that the Clause 8 of Section XII of the Resolution Plan stipulates that unless otherwise decided by the CoC in its sole discretion, the right to pursue all applications filed by the IRP or RP relating to avoidance transactions whether preferential, undervalued, extortionate credit transactions (under Sections 43 to 50 of the Code), or fraudulent and wrongful trading (under Section 66 of the Code) shall vest with the CoC. Any recoveries arising out of such applications shall be distributed to the financial creditors. The SRA shall, however, pursue avoidance applications concerning immovable properties/ contingent assets specified under Annexure F of the Resolution Plan and shall be entitled to any recoveries from such transactions. The SRA shall also bear a proportionate share of the cost incurred in recovering these assets. Recoveries from other transactions shall remain vested with the CoC, which shall also bear the associated costs.



15.6 It is further observed that the Applicant filed I.A. No.455 of 2024 seeking exclusion of the period from 26.09.2023 to 09.02.2024 from the CIRP timeline of the Corporate Debtor and *vide* order dated 14.02.2024, this Tribunal extended the CIRP period until 29.05.2024. Accordingly, the present application filed on 05.03.2024 has been submitted within the extended CIRP period.

15.7 It is seen that the Revised Resolution Plan was placed before the CoC at its 10<sup>th</sup> meeting held on 30.12.2023. The voting commenced on 09.02.2024 and concluded on 16.02.2024. The CoC, by a majority vote of 83%, approved the Resolution Plan dated 27.12.2023 along with its addendum dated 30.12.2023, as submitted by the SRA. The CoC, in doing so, has determined that the Resolution Plan is viable and feasible for the revival of the Corporate Debtor. The Plan also provides for a detailed implementation schedule, including specific timelines and a framework for management and supervision.

15.8 The Applicant has duly complied with the requirements of Sections 30(2)(a) to 30(2)(f) of the Code as well as Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c), 38(3), and 38(4) of the CIRP Regulations. A Compliance Certificate in Form-H has also been submitted along with the Resolution Plan and upon examination, has been found to be in order.

15.9 In *K Sashidhar Vs. Indian Overseas Bank and Ors. (Civil Appeal No. 10673/2018)*, the Hon'ble Supreme Court held that if the committee of creditors approves a resolution plan by the requisite percentage of voting share under section 30(6), it is imperative for the resolution professional to submit the plan to the Adjudicating Authority. The Adjudicating Authority is then required to satisfy itself that the resolution plan, as approved by the CoC, meets the requirements



specified in Section 30(2). The law is now settled that the role of the Adjudicating Authority is no more and no less than the above. The role of the Adjudicating Authority with respect to a resolution plan is limited to matters specified in Section 30(2) of the Code. Further, the Adjudicating Authority is not required to interfere with the commercial wisdom of the CoC.

15.10 As regards concessions, waivers, directions and specific orders as mentioned under Section XIII of the Plan, we make it categorically clear that **no** reliefs, concessions and dispensations that fall within the domain of other government department/authorities are granted hereto. The reliefs, concessions and dispensations that pertain to other governmental authorities/departments shall be dealt with by the respective competent authorities/fora/offices, Government (State or Central) with regard to respective reliefs, if any.

15.11 In light of the above, for the effective implementation of the Resolution Plan, the SRA shall obtain all necessary approvals, as required under any applicable law, within such period as may be prescribed. Further, in terms of the judgment of the Hon'ble Supreme Court in *Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited [Civil Appeal No. 8129 of 2019]*, we are of the opinion that, upon the approval of the Resolution Plan by this Tribunal, all claims not included in the Resolution Plan shall stand extinguished. No person shall be entitled to initiate or continue any proceedings in relation to claims that are not part of the approved Resolution Plan.

15.12 In view of the discussions above and the law as settled, we are of the considered view that the Resolution Plan meets the requirements set out under Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the CIRP



Regulations. We are satisfied that the Plan contains provisions for its effective implementation. Considering both the factual and legal aspects, we find that the present Application deserves to be allowed.

**ORDER**

The **IA (I.B.C.) (Plan) No. 12 of 2024 in C.P.(IB) 1738 of 2017 is allowed** and **the Resolution Plan** submitted by **‘M/s. Kshitij Polyline Limited’** is hereby **approved** in terms of Section 31(1) of the Code.

- I. The Plan shall become effective from the date of this Order and shall form part of this Order. It shall be binding on the Corporate Debtor, its employees, members, creditors including the Central Government, any State Government, or any local authority, to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues is owed, guarantors and other stakeholders involved in the Plan. However, the approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor which shall be dealt with by appropriate Authorities in accordance with law. Any waiver sought in the Resolution shall be subject to approval of concerned Authorities.
- II. Accordingly, no person or authority will be entitled to initiate or continue any proceedings with respect to a claim prior to the approval of the Plan which is not part of the Plan.
- III. The Corporate Debtor shall not be prosecuted for any offence committed prior to the commencement of CIRP in terms of Section 32A of the IBC.



- IV. Further, all such claims which are not a part of the Plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings with respect to a claim which is not a part of the Resolution Plan.
- V. The Monitoring Committee as proposed in the Plan shall be constituted to supervise and implement the Plan.
- VI. The Monitoring Committee shall file progress report regarding implementation of the Plan before this Tribunal from time to time, preferably every quarter.
- VII. The moratorium declared under Section 14 of the Code shall cease to have effect on and from the date of this Order.
- VIII. The Applicant/RP shall stand discharged from his duties with effect from the date of this Order. However, he shall perform his duties in terms of the Plan as approved by us.
- IX. The SRA shall have access to all the Corporate Debtor's records, documents, assets and premises with effect from the date of this Order.
- X. The Applicant is further directed to hand over all records, documents and properties of the Corporate Debtor to the SRA to enable it to carry on the business of the Corporate Debtor.
- XI. Liberty is granted to the parties for moving any application, if required, in connection with implementation of this Plan.
- XII. The Applicant shall forward all records relating to the conduct of the CIRP and the Plan to the IBBI along with a copy of this Order for information and record.



- XIII. The Applicant shall forthwith send a certified copy of this Order to the CoC and the SRA respectively for necessary compliance.
- XIV. The Registry is directed to send electronic version of the Order to all the concerned parties including the IBBI for record.
16. In the result, **IA Nos.2717/MB/2024** and **2908/MB/2024** are **dismissed** and **I.A. (I.B.C) (Plan) No.12/MB/2024** in C.P. (IB) No.1738/MB/2017 is **allowed** and the Resolution Plan is hereby **approved**.

**Sd/-**

**SANJIV DUTT**  
**MEMBER (TECHNICAL)**

**Sd/-**

**ASHISH KALIA**  
**MEMBER (JUDICIAL)**