

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

IA(IBC)/3781/ 2025

In

(IB)-630(PB)/2019

Order under Section 60(5) of the Insolvency and Bankruptcy Code 2016

IN THE MATTER OF (IB)-630(PB)/2019 :

State Bank of India Petitioner
Vs	
Mastana Foods Pvt Ltd. Respondent

AND IN THE MATTER OF IA (IBC)-3781/2025 :

Amba Grains Private Limited Applicant
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Vs

Mr. Amit Agrawal, Respondent No.1
Resolution Professional of Mastana	
Foods Private Limited.	
State Bank of India Respondent No.2
M/s. HR Commercials Private Limited &	... Respondent No.3
M/s. Crown Steels (As Consortium)	

Order delivered on 11.06.2026

CORAM:

SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)

SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant	:	Ms. Doel Bose, Advocate along with Ms. Kashish Chhabra and Mr. Mukul Arya, Advocates
For the RP	:	Mr. Sumant Batra, Advocate along with Mr. Pankaj Agarwal, Mr. Shashwat Srivastava, Mr. Sarthak Bhandari, Ms. Riya K. Arora and Ms. Mrigangi Parul, Advocates and Mr. Amit Agarwal, RP
For the SRA	:	Mr. Abhishek Anand, Advocate

For CoC

: Mr. Ankur Mittal, Advocate along with Ms. Sabhya Jain, Advocate

ORDER

1. The Application has been filed by M/s Amba Grains Pvt Ltd – an unsuccessful Resolution Applicant, with the following prayer:

- (a) *Reject the resolution plan submitted by consortium of HR Commercials Private Limited and Crown Steels and as approved by the CoC on 16.07.2025;*
- (b) *Direct the RP to call for submission of fresh resolution plans by all PRAs and conduct a fresh, fair, and transparent process in strict compliance with the IBC and applicable regulations, ensuring equal treatment of all such PRAs;*
- (c) *Pending the adjudication of the present Application, restrain the CoC and/ or the RP from taking any further steps pursuant to the outcome of the said approval process or giving effect to the resolution plan approved by the CoC;*
- (d) *In the interim, direct the RP to serve a copy of the application filed for approval of consortium of HR Commercials Private Limited and Crown Steels's resolution plan on the Applicant;*
- (e) *In the interim, direct the RP to place on record and supply to the Applicant the full and complete minutes, along with attendance records, voting records, and all annexures, of the CoC meetings;*
- (f) *In the interim, direct the RP to place on record the evaluation and scoring of all resolution plans submitted and considered by the CoC;*
- (g) *In the interim, direct the RP to place on record all communication with consortium of HR Commercials Private Limited and Crown Steels;*
- (h) *(h) Pass such other or further orders as this Hon 'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

Case of the Applicant

2. The Applicant has stated the following grounds in support of his Application which are briefly mentioned hereunder:

A. Discriminatory treatment of Resolution Applicants and material Irregularities in the Plan Approval Process

- i. It is submitted that a revised resolution plan on 22.04.2025, i.e. within the extended timeline for submission of final revised plans and offered the highest financial consideration. Despite this, and evidently to afford favourable treatment to HR Commercial, the latter was permitted to revise its lower offer of INR 132.36 crore (Indian Rupees One Hundred Thirty-Two Crore and Thirty-Six Lakh only) to INR 135,53 crore (Indian Rupees One Hundred Thirty-Five crore and Sixty-Eight Lakh only) after the last date of plan submission (i.e. 22.04.2025) solely with the intent of defeating the Applicant's plan. No such opportunity for revision was extended to the Applicant or any other PRAs to better their offer, there by reflecting a clear instance of discriminatory and selective conduct to the detriment of other PRAs, including the Applicant. In fact, as per the RP, no such revision was permissible after submission of revised plans by the PRAs. Yet, HR Commercial was singularly permitted to better its offer even after submission of revised plans by the PRAs in a manner that its financial bid would be higher than the Applicant. Such treatment is violative of the principles of fairness, transparency, and non-discrimination that are foundational to the CIRP under the IBC.
- ii. It is submitted that Applicant's revised resolution plan was submitted not only within the extended deadline but also in response to a critical clarification belatedly provided by the RP on 22.04.2025 regarding Section 29A eligibility. The Applicant acted promptly and in good faith, offering a significantly enhanced resolution plan of INR 1,33,91,00,000 (Indian Rupees One Hundred Thirty Three Crores and Ninety-One Lakhs only), a proposal that was both financially superior and backed by strong sectoral credentials. It is only to counter the viable plan submitted by the Applicant that HR Commercial was permitted to increase its financial offer from INR 1,32,36,00,000 (Indian

Rupees One Hundred Thirty Two Crores and Thirty-Six Lakhs only) to INR 1,35,68,00,000 (Indian Rupees One Hundred Thirty Five Crores and Sixty-Eight Lakhs only), when no such revision was permissible after 22.04.2025 (i.e. the last date of submission of revised plan), especially without affording the same opportunity to other PRAs.

- iii. It is submitted that the CoC and RP, in an evidently rushed manner, approved HR Commercial's plan on 16.07.2025 and filed the application for approval of the same on 17.07.2025, after becoming aware of the challenge levied by another PRA to the unfair process being followed by them of permitting HR Commercial to increase its financial bid after the last date of submission of plans. This was done solely to obfuscate such challenges and create equities in favour of HR Commercial.

B. The rejection of the Applicant's Resolution Plan is Contrary to the objective of Value Maximisation under the IBC and reflects procedural impropriety and dereliction of statutory duties by the RP and CoC

- i. It is submitted that the rejection of the Applicant's compliant resolution plan offering a total consideration of INR 133. 91 crores (Indian Rupees One Hundred Thirty-Three Crores and Ninety-One Lakhs only) is contrary to the settled legal framework and defeats the very object of the IBC. The said revised resolution plan, submitted on 22.04.2025, was tendered well within the extended deadline via email dated 21.04.2025 and is presumably the highest financial bid offered as on 22.04.2025.
- ii. It is submitted that a comparison of its revised resolution plan submitted on 22.04.2025 and the plan submitted by HR Commercial as on 22.04.2025, the Applicant's resolution plan would score higher on the evaluation matrix, especially in view of the higher financial offer made therein. This is further bolstered by the fact that if that was not the case, the need to allow a revision in HR Commercial's financial bid post 22.04.2025 to ensure its selection would not have arisen. The fact that such

revision was permitted post 22.04.2025 can only be with the intent to defeat the plan submitted by the Applicant.

- iii. It is submitted that the Applicant, being an experienced industry participant with a proven track record, is not only financially better placed but also strategically positioned to revive the Corporate Debtor, owing to its existing operational and manufacturing infrastructure. HR Commercial, in comparison, is in the iron and scrap industry, completely unrelated to the business of the Corporate Debtor. The Applicant's resolution plan is thus superior not only in monetary terms but also in terms of feasibility, implementation potential, and long-term value creation. The rejection of such a resolution plan is a direct affront to the object of the IBC and results in the frustration of the principle of value maximization.

C. Defective and opaque conduct of the E-bidding process dated 15.04.2025 and the failure to ensure Section 29A compliance compromised the integrity, fairness and legality of the Corporate Insolvency Resolution Process.

- i. It is submitted that at the time the e-bidding was conducted, there remained ambiguity surrounding the PRAs eligibility under Section 29A of the IBC. Despite repeated communications, the RP failed to provide a conclusive determination or formal clarification on the eligibility status of the PRAs until 22.04.2025, i.e., after the completion of the e-bidding process.
- ii. It is submitted that the RP is duty-bound to verify whether the resolution applicants meet the eligibility criteria prescribed under Section 29A and to ensure that only compliant resolution applicants are permissible to participate in such e-bidding process for price discovery.
- iii. It is submitted that Section 29A serves as a substantive safeguard against backdoor entries of persons lacking credibility. In *ArcelorMittal India Pvt Ltd v. Satish Kumar Gupta*, (2019) 2 SCC 1, the Hon'ble Supreme Court clearly held that the eligibility

of a resolution applicant under Section 29A must be conclusively determined before their resolution plan is placed for consideration. In the present case, the RP's failure to ensure timely and uniform compliance with Section 29A has not only violated this settled principle but has also eroded the legitimacy of the entire process.

Submissions of Respondent No.1/Resolution Professional

3. The Respondent No.1/Resolution Professional has filed the reply and made the following submissions :

A. Application is not maintainable in view of the bar created by statutory scheme as per Section 30(6) read with Section 31 of the Code.

- i. It is submitted that instant application is not maintainable in view of the bar created by statutory scheme as per Section 30(6) read with Section 31 of the Code. It is submitted that once a Resolution Plan has been approved by the Committee of Creditors (“CoC”) any challenge to the commercial decision of the CoC is impermissible save on the limited grounds enumerated in section 30(2) of the Code.
- ii. The Applicant, being an unsuccessful Prospective Resolution Applicant (“PRA”), has no vested or legal right to seek substitution of the plan approved by the CoC. At best, an unsuccessful PRA is entitled only to a fair consideration of its plan, a requirement fully satisfied in the present CIRP.

B. INSTANT APPLICATION IS LIABLE TO BE DISMISSED AS IT IS IN GROSS VIOLATION OF TERMS AND CONDITIONS OF RFRP

- i. It is submitted that That RP has circulated the Request for Resolution Plan document with every Prospective resolution applicant including the applicant here as per the RP documents the COC have enough Rights and Powers to negotiate, accept, reject and modify any resolution plan as received from prospective resolution applicants.

- ii. It is submitted that COC within its commercial wisdom have negotiated with them resolution applicants and have approved the resolution plan of the successful resolution applicant the applicant hearing have no locus or right to challenge the commercial decision taken by the COC. Further the applicant also do not have any vested right to suo moto submit a revised resolution plan without being asked by the RP or the COC.

C. **Equal and transparent opportunity accorded to the Applicant**

- i. It is submitted that Applicant herein presented its plan before the CoC on 07.03.2025, participated fully in the e-bidding round on 15.04.2025, and was granted time for submission of Revised Resolution Plan as per the value offered during the ebidding process till 22.04.2025. Contrary to the allegation of unfair treatment, the Applicant alone (i) altered its financial offer after the e-bidding round, and (ii) introduced material deviations inconsistent with the e-bid. Vide email dated 02.05.2025 the RP requested the Applicant to rectify the plan by incorporating only the e-bid amount, failing which the plan would be placed before the CoC with a caveat. The Applicant declined to correct the defect and insisted that the post-bid enhancement be accepted.
- ii. It is submitted that RFRP as well as the terms of the e-bid categorically prohibited any unilateral alteration of the financial figure after conclusion of the bid. The Applicant's nonconforming plan could therefore not be evaluated on parity with compliant plans. It is most humbly submitted that applicant after gaining the knowledge about the final valuation being achieved under the E- bidding mechanism has with its all malafide intentions and to just dislodge and derail the process have suo moto submitted another resolution plan by marginally increasing the value being offered by the Successful Resolution Applicant. Applicant's attempt to increase the e-bid amount on 22-23 April 2025 was fundamentally distinct as it sought to rewrite the competitive equilibrium already achieved; it was not a rectification but a fresh

bid. Acceptance of such belated escalation would have vitiated the integrity of the entire challenge process.

D. Legality of Bid Revision by HR Commercials Private Limited (In Consortium)

- i. It is submitted that CoC, in exercise of commercial wisdom and strictly within the framework of the RFRP, permitted all PRAs to seek clarifications from all prospective resolution applicants including the applicant herein.
- ii. It is submitted that after receipt of Revised Resolution Plans from 4 PRA's namely, Mr. Krishan Mohan Mendiratta (Erstwhile Promoter & Director), Mr. Anand Pal Jain & Mr. Sahil Jain & Mrs. Sudha Jain (As Consortium), M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium), and Applicant M/s. Amba Grains Private Limited and Mr. Amarjeet Kaur and Mr. Rajender Pal Singh (As Consortium) it was found that in Resolution Plans submitted by Applicant and Mr. Krishan Mohan Mendiratta (Erstwhile Promoter & Director) are fully complied and an equal treatment is offered to Secured Financial and Operational Creditor, whereas in two Resolution Plans submitted by Mr. Anand Pal Jain & Mr. Sahil Jain & Mrs. Sudha Jain (As Consortium) and M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium) and an equal treatment is offered to Secured Financial and Operational Creditor.
- iii. It is submitted that on observing the difference in the treatment offered RP on 13.06.2025, wrote an email to both PRA's namely Mr. Anand Pal Jain & Mr. Sahil Jain & Mrs. Sudha Jain (As Consortium) and M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium) and sought further clarification on the aspect of treatment proposed to HV AT – Excise Department, i.e., the secured operational creditor. On 14.06.2025, RP received Reply from 1 PRA namely M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium) giving clarifications to the

queries raised by RP. Said Clarification was forwarded to the SBI /Sole Secured Financial Creditor having 100 % voting.

- iv. It is submitted that after due discussions and deliberations in the 28th meeting the COC directed the RP to obtain an addendum to the Resolution Plan as submitted by M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium) and put all 8 Revised Resolution Plan to for voting alongwith all clarifications as received by all PRA's.
- v. It is submitted that no price enhancement has been done or any bid revision was made after the E-Bidding process by HR Commercials Private Limited (In Consortium), value offered to various creditors under the resolution plan is same as offered by SRA during the E-Bidding process, On the contrary the applicant has played mischievous role and has suo-moto increased the value offered to the creditors under its Revised Resolution Plan.

E. Adherence to Section 29A of the Code

- i. It is submitted that RP engaged an independent professional agency which furnished detailed section 29A reports for each PRA well before the e-bidding date. The Applicant's insinuation that ineligible entities distorted the bidding process is therefore baseless. To remove any doubt, the Answering Respondent's email dated 22.04.2025 expressly confirmed that all 8 PRAs including the Applicant had been found compliant and hence was permitted to participate in the entire process.
- ii. It is submitted that on 14.04.2025, Applicant wrote email to RP, seeking clarification Regarding NPV Evaluation and Base Price Escalation in E-Bidding process, but nowhere raised the question and query of eligibility of PRA's under Section 29A, IBC.
- iii. It is submitted that on 18.04.2025, 3 days after the conclusion of E-Bidding process, Applicant wrote an email for the first time raised issued of eligibility of prospective resolution applicants under section 29A, IBC. It is pertinent to note that the applicant never alleged that he stopped and refrained from raising the bids

during e-bidding process, because Applicant was concerned that the participation of non-serious/ineligible PRAs leading to inflated bids, the said email was duly replied by RP on 22.04.2025 clarifying the position with respect to the Report obtained under Section 29A of IBC for all PRA's including the Applicant. Again on 22.04.2025 Applicant wrote email to RP raising issue of eligibility of PRA's under Section 29A of IBC same was also duly replied to by RP.

Submissions of Respondent No.3/SRA

4. The Respondent No.3/SRA has filed the reply and made the following submissions:

A. Present Application is not maintainable

- i. It is submitted that the Applicant herein filing the present Application is part of the Consortium i.e., Amba Grains Private Limited and not the consortium as a whole. It can be clearly seen that the consortium as a whole isn't challenging the approved Resolution Plan but Amba Grains Private Limited being the Applicant herein solely challenging the approved Resolution Plan. It is pertinent to mention here that the Hon'ble Appellate Tribunal in Myotic Trading Pvt. Ltd. v. Deepak Maini (RP) & Ors., Company Appeal (AT) (Insolvency) No. 859 of 2025 and Company Appeal (AT) (Insolvency) No. 877 of 2025 stated that consortium cannot be transposed to the remaining member unless expressly permitted by the RFRP, and absent such provision, the consortium ceases to exist in law.
- ii. It is submitted that Amba Grains has solely filed the present Application cannot claim to act on behalf of the consortium of Amba Grains Private Limited, Mr. Amarjeet Kaur and Mr. Rajender Pal Singh being the PRA. Hence, the present Application is not maintainable in view of the settled position of law as laid down by Hon'ble Appellate Tribunal in Myotic Trading Pvt. Ltd. v. Deepak Maini (RP) & Ors., Company Appeal (AT) (Insolvency) No.

859 of 2025 and Company Appeal (AT) (Insolvency) No. 877 of 2025.

B. SRA has acted in consonance with the law laid down and the Instructions of CoC/RP

- i. It is submitted that the Resolution Professional sought various clarifications from the SRA herein along with the documents, which were duly provided by the SRA as and when asked. It is pertinent to mention that the SRA has acted in consonance with law and in accordance with the CoC of the Corporate Debtor in the whole process of the e-bidding and submission of Resolution Plan.

C. Resolution Plan was revised in consonance with terms of RFRP and instructions of CoC

- i. It is submitted that Resolution Professional vide email dated 13.06.2025 apprised the SRA herein that the claim of the Excise and Taxation Officer of State Tax, Kaithal, Haryana is being considered as a secured operation creditor in view of the law laid down by the Hon'ble Supreme Court in the matter of "State Tax Officer v. Rainbow Papers Limited, Civil Appeal No. 2568 of 2020". Further, the Resolution Professional sought clarification on the treatment being given to the HVAT – Excise Department by the SRA.
- ii. It is submitted that SRA vide email dated 14.06.2025, informed that they had already provided an amount of Rs. 4,06,10,868 in the resolution plan. Additionally, the SRA agreed to provide a further sum of Rs. 3,32,27,872, specifically to be paid to the Secured Operational Creditor, namely the HVAT - Excise Department in accordance with the judgment in the case of State Tax Officer vs. Rainbow Papers Limited(Supra).
- iii. It is submitted that the vide email dated 26.06.2025 the SRA was asked to revise the Resolution Plan as per the comments given by the members of the CoC of the Corporate Debtor, wherein the SRA submitted the revised resolution plan vide email dated

30.06.2025. Thereafter, the SRA vide email dated 03.07.2025 submitted the addendum to the Resolution Plan with the Resolution Professional which clearly stipulates equal treatment to HVAT - Excise Department in accordance with Rainbow Papers (Supra).

ANALYSIS AND FINDINGS

5. The Applicant has raised various contentions, raising objections to the Corporate Insolvency Resolution Process (**CIRP**) and in response to which the Resolution Professional (**RP**) has filed a Reply. Further, addition written submission has been filed by the RP and Applicant on 17.04.2026 and 21.04.2026 respectively. Contentions raised in the Application are dealt by us one by one hereinafter.
6. *Firstly*, the Applicant has contended that though there was a better financial proposal i.e., for INR 133.91 crores from the Applicant; Mrs. Amarjit Kaur; and Mr. Rajinder Pal Singh (the Resolution Applicant in Consortium), the COC, misguided by the Resolution Professional, has chosen to approve the Resolution Plan of M/s HR Commercials Private Limited; and Crown Steels (the SRA in Consortium) for a value of INR 132.36 crores only, which is against the principle of value maximisation. It has been contended that the Resolution Professional and CoC have rendered an undue favour to the Successful Resolution Applicant.
7. This contention of the Applicant is irrelevant, as on the date when the law is settled, the COC has absolute and unfettered commercial wisdom and discretion to approve one Resolution Plan and reject another, going by the feasibility and viability aspects, and the same is not justiciable. In the minutes of the 28th CoC meeting convened on 01.07.2025, a detailed recording has been made as to bidding received in the Swiss Challenge Mechanism and only after completion of the process, the Applicant along with Mrs. Amarjit Kaur; and Mr. Rajinder Pal Singh (Consortium) submitted two different resolution plan, one with the same value as submitted in the bid i.e., INR 91.91 crores and another with the unilaterally revised bid i.e., INR 133.91 crores after swiss challenge. It is an undisputed position that in the Swiss Challenge mechanism, the

highest bid i.e., of INR 131.91 crores was submitted by the SRA - M/s HR Commercials Private Limited, and Crown Steels (Consortium). Bid submitted by Applicant during the swiss challenge process was less than that of the SRA. Only after the closure of the swiss challenge, Applicant, without permission, submitted another resolution plan with the higher bid, which CoC, after recording reasons as to ensure fairness and transparency, rejected the later submitted resolution plan with a higher bid.

8. It is relevant to take note of what has been recorded in the 28th CoC meeting convened on 01.07.2025:

In the e-bidding process, the amount offered by each PRAs is mentioned Below;

S. No.	Name	Resolution Plan Value (In Rs. In Crore)
1	M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium)	131.91
2.	M/s. Sapphire Media Limited	129.91*
3.	M/s. Amba Grains Private Limited and Mr. Amarjeet Kaur and Mr. Rajender Pal Singh (As Consortium)	91.91
4.	Mr. Anand Pal Jain & Mr. Sahil Jain & Mrs. Sudha Jain (As Consortium)	82.91
5.	Mr. Krishan Mohan Mendiratta (Erstwhile Promoter & Director)	77.91
6.	M/s. Nokha Agrotech Private Limited	Not Participated In E-Bidding**

7.	M/s. Aqua Vitoe Laboratories	No Revised Resolution Plan Submitted And Not Participated In E-Bidding
8.	M/s. Noida Holdings Private Limited & M/s. Suraj Udyog Gujarat & Mr. Munish Dhingra (As Consortium)	No Revised Resolution Plan Submitted And Not Participated In E-Bidding

**** Kindly note that M/s Sapphire Media Limited participated in e-bidding process made and punched bids but did not submit the revised resolution Plan as per its final bid of Rs. 129.91 Crores.***

***** Kindly note that M/s Nokha Agrotech Private Limited did not participated in e-bidding process and only submit the revised resolution Plan incorporating the suggestion made by COC.***

Additional Notes

Kindly note that M/s. Amba Grains Private Limited and Mr. Amarjeet Kaur and Mr. Rajender Pal Singh (as Consortium) had submitted a revised Resolution Plan for ₹91.90 Crore after the conclusion of the Challenge Mechanism, with similar amount as of Bid.

Subsequently, M/s. Amba Grains Private Limited and Mr. Amarjeet Kaur and Mr. Rajender Pal Singh (as Consortium) after the conclusion of Price challenge, after 1 days on 22.04.2025 suo-moto and unilaterally increased their financial bid and submitted another revised Resolution Plan, (Second Plan) wherein the total amount offered is ₹133.91 Crore. This update is being shared for your information.

RP also referred to the judgement passed by Hon'ble National Company Law Appellate Tribunal In Jindal Power Ltd. v. Dhiren Shantilal Shah, RP and Anr. Company Appeal (AT) (Insolvency) No. 1166-1167 of 2023 Decided on 08-Jan-24 wherein Hon'ble NCLAT held that:-

"31. If unsolicited plans are obtained at any stage it will cause unnecessary avoidable delay in the CIRP process. If resolution plans are allowed to be submitted at any stage, it will make the whole CIRP process unending. To curtail the delay in the CIRP process, it is appropriate to restrain the tendency to consider resolution plans after the time as specified by the CoC and from someone not in the final list of PRAs. This has been the spirit and justification of newly inserted provisions in the Regulations in 2021 and which has been eloquently

described in the Discussion Paper of the IBBI, before changes were brought in and which have also been referred to by SRA viz. SEAPOL."

However, it is to be noted that this unilateral revision & increase of value in the Resolution Plan and simultaneously submitting 2 resolution plans is not acceptable and is against the principle of equity and fairness. However, this is also bought in notice of COC for its kind information.

...

Process Advisor M/s KDRA Presented and discussed the evaluation matrix And Informed the COC about the scores/Marks given to each perspective resolution applicant based on the evaluation matrix approved by the COC, also M/s KDRA presented the net NPV value being offered under each resolution plan by perspective resolution applicants. Brief of Evaluation Ranking and NPV Ranking as presented by the KDRA is as follows.

SI No	Name of PRA	EM score	EM Ranking	NPV of the Resolution Amount (Rs.)	NPV Ranking
1	Consortium of M/s. HR Commercials Private Limited & Crown Steels	42	1	1,27,52,68,440	1
2	Consortium of M/s. Amba Grains Pvt Ltd, Mr. Amarjeet Kaur and Mr. Rajendra Pal Singh	28	2	90,40,42,982	2
3	Consortium of Anand Pal Jain, Mrs Sudha Jain and Mr Sahil Jain	26	3	80,94,79,629	3
4	M/s. Nokha Agrotech Pvt Ltd.	25	4	46,97,69,598	6
5	Krishan Mohan Mendiratta	24	5	77,91,71,467	4
6	Consortium of M/s. Noida Holdings Private Limited; M/s Suraj Udyog Gujarat & Mr Munish Dhingra	16	6	53,08,11,253	5
7	M/s. Sapphire Media Limited	15	7	32,19,00,000	8
8	Aqua Vitoe Laboratories	15	8	37,46,36,896	7

*** EM – Evaluation Matrix**

It is clear from the above proceedings that CoC has recorded reasons for not accepting the higher bid of the Applicant. There is nothing in proceedings to believe that any undue favor has been rendered to the SRA. The Hon'ble National Company Law Appellate Tribunal, New Delhi in the case of ***Vistra ITCL (India) Ltd. v. Torrent Investments Pvt. Ltd. & Ors.***, referred to a judgment passed by the Hon'ble Supreme Court in the matter of ***(1993) 1 SCC 71 – Food Corporation of India vs. M/s Kamdhenu Cattle Feed Industries*** and observed as follows:

54. We may refer to a judgment of Hon'ble Supreme Court in ***(1993) 1 SCC 71 – Food Corporation of India vs. M/s Kamdhenu Cattle Feed***

Industries. *In the above case, tenders were issued by Food Corporation of India for sale of stocks of damaged food grains, in which Respondent Kamdhenu Cattle Feed Industries submitted a tender, which was highest tender, but tender was not accepted by Food Corporation of India. A Writ Petition was filed by the Respondent, challenging the Appellants refusal to accept the highest tender, which Writ Petition was allowed by the High Court. It was contended before the High Court that Food Corporation of India having chosen to invite tenders, it could not thereafter dispose of the stocks of damaged food grains by subsequent negotiation rejecting the highest tenderer. Appeal filed in the Hon'ble Supreme Court was allowed, setting aside the judgment of the High Court. The Hon'ble Supreme Court also held in the above case that highest tenderer can claim no right to have his tender accepted. It was further observed that inadequacy of the price offered in the highest bid could be a cogent ground for negotiating with the tenderers giving them equal opportunity to revise their bids with a view to obtain the highest available price. In the above case, the action of the Food Corporation of India to negotiate with tenderers even after receiving of the bid of the Respondent, which was highest, was upheld. In paragraph 10 of the judgment, following was laid down:*

“10. From the above, it is clear that even though the highest tenderer can claim no right to have his tender accepted, there being a power while inviting tenders to reject all the tenders, yet the power to reject all the tenders cannot be exercised arbitrarily and must depend for its validity on the existence of cogent reasons for such action. The object of inviting tenders for disposal of a commodity is to procure the highest price while giving equal opportunity to all the intending bidders to compete. Procuring the highest price for the commodity is undoubtedly in public interest since the amount so collected goes to the public fund. Accordingly, inadequacy of the price offered in the highest tender would be a

cogent ground for negotiating with the tenderers giving them equal opportunity to revise their bids with a view to obtain the highest available price. The inadequacy may be for several reasons known in the commercial field. Inadequacy of the price quoted in the highest tender would be a question of fact in each case. Retaining the option to accept the highest tender, in case the negotiations do not yield a significantly higher offer would be fair to the tenderers besides protecting the public interest. A procedure wherein resort is had to negotiations with the tenderers for obtaining a significantly higher bid during the period when the offers in the tenders remain open for acceptance and rejection of the tenders only in the event of a significant higher bid being obtained during negotiations would ordinarily satisfy this requirement. This procedure involves giving due weight to the legitimate expectation of the highest bidder to have his tender accepted unless outbid by a higher offer, in which case acceptance of the highest offer within the time the offers remain open would be a reasonable exercise of power for public good.”

9. Therefore, the Prospective Resolution Applicant (**PRA**) offering the highest financial proposal does not have a vested right to get selected and CoC is well within its right to look into all the factors prevailing. In the present case, the higher bid was not submitted during swiss chalange process but thereafter and accepting thereof would have been unfair to others who participated in the bidding process, as per the CoC specific discussion in the meeting as notes above. When there were multiple PRAs, allowing one to raise the bid unilaterally without offering others the opportunity would render the process arbitrary and since, unilateral revision was done after the closure of swiss challenge process, offering a similar opportunity to other PRAs would have delayed the process further. This is relevant as in the order dated 07.04.2025 passed by this AA, the Resolution Professional was directed to complete the CIRP within extended timeline and it was categorically recorded that no further extension will be granted. Therefore,

in our view, CoC has rightly rejected the resolution plan submitted by Applicant with the unilaterally revised bid, after the closure of the Swiss Challenge Mechanism.

10. Furthermore, it is settled that the Adjudicating Authority (**AA**) has no jurisdiction to sit in appeal over decisions taken by CoC in its commercial wisdom. In terms of the judgment of Hon'ble Supreme Court in the case of **Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors.** [Civil Appeal No. 8766-67 of 2019], it is the subject matter of commercial wisdom of CoC to take decision regarding the amount of bid offered by SRA and the scope for this Tribunal to interfere on such issues is negligible.

Further, in case of **Jindal Stainless Ltd. v. Mr. Shailendra Ajmera RP of Mittal Corp Ltd. & Ors.**, the Hon'ble held as follows:

25. It is well settled that the timeline in the IBC has its salutary value and it was the wisdom of the CoC which decided to vote on the Resolution Plan after completion of Challenge Process and not to proceed to take any further negotiation or further modification of the plan, that decision ought not to have been interfered with. The Application was filed by the Respondent No.2 on 07.08.2022 by which date CoC has already decided to resolve the vote on all the plans and voting has also commenced w.e.f. 07.08.2022.

In view of the above, this AA cannot interfere with the decision of the CoC in not considering the resolution plan of the Applicant with a unilaterally revised bid. Hence, this contention of the Applicant is rejected.

11. *Secondly*, the Applicant has contended that HR Commercial has been allowed to revise resolution plan – financial proposal even after the closure of bidding process and last date prescribed for the submission of the same i.e., 22.04.2025.

12. The Hon'ble Supreme Court in the matter of **Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. and Ors., Civil Appeal Nos. 1632-1634 of 2022** held as follows:

83. *During the course of hearing of these Appeals also, the learned Senior Advocate Mr. Abhishek Manu Singhvi for the SRA and the learned Senior Advocate Mr. Tushar Mehta appearing for the CoC had stated in no uncertain terms that the benefit of avoiding/setting aside of any transaction under Sections 43, 45, 47, 49 and 50 shall enure to the benefit of the Creditors of DHFL, whereas any recovery under Section 66 would be for the benefit of Piramal Capital. As discussed earlier, the SRA had raised its offer to the extent of Rs.37,250 crores, which had factored the potential recoveries from Section 66 Applications. Thus, the RP approved by the CoC was an outcome of the commercial bargain struck between the SRA and the CoC after several rounds of negotiations and deliberations. The said plan approved by the CoC was also further approved by the NCLT under Section 31(1) of IBC. In absence of any perversity, that was palpable on the face of the approved RP, and the CoC having taken a firm commercial decision with regard to the impugned clause of RP by voting overwhelmingly in favour of the RP, the NCLAT ought not to have interfered with the said clause of RP approved by the CoC and the NCLT.*

84. *As per the legislative intent and as per the broad contours of the provisions of IBC, the commercial wisdom of CoC has been given the prominent status, with the least judicial intervention, for ensuring the completion of Resolution Process within the prescribed timelines. As stated earlier, in **Essar Steel** (supra), this Court after discussing earlier judgments had observed that what is left to the majority decision of the CoC is the "feasibility and viability" of a RP, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of Creditors. The legislature has consciously not provided for a ground to challenge the justness of the commercial decision expressed by the Financial Creditors – be it to*

approve or reject the RP. Similar view is taken by the Three Judge Bench in **Ghanashyam Mishra** (supra) to the effect that the legislature has given paramount importance to the commercial wisdom of the CoC and the scope of judicial review by the Adjudicating Authority is limited to the extent provided under Section 31 and by the Appellate Authority limited to the extent provided under sub-section (3) of Section 61 of IBC.

85. The NCLAT therefore has clearly transgressed its jurisdiction under Section 61 IBC, by interfering with the clause pertaining to the treatment to the recoveries from the Fraudulent and Wrongful trading under Section 66.

...

102. We have already discussed and dealt with, in the earlier part of this judgment, all the said issues including the scope of judicial review by the NCLT and NCLAT over the commercial wisdom exercised by the CoC, and also examined the legality of the clause in the RP with regard to the treatment of Recoveries from the Avoidance Applications. We have also examined in detail the issue with regard to the maximization of the value of assets of the CD. Hence, the same are not dealt with in this set of Appeals. Suffice it to say that when majority of the creditors in their wisdom, and after negotiations with the PRA as to how and in what manner the Corporate Resolution Process should be undertaken, had explored the feasibility and viability of the RP, while approving the same, and when the said Plan was also approved by the NCLT, the NCLAT ought not to have tinkered with a Clause of the said Plan with regard to the treatment of Recoveries from the Applications under Section 66 of the IBC.

13. The Hon'ble Supreme Court in the matter of **Ramkrishna Forgings Limited vs Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr.** Civil Appeal No. 1527 of 2022 held as follows:

27. ... K Sashidhar (supra) and Committee of Creditors of Essar Steel India Ltd. (supra) are clear authorities that the CoC's decision is not to be

subjected to unnecessary judicial scrutiny and intervention. This came to be reiterated in *Maharashtra Seamless Limited (supra)*, which also emphasised that the CoC's commercial analysis ought not to be qualitatively examined and the direction therein of the NCLAT to direct the successful Resolution Applicant to enhance its fund flow was disapproved of by this Court. Thus, if the CoC, including the FC(s) to whom money is due from the Corporate Debtor, had undertaken repeated negotiations with the appellant with regard to the Resolution Plan and thereafter, with a majority of 88.56% votes, approved the final negotiated Resolution Plan of the appellant, which the RP, in turn, presented to the Adjudicating Authority-NCLT for approval, unless the same was failing the tests of the provisions of the Code, especially Sections 30 & 31, no interference was warranted. In *Kalpraj Dharamshi v Kotak Investment Advisors Limited*, (2021) 10 SCC 401, the Court concluded that '... in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of "commercial wisdom", NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.

30. At this juncture, it also cannot be lost sight of that it is for the FC(s) who constitute the CoC to take a call, one way or the other. *Stricto sensu*, it is now well-settled that **it is well within the CoC's domain as to how to deal with the entire debt of the Corporate Debtor**. In this background, **if after repeated negotiations, a Resolution Plan is submitted, as was done by the appellant (Resolution Applicant), including the financial component which includes the actual and minimum upfront payments, and has been approved by the CoC with a majority vote of 88.56%, such commercial wisdom was not required to be called into question or casually interfered with. ...**

14. Even otherwise on facts, it has been submitted in reply that the SRA had to make revision to the Resolution Plan in order to comply with the Judgment by the Hon'ble Supreme court in the case of **State Tax Officer vs Rainbow Paper** Civil Appeal No. 1661 of 2020 to pay statutory dues.

In the 28th CoC meeting that the SRA has undertaken to provide similar treatment to all the secured creditors. Relevant portion of the minutes are extracted below:

RP informed the COC that Mr. Anil Khurana, suspended director of CD, has sent an email and raised his concerns regarding the treatment of the claim of the excise department. Mr. Anil Khurana had raised specific concerns in relation to the resolution plan submitted by HR Commercials Private Limited & M/s. Crown Steels (As Consortium), particularly:

- a)** The proposal to share only 50% of recoveries from PUFEE transactions, whereas the original plan had earmarked 100% for the financial creditors.
- b)** The disproportionate allocation towards statutory dues (sales tax), potentially in contravention of the principles laid down by the Hon'ble Supreme Court in State Tax Officer v. Rainbow Papers Ltd.

Accordingly, RP have sent emails and sought clarifications from all those PRAs who have not given the equal treatment to the state excise department in their Respective Resolution Plan. RP informed the COC in response to RP have received the reply from the only one PRA i.e. M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium), wherein the said PRA have undertaken to provide the similar treatment to all secured creditors as per the law laid down by Hon'ble Supreme Court of India State Tax Officer v. Rainbow Papers Ltd matter. Also, M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium) has given an addendum to the Resolution Plan detailing treatment to all creditors as proposed.

15. Resolution Plans were submitted on 22.04.2025 with revised financial proposals based on bid amount. Further, the SRA has vide email dated 14.06.2025 addressed to Resolution Professional, has stated as follows:

Dear Sir,

We have already provided an amount of ₹4,06,10,868 in our resolution plan. Additionally, a sum of ₹3,32,27,872 shall be paid to the Secured Operational Creditor, i.e., HVAT – Excise Department. This payment is being made in accordance with the judgment in State Tax Officer vs. Rainbow Papers Limited.

Please note that this payment is over and above the amount stipulated in our resolution plan and shall have no impact and bearing on implementation on resolution plan.

16. Accordingly, on 02.07.2025, the SRA in compliance with the above submitted an addendum dated 02.07.2025 incorporating the additional amount payable to HVAT – Excise Department.

17. It is further pertinent to note that clause 5.5(A) of the RFRP provides that CoC reserves absolute right to accept any resolution plan with or without modification; reject any resolution plan; call upon the Resolution Applicant(s) to submit a revised Resolution Plan; and select or approve any proposal or Resolution Plan, as it may deem fit, at any time, without any liability or any obligation for such acceptance or rejection without assigning any reasons for such actions.

Further, Clause 5.5(C) further provides that if the Resolution Plan submitted by the Resolution Applicant(s) is rejected for any reason whatsoever, the CoC may consider the offer from any other Resolution Applicant(s), whose Resolution Plan is responsive and valid, including any deviations/amendments to the Resolution Plan, as may be acceptable to the CoC or Resolution Professional and such Resolution Applicant(s).

Further, Clause 10.1(1) states that the CoC reserves the right, in its sole discretion, to add, delete or modify these parameters for the purpose of evaluation of the Resolution Plan, within the timelines mentioned in the IB Code.

Further, Clause 10.2.3 states that the CoC reserves the right to negotiate any of the terms of the Resolution Plan with one or more Resolution Applicant(s) to maximize the value for all the stakeholders.

Therefore, amendment has been allowed within parameters of RFRP and falls well within a purview of commercial wisdom of CoC and is this AA does not have jurisdiction reverse the same.

18. We are of the view that amendment to resolution plan has been permitted by the CoC in its wisdom and that too to ensure compliance with the judgment of the Hon'ble Supreme court. Therefore, the contention of the Applicant stands rejected.

19. *Thirdly*, it has been contended by the Applicant that RP has not completed eligibility check under section 29A till the bidding process. In the response, it has been submitted that it is for the CoC and RP to test the eligibility of Prospective Resolution Applicants, and the applicant cannot act as supervisor or advisor.
20. On this issue, we observe that in the 28th CoC meeting convened on 01.07.2025, RP informed CoC that all 8 PRA's have been found to be eligible under Section 29A, so the same is anyways done before consideration – voting on resolution plans. Therefore, this contention of the Applicant is irrelevant and cannot be sustained.
21. *Fourthly*, the Applicant has broadly raised a contention that the Resolution Plan does not conform to mandatory requirements of section 30 and Regulation 39, without specifying and explaining that in what respect Resolution Plan of the SRA is non-compliant. Thus, it is practically impossible to deal with this contention at this stage. Nevertheless, the Resolution Plan of the SRA will be dealt by us on its own merit at the time of consideration of the Plan Application.

Accordingly, Application bearing **IA-3781/2025 is Dismissed.**

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

IA(IBC)/5148/2025

In

(IB)-630(PB)/2019

Order under Section 60(5) of the Insolvency and Bankruptcy Code 2016

IN THE MATTER OF- (IB)-630(PB)/2019 :

State Bank of India Petitioner
Vs	
Mastana Foods Pvt Ltd. Respondent

AND IN THE MATTER OF- IA(IBC)/5148/2025 :

Krishan Mohan Mendiratta Applicant
Vs	
Mr. Amit Agrawal, Respondent No.1
Resolution Professional of Mastana Foods Private Limited.	
State Bank of India Respondent No.2
M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium) Respondent No.3

Order delivered on 11.06.2026

CORAM:

SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)

SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant	:	Mr. Ashish Mohan, Senior Advocate along with Ms. Udita Singh, Advocate in IA5148/2025 and RA-87/2025
For the RP	:	Mr. Sumant Batra, Advocate along with Mr. Pankaj Agarwal, Mr. Shashwat Srivastava, Mr. Sarthak Bhandari, Ms. Riya K. Arora and Ms. Mrigangi Parul, Advocates and Mr. Amit Agarwal, RP
For the SRA	:	Mr. Abhishek Anand, Advocate
For CoC	:	Mr. Ankur Mittal, Advocate along with Ms. Sabhya Jain, Advocate

ORDER

1. The Application has been filed Mr. Krishan Mohan Mendiratta, who is the director of the suspended board of the Corporate Director (**CD**), with the following prayer:
 - a) *Allow the present Application;*
 - b) *Set aside the Resolution Plan of Consortium of HR Commercials Pvt. Lid. and Crown Steels (Successful Resolution Applicant/ Respondent No. 3) as approved by the Committee of Creditors/ Respondent No. 2 in the 28th CoC meeting held on 01.07.2025 and 05.07.2025;*
 - c) *Direct the Respondents to consider the revised Financial Offer dated 05.07.2025 submitted by the Applicant herein or permit inter-se bidding between the Prospective Resolution Applicants;*
 - d) *Or alternatively, direct the CoC to reconsider the other eligible Resolution Plans in accordance with the provisions of the IBC;*
 - e) *Remove Mr. Amit Agrawal (Respondent No. 1) as the Resolution Professional of the Corporate Debtor and direct CoC/ Respondent No. 2 to appoint another Resolution Professional;*
 - f) *Pass such other or further directions as this Hon'ble Tribunal may deem fit and proper in light of the facts of the instant case.*

Case of the Applicant

2. The Applicant has stated the following grounds in support of his Application which are briefly mentioned hereunder:

A. Plan Approval Process is riddled with material irregularities

- i. It is submitted that it can be seen from the minutes of the 28th CoC meeting dated 01.07.2025 and 05.07.2025, one of the PRAs, namely Amba Consortium, had submitted its Resolution Plan on 21.04.2025, consisting of the Resolution Plan value as per the bid amount (INR 91.91 Cr.) and eventually, upon extension of time period for submission of Resolution Plans, submitted revised Resolution Plan for an enhanced amount of INR 133.91 on 22.04.2025 (i.e. within the stipulated time period) being higher than the final bid of INR 131 .91 Crores submitted by the SRA.

- ii. It is submitted that in the Notice and Agenda of the 27th CoC meeting, the Resolution Professional had also informed the CoC about revision in the bid value by Amba Consortium. However, for the reasons best known to the Respondents herein, the said issue of whether the CoC can consider the revised Plan Value was not deliberated or considered in the said CoC meeting, despite the fact that the process of revision of Resolution Plans was still ongoing and no final decision had been taken by the CoC.
- iii. It is submitted that 28th CoC meeting was convened on 01.07.2025. In the Notice and Agenda of the 28th CoC meeting, the Resolution Professional recorded that Amba Consortium participated in the e-bidding process and duly submitted its Revised Resolution Plan on 21.04.2025 pursuant to the e-bidding held on 15.04.2025. Following the extension of the timeline for submission, Amba Consortium again submitted a further Revised Resolution Plan for an enhanced amount of R133.91 Crores on 22.04.2025, well within the extended period. However, instead of placing this improved plan before the CoC for its independent consideration and exercise of commercial wisdom, the Resolution Professional unilaterally branded the said plan as “not acceptable” on the pretext of violating the “principle of equity and fairness.”
- iv. It is submitted that it is pertinent to note that in the said Notice and Agenda, the Resolution Professional/ Respondent No. 1 also specified that the RP has “carried out comprehensive legal due diligence, with the support of the advisors and consultants appointed for this purpose,” and accordingly, the Resolution Plans as received latest by 22.04.2025, along with clarifications received upto 01.07.2025 can be put for deliberation and voting by the CoC. In fact, it is also worth noting that the RP, in the said Notice, also specified that the SRA (HR Commercials Consortium) has not given equal treatment to the dues of state excise

department till the last date for submission of Revised Plans and clarifications, making the plan non-compliant.

- v. It is submitted that notice and Agenda of the 28th CoC meeting that the voting shall be started on 01.07.2025, the said meeting was adjourned from 01.07.2025 to 05.07.2025, solely at the behest of the RP/ Respondent No. 1 in order to provide an opportunity to certain PRAs, including the SRA, to modify their Resolution Plans. It is submitted that the Resolution Plan of the SRA, as on the last date of submission of Plans, was clearly noncompliant. However, in order to unduly favor the SRA, the RP and the CoC adjourned the meeting to 05.07.2025 in order to assist the SRA to not only revise its Resolution Plan by way of addendum but also enhance the bid value from 131.91 Crores to 135.68 Crores, being in clear violation of the terms set out by the Respondent No. 1 herein.
- vi. It is submitted that during the course of discussions in 28th CoC meeting on 01.07.2025, the Resolution Professional/ R.1 placed reliance on the judgment passed by the Hon'ble NCLAT in the matter of Jindal Power Ltd, versus Dhiren Shantilal Shah, RP and Anr. (CA(AT)(INS) No. 1166-1167 of 2023) in order to unilaterally brand the revised Resolution Plan of Amba Consortium as being unacceptable. That it is respectfully submitted that the Resolution Professional has placed reliance on the said judgment, in a completely mala fide manner, as the said judgment is not applicable to the facts of the instant case.
- vii. It is submitted that procedural irregularities, and manifest arbitrariness on part of the Respondents herein was again raised by the Applicant in the 29th CoC meeting held on 07.07.2025 wherein the Applicant requested the CoC to consider the revised offer. However, no decision on the same was taken by the CoC.
- viii. It is submitted that in the Minutes of the 29th CoC meeting, where it is falsely reflected that deliberations were held on the revised offer of the Applicant. In reality, no such discussion or

clarification ever took place, either by the CoC or by the RP, leaving no occasion for the Applicant to adduce any further explanation. Yet, the Minutes misleadingly record that “the email sent by Krishan Mohan Mendiratta does not contain documentary evidence to support proof of availability of funds as per Clause 9.2(C) of the RFRP,” thereby creating a distorted impression that the Applicant’s revised offer lacked bona fides.

B. The Resolution Plan of SRA is not in compliance with the law

- i. It is submitted that HR Commercials Pvt. Ltd. is a lead member, a specific Undertaking to the effect that the said Lead Member shall hold 51% of the shareholding in the Consortium was also submitted to the Resolution Professional. A combined reading of the RFRP, the EOI, and the undertaking of the SRA leaves no scope for ambiguity: (i) incorporation of an SPC with 100% consortium ownership is mandatory; and (ii) the lead member must hold controlling interest of at least 51%. However, the Resolution Plan approved by the CoC ignores both requirements. It neither provides for incorporation of a SPC nor ensures controlling shareholding of at least 51% of the lead member. In fact, HR Commercials Pvt, Ltd., being a legal entity, has not proposed to hold a single share in the Corporate Debtor.
- ii. It is submitted that SRA has introduced one Mr. Surya Parkash Aggarwal with a 20% equity holding, thereby vesting him with significant control over the Corporate Debtor. Yet, he is not even a consortium member, and no due diligence under Section 29A of the Code or other eligibility requirement has been carried out in his respect. The same glaring omission applies to other proposed shareholders, namely Satvik Dewan Garg, Sahil Dewan Garg, Jaideep Chaudhary, and Keshav Gupta, together holding another 20%. This allocation of shares clearly reflect some third parties being actual beneficiaries wherein the SRA is only acting as a front.

- iii. It is submitted that Resolution Plan is in gross violation of the RFRP, which provides for minimum lock-in period of 3 years for the shareholding of the Consortium Members in the Corporate Debtor. However, in complete contravention of the said mandatory requirement of the RFRP, the SRA has provided for the following in its Resolution Plan:
- “6) Notwithstanding anything contained in this Resolution Plan or in the Annexures hereto, the Resolution Applicant shall have the right, during the implementation of the Resolution Plan to make such changes to the proposed shareholding pattern of the Corporate Debtor as may be necessary or expedient for the effective implementation of the Resolution Plan, subject to compliance with applicable laws including but not limited to Section 294 of Insolvency and Bankruptcy Code, 2016. Such changes shall not affect the quantum or timelines of payments proposed to the stakeholders under this Resolution Plan and shall not be construed as a modification to the commercial terms of the approved Resolution Plan.”
- iv. It is submitted that it becomes abundantly clear that the SRA has expressly provided for change in shareholding even during the implementation of the Resolution Plan which demonstrates that the SRA herein is itself not implementing the Resolution Plan and has used the Code and Plan Approval Process, at the behest of an unrecognised entity/ person, to acquire the Corporate Debtor.
- v. It is submitted that it is further pertinent to note that the sole Financial Creditor / Respondent No. 2 herein has also made an attempt to cause undue enrichment, at the cost and expense of the Applicant herein, in the garb of approval of the Resolution Plan. It is submitted that the approved Resolution Plan provided for appropriation of the amount of INR 2.85 Crores owed by Respondent No. 2 to three entities (namely LK International (HUF), AKM Foods Pvt. Ltd. (in CIRP), Amir Chand Jagdish Kumar (Exports) Ltd. which was deposited by the said entities to

Respondent No. 2 in lieu of the OTS Proposal dated 19.05.2018 submitted by the Applicant to Respondent No. 2. It is further pertinent to note that the Applicant herein is the Karta of LK International (HUF) and has paid a sum of INR 80 Lakhs out of 2.85 Crores, to Respondent No. 2.

C. The Resolution Professional has conducted the entire CIRP without a valid authorisation for assignment w.e.f 05.04.2024, and deliberately withheld the same from the CoC.

- i. It is submitted that the Authorisation for Assignment (AFA) of the Resolution Professional herein was suspended by virtue of initiation of disciplinary proceedings against the Resolution Professional, upon issuance of Show Cause Notice dated 05.04.2024 by the Insolvency and Bankruptcy Board of India (IBBI) in the CIRP of Vistar Constructions Pvt. Ltd.
- ii. It is submitted that by virtue of Model Bye-Law 23A of the IBBI (Model Bye — Laws, and Governing Board of Insolvency Professional Agencies) Regulations, 2016 which provides that immediately upon issuance of show cause notice, the AFA of the concerned RP was automatically suspended on 05.04.2024. Pertinently, the said fact was never brought to the notice of the Committee of Creditors in any of the CoC meetings of Mastana Foods Pvt. Ltd.
- iii. It is submitted that Show Cause Notice was disposed off by the IBBI vide its Disposal order dated 24.07.2025, wherein the guilt of the Resolution Professional/ Respondent No. 1 has been duly established and the AFA has been further suspended for a period of 3 months along with further investigation into the conduct of the Respondent No. 1 herein. That it is most respectfully submitted that the Respondent No. 1 herein brought the said order to the knowledge of the CoC and the Applicant herein vide Notice and Agenda of the 30th CoC meeting held on 16.08.2025.
- iv. It is submitted that Respondent No. 1 herein cannot continue as RP of Mastana Foods Pvt. Ltd., as Regulation 13(6) of IBBI

(Inspection and Investigation Regulations) Regulations, 2017 clearly provides that such continuation is permitted only to enable the stakeholders to shift to another service provider.

Submissions of Respondents

3. The Respondent No.1/Resolution Professional has filed a reply affidavit denying each and every averment made by the Applicant. The Respondent No.3/SRA has also filed a reply supporting the submissions made by the Resolution Professional.
4. It is submitted that the instant application is not maintainable in view of the bar created by the statutory scheme as per Section 30(2) read with Section 31 of the Code. It is submitted that once a Resolution Plan has been approved by the Committee of Creditors ("CoC") and placed before this Hon'ble Tribunal for confirmation, any challenge to the commercial decision of the CoC is impermissible save on the limited grounds enumerated in Section 30(2) of the Code.
5. The Respondent No. 1 has relied upon a judgment passed by the Hon'ble Supreme Court of India in "*K. Sashidhar v. Indian Overseas Bank*", reported in (2019) 12 SCC 150: (2019) 4 SCC (Civ) 222, where the Hon'ble Supreme Court held that the Adjudicating Authority has limited jurisdiction to reject the resolution plan defined under Section 30(2) and Section 31 of the IBC.
6. It is further submitted that the application is not maintainable in view of the bar created by statutory scheme as per Section 30(6) read with Section 31 of the Code. It is contended that the Applicant is an unsuccessful Prospective Resolution Applicant and has right or locus to challenge the plan duly approved by the CoC. The allegations of bias and collusion made by the Applicant are vague and unsupported by evidence. The CoC in its meeting clearly considered the plan submitted by all Prospective Resolution Applicant in a fair and transparent manner. The Respondent No. 1 relied upon a judgment passed by the Hon'ble Supreme Court of India in "*Ngaitlang Dhar Vs. Panna Pragati Infrastructure Private Limited & Ors.*", reported in (2022) 6 SCC 172, wherein the Hon'ble

Supreme Court has held that the commercial wisdom of CoC has paramount status.

7. It is contended by the Respondent No. 1 that members of the CoC requested each PRA separately to file a revised and enhanced financial bid with the Resolution Professional. The Resolution Professional 22.03.2025 sent an emails to all the eight PRAs to submit their respective enhanced financial bids by 25.03.2025.
8. It is further contended that on 27.03.2025, RP convened the 26th meeting of COC wherein RP informed the COC that 7 PRAs except 1 PRA namely, M/s. Nokha Agrotech Private Limited have submitted revised financial proposals, either in sealed envelopes or via email. RP again invited Representative of each PRA and their respective revised financial proposals was opened in presence of member of COC, RP along with the respective PRA. After the due discussions and deliberation the COC sought certain clarifications from each PRA over their respective Resolution Plans.
9. After considering the revised financial bids, the CoC directed the Resolution Professional to conduct E-challenge mechanism for complete transparency in matter and getting better valuation & maximising the value of Corporate Debtor. Accordingly, on 08.04.2025, the Resolution Professional wrote email to each PRA and circulated the Reference, terms and conditions for use of online price challenge mechanism process and also obtained the requisite affidavits from each PRA. The Resolution Professional, pursuant to directions issued by the COC engaged professional services of one independent E-Bidding platform and on 15.04.2025 the online challenge Mechanism/ E-Bidding was done wherein all eight PRAs participated. However only 5 out of 8 PRA's punched their bids. 3 PRA's namely (1) M/s. Noida Holdings Private Limited & M/s. Suraj Udyog Gujarat & Mr. Munish Dhingra (As Consortium), (2) M/s. Nokha Agrotech Private Limited and (3) M/s. Aqua Vitoe Laboratories, did not made and punched any bid. It is pertinent to mention that a day prior to conducting of E challenge Mechanism/ E-Bidding process, i.e., 14.04.2025, RP alongwith the Professionals from E-Bidding platform team

conducted a detailed training session for all 8 PRA's wherein each PRA was duly informed and educated about the process and its usage. A total of 17 bids were punched during the entire E-bidding Process.

10. That after the conclusion of E Challenge Mechanism/ E-Bidding process RP, wrote emails to all 8 PRA's requesting each PRA to submit their Resolution Plan after incorporating the value as proposed by respective PRA during the E challenge Mechanism/ E-Bidding process and also incorporating the observations and corrections as suggested by COC, RP and Process advisor, however on request of PRA's date for submission of Revised Resolution Plan was extended to 22.04.2025.
11. That after the conclusion of E challenge Mechanism and after extension of time for submission of Revised Resolution Plan up till 22.04.2025, only 4 Resolution Plans were received by the RP. It is pertinent to note that only 4 PRAs out of 8 PRA's had submitted the responses for the observation and gave clarification over the revised resolution plans as submitted by PRAs, 2 PRA's namely Mr. Anand Pal Jain & Mr. Sahil Jain & Mrs. Sudha Jain (As Consortium) and M/s. Sapphire Media Limited did not revert to the queries as raised by RP and did not submit the clarifications as well as the revised financials as per the e-bidding process, 2 PRA's namely M/s. Aqua Vitoe Laboratories and M/s. Noida Holdings Private Limited & M/s. Suraj Udyog Gujarat & Mr. Munish Dhingra (As Consortium) sought some time to revert, however no revised plan was received by RP. 4 PRA's namely M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium), M/s. Amba Grains Private Limited and Mr. Amarjeet Kaur and Mr. Rajender Pal Singh (As Consortium), Mr. Krishan Mohan Mendiratta (Erstwhile Promoter & Director) and M/s. Nokha Agrotech Private Limited, have reverted to the Queries raised by the COC and RP and sent their respective clarifications to queries raised by COC and RP.
12. It is further contended that on 01.07.2025 and on 05.07.2025, Applicant RP convened 28th meeting of COC wherein COC, RP and Process advisors discussed and deliberated on all eight Resolution Plans at length, it is pertinent to note that Both the Suspended Directors/ Promoters

namely Dr. Krishan Mohan Mehendirattta and Mr. Anil Khurana were present in the COC meeting.

13. It is also contended that Process Advisor M/s KDRA presented and discussed the evaluation matrix and informed the COC about the scores/Marks given to each perspective resolution applicant based on the evaluation matrix approved by the COC, also M/s KDRA presented the net NPV value being offered under each resolution plan by perspective resolution applicants. After assessing the feasibility and viability of the Resolution Plans submitted by the PRA's, all the plans were evaluated as per the evaluation matrix and the Resolution Plan of M/s. HR Commercials Private Limited & M/s. Crown Steels (In Consortium) was declared as H1. Brief of Evaluation Ranking and NPV Ranking as presented by the KDRA is as follows:-

Sl No	Name of PRA	EM score	EM Ranking	NPV of the Resolution Amount (Rs.)	NPV Ranking
1	Consortium of M/s. HR Commercials Private Limited & Crown Steels	42	1	1,27,52,68,440	1
2	Consortium of M/s. Amba Grains Pvt Ltd, Mr. Amarjeet Kaur and Mr. Rajendra Pal Singh	28	2	90,40,42,982	2
3	Consortium of Anand Pal Jain, Mrs Sudha Jain and Mr Sahil Jain	26	3	80,94,79,629	3
4	M/s. Nokha Agrotech Pvt Ltd.	25	4	46,97,69,598	6
5	Krishan Mohan Mendiratta	24	5	77,91,71,467	4
6	Consortium of M/s. Noida Holdings Private Limited; M/s Suraj Udyog Gujarat & Mr Munish Dhingra	16	6	53,08,11,253	5
7	M/s. Sapphire Media Limited	15	7	32,19,00,000	8

8	Aqua Laboratories	Vitoe	15	8	37,46,36,896	7
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EM – Evaluation Matrix

14. It is further submitted that the Applicant’s OTS proposal of Rs. 130 Crores though claimed to be higher than the SRA’s Resolution Plan is legally untenable. It is further contended that the Resolution Professional engaged an independent professional agency which furnished detailed section 29A reports for each PRA well before the e-bidding date. The Applicant’s insinuation that ineligible entities distorted the bidding process is therefore baseless. To remove any doubt, the Answering Respondent’s email dated 22.04.2025 expressly confirmed that all 8 PRAs including the Applicant, had been found compliant and hence was permitted to participate in the entire process.
15. It is submitted that the instant application is liable to be dismissed as it is in gross violation of terms and conditions of RFRP as the RP has circulated the Request for Resolution Plan document with every Prospective resolution applicant including the applicant here as per the RP documents the COC have enough Rights and Powers to negotiate, accept, reject and modify any resolution plan as received from prospective resolution applicants. That it is further submitted that the COC within its commercial wisdom have negotiated with all 8 resolution applicants and have approved the resolution plan of the successful resolution applicant the Applicant herein have no locus or right to challenge the commercial decision taken by the COC.
16. It is submitted that full, equal and transparent opportunity was accorded to the applicant. Applicant herein presented its plan before the CoC on 07.03.2025, participated fully in the e-bidding round on 15.04.2025, and was granted time for submission of Revised Resolution Plan as per the value offered during the e-bidding process till 22.04.2025. Applicant’s attempt to push and put forth a Resolution Plan where an increased amount is suo-moto offered which is different than e-bid amount is fundamentally distinct.

17. It is submitted that CoC, in exercise of commercial wisdom and strictly within the framework of the RFRP, permitted all PRAs to seek clarifications from all prospective resolution applicants including the applicant herein. After receipt of Revised Resolution Plans from 4 PRA's namely, Applicant - Mr. Krishan Mohan Mendiratta (Erstwhile Promoter & Director), Mr. Anand Pal Jain & Mr. Sahil Jain & Mrs. Sudha Jain (As Consortium), M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium), M/s. Amba Grains Private Limited and Mr. Amarjeet Kaur and Mr. Rajender Pal Singh (As Consortium) it was found that in Resolution Plans submitted by Applicant and M/s. Amba Grains Private Limited and Mr. Amarjeet Kaur and Mr. Rajender Pal Singh (As Consortium) are fully complied and an equal treatment is offered to Secured Financial and Operational Creditor, whereas in 2 Resolution Plans submitted by Mr. Anand Pal Jain & Mr. Sahil Jain & Mrs. Sudha Jain (As Consortium) and M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium) and unequal treatment is offered to Secured Financial and Operational Creditor.
18. It is submitted that on observing the difference in the treatment offered RP on 13.06.2025, wrote an email to both PRA's namely Mr. Anand Pal Jain & Mr. Sahil Jain & Mrs. Sudha Jain (As Consortium) and M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium) and sought further clarification on the aspect of treatment proposed to HV AT – Excise Department, i.e., the secured operational creditor.
19. It is submitted that after due discussions and deliberations in the 28th meeting the CoC directed the RP to obtain an addendum to the Resolution Plan as submitted by M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium) and put all 8 Revised Resolution Plan to for voting alongwith all clarifications as received by all PRA's.
20. It is submitted that no price enhancement has been done or any bid revision was made after the E-Bidding process by HR Commercials Private Limited (In Consortium), value offered to various creditors under the resolution plan is same as offered by SRA during the E-Bidding process.

21. It is submitted that RP engaged an independent professional agency which furnished detailed section 29A reports for each PRA well before the e-bidding date. The Applicant's insinuation that ineligible entities distorted the bidding process is therefore baseless. To remove any doubt, the Answering Respondent's email dated 22.04.2025 expressly confirmed that all 8 PRAs including the Applicant had been found compliant and hence was permitted to participate in the entire process.
22. It is submitted that Insolvency and Bankruptcy Board of India (IBBI), vide its order dated 24.07.2025, has suspended the Authorisation for Assignment (AFA) of the Resolution Professional (RP) for a period of 3 months starting from 24.08.2025. As per Clause 3.3 of the said order, the Committee of Creditors (CoC) is required to take a call regarding the continuation of the services of the RP during the period of suspension of AFA. Further reliance has been placed on the judgement dated 07.08.2025 passed by Hon'ble NCLAT in matter of Girish Siriram Juneja, RP, Hindusthan National Glass & Industries Ltd. Vs. Soneko Marketing Pvt. Ltd. & Ors. (Company Appeal (AT) (Insolvency) No. 890 of 2025 & I.A. No. 3492 of 2025).
23. It is submitted that RP convened 30th COC meeting, wherein RP/Respondent, had placed the agenda before the COC pertaining to the order dated 24.07.2025 passed by IBBI. COC after due deliberation decided to continue with the services of Respondent, it is pertinent to note that the COC is authorised to take the call the issue of continuation of the services responding as the resolution professional in the ongoing CIRP of corporate debtor.

ANALYSIS AND FINDINGS

24. The Applicant has raised various contentions, raising objections to the Corporate Insolvency Resolution Process (**CIRP**) to which the Resolution Professional (**RP**) has made a response, and the same has been dealt with by us hereinafter.

A. First Contention of the Applicant:

25. The Applicant had contended that they had offered multiple one-time settlements (**OTS**) qua the debts of the Corporate Debtor and last OTS made on 20.05.2025 was for a total value of 130 crores payable within 30 days from approval of the Proposal by this AA. Despite the better financial proposal in the said OTS and immediacy of payments therein, the same was arbitrarily rejected on 23.05.2025 by the State Bank of India being the sole member of CoC. While a significantly lower-valued Resolution Plan of the SRA was approved by the CoC.

26. This contention of the Applicant is irrelevant, as on the date when the law is settled, the COC has absolute and unfettered commercial wisdom and discretion to approve one Resolution Plan and reject another, going by the feasibility and viability aspects, which only the COC can decide, and the same is not justiciable. In the minutes of the 28th CoC meeting convened on 01.07.2025, a detailed recording has been made of the bidding received in the Swiss Challenge Mechanism and it is an undisputed position that in the Swiss Challenge mechanism, the highest bid i.e., of INR 131.91 crores was submitted by the SRA - M/s HR Commercials Private Limited, and Crown Steels (Consortium), which in any event is higher financial offer than the above OTS submitted by the Applicant. It is relevant to take note of what has been recorded in the 28th CoC meeting convened on 01.07.2025:

In the e-bidding process, the amount offered by each PRAs is mentioned Below;

S. No.	Name	Resolution Plan Value (In Rs. In Crore)
1	M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium)	131.91
2.	M/s. Sapphire Media Limited	129.91*
3.	M/s. Amba Grains Private Limited and Mr. Amarjeet Kaur and Mr. Rajender Pal Singh (As Consortium)	91.91
4.	Mr. Anand Pal Jain & Mr. Sahil Jain & Mrs. Sudha Jain (As Consortium)	82.91
5.	Mr. Krishan Mohan Mendiratta (Erstwhile Promoter & Director)	77.91
6.	M/s. Nokha Agrotech Private Limited	Not Participated In E-Bidding**

7.	M/s. Aqua Vitoe Laboratories	No Revised Resolution Plan Submitted And Not Participated In E-Bidding
8.	M/s. Noida Holdings Private Limited & M/s. Suraj Udyog Gujarat & Mr. Munish Dhingra (As Consortium)	No Revised Resolution Plan Submitted And Not Participated In E-Bidding

*** Kindly note that M/s Sapphire Media Limited participated in e-bidding process made and punched bids but did not submit the revised resolution Plan as per its final bid of Rs. 129.91 Crores.**

**** Kindly note that M/s Nokha Agrotech Private Limited did not participated in e-bidding process and only submit the revised resolution Plan incorporating the suggestion made by COC.**

Additional Notes

Kindly note that M/s. Amba Grains Private Limited and Mr. Amarjeet Kaur and Mr. Rajender Pal Singh (as Consortium) had submitted a revised Resolution Plan for ₹91.90 Crore after the conclusion of the Challenge Mechanism, with similar amount as of Bid.

Process Advisor M/s KDRA Presented and discussed the evaluation matrix And Informed the COC about the scores/Marks given to each perspective resolution applicant based on the evaluation matrix approved by the COC, also M/s KDRA presented the net NPV value being offered under each resolution plan by perspective resolution applicants. Brief of Evaluation Ranking and NPV Ranking as presented by the KDRA is as follows.

SI No	Name of PRA	EM score	EM Ranking	NPV of the Resolution Amount (Rs.)	NPV Ranking
1	Consortium of M/s. HR Commercials Private Limited & Crown Steels	42	1	1,27,52,68,440	1
2	Consortium of M/s. Amba Grains Pvt Ltd, Mr. Amarjeet Kaur and Mr. Rajendra Pal Singh	28	2	90,40,42,982	2
3	Consortium of Anand Pal Jain, Mrs Sudha Jain and Mr Sahil Jain	26	3	80,94,79,629	3
4	M/s. Nokha Agrotech Pvt Ltd.	25	4	46,97,69,598	6
5	Krishan Mohan Mendiratta	24	5	77,91,71,467	4
6	Consortium of M/s. Noida Holdings Private Limited; M/s Suraj Udyog Gujarat & Mr Munish Dhingra	16	6	53,08,11,253	5
7	M/s. Sapphire Media Limited	15	7	32,19,00,000	8
8	Aqua Vitoe Laboratories	15	8	37,46,36,896	7

*** EM – Evaluation Matrix**

It is clear from the above proceedings that the best financial offer was made by the SRA -Consortium of HR Commercial Pvt Ltd and Crown Steels.

There is nothing in proceedings to believe that there any undue favor has been rendered to the SRA.

27. Furthermore, it is settled that the Adjudicating Authority (**AA**) has no jurisdiction to sit in appeal over decisions taken by CoC in its commercial wisdom. In terms of the judgment of Hon'ble Supreme Court in the case of **Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors.** [Civil Appeal No. 8766-67 of 2019], it is the subject matter of commercial wisdom of CoC to take decision regarding the amount of bid offered by SRA and the scope for this Tribunal to interfere on such issues is negligible.

Further, in case of **Jindal Stainless Ltd. v. Mr. Shailendra Ajmera RP of Mittal Corp Ltd. & Ors.**, the Hon'ble held as follows:

25. It is well settled that the timeline in the IBC has its salutary value and it was the wisdom of the CoC which decided to vote on the Resolution Plan after completion of Challenge Process and not to proceed to take any further negotiation or further modification of the plan, that decision ought not to have been interfered with. The Application was filed by the Respondent No.2 on 07.08.2022 by which date CoC has already decided to resolve the vote on all the plans and voting has also commenced w.e.f. 07.08.2022.

28. Even otherwise, we are of the view through the CIRP and Resolution Plan, CD is entitled to the benefit of section 32A and clean slate principle while the same will not be available to the CD through settlement with the promoters and therefore even a settlement with the closer value to the resolution plan may not be a better option.

29. Further, reliance may be placed upon the judgment of the Hon'ble NCLAT in the matter of **Sanjeev Mahajan v. Indian Bank** CA(AT)(Ins) No. 03/2022, wherein it was held that once a settlement proposal was rejected by the CoC, it was not open for the promoter, after the approval of the resolution plan by COC to again seek consideration of revised proposal.

30. In view of the above, we hold that neither this AA can interfere with the decision of the CoC in not considering the OTS for INR 130 crores of the Applicant nor otherwise the Applicant – suspended director has any vested right to have his already rejected OTS considered at the stage when resolution plan stands approved by the CoC.

B. Second contention of the Applicant:

31. Vide OTS Letter dated 19.05.2018, an upfront amount of INR 2.85 crores was deposited with the State Bank of India, however eventually settlement could not be achieved as said OTS Proposal was subsequently rejected by the bank vide letter dated 07.02.2019. It is the contention that the said sum for upfront deposit was arranged by the CD by bowing from three entities (namely LK International (HUF), AKM Foods Pvt. Ltd. (in CIRP), Amir Chand Jagdish Kumar (Exports) Ltd and the Applicant is the Karta of LK International (HUF), which had contributed to a sum of INR 80 Lakhs out of 2.85 Crores. Now it is the contention that said deposit has not been returned and has been retained by the CD. In the meanwhile, CD entered into CIRP on 18.09.2019 and the RP also did not return the amount.

32. On this we see that that the OTS in question was made and eventually rejected prior to the CIRP and therefore is not within the ambit of this AA to decide.

33. Even otherwise, it is relevant to have a view of the OTS Letter dated 19.05.2018, which is extracted hereinafter:

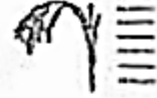
11.11.06/572102627 Dt. 25-5-99
P.L.E./E.A.6305
CAN: AACUM9-14N
CIN: U15319DL1999PTCC098638

Fastags Ltd. (HVA) Introduction

96863
96863
mastanafods2018@yahoo



Mastana Foods Pvt. Ltd.



AN ISO 9001:2008, ISO 22000: 2005 & HACCP Certified Company

(Rice Millers & Exporters)
(SUPER STAR EXPORT HOUSE)

18th May 2018.

Deputy General Manager,
State Bank of India,
Stressed Assets Management Branch,
Chandigarh

Subject - Request for one-time settlement of dues against credit facilities availed by M/s Mastana Foods Private Limited from your SBI, Karnal Branch

Sir,

Please refer to subject cited above in this regard we are to submit as under:-

A. Brief facts of our case

- Our Company M/s Mastana Foods Private Limited (MFPL) has business relations with your bank for the last 10 years. During these years we had a very good relations with the bank. At no point of time there was any default in repayment and we have been a very disciplined customer. The conducts and operations of Our Company with the bank were satisfactory throughout till account turned NPA. In the last financial year 2016-17, we have suffered a net loss of Rs 31.18 Crores and we are in huge losses in the current financial year also.
- Our Company MFPL is into Processing of Paddy and Rice and has been a leading player of the Rice Industry till last financial year.
- Basmati Rice Industry has suffered huge losses on account of downward movement in prices in the last 4 years. More than 80% of the large accounts of the Basmati Rice Industry are either NPA or in financial crunch.

Received
on 10/05/2018

TRUE COPY

Admn. Off. :- 4 KM Mile Stone, Kurukshetra Road, Kaithal-136027 (Haryana)
Regd. Off. :- 2646, 1st Floor, Gali Raghunandan, Naya Bazar, Delhi-110006

Internal Reasons

- **Continuous servicing of debt despite of insufficient cash accruals**

The Company had been prompt in servicing its debt obligations without any significant delays despite incurring sustained losses and liquidity constraint. The fact that the Company managed to pay all the dues including Interest Payments resulted in additional burden in managing liquidity for day to day operations. Subsequently, Company has managed to reduce the bank borrowings from Rs 205.96 Crores in FY16 to Rs 168.71 Crores in FY17. Payments made towards Bank Interest and repayment of bank term loan, creating further strain on cash flow position of the Company.

In addition to above, Company has also repaid loan of Rs. 37.27 Crores by making stressed sale of stocks from April 2016 to December 2017, resulting huge operation losses and company is not in the position to run the plant and operations. At present, we are managing the operations through job work of other rice millers.

- **Lesser margins due to non-availability of working capital**

We are supplier to major rice exporters and our profitability is linked with their export turnover and profitability. In the last 3-4 years, all the exporters suffered huge losses on account variation in the prices of basmati and due to this reason our profit margin are also impacted. Most of our sales are unbranded sales, where margins are low. To maintain the cash flow and bank interest payments good were sold on negative margins, which resulted in heavy losses.

- **Slow Realization from Debtors of Trading Activities**

The impact of demonetization and GST, most of brokers of Delhi Naya Bazaar have defaulted in the payments as their business is heavily impacted. They were our customers and due to their default, huge working capital is stucked in domestic debtors and recovery from them is very difficult.

External Reasons:

Losses in rice industry due to various factors:

- Decline in prices of basmati rice globally over last 3-4 years
- Increased competition, especially from countries which supported their producers and exporters heavily with subsidy and other benefits
- Changes in market regulations on EU export market
- Increased quality demand assurance of product and production factors
- Increased prices of different input articles like fertilizers and machines
- Demonetization
- Implementation of the GST on the Branded Rice Products

Loss of valuation in inventory

According to the industry requirements, millers are required to store the raw material in the Kharif season to suffice the demand for the whole year. Due to downward movement of prices of Basmati Rice, millers were holding the stocks in warehouse and ultimately, there was no other option to sell the stocks at loss. In Basmati Rice Industry, ageing is important factor and there was always trend of upward movement of prices after the procurement season is over. This covers the inventory carrying cost. But in the last 3-4 years, we are not able to recover the inventory carrying cost and interest is not recovered, which is ultimately paid from own capital and working capital to save the reputation. T

Ban on imports by Iran

Iran imposed a temporary ban on rice imports in November 2014. It was an important destination for India's basmati rice exports, accounting for 30% of India's total Basmati rice exports. Accordingly, India's rice exports were hit badly. As per DGCIS, total export of Basmati rice to Iran in FY 14 was 14.40 Lac tons which reduced to 9.35 Lac tons in FY 15 & 6.96 tons in FY 16. Company's export to Iran or exporter having presence in Iran, has also consequently fallen by around 35% from FY 14 to FY 15 and 15% from FY 15 to FY 16. Ban by Iran coupled with slow off-take of rice by other countries in FY 15 & FY 16 further dragged depressed prices of Basmati rice in the domestic market. Prices of rice move in tandem in all international markets.

Renegotiation of contracts by the customers

With the ban on imports by Iran there was a sudden fall in prices of raw material and finished goods by more than 50%. As mentioned, the Industry is required to stock up the paddy in the Kharif season to suffice the demand for the whole year, the stock of raw material and finished goods which was lying unsold due to fall in prices resulted in a massive inventory valuation loss. Furthermore, the material which was lying as covered against booked orders also resulted in some losses as the customers started facing problem of selling the material at competitive prices in the market and re-negotiated the contracts.

Moreover, due to reduced liquidity in the system, the purchases of raw material (processed Basmati) in the Company had to be made at higher prices in the market thereby impacting the profit margins further adversely.

Stretched working capital cycle

The above impact on the rice industry has impacted customers as well. There had been delays in receiving payments from them, which further deteriorated the working capital position of the Company.

C. Securities mortgaged to your bank against credit facilities enjoyed by MFPL

The detail of properties mortgaged to your bank against the credit facilities enjoyed by MFPL is as under:-

Sl.No	Property Type	Area and Measuring	Khata Nos.
1.	Land & Building at Kurukshetra Road, Kaithal owned by the Company Mastana Foods Private Limited	3 Kanal 12 Marlas 73 Kanal 11 Marlas	Khewat No. 43, Murabba No 90 Kila No 19 Khewat No 68, Kahtoni No 73, Murabba No 89/6.
2.	Land & Building at Kurukshetra Road, Kaithal owned by the Company Mastana Foods Pvt Ltd	20 Kanal 09 Marlas	Khewat No. 720/946, Murabba No-80/07
3.	Land & Building at Kurukshetra Road, Kaithal owned by the Company Mastana Foods Pvt Ltd	26 Kanal 13 Marlas	Khewat No. 68/73, 73/79 Murabba No-300/693, 138/1268.
4.	Land & Building at Kurukshetra Road, Kaithal owned by the Company Mastana Foods Pvt Ltd	68 Kanal 02 Marlas	Khewat No-1044, Murabba No-88/06
5.	Land & Building at Kurukshetra Road, Kaithal owned by the Company Mastana Foods Pvt Ltd	49 Kanal 08 Marlas	Khewat No-372, Murabba No-20/86
6.	Land & Building at Kurukshetra Road, Kaithal owned by the Company Mastana Foods Pvt Ltd	32 Kanal 14 Marlas	Khewat no-372, Murabba No-21/43
	Total Area	271 Kanal 69 Marlas	
7.	Plant & Machinery	Written down value as on 31 st March 2017 - 13.95 CRS	Installed at Mill premises at Kurukshetra Road, Kaithal

The total market value of above mentioned properties as on date is approximately Rs. 35 Crores to Rs. 38.00 Crores and if we sell that in the market, we shall not be able to get more than Rs. 30.00 Crores due to adverse market conditions.

D. Reasons for One Time Settlement of Outstanding dues of Our Company MFPL detailed in point B of this letter/offer.

- a) You are well aware of this fact that Our Company MFPL enjoyed a preferred customer status in your bank till date of NPA.
- b) The circumstances like worldwide recession, and reasons mentioned above, which were beyond our control resulted in huge losses to MFPL. We tried our best to revive our units but all our sincere efforts were in vain and Our Company became NPA for non fulfillment of commitments to your bank.
- c) In spite of all these happening still it is our earnest desire of the promoters of the Company to settle the outstanding dues. In spite of the fact that there is significant fall in realizable Value of Properties / Assets Mortgage to the Bank and in order to buy piece of mind and refrain from un-necessary litigation, We want to settle the total outstanding dues to the bank as one time settlement (OTS).

E. Offer for One Time Settlement of Outstanding dues of the Our Company MFPL detailed in point B of this letter/offer.

- a) We wish to bring to your kind notice that presently we are passing through Financial Crisis and not in comfortable position to pay the desired amount but still it is our earnest desire to settle the account and we want to maintain the same relations with your bank as maintained by us for the last 10 years, as such we offer Rs. 57.00 Cr.
- c) We have decided and have talked to various customers who intend to purchase our properties and talks with them at advanced stage. The present realizable value of the properties / Assets mortgaged to your bank will be less than Rs. 35.00 Crores to Rs. 38.00 Crores, if these are sold by us and for rest of the amount we have requested all our relatives / friends and other persons known to us for their help and there is positive assurance from them but this help is subject to OTS approval from your side.

F. Terms, Timeframe and Manner of Payment of OTS amount of Rs. 57.00 Crore will be paid, detail of which is as under: -

Demand draft bearing no. 601962 dated 13/03/18 (amount 2 Crs) & other bearing no. 696820 dated 18/05/18 (amount 85 Lakhs) aggregating Rs.2.85 Crs drawn on Chandigarh are duly attached herewith. Remaining amount we will pay in a span of 12 months from the date of approval of our OTS, detail is which is mention below:-

Sr No.	Time of Payment	% of Proposed Amount	Cumulative Total	Property to be released
1.	Amount to be appropriate which is sent in shape of DD in no lien account with OTS proposal	5.00%	5.00%	Nil
2	Within month of Approval of OTS	5.00%	10.00 %	Nil
3	Within 3 months of Approval of OTS	10.00%	20.00%	Property No. 5 & Property Number 6
4	Within 6 months of Approval of OTS	30.00%	50.00%	Property No 4
5	Within 9 months Approval of OTS	25.00%	75.00%	Property No 2 & 3
6	Within 12 months of Approval of OTS	25.00%	100.00%	Property No 1 & Plant & Machinery
8.	Total	100.00%		

II. Other terms and conditions of the OTS

- a) After the approval of this OTS, the bank will not pursue or initiate any Court case / cases / any other Litigation filed before the Hon'ble DRT-II / Local Courts / Any other court in India / Abroad against Our Company MFPL.
- b) On or before the date of payment of final amount of the OTS, the bank will withdraw all the Court Case / Cases / any other litigation or proceedings if any filed or started.
- c) After approval of OTS, give us permission to sell the properties mortgaged to your bank as per point G of the letter / offer. However we shall first deposit the amount and then get the property released.

- d) After deposit of the agreed installments of payment of OTS amount Bank shall hand over all the legal and other documents relating to the properties mortgaged to your bank as per point G of the letter / Offer.
- e) After completion of the entire OTS payment, bank shall provide all the NOC's / No due certificates and other relevant documents required to us as per the banking norms
- f) The amount of Rs. 2.85 crs (DDs on which are enclosed herewith) is arranged by us by borrowing funds, The bank will not have any lien on it. It should be treated as upfront money and be appropriated in the account only after approval of OTS. In no case this amount can be appropriated by the bank without approval of our OTS proposal.

Keeping in view the above facts and circumstances we request you to consider our application/offer for OTS favorably and inform us about your decision as earliest as possible. We shall be glad to provide any other requirement/ Information/Clarification.

Thanking You,
Yours Faithfully

For Mastana Foods Private Limited

Mastana Foods Pvt. Ltd.
[Signature]
Director

Anil Kumar Khurana

Director

Place: KATHAL

34. The above letter firstly does not reflect the routing of money from the Applicant or his HUF to the State Bank of India and secondly the letter is made on the letter head of the CD, signed by Mr. Anil Khurana, also the director of suspended board. The Applicant or his HUF is nowhere even privy to the above letter and therefore, the Applicant's contention is not tenable.
35. It is also reiterated that if the Applicant has any dispute based on retention of upfront amount by the State bank of India, before commencement of CIRP shall be raised before the appropriate forum having jurisdiction.

C. Third Contention of the Applicant:

36. The Applicant has alleged that RP has received a show cause notice from Insolvency & Bankruptcy Board of India (IBBI) dated 05.04.2024 whereby disciplinary proceedings were initiated. Applicant states that by

virtue of Model Bye Law 23A of the IBBI (Model Bye Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, the Resolution Professional is suspended with immediate effect upon receipt of show cause notice. Despite the same, the RP continued to function without disclosure of the fact of suspension to the COC.

To this objection, Resolution Professional's response is that clause 3.4 of the order dated 24.07.2025 passed by IBBI states that a copy of this order shall be sent to COC / Stakeholder Consultation Committee of all Corporate Debtors in which the Insolvency Professional, Mr Amit Agarwal, is providing services, and the COC / SCC may decide on the continuation of services of Mr Amit Agarwal. Pursuant to the same, RP convened the 30th COC meeting on 16.08.2025, wherein RP has disclosed the order date 24.07.2025, passed by IBBI, and the relevant clause 3.4 was also highlighted. It was disclosed that the suspension is for a period of three months on technical grounds of non-registration. The following discussion was carried out in the 30th CoC meeting:

Item No. 9

To Take Note of the IBBI Order Dated 24th July, 2025 and Decide the Future Course of Action and continuation of services of Present Resolution Professional

The Insolvency and Bankruptcy Board of India (IBBI), vide its order dated 24.07.2025, has suspended the Authorisation for Assignment (AFA) of the Resolution Professional (RP) for a period of 3 months starting from 24.08.2025.

As per Clause 3.3 of the said order, the Committee of Creditors (CoC) is required to take a call regarding the continuation of the services of the RP during the period of suspension of AFA.

Operative portion of order thus read under:-

3. Order.

- 3.1. In view of the foregoing, the DC in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the Inspection and Investigation Regulations and Regulation 11 of the IP Regulations hereby suspends the Authorisation for Assignment of Mr. Amit Agrawal (Registration No. IBBI/IPA-002/IP-N00185/2017-18/10456) for a period of three months.***
- 3.2. The DC refers the matter to the Board for examining/ investigating the conduct of Mr. Amit Agrawal, with respect to not mentioning the amount of the claim awarded in the arbitration award and subsequent assurance of Divine Infracon Private Limited in respect of giving four units in the hotel as noted by HC in its order dated 24.12.2021. While investigating conduct of Mr. Amit Agrawal, Board may examine the correspondence between Mr. Amit Agrawal and other stakeholders including advocate, PRA, Valuers and CoC members.***
- 3.3. This Order shall come into force after expiry of 30 days from the date of its issuance.***

- 3.4. **A copy of this order shall be sent to the CoC/ Stakeholders Consultation Committee of all them Corporate Debtors in which Mr. Amit Agrawal is providing his services, if any and the CoC/SCC may decide on the continuation of services of Mr. Amit Agrawal**
- 3.5. A copy of this order shall be forwarded to ICSI Institute of Insolvency Professionals where Mr. Amit Agrawal is enrolled as a member.
- 3.6. **A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.**
- 3.7. Accordingly, the show cause notice is disposed of.

Copy of said order was already forwarded to Members of COC and the suspended directors for their kind perusal on 13.08.2025 alongwith the Notice of 30th COC meeting.

RP informed and explained to the COC that his AFA is suspended for a period of 3 months on technical grounds not the registration. RP also explained the COC that during the suspension of Registration, the license to practice as an insolvency professional is suspended however during the suspension of authorization for assignment (AFA) an insolvency professional is barred from accepting any fresh assignment during the tenure of suspension of AFA, but can continue to work and provide services as resolution professional in the matters which are ongoing.

To subsist, RP produced copy of Judgement dated 07.08.2025 passed by Hon'ble National Company Law Appellate Tribunal (NCLAT) in matter of Girish Siriram Juneja, RP, Hindusthan National Glass & Industries Ltd. Vs. Soneko Marketing Pvt. Ltd. & Ors. (Company Appeal (AT) (Insolvency) No. 890 of 2025 & I.A. No. 3492 of 2025) Inter-alia held :-

44. Thus, while passing a final order imposing penalty of suspension, or cancellation of authorisation, the Board may discharge pending obligations or continue its function till such time as may be directed, only to enable stakeholders to shift to another service provider. The provision of sub-regulation (6) of Regulation 13, thus militate against the submission that on suspension of authorisation of assignment, the RP is statutorily debarred from continuing its existing functions. Had the consequence of suspension of authorisation for assignment is to statutorily debar the Insolvency Professional to continue with its existing assignment, there is no occasion for providing for requirement as contained in Regulation 13, sub-regulation (6). Thus, the statutory scheme as contained in Regulation 13(6) also indicates that there is no automatic statutory debar of RP to continue with existing assignment, merely

because of suspension of authorisation of assignment that too when such suspension is in a manner of penalty by a final order under Regulation 13, sub-regulations (1) and (3).

45. We in the present case, are dealing with suspension, which is consequent to initiation of disciplinary proceedings by issuance of show- cause notice. Thus, when the suspension by way of penalty, does not contemplate automatic debarment from existing assignments, suspension under Bye-Law 23A, cannot be read to mean that suspension under Bye- Law 23A, shall automatically debar the RP from continuing with existing assignments. The statutory scheme reflected by the above Regulations as noticed above thus, indicate that Bye-Law 23A has to be read to mean that on suspension of authorisation of assignment, no fresh assignment can be taken by the RP.

Copy of judgement dated 07.08.2025 passed by Hon'ble National Company Law Appellate Tribunal, New Delhi in matter of Girish Siriram Juneja, RP, Hindusthan National Glass & Industries Ltd. Vs. Soneko Marketing Pvt. Ltd. & Ors. (Company Appeal (AT) (Insolvency) No. 890 of 2025 & I.A. No. 3492 of 2025) was also forwarded to Members of COC for their kind perusal on 13.08.2025 alongwith the Notice of 30th COC meeting.

That on 15.08.2025, Mr. Krishan Mohan Mendiratta (Suspended Director, Promoter and Unsuccessful PRA) sent an email to RP raising following issues:-

"Dear Sir,

We are in receipt of the Notice and Agenda for the 30th meeting of the Committee of Creditors scheduled for 16.08.2025.

We invite your kind attention to the Agenda No. 2 of the said Notice, wherein RP Mr. Agrawal has intimated the CoC regarding suspension of his AFA by the Insolvency and Bankruptcy Board of India (IBBI) vide Order dated 24.07.2025 passed by the Disciplinary Committee in furtherance to the Show Cause Notice dated 05.04.2024 issued by IBBI to the Resolution Professional (Mr. Amit Agrawal) for violations of the provisions of the Code and CIRP Regulations.

*In the Notice and Agenda, the Resolution Professional has sought his continuance as RP of the Corporate Debtor, by the CoC, by placing reliance upon the judgment dated 08.07.2025 passed by the Hon'ble NCLAT in the matter of **Girish Siriram Juneja versus Soneko Marketing Pvt. Ltd. and Ors. (CA(AT)(INS) No. 890 of 2025)**, wherein it has been held that the CoC*

may permit the Resolution Professional to continue with its existing Assignments, despite suspension of the AFA.

However, there are certain key points which are pertinent to be brought to the kind attention of the CoC in order to arrive at the conclusion on whether Mr. Agrawal can continue as the RP of the Corporate Debtor, despite suspension of his AFA:

1. The judgment passed by the Hon'ble NCLAT in the matter of **Hindustan National Glass (Supra)** was in the context of automatic suspension of the AFA of the concerned RP immediately upon issuance of Show Cause Notice issued by IBBI (refer **para 37** of the Judgment). It was in this factual background that the RP therein was suspended by virtue of Model Bye-Law 23A of the IBBI (Model Bye – Laws, and Governing Board of Insolvency Professional Agencies) Regulations, 2016 which provides that immediately upon issuance of show cause notice, the AFA of the concerned RP is suspended. The said judgment is solely restricted to interpretation of Bye-Law 23A which comes into effect upon issuance of Show Cause Notice.

However, in the present case of Mr. Amit Agrawal, the Show Cause Notice was issued way back on 05.04.2024 and therefore, by virtue of Model Bye-law 23A, the AFA stood suspended on 05.04.2024 only. Pertinently, the said fact was never brought to the notice of the Committee of Creditors in any of the CoC meetings of Mastana Foods Pvt. Ltd. after 05.04.2024. In our respectful submission, such material fact ought to have been placed before the CoC for its consideration and decision on the continuation of Mr. Agrawal as the RP. Such wilful omission on part of the RP to bring to the notice of the CoC the suspension of its AFA and to not seek approval of the CoC on its continuation as RP, despite suspension of AFA, is a material irregularity on part of the RP in the present case and ought to be looked into by the CoC.

2. As mentioned hereinabove, the facts of the case in **Hindustan National Glass (supra)** were solely restricted to automatic suspension of AFA upon issuance of show cause notice and not when the show cause notice was finally disposed off by the Disciplinary Committee. However, in the facts of Mr. Amit Agrawal, it is pertinent to note that the Show Cause Notice has been finally disposed off by IBBI vide order dated 24.07.2025, wherein the AFA has been suspended for a period of 3 months and further investigation has been ordered. Therefore,

Regulation 13(6) of IBBI (Inspection and Investigation Regulations) Regulations, 2017 shall be squarely made applicable to the facts of the present case which clearly provide the following:

13. Disposal of Show Cause Notice-

- (6) The Disciplinary Committee shall in the order passed under sub-regulation (1) require the service provider-*
- (a) to discharge pending obligations, if any;*
 - (b) to continue its functions till such time as may be directed, **only to enable stakeholders to shift to another service provider;** and*
 - (c) to comply with any other directions.*

Therefore, in our respectful submission, Mr. Agrawal cannot continue as RP of Mastana Foods Pvt. Ltd., as Regulation 13(6) clearly provides that such continuation is permitted only to enable the stakeholders to shift to another service provider. We request the CoC to kindly consider the same while discussing the aforesaid Agenda in the meeting.

*3. The judgment passed by the Hon'ble NCLAT in the matter of **Hindustan National Glass (supra)** has been challenged before the Hon'ble Supreme Court in Civil Appeal Nos. 9782-9787 of 2025 wherein the Hon'ble Supreme Court, vide order dated 08.08.2025, has directed that "**Appeals are admitted on the question of law**" which clearly reflects that the said issue of whether the RP can continue in existing assignments despite suspension of AFA has not attained finality.*

*We further invite your attention to another judgment dated 22.04.2024 passed by the Hon'ble NCLAT, Chennai Bench in the matter of **Mr. S. Muthuraju versus Mr. Arunachalam Tenzing (CA(AT)(CH)(INS) No. 115/2024** wherein the RP was suspended after final disposal of the Show Cause Notice. It was held:*

*"As far as the contention of the Learned Counsel for the Appellant is concerned with regards his authority to function as IRP, in the CIRP Proceedings which has already been initiated prior to the order dated 12th April 2023, owing to the fact that the said Order of Suspension of his Authority to function as IRP by exercising the powers under Section 220(2) of the Code, would operate prospectively. The contention raised by the Counsel for the Appellant is not accepted by this Tribunal for the reason being that by an Order dated 12th April 2023 his Licence to function as an IRP before this Tribunal, it was as issued in his favour by the IBBI was suspended. **We are of the view that the***

suspension will relegate back to the date on which the Registration was granted and as soon as the said Order of suspension as IRP was passed on 12th April 2023, he will lack an authority to still to function as an IRP even in the pending Proceedings or any Proceeding which is to be carried henceforth, since having held to be ineligible to function as such, his incapacity, would be his incapacity right from the date he was registered by IBBI.

Therefore, in our respectful submission, in the interest of the Corporate Debtor and all its stakeholders, we earnestly request the CoC to kindly consider the said factual and legal aspects and accordingly, replace the existing RP.

This email is without prejudice to the rights and remedies of the undersigned.

*Kind Regards
Krishan Mohan"*

That during the meeting Dr. Krishna Mohan this raised the issue and requested the COC to take Appropriate Steps in this regard..

RP responded to all issues raised by Dr. Krishna Mohan:-

1. We invite your kind attention to the Agenda No. 2 of the said Notice, wherein RP Mr. Agrawal has intimated the CoC regarding suspension of his AFA by the Insolvency and Bankruptcy Board of India (IBBI) vide Order dated 24.07.2025 passed by the Disciplinary Committee in furtherance to the Show Cause Notice dated 05.04.2024 issued by IBBI to the Resolution Professional (Mr. Amit Agrawal) for violations of the provisions of the Code and CIRP Regulations.

In the Notice and Agenda, the Resolution Professional has sought his continuance as RP of the Corporate Debtor, by the CoC, by placing reliance upon the judgment dated 08.07.2025 passed by the Hon'ble NCLAT in the matter of Girish Siriram Juneja versus Soneko Marketing Pvt. Ltd. and Ors. (CA(AT)(INS) No. 890 of 2025), wherein it has been held that the CoC may permit the Resolution Professional to continue with its existing Assignments, despite suspension of the AFA.

However, there are certain key points which are pertinent to be brought to the kind attention of the CoC in order to arrive at the conclusion on whether Mr. Agrawal can continue as the RP of the Corporate Debtor, despite suspension of his AFA:

POINT 1

1. The judgment passed by the Hon'ble NCLAT in the matter of Hindustan National Glass (Supra) was in the context of automatic suspension of the AFA of the concerned RP immediately upon issuance of Show Cause Notice issued by IBBI (refer para 37 of the Judgment). It was in this factual background that the RP therein was suspended by virtue of Model Bye-Law 23A of the IBBI (Model Bye – Laws, and Governing Board of Insolvency Professional Agencies) Regulations, 2016 which provides that immediately upon issuance of show cause notice, the AFA of the concerned RP is suspended. The said judgment is solely restricted to interpretation of Bye-Law 23A which comes into effect upon issuance of Show Cause Notice.

However, in the present case of Mr. Amit Agrawal, the Show Cause Notice was issued way back on 05.04.2024 and therefore, by virtue of Model Bye-law 23A, the AFA stood suspended on 05.04.2024 only. Pertinently, the said fact was never brought to the notice of the Committee of Creditors in any of the CoC meetings of Mastana Foods Pvt. Ltd. after 05.04.2024. In our respectful submission, such material fact ought to have been placed before the CoC for its consideration and decision on the continuation of Mr. Agrawal as the RP. Such wilful omission on part of the RP to bring to the notice of the CoC the suspension of its AFA and to not seek approval of the CoC on its continuation as RP, despite suspension of AFA, is a material irregularity on part of the RP in the present case and ought to be looked into by the CoC.

RP's Response :-

RP informed the COC that there is no specific legal provision under the Insolvency and Bankruptcy Code, 2016 (IBC) or related regulations that mandates a Resolution Professional (RP) to inform the Committee of Creditors (CoC) about a Show Cause Notice (SCN) issued by the Insolvency and Bankruptcy Board of India (IBBI).

RP further informed the COC that in SCN itself, there were no directions given or mentioned to RP, obligating or necessitating him to inform the issuance of SCN to COC and other stakeholder, as clear directions are passed while disposing the said SCN. It is well settled principle of law that no one can be held guilty unless proven. RP informed the COC, as per the existing procedure, AFA is automatically suspended soon the SCN is issued, during the period of suspension RP has not undertaken any new assignment and have continued to work on the pre - existing assignments only. It was reiterated that, under the

provisions of the Insolvency and Bankruptcy Code, 2016 and the regulations framed thereunder, a Resolution Professional is not required to inform the Committee of Creditors (CoC) about the issuance of a Show Cause Notice (SCN) by the IBBI. Accordingly, there is no irregularity or lapse on part of the Resolution Professional in not communicating the issuance of the said Show Cause Notice to the CoC, however in all fairness and transparency RP has placed the order dated 24.07.2025 passed by DC disposing the SCN before the COC, even before the said order came to force, i.e., 24.08.2025.

RP also stated and mentioned in the notice for COC meeting that members of the COC shall be at the liberty to propose the name of a new Resolution Professional should they wish to replace the present Resolution Professional.

POINT 2

2. As mentioned hereinabove, the facts of the case in ***Hindustan National Glass (supra)*** were solely restricted to automatic suspension of AFA upon issuance of show cause notice and not when the show cause notice was finally disposed off by the Disciplinary Committee. However, in the facts of Mr. Amit Agrawal, it is pertinent to note that the Show Cause Notice has been finally disposed off by IBBI vide order dated 24.07.2025, wherein the AFA has been suspended for a period of 3 months and further investigation has been ordered. Therefore, Regulation 13(6) of IBBI (Inspection and Investigation Regulations) Regulations, 2017 shall be squarely made applicable to the facts of the present case which clearly provide the following:

13. Disposal of Show Cause Notice-

(6) The Disciplinary Committee shall in the order passed under sub-regulation (1) require the service provider-

(a) to discharge pending obligations, if any;

*(b) to continue its functions till such time as may be directed, **only to enable stakeholders to shift to another service provider;** and*

(c) to comply with any other directions.

Therefore, in our respectful submission, Mr. Agrawal cannot continue as RP of Mastana Foods Pvt. Ltd., as Regulation 13(6) clearly provides that such continuation is permitted only to enable the stakeholders to shift to another service provider. We request the CoC to kindly consider the same while discussing the aforesaid Agenda in the meeting.

RP's Response :-

RP informed the COC that Regulation 7A of IP regulations requires for any IP to have AFA before undertaking any assignment after 31st December, 2019. Regulation 7A reads as follows

"7A. An insolvency professional shall not accept or undertake an assignment after 31st December, 2019 unless he holds a valid authorisation for assignment on the date of such acceptance or commencement of such assignment, as the case may be: Provided that provisions of this regulation shall not apply to an assignment which an insolvency professional is undertaking as on-
(a) 31st December, 2019; or
(b) the date of expiry of his authorisation for assignment."

RP stated that it is clear from the said Regulation that one of the essential conditions for undertaking any assignment by an IP is that he should have a valid AFA which is issued by the IPA with which he is enrolled as a professional member. In other words, without AFA, an IP is not eligible to undertake assignments or conduct various processes thereof.

The bye laws of Indian Institute of Insolvency Professional of ICAI defines in para 4(1)(aa) the expression "Authorisation for Assignment" as an authorisation to undertake an assignment, issued by an insolvency professional agency to an insolvency professional, who is its professional member, in accordance with its bye-laws regulation. An application for grant of AFA can be made to the IPA under para 12A of said bye laws

RP further reoffered the Bye-law 23A which thus reads

"23A. The authorisation for assignment shall stand suspended upon initiation of disciplinary proceedings by the Agency or by the Board, as the case may be.

Explanation.- A disciplinary proceeding shall be considered as pending against the professional member from the date he has been issued a show cause notice by the Agency or the Board, as the case may be, till its disposal by the Disciplinary Committee of the Agency or the Board, as the case may be."

One of the exception carved out by the above Proviso is that the provision of Regulation 7A, shall not be applicable on the date of expiry of his authorisation for assignment. Thus, the Proviso carves a clear exception that an assignment, which an Insolvency Professional is undertaking shall not be affected by expiry of his Authorisation for assignment. Thus, Regulation clearly contemplates that existing assignment, shall not be affected by expiry of authorisation of assignment. The authorisation of assignment has been defined in Regulation 2(aa), which is as follows:

"2(aa) "authorisation for assignment" means an authorisation to undertake an assignment, issued by an insolvency professional agency to an insolvency professional, who is its professional member, in accordance with its bye-laws;"

Regulation 13(3) contemplates various kinds of order, which will be passed while disposing of the show-cause notice. Regulation 13(3) is as follows:

"13. Disposal of show cause notice.

(3) The order under sub-regulation (1) may provide for-

(a) closure of show cause notice without any direction;

(b) warning;

(ba) suspension or cancellation of authorisation for assignment of an Insolvency Professional;

(c) any of the actions under section 220(2) to (4);

(d) a reference to the Board to take any action under section 220(5) or 236(2), or

(e) any other action or direction as may be considered appropriate."

RP placed reliance on Judgement passed by Hon'ble NCLAT in Girish Siriram Juneja versus Soneko Marketing Pvt. Ltd. and Ors. (CA(AT)(INS) No. 890 of 2025) wherein the Hon'ble NCLAT in has examined all above quoted provision at great length and inter-alia held that:-

Suspension of authorisation for assignment by Bye-Law of 23A shall not debar the RP to continue with pending/ obligatory assignments and the RP is only prohibited to take new assignments

After the hearing all points reiterated by Dr. Krishna Mohan COC and response by given by RP, COC directed the RP to record all contentions raised and response given in the minutes of meeting also give an appropriate reply to email dated 15.08.2025.

3. The judgment passed by the Hon'ble NCLAT in the matter of Hindustan National Glass (supra) has been challenged before the Hon'ble Supreme Court in Civil Appeal Nos. 9782-9787 of 2025 wherein the Hon'ble Supreme Court, vide order dated 08.08.2025, has directed that "Appeals are admitted on the question of law" which clearly reflects that the said issue of whether the RP can continue in existing assignments despite suspension of AFA has not attained finality.

RP's Response :-

RP informed the COC, that Dr. Krishnan Mohan have selectively chosen only one part of order passed by Hon'ble Supreme Court in Civil Appeal Nos. 9782-9787 of 2025, wherein Hon'ble Supreme Court categorically mentioned and clarified that there is no stay and all interlocutory applications are dismissed.

Complete order dated 08.08.2025 passed by Hon'ble Supreme Court in Civil Appeal Nos. 9782-9787 of 2025 thus reads as under:-

"O R D E R

- 1. Permission to file appeal is granted.*
- 2. Appeals are admitted on the question of law. However, all the interlocutory applications are dismissed.*
- 3. We clarify that the pendency of this appeal shall not be treated as stay of further proceedings under Insolvency and Bankruptcy Code, 2016."*

As per Hon'ble Supreme Court order there is no stay on the NCLAT order and it shall be continue binding till the final order is passed by the Apex Court.

POINT 4.

We further invite your attention to another judgment dated 22.04.2024 passed by the Hon'ble NCLAT, Chennai Bench in the matter of **Mr. S. Muthuraju versus Mr. Arunachalam Tenzing (CA(AT)(CH)(INS) No. 115/2024** wherein the RP registration was suspended after final disposal of the Show Cause Notice. It was held:

"As far as the contention of the Learned Counsel for the Appellant is concerned with regards his authority to function as IRP, in the CIRP

*Proceedings which has already been initiated prior to the order dated 12th April 2023, owing to the fact that the said Order of Suspension of his Authority to function as IRP by exercising the powers under Section 220(2) of the Code, would operate prospectively. The contention raised by the Counsel for the Appellant is not accepted by this Tribunal for the reason being that by an Order dated 12th April 2023 his Licence to function as an IRP before this Tribunal, it was as issued in his favour by the IBBI was suspended. **We are of the view that the suspension will relegate back to the date on which the Registration was granted and as soon as the said Order of suspension as IRP was passed on 12th April 2023, he will lack an authority to still to function as an IRP even in the pending Proceedings or any Proceeding which is to be carried henceforth, since having held to be ineligible to function as such, his incapacity, would be his incapacity right from the date he was registered by IBBI.***

Therefore, in our respectful submission, in the interest of the Corporate Debtor and all its stakeholders, we earnestly request the CoC to kindly consider the said factual and legal aspects and accordingly, replace the existing RP.

RP's Response :-

RP informed the COC that citation is not applicable in present case as in the matter of S. Muthuraju There was suspension of the registration. Whereas in the present case registration has not been suspended its only the AFA suspended.

Suspension of Registration and Suspension of AFA are to different propositions which are distinctly governed by Regulation 7 and Regulation 7A respectively.

The COC after due deliberation and take an appropriate decision on whether to continue with the services of present Resolution Professional during the period of suspension of AFA for 3 months affective from 24.08.2025. The members of the COC shall be at the liberty to propose the name of a new Resolution Professional should they wish to replace the present Resolution Professional.

The CoC noted that the Resolution Plan has already been approved by the CoC and is presently pending approval before the Hon'ble Adjudicating Authority (AA). In view of the advanced stage of the process, members observed that any change of RP at this juncture may not be in the interest of the CIRP.

The unwanted objections raised by promoter who is also an unsuccessful PRA appear to be an attempt to derail the CIRP process at this culminating stage and these are all steps to unnecessary pressurize the RP. The present email is another step in that direction and lacks merit.

RP also referred to the Judgement dated 22.02.2022, passed by Hon'ble NCLAT in Anil Kumar Ojha v. Chandramouli Ramasubramaniam, RP of SLO Industrial Ltd. & Anr Company Appeal (AT) (Insolvency) No. 75 of 2022 wherein the Hon'ble NCLAT inter-alia held that:-

*"10. At this juncture, this connection, this 'Tribunal' on going through the 'impugned order' dated 23.12.2021 in IA(IBC)/1095/CHE/2021 in CP 1264/IB/2018 on the file of the 'Adjudicating Authority' (National Company Law Tribunal, Special Bench -1, Chennai) is of the considered opinion that the 'Committee of Creditors' is entitled and also empowered to change the 'Resolution Professional' in 'Corporate Insolvency Resolution Process' and that too, with a Majority of 66 % votes. **In reality, the 'Suspended Board of Director' under the I & B Code, 2016 is not enjoined with the 'power' to displace the existing 'Resolution Professional' and to seek for a replacement of another 'Resolution Professional', being appointed in his place.** Added further, an 'Adjudicating Authority' is to adhere to the procedural formalities which are mentioned in the relevant Sections of the Code, depending on the controversies involved, in the subject matter."*

With this RP answered all points and issues raised by Dr. Krishan Mohan and left the decision on the CoC to decide the further course of action.

Decision of the CoC:

After considering the submissions of the RP, the legal position, and the objections raised by the suspended director, the CoC observed that the CIRP is at its concluding stage, wherein the CoC has already approved Resolution Plan which is now pending approval before the Hon'ble NCLT and notices have been issued to concerned parties of filing objections.

At this stage, replacing the RP would not be prudent and shall unnecessarily delay the process to the detriment of members of CoC and stakeholders.

Accordingly, the CoC decided that the present RP shall continue to discharge his functions as RP, in line with the judgement of the Hon'ble NCLAT in Hindusthan National Glass (supra) and until further orders of the Hon'ble Supreme Court.

The statement of the representative of the Financial Creditor and the objections of the suspended director were duly noted.

37. It is evident from the above that directors of the Suspended Board have raised objections. However, what is relevant is that in the order of suspension dated 24.07.2025 itself, the liberty has been given to the CoC to decide whether to continue with the current RP who is suspended for a temporary period of three months. Given the context that CIRP is already at advance stage, CoC has decided to continue with the same RP. When the suspension order itself provides the liberty, then no question can be raised upon the power exercised by the CoC to continue with the same RP. From the minutes of the 30th CoC meeting, it is evident that the CoC, after giving consideration to all facts and contentions, decided to continue

with the same RP. Thus, no question can be raised at this stage as to the validity of the continuation of the RP after the suspension order.

Further judgment of the Hon'ble NCLAT case is the one that is binding upon us. Therefore, we are constrained to reject this contention of the applicant.

D. Fourth Contention of the Applicant:

38. Applicant has contended that though there was a better financial proposal from M/s Amba Grains Private Limited; Mrs. Amarjit Kaur; and Mr. Rajinder Pal Singh (Consortium), the COC, misguided by the Resolution Professional, has chosen to approve the Resolution Plan of SRA – M/s HR Commercials Private Limited and Crown Steels (Consortium), which is against the principle of value maximisation. It has been contended that the Resolution Professional and CoC have rendered an undue favour to the Successful Resolution Applicant.

39. This contention of the Applicant is irrelevant, as on the date when the law is settled, the COC has absolute and unfettered commercial wisdom and discretion to approve one Resolution Plan and reject another, going by the feasibility and viability aspects, which only the COC can decide, and the same is not justiciable. In the minutes of the 28th CoC meeting convened on 01.07.2025, a detailed recording has been made of the bidding received in the Swiss Challenge Mechanism and only after completion of the process, M/s Amba Grains Private Limited; Mrs. Amarjit Kaur; and Mr. Rajinder Pal Singh (Consortium) submitted two different resolution plan, one with the same value as submitted in the bid i.e., INR 91.91 crores and another with the unilaterally revised bid i.e., INR 133.91 crores after swiss challenge. It is an undisputed position that in the Swiss Challenge mechanism, the highest bid i.e., of INR 131.91 crores was submitted by the SRA - M/s HR Commercials Private Limited, and Crown Steels (Consortium). Bid submitted by M/s Amba Grains was less than that of the SRA. Only after the closure of the Swiss Challenge, M/s Amba Grains, without permission, submitted another resolution plan with the higher bid, which CoC, after recording reasons as to ensure fairness and

transparency, rejected the later submitted resolution plan with a higher bid.

40. The Hon'ble National Company Law Appellate Tribunal, New Delhi in the case of **Vistra ITCL (India) Ltd. v. Torrent Investments Pvt. Ltd. & Ors.**, referred to a judgment passed by the Hon'ble Supreme Court in the matter of "**(1993) 1 SCC 71 – Food Corporation of India vs. M/s Kamdhenu Cattle Feed Industries**" and observed as follows:

54. *We may refer to a judgment of Hon'ble Supreme Court in (1993) 1 SCC 71 – Food Corporation of India vs. M/s Kamdhenu Cattle Feed Industries. In the above case, tenders were issued by Food Corporation of India for sale of stocks of damaged food grains, in which Respondent Kamdhenu Cattle Feed Industries submitted a tender, which was highest tender, but tender was not accepted by Food Corporation of India. A Writ Petition was filed by the Respondent, challenging the Appellants refusal to accept the highest tender, which Writ Petition was allowed by the High Court. It was contended before the High Court that Food Corporation of India having chosen to invite tenders, it could not thereafter dispose of the stocks of damaged food grains by subsequent negotiation rejecting the highest tenderer. Appeal filed in the Hon'ble Supreme Court was allowed, setting aside the judgment of the High Court. The Hon'ble Supreme Court also held in the above case that highest tenderer can claim no right to have his tender accepted. It was further observed that inadequacy of the price offered in the highest bid could be a cogent ground for negotiating with the tenderers giving them equal opportunity to revise their bids with a view to obtain the highest available price. In the above case, the action of the Food Corporation of India to negotiate with tenderers even after receiving of the bid of the Respondent, which was highest, was upheld. In paragraph 10 of the judgment, following was laid down:*

"10. From the above, it is clear that even though the highest tenderer can claim no right to have his tender accepted, there being

a power while inviting tenders to reject all the tenders, yet the power to reject all the tenders cannot be exercised arbitrarily and must depend for its validity on the existence of cogent reasons for such action. The object of inviting tenders for disposal of a commodity is to procure the highest price while giving equal opportunity to all the intending bidders to compete. Procuring the highest price for the commodity is undoubtedly in public interest since the amount so collected goes to the public fund. Accordingly, inadequacy of the price offered in the highest tender would be a cogent ground for negotiating with the tenderers giving them equal opportunity to revise their bids with a view to obtain the highest available price. The inadequacy may be for several reasons known in the commercial field. Inadequacy of the price quoted in the highest tender would be a question of fact in each case. Retaining the option to accept the highest tender, in case the negotiations do not yield a significantly higher offer would be fair to the tenderers besides protecting the public interest. A procedure wherein resort is had to negotiations with the tenderers for obtaining a significantly higher bid during the period when the offers in the tenders remain open for acceptance and rejection of the tenders only in the event of a significant higher bid being obtained during negotiations would ordinarily satisfy this requirement. This procedure involves giving due weight to the legitimate expectation of the highest bidder to have his tender accepted unless outbid by a higher offer, in which case acceptance of the highest offer within the time the offers remain open would be a reasonable exercise of power for public good.”

41. Therefore, the Prospective Resolution Applicant (**PRA**) offering the highest financial proposal does not have a vested right to get selected and CoC is well within its right to look into all the factors prevailing. In the present case, the higher bid was not submitted during swiss chalange process but thereafter and accepting thereof would have been unfair to

others who participated in the bidding process. When there were multiple PRAs, allowing one to raise the bid unilaterally without offering others the opportunity would render the process arbitrary and since, unilateral revision was done after the closure of swiss challenge process, offering a similar opportunity to other PRAs would have delayed the process further. This is relevant as in the order dated 07.04.2025 passed by this AA, the Resolution Professional was directed to complete the CIRP within extended timeline and it was categorically recorded that no further extension will be granted. Therefore, in our view, CoC has rightly rejected the resolution plan submitted by M/s Amba Grains with the unilaterally revised bid, after the closure of the Swiss Challenge Mechanism.

42. Furthermore, it is settled that the Adjudicating Authority (**AA**) has no jurisdiction to sit in appeal over decisions taken by CoC in its commercial wisdom.

43. In view of the above, this AA cannot interfere with the decision of the CoC in not considering the resolution plan of the Respondent No. 4 with a unilaterally revised bid. Hence, this contention of the Applicant is rejected. Reliance is placed upon **Committee of Creditors of Essar Steel India** (Supra), and **Jindal Stainless Ltd.** (Supra).

E. Fifth Contention of the Applicant:

44. The Applicant has contended that RFRP requires the SRA consortium to be incorporated only in the form of a Special Purpose Company (SPC) and the same shall acquire at least 51% of the Corporate Debtor.

45. Per contra, SRA and CoC members contends that the plan has been submitted by two corporate entities as consortium and not as SPC which is the option given in RFRP. Since, it is the consortium, they will abide by the terms & conditions on which the plan was approved and therefore, the question of going into the shareholding of the individual company is irrelevant. Otherwise, an undertaking also has been given by the SRA that he will be compliant as and when the plan is approved.

46. Hence, this contention of the Applicant also stands rejected.

F. Sixth Contention of the Applicant:

47. The Applicant has contended that HR Commercial has been allowed to revise resolution plan – financial proposal even after the closure of bidding process and last date prescribed for the submission of the same i.e., 22.04.2025.
48. The Hon'ble Supreme Court in the matter of **Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. and Ors., Civil Appeal Nos. 1632-1634 of 2022** held as follows:

83. During the course of hearing of these Appeals also, the learned Senior Advocate Mr. Abhishek Manu Singhvi for the SRA and the learned Senior Advocate Mr. Tushar Mehta appearing for the CoC had stated in no uncertain terms that the benefit of avoiding/setting aside of any transaction under Sections 43, 45, 47, 49 and 50 shall enure to the benefit of the Creditors of DHFL, whereas any recovery under Section 66 would be for the benefit of Piramal Capital. As discussed earlier, the SRA had raised its offer to the extent of Rs.37,250 crores, which had factored the potential recoveries from Section 66 Applications. Thus, the RP approved by the CoC was an outcome of the commercial bargain struck between the SRA and the CoC after several rounds of negotiations and deliberations. The said plan approved by the CoC was also further approved by the NCLT under Section 31(1) of IBC. In absence of any perversity, that was palpable on the face of the approved RP, and the CoC having taken a firm commercial decision with regard to the impugned clause of RP by voting overwhelmingly in favour of the RP, the NCLAT ought not to have interfered with the said clause of RP approved by the CoC and the NCLT.

*84. As per the legislative intent and as per the broad contours of the provisions of IBC, the commercial wisdom of CoC has been given the prominent status, with the least judicial intervention, for ensuring the completion of Resolution Process within the prescribed timelines. As stated earlier, in **Essar Steel** (supra), this Court after discussing earlier judgments had observed that what is left to the majority decision of the*

CoC is the “feasibility and viability” of a RP, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of Creditors. The legislature has consciously not provided for a ground to challenge the justness of the commercial decision expressed by the Financial Creditors – be it to approve or reject the RP. Similar view is taken by the Three Judge Bench in **Ghanashyam Mishra** (supra) to the effect that the legislature has given paramount importance to the commercial wisdom of the CoC and the scope of judicial review by the Adjudicating Authority is limited to the extent provided under Section 31 and by the Appellate Authority limited to the extent provided under sub-section (3) of Section 61 of IBC.

85. The NCLAT therefore has clearly transgressed its jurisdiction under Section 61 IBC, by interfering with the clause pertaining to the treatment to the recoveries from the Fraudulent and Wrongful trading under Section 66.

...

102. We have already discussed and dealt with, in the earlier part of this judgment, all the said issues including the scope of judicial review by the NCLT and NCLAT over the commercial wisdom exercised by the CoC, and also examined the legality of the clause in the RP with regard to the treatment of Recoveries from the Avoidance Applications. We have also examined in detail the issue with regard to the maximization of the value of assets of the CD. Hence, the same are not dealt with in this set of Appeals. Suffice it to say that when majority of the creditors in their wisdom, and after negotiations with the PRA as to how and in what manner the Corporate Resolution Process should be undertaken, had explored the feasibility and viability of the RP, while approving the same, and when the said Plan was also approved by the NCLT, the NCLAT ought not to have tinkered with a Clause of the said Plan with regard to the treatment of Recoveries from the Applications under Section 66 of the IBC.

49. The Hon'ble Supreme Court in the matter of **Ramkrishna Forgings Limited vs Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr.** Civil Appeal No. 1527 of 2022 held as follows:

27. ... K Sashidhar (supra) and Committee of Creditors of Essar Steel India Ltd. (supra) are clear authorities that the CoC's decision is not to be subjected to unnecessary judicial scrutiny and intervention. This came to be reiterated in Maharashtra Seamless Limited (supra), which also emphasised that the CoC's commercial analysis ought not to be qualitatively examined and the direction therein of the NCLAT to direct the successful Resolution Applicant to enhance its fund flow was disapproved of by this Court. Thus, if the CoC, including the FC(s) to whom money is due from the Corporate Debtor, had undertaken repeated negotiations with the appellant with regard to the Resolution Plan and thereafter, with a majority of 88.56% votes, approved the final negotiated Resolution Plan of the appellant, which the RP, in turn, presented to the Adjudicating Authority-NCLT for approval, unless the same was failing the tests of the provisions of the Code, especially Sections 30 & 31, no interference was warranted. In Kalpraj Dharamshi v Kotak Investment Advisors Limited, (2021) 10 SCC 401, the Court concluded that '... in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of "commercial wisdom", NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.

*30. At this juncture, it also cannot be lost sight of that it is for the FC(s) who constitute the CoC to take a call, one way or the other. Stricto sensu, it is now well-settled that **it is well within the CoC's domain as to how to deal with the entire debt of the Corporate Debtor.** In this background, **if after repeated negotiations, a Resolution Plan is submitted, as was done by the appellant (Resolution Applicant), including the financial component which includes the actual and minimum upfront payments, and has been approved by the CoC***

with a majority vote of 88.56%, such commercial wisdom was not required to be called into question or casually interfered with. ...

50. Even otherwise on facts, it has been submitted in reply that the SRA had to make revision to the Resolution Plan in order to comply with the Judgment by the Hon'ble Supreme court in the case of ***State Tax Officer vs Rainbow Paper*** Civil Appeal No. 1661 of 2020 to pay statutory dues. In the 28th CoC meeting that the SRA has undertaken to provide similar treatment to all the secured creditors. Relevant portion of the minutes are extracted below:

RP informed the COC that Mr. Anil Khurana, suspended director of CD, has sent an email and raised his concerns regarding the treatment of the claim of the excise department. Mr. Anil Khurana had raised specific concerns in relation to the resolution plan submitted by HR Commercials Private Limited & M/s. Crown Steels (As Consortium), particularly:

- a) The proposal to share only 50% of recoveries from PUFEE transactions, whereas the original plan had earmarked 100% for the financial creditors.
- b) The disproportionate allocation towards statutory dues (sales tax), potentially in contravention of the principles laid down by the Hon'ble Supreme Court in *State Tax Officer v. Rainbow Papers Ltd.*

Accordingly, RP have sent emails and sought clarifications from all those PRAs who have not given the equal treatment to the state excise department in their Respective Resolution Plan. RP informed the COC in response to RP have received the reply from the only one PRA i.e. M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium), wherein the said PRA have undertaken to provide the similar treatment to all secured creditors as per the law laid down by Hon'ble Supreme Court of India *State Tax Officer v. Rainbow Papers Ltd* matter. Also, M/s. HR Commercials Private Limited & M/s. Crown Steels (As Consortium) has given an addendum to the Resolution Plan detailing treatment to all creditors as proposed.

51. Resolution Plans were submitted on 22.04.2025 with revised financial proposals based on bid amount. Further, the SRA has vide email dated 14.06.2025 addressed to Resolution Professional, has stated as follows:

Dear Sir,

We have already provided an amount of ₹4,06,10,868 in our resolution plan. Additionally, a sum of ₹3,32,27,872 shall be paid to the Secured Operational Creditor, i.e., HVAT – Excise Department. This payment is being made in accordance with the judgment in State Tax Officer vs. Rainbow Papers Limited.

Please note that this payment is over and above the amount stipulated in our resolution plan and shall have no impact and bearing on implementation on resolution plan.

52. Accordingly, on 02.07.2025, the SRA in compliance with the above submitted an addendum dated 02.07.2025 incorporating the additional amount payable to HVAT – Excise Department.

53. It is further pertinent to note that **clause 5.5(A) of the RFRP provides that CoC reserves absolute right** to accept any resolution plan with or without modification; reject any resolution plan; call upon the Resolution Applicant(s) to submit a revised Resolution Plan; and select or approve any proposal or Resolution Plan, as it may deem fit, at any time, without any liability or any obligation for such acceptance or rejection without assigning any reasons for such actions.

Clause 5.5(C) further provides that If the Resolution Plan submitted by the Resolution Applicant(s) is rejected for any reason whatsoever, the CoC may consider the offer from any other Resolution Applicant(s), whose Resolution Plan is responsive and valid, including any deviations/amendments to the Resolution Plan, as may be acceptable to the CoC or Resolution Professional and such Resolution Applicant(s).

Further, **Clause 10.1(1)** states that the CoC reserves the right, in its sole discretion, to add, delete or modify these parameters for the purpose of evaluation of the Resolution Plan, within the timelines mentioned in the IB Code.

Further, **Clause 10.2.3** states that the CoC reserves the right to negotiate any of the terms of the Resolution Plan with one or more Resolution Applicant(s) to maximize the value for all the stakeholders.

Therefore, amendment has been allowed within parameters of RFRP and amounts to commercial wisdom of CoC.

54. In view of the above, we are of the view that amendment to resolution plan has been permitted by the CoC in its wisdom and that too to ensure compliance with the judgment of the Hon'ble Supreme court. Therefore, the contention of the Applicant stands rejected.

G. Seventh Contention of the Applicant:

55. It has been contended by the Applicant that RP has not completed eligibility check under section 29A till the bidding process. In the response, it has been submitted that it is for the COC and RP to test the eligibility of Prospective Resolution Applicants, and the applicant cannot act as supervisor or advisor.

56. On this issue, we observe that in the 28th CoC meeting convened on 01.07.2025, RP informed CoC that all 8 PRA's have been found to be eligible under Section 29A, so the same is anyways done before consideration on voting on resolution plans. Therefore, this contention of the Applicant is irrelevant and cannot be sustained.

57. Accordingly, Application bearing **IA-5148/2025 is dismissed.**

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)