NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 714 of 2025

(Arising against the Impugned order dated 24.03.2025 passed by the Learned NCLT, Mumbai Bench, in I.A. (IBC) (PLAN) No. 04 of 2024 in C.P.(IB) No.748/MB/2022)

IN THE MATTER OF:

MICRO CAPITALS PRIVATE LIMITED
(Financial Creditor)
Shop No. 37, Ground Floor,
Raj Life Style Chsl,
Opp. Gee Club, Mira Bhayander,
Mira Road East, Thane-401107

.... Appellant

Versus

1. **COMMISSIONER OF INCOME TAX**
   CITA - 54 Mumbai, 102, 1st Floor,
   Earnest House, Nariman Point,
   Mumbai, Maharashtra - 400021.

2. **PRINCIPAL CHIEF COMMISSIONER OF CUSTOMS**
   TRC (Export), ACC Office of the Commissioner of Customs,
   Tax Recovery Call, Air Cargo Complex,
   Sahar, Andheri (E), Mumbai - 400099

3. **PRINCIPAL OFFICER OF SEBI**
   Mittal Court, 'B' & 'C' Wing, 1st Floor,
   224 Nariman Point, Mumbai - 400021,
   Maharashtra

4. **Mr. DHARMENDRA DHELARIYA,**
   RESOLUTION PROFESSIONAL OF KSS LIMITED

Unit 101 A, 1st Floor, Plot No. B-17,
Maurya landmark II, Andheri (West),
Mumbai - 400053

5. KSS Limited Through the Resolution Professional
Unit 101 A, 1st Floor, Plot No. B-17,
Maurya landmark II, Andheri (West),
Mumbai - 400053 **.... Respondents**

Present:

For Appellant:	**Mr. Amit Agrawal, Mr. Sarthak Wadhwa and Ms. Sana Jain, Advocates.**
For Respondents:	**Mr. Akshay Amritanshu, Sr. Standing Counsel for CBIC a/w Ms. Drishti Rawal, Mr. Mayur Goyal, Advocates for R-2.**
	Mr. Dhaval Mehrotra, Mr. Aditi Desai, Advocates for R-3.

With

Company Appeal (AT) (Insolvency) No. 721 of 2025

(Arising against the Impugned order dated 24.03.2025 passed by the Learned NCLT, Mumbai Bench-V, in I.A. (IBC) (PLAN) No. 04 of 2024 in C.P.(IB) NO.748/MB/2022)

IN THE MATTER OF:

MR. DHARMENDRA DHELARIYA
B-605, Titanium Square, Thaltej Cross Road,
Thaltej, Ahmedabad, Gujarat -380054

...Appellant

Versus

1. COMMISSIONER OF INCOME TAX
CITA - 54 Mumbai, 102, 1st Floor,
Earnest House, Nariman Point,
Mumbai, Maharashtra - 400021.

2. PRINCIPAL CHIEF COMMISSIONER OF CUSTOMS
TRC (Export), ACC Office of the Commissioner of Customs,
Tax Recovery Call, Air Cargo Complex,
Sahar, Andheri (E), Mumbai - 400099

3. PRINCIPAL OFFICER OF SEBI
Mittal Court, 'B' & 'C' Wing, 1st Floor,
224 Nariman Point, Mumbai - 400021,
Maharashtra **...Respondents**

Present:

For Appellant:	**Ms. Honey Satpal, Mr. Akash Aggarwalla and Mr. Aman, Advocates.**
For Respondents:	**Mr. Akshay Amritanshu, Sr. Standing Counsel for CBIC a/w Ms. Drishti Rawal, Mr. Mayur Goyal, Advocates for R-2.**
	Mr. Dhaval Mehrotra, Mr. Aditi Desai, Advocates for R-3.

J U D G M E N T

(30th June, 2026)

INDEVAR PANDEY, MEMBER (T)

Company Appeal (AT) (Ins.) No. 714 of 2025

The Company Appeal (AT) (Ins.) No. 714 of 2025 has been filed by **Micro Capitals Private Limited (Successful Resolution Applicant)** who

is the **Appellant** herein. It arises from the order dated 24.03.2025 passed by the National Company Law Tribunal, Mumbai (Adjudicating Authority), in I.A. (IBC) (PLAN) No.04 of 2024 in C.P.(IB) No. 748/MB/2022. The Adjudicating Authority vide the impugned order had rejected the IA No. 04 of 2024 filed by the **Resolution Professional/ Respondent No.4** for the approval of resolution plan submitted by the Appellant (SRA). The Appellant is the majority Financial Creditor of the KSS Limited **(Corporate Debtor)** having a voting right of 77.97% in the CoC; it is also the Successful Resolution Applicant of the Corporate Debtor. The **Commissioner of Income-Tax, Mumbai** has been arrayed as **Respondent No.1**; **Principal Chief Commissioner of Customs** is the **Respondent No.2**; **Principal Officer of SEBI**, is the **Respondent No.3**; **Mr. Dharmendra Dhelariya, the Resolution Professional** of KSS Limited and **Respondent No.4**; and **KSS Limited (CD)** is the **Respondent No.5**. For the sake of convenience this appeal would be treated as first appeal.

Company Appeal (AT) (Ins.) No. 721 of 2025

2. The Second appeal, CA (AT) (Ins.) No. 721 of 2025 has been filed by the **MR. DHARMENDRA DHELARIYA** who is the **Resolution Professional (RP)** of the CD and is aggrieved by the same impugned order dated 24.03.2025 passed by Adjudicating Authority in I.A. (IBC) (PLAN) No. 04 of 2024 in C.P.(IB) No. 748/MB/2022. The RP is aggrieved by the adverse remark passed by the Ld. Adjudicating Authority against him and has sought expunging of the remarks in this appeal. The Commissioner

of Income-Tax, Mumbai has been arrayed as Respondent No.1; Principal Chief Commissioner of Customs is the Respondent No.2; and Principal Officer of SEBI, Respondent No.3 in this appeal.

3. Both the appeals are being taken up for disposal together as they arise from the same CIRP proceedings and same impugned order.

4. Brief facts of the case necessary to decide these Appeals are as under:

(i) The Corporate Debtor (**CD**), KSS Limited ("KSSL"), was incorporated on 06.09.1995 and engaged in the business of content distribution and exhibition of feature films. Its shares are listed on the National Stock Exchange of India and Bombay Stock Exchange.

(ii) The Appellant which is a Non-Banking Financial Company registered with the Reserve Bank of India, filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**"Code"**) before the Adjudicating Authority seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor. The Adjudicating Authority vide order dated 24.01.2023 admitted the petition and initiated CIRP against the Corporate Debtor and Mr. Dharmendra Dhelariya, was appointed as Interim Resolution Professional and later on, confirmed as Resolution Professional.

(iii) Pursuant to commencement of CIRP, a public announcement dated 30.01.2023 was issued inviting claims from creditors. Claims amounting to approximately Rs. 95.59 crores submitted by the Micro

Capitals Private Limited (Appellant) and Axis Bank Limited were admitted. Consequently, the Committee of Creditors ("CoC") was constituted with:

A. Micro Capitals Private Limited – 77.97% voting share; and

B. Axis Bank Limited – 22.07% voting share.

(iv) Two sets of registered valuers were appointed to determine the valuation of the assets of the Corporate Debtor. The Fair Value of the CD was assessed at approximately Rs. 3.21 crores and the Liquidation Value at approximately Rs. 2.52 crores as per valuation.

(v) An Invitation for Expression of Interest ("EOI") in Form-G was published on 25.03.2023 and subsequently revised on 17.04.2023. Eight prospective resolution applicants submitted EOIs.

(vi) Out of the eight prospective resolution applicants, only the Appellant/Micro Capitals Private Limited submitted a Resolution Plan on 14.06.2023.

(vii) During CIRP, the premises of the Corporate Debtor had been sealed by the Enforcement Directorate in connection with alleged offences committed by the erstwhile management, thereby restricting access to crucial records. Accordingly, the Resolution Professional filed an application seeking de-sealing of the premises, which was disposed of as infructuous on 07.09.2023 upon the statement of the Enforcement Directorate that de-sealing was underway.

(viii) The Resolution Plan submitted by the Appellant was placed before the CoC and approved in the 7th CoC meeting held on 17.10.2023

with 77.97% voting share. The Axis Bank which was holding 22.07% voting share was the dissenting Financial Creditor.

(ix) The Resolution Professional thereafter filed an application bearing I.A. (IBC) (Plan) No. 04 of 2024 under Section 30(6) of the Code seeking approval of the Resolution Plan before the Adjudicating Authority. The Resolution Plan proposed a total payment of approximately Rs. 3.01 crores against admitted claims exceeding Rs. 106 crores.

(x) The Resolution Professional certified that the Resolution Plan complied with the provisions of Section 30(2) of the IBC and the CIRP Regulations, and that the CoC had approved the plan after considering its feasibility and viability.

(xi) By Impugned Order dated 24.03.2025, the Adjudicating Authority rejected the Resolution Plan on the following grounds:

(a) Absence of genuine infusion of funds by the Resolution Applicant;
(b) Non-compliance with Regulation 38 concerning payment to dissenting financial creditors;
(b) Failure of the CoC to adequately consider feasibility and viability;
(c) omission of certain assets allegedly de-sealed by the Enforcement Directorate;
(d) Discrepancies in the total plan value and Form-H compliance;
(e) Non-production of complete records including CoC minutes and Information Memorandum; and

(f) Conflict of interest arising from the Resolution Applicant itself being the majority financial creditor in the CoC.

5. Aggrieved by the rejection of the Resolution Plan, the Appellant in the first appeal has challenged the legality and correctness of the Impugned Order dated 24.03.2025.

6. Mr. Dharmendra Dhrealiya, the RP and the Appellant in second appeal has challenged the adverse remarks passed by the Ld. Adjudicating Authority in paragraphs 4, 12, 13, 14, 15, 16 and 17 of the same impugned Order.

Submissions of Appellant/SRA

7. Ld. Counsel for the Appellant/SRA made the following submissions:

I. Ld. Counsel submits that the Appellant was the sole Resolution Applicant and its Resolution Plan was approved in the 7th CoC Meeting held on 17.10.2023, with requisite majority in accordance with Section 30(4) of the Insolvency and Bankruptcy Code, 2016 ("IBC"). Despite the approval accorded by the CoC, the Learned Adjudicating Authority rejected the Resolution Plan on grounds wholly extraneous to the limited jurisdiction contemplated under Section 31 of the Code.

II. He submits that the Impugned Order was pronounced after an inordinate delay of nearly seven months from the date on which

orders were reserved on 29.08.2024. According to the Appellant, such extraordinary delay has resulted in erroneous appreciation of pleadings, documents and submissions advanced before the Learned Adjudicating Authority and is contrary to the time-bound framework envisaged under the IBC.

III. It is submitted that the Appellant, despite being the Successful Resolution Applicant ("SRA"), was not impleaded as a party in I.A. (IBC) (Plan) No. 04 of 2024 filed by the Resolution Professional under Section 30(6) of the Code seeking approval of the Resolution Plan.

IV. Ld. Counsel further submits that the Learned Adjudicating Authority gravely erred in rejecting the Resolution Plan on the premise that a Financial Creditor cannot submit a Resolution Plan and that the approval of such Plan by the CoC violates the principle of *nemo judex in causa sua*. It is submitted by the Appellant that the aforesaid finding is contrary to the express provisions of the IBC itself. Reliance is placed upon the proviso to Section 30(5) of the Code, which specifically contemplates a situation where a Resolution Applicant may also be a Financial Creditor. It provides that a Resolution Applicant, who is also a Financial Creditor shall have a right to vote in approval of Plan.

V. He submits that the very existence of the proviso to Section 30(5) unequivocally demonstrates legislative recognition of a Financial Creditor being eligible to submit a Resolution Plan.

Therefore, the finding of the Learned Adjudicating Authority that the Resolution Plan was vitiated merely because the Resolution Applicant was a member of the CoC is wholly unsustainable in law.

VI. Ld. Counsel submits that the only statutory restriction upon eligibility of a Resolution Applicant flows from Section 29A of the Code and admittedly the Appellant is not ineligible under Section 29A of the IBC and there exists no statutory prohibition restraining the Appellant from submitting the Resolution Plan.

VII. It is his submission that once the CoC, in its commercial wisdom, approved the Resolution Plan with requisite voting share, the jurisdiction of the Adjudicating Authority was confined only to examining whether the Plan satisfied the requirements of Section 30(2) of the Code and Regulation 38 of the CIRP Regulations.

VIII. In response to the finding of the Learned Adjudicating Authority that there was no infusion of funds by the SRA and that the CoC was merely protecting its own interest, Learned Counsel invited attention to Clause 2.3(vi) of the Resolution Plan which specifically provides for infusion of working capital amounting to Rs. 5 Crores within six months and an additional infusion of Rs. 5 Crores within twelve months. He further referred to Clause 4.20.4(b) of the Resolution Plan which contemplates infusion of funds through creation of a Special Purpose Vehicle funded by equity infusion and subscription of equity shares by the Resolution Applicant

aggregating to Rs. 3 Crores. It is therefore submitted that the finding recorded by the Learned Adjudicating Authority that there was no infusion of funds is ex facie contrary to the material placed on record.

IX. With regard to the observation that there was no detailed bifurcation concerning the amount payable to the dissenting Financial Creditor, namely Axis Bank Limited, Learned Counsel submits that Clause 4.3.3(1) of the Resolution Plan specifically provides that dissenting Financial Creditors shall be paid in priority and not less than the liquidation value in terms of Section 30(2)(b) of the Code. He submitted that the exact bifurcation could not have been specified at the stage of submission of the Resolution Plan since the Resolution Applicant could not have anticipated the final voting pattern of assenting and dissenting Financial Creditors.

X. Learned Counsel further submits that the finding regarding alleged violation of Regulation 38(1)(b) of the CIRP Regulations is wholly misconceived since the Resolution Plan expressly provides priority payment to dissenting Financial Creditors. Reliance is placed upon Clause 3.2, Clause 4.3.3(1), and Clause 4.4 of the Resolution Plan, which collectively provide that dissenting Financial Creditors shall be paid in priority within thirty days from the Effective Date and such payment shall not be less than the liquidation value payable under Section 53 of the Code.

XI. Insofar as the findings concerning feasibility and viability of the Resolution Plan are concerned, Learned Counsel submits that the Learned Adjudicating Authority could not have substituted its own subjective assessment over the commercial wisdom exercised by the CoC. It is submitted by the Appellant that Clause 3.4(b) of the Resolution Plan specifically deals with feasibility and viability and records the experience of the Resolution Applicant in revival of distressed entities along with projected revenue statements for five years. Learned Counsel also referred to Clause 3.4(e) of the Resolution Plan to demonstrate that the Resolution Applicant possesses relevant experience in the same line of business and would also be assisted by a team of professionals possessing requisite technical expertise.

XII. Learned Counsel submits that the findings concerning the property allegedly de-sealed by the Enforcement Directorate are also unsustainable since the said property did not form part of the liquidation assets of the Corporate Debtor and was merely a leased property. It is submitted that the Resolution Plan could not therefore have been rejected on account of non-dealing with an asset which did not belong to the Corporate Debtor.

XIII. Ld. Counsel further assailed the findings of the Learned Adjudicating Authority with respect to treatment of statutory dues and reliance placed upon the judgment in *State Tax Officer vS.*

Rainbow Papers. He submitted that the reliance placed on the aforesaid judgment is misplaced in as much as the said decision arose in the context of Section 48 of the Gujarat VAT Act, 2003, which specifically created a first charge in favour of the State authorities. He submits that the said judgment was subsequently distinguished by the Hon'ble Supreme Court in *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat & Ors.,* wherein it was clarified that the waterfall mechanism under Section 53 of the IBC accords priority to secured creditors over government dues. It is therefore submitted that the treatment accorded to statutory authorities under the Resolution Plan was fully compliant with the provisions of the IBC.

XIV. In relation to the alleged inconsistency in Form-H regarding Regulation 38(1B), Learned Counsel submits that the Resolution Professional merely marked "YES" in the compliance column to indicate compliance with the said Regulation. It is submitted that Clause 3.5 of the Resolution Plan specifically records an undertaking by the Resolution Applicant that it has not failed to implement any previously approved Resolution Plan. He further submits that even otherwise Clause 9.7.5 of the Resolution Plan specifically provides that in the event of any inconsistency between the Resolution Plan and any other document; the provisions of the Resolution Plan shall prevail.

XV. With regard to the alleged discrepancy in the total Plan value, Learned Counsel submits that there exists no discrepancy whatsoever. It is submitted that Clause 4 of the Resolution Plan stipulates the Plan value as Rs. 2.65 Crores together with CIRP Costs of Rs. 35 Lakhs, whereas Form-H reflects an aggregate amount of Rs. 3.01 Crores after inclusion of CIRP Costs and ex-gratia payment of Rs. 1 Lakh proposed for Operational Creditors. According to the Appellant, the figures are fully reconcilable and the Learned Adjudicating Authority erroneously treated the same as contradictory.

XVI. Learned Counsel further submits that the observation regarding non-filing of minutes of the 2nd to 6th CoC Meetings and Information Memorandum is also untenable. It is submitted that Regulation 39(4) read with Form-H merely requires annexing the minutes of the meeting approving the Resolution Plan and there exists no statutory requirement mandating filing of all previous CoC minutes along with the approval application. He submits that the Impugned Order has resulted in complete frustration of the CIRP, despite the existence of an approved Resolution Plan and has defeated the very objective of value maximization and revival of the Corporate Debtor contemplated under the IBC.

XVII. The Appellant submitted that the objections raised by SEBI are wholly misconceived and unsustainable in law. It is contended

that SEBI, having itself lodged its claim in the CIRP as an "Operational Creditor" in respect of the penalty amount, is now precluded from asserting any superior or independent status dehors the scheme of the IBC. Having elected to participate in the CIRP in the capacity of an Operational Creditor, SEBI is estopped from contending that its claim survives the approval of the Resolution Plan in any other manner. He further submits that the reliance placed by SEBI upon *State Tax Officer vs. Rainbow Papers Ltd.* is entirely misplaced as it is a statutory authority having no security interest and has to be treated as operational creditor. He further relied upon the judgment of the Hon'ble Supreme Court in *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd.* to contend that Rainbow Papers stands explained and distinguished.

XVIII. Ld. Counsel next contended that statutory penalties cannot be accorded any special or preferential treatment in the context of corporate insolvency resolution. It is submitted that wherever the legislature intended to exclude liabilities such as fines or penalties from the insolvency framework, it has done so expressly. In this regard, reliance has been placed upon Sections 79(15) and 79(19) contained in Part III of the IBC dealing with personal insolvency, wherein liabilities to pay fines imposed by a court or tribunal are specifically categorized as "excluded debts" and excluded from the definition of "qualifying debt". According to the Appellant, the absence of any corresponding exclusion in the provisions governing

corporate insolvency resolution is deliberate and significant. It is therefore contended that statutory penalties imposed upon a Corporate Debtor stand covered within the comprehensive framework of the CIRP and cannot survive independently once the Resolution Plan has attained approval under Section 31 of the IBC. He submitted that the impugned action of SEBI seeking to enforce recovery of penalty amounts subsequent to approval of the Resolution Plan is contrary to the scheme, object and overriding effect of the IBC and deserves to be set aside.

XIX. Ld. Counsel further submits that Section 32A of the IBC grants complete immunity to the Corporate Debtor and its assets from liabilities arising out of offences committed prior to the approval of the Resolution Plan. According to the Appellant, the legislative intent behind Section 32A is to ensure that the Successful Resolution Applicant acquires the Corporate Debtor on a "clean slate" basis, free from past liabilities and encumbrances, so as to maximize value and ensure successful revival of the Corporate Debtor. In view of the aforesaid submissions, Learned Counsel appearing for the Appellant prayed that the present Appeal be allowed.

Submissions of the Respondent No. 2/Pr. Ch. Commr. Customs

8. Ld. Counsel for the Respondent No.2 on behalf of Customs (Dept. of Revenue), Govt. of India made the following submissions:

I. Ld. Counsel submits that the Customs Department of the Union of India, has lawful and admitted statutory dues amounting to approximately Rs. 23.14 Crores arising out of adjudication proceedings under the Customs Act, 1962. The impugned Resolution Plan seeks to extinguish such substantial statutory liabilities by allocating merely a token amount of Rs. 1,00,000/- collectively towards all operational and statutory creditors, including Customs Authorities, Income Tax Authorities and SEBI. Such treatment is ex facie arbitrary, discriminatory, contrary to Section 30(2)(b) of the Code and against public interest. He submits that Such treatment is grossly inequitable, arbitrary and contrary to Section 30(2)(b) of the Code, which mandates that operational creditors receive not less than the amount payable under Section 53 of the Code or liquidation value, whichever is higher.

II. Ld. Counsel submits that the Appellant occupied a dual and conflicting position in the CIRP process, namely:

(i) As the sole Resolution Applicant; and

(ii) As the dominant financial creditor holding 77.97% voting share in the Committee of Creditors.

He submits that the records reveal that the Appellant, by virtue of its overwhelming voting share, single-handedly approved its own Resolution Plan in the 7th CoC Meeting dated 17.10.2023 despite categorical dissent by Axis Bank holding 22.07% voting share. He

further submits that the entire process therefore stands vitiated by apparent conflict of interest and self-serving exercise of voting power. The doctrine of *nemo judex in causa sua* squarely applies to the present facts, as the Appellant effectively acted both as beneficiary and approving authority of its own Resolution Plan. Although Section 30(5) of the Code permits a financial creditor to submit a Resolution Plan, such provision cannot be interpreted to legitimise unilateral approval of a self-serving plan by a dominant CoC member to the detriment of other stakeholders and statutory creditors.

III. It is the submission of Ld. counsel that the Ld. Adjudicating Authority rightly relied upon the judgment of the Hon'ble Supreme Court in *State Tax Officer vs. Rainbow Papers Ltd.* wherein it was held that statutory dues owed to Government Authorities constitute secured debts by virtue of statutory charge created under the relevant enactment. The Customs Department, being a statutory authority exercising sovereign functions, cannot be reduced to a mere token recipient under the garb of commercial wisdom.

IV. Ld. Counsel further submits that the CIRP Regulations mandate that the Committee of Creditors must examine feasibility and viability of a Resolution Plan before approval under Regulation 39(4). In the present case, the Resolution Plan suffers from serious deficiencies and lack of transparency, including:

(a) Non-placement of Minutes of CoC Meetings 2 to 6;

(b) Non-placement of the Information Memorandum;

(c) Non-placement of the Request for Resolution Plan ("RFRP"); and

(d) Exclusion of de-sealed Enforcement Directorate properties from valuation exercise.

These deficiencies strike at the very root of transparency and fairness in the CIRP process. He further submits that the absence of crucial documents and suppression of material particulars prevented proper judicial scrutiny and raises substantial concerns regarding the legitimacy and viability of the Resolution Plan itself.

V. Ld. counsel further submits that the Appellant's contention that the Ld. Adjudicating Authority impermissibly interfered with the commercial wisdom of the CoC is wholly misconceived. It is now well settled that while commercial wisdom of the CoC is ordinarily non-justiciable, the Adjudicating Authority is duty-bound to examine whether the Resolution Plan satisfies mandatory requirements under Section 30(2) of the Code and the CIRP Regulations. The Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta* categorically held that judicial review is permissible, where the Resolution Plan suffers from illegality, material irregularity or non-compliance with the provisions of the Code.

VI. Ld. Counsel further submits that in the present case, the Ld. Adjudicating Authority rejected the Resolution Plan on account of conflict of interest; violation of Section 30(2)(b); disregard of statutory dues; lack of transparency; and non-compliance with CIRP Regulations. Thus, the exercise of judicial review by the Ld. Adjudicating Authority was fully justified and within jurisdiction. He further submits that the Appellant has sought to contend that since no competing Resolution Plan was available, the Resolution Plan submitted by the Appellant ought to have been approved. Such submission is legally untenable. The Code does not contemplate automatic approval of a Resolution Plan merely because it is the only plan available. Section 31 mandates that only a lawful and compliant Resolution Plan may be approved. If the available Resolution Plan violates mandatory provisions of the Code or fails statutory scrutiny, the inevitable consequence contemplated under Section 33 is liquidation. Absence of alternative plans therefore cannot validate an otherwise illegal and inequitable Resolution Plan.

VII. Ld. Counsel submits that the Resolution Plan clearly demonstrates disproportionate allocation in favour of the Appellant itself, while virtually extinguishing claims of statutory authorities and operational creditors. The bulk of the Resolution Plan value is directed towards the Appellant itself, whereas sovereign dues running into crores of rupees are sought to be settled for a token amount. Such conduct amounts to abuse of dominant position

within the CoC and undermines the foundational objective of equitable insolvency resolution under the IBC.

Submissions of Respondent No. 3/SEBI

9. Ld. Counsel for Respondent No. 3 made the following submissions:

I. Ld. Counsel for SEBI submits that Section 30(2)(b) of the Code mandates that the Resolution Plan must provide fair and equitable treatment to Operational Creditors and ensure payment to such creditors in the manner contemplated under Section 53 of the Code. The legislative intent behind the 2019 Amendment to Section 30(2) was to protect the interests of Operational Creditors and ensure balanced treatment amongst all stakeholders in the CIRP.

II. The Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta* categorically held that while commercial wisdom of the Committee of Creditors ("CoC") is paramount, the distribution mechanism under a Resolution Plan must reflect the objectives of the Code namely:

(a) maximisation of value of assets of the Corporate Debtor; and

(b) balancing of interests of all stakeholders including Operational Creditors.

III. In the present case, the Resolution Plan allocates merely Rs. 1,00,000/- collectively towards all Operational Creditors despite admitted claims running into several crores including statutory

claims of Government Authorities such as SEBI. The records further reveal that the SRA itself, being the dominant financial creditor with 77.97% voting share, approved its own Resolution Plan despite dissent by the minority financial creditor. The Resolution Plan further fails to provide payment to dissenting financial creditors in priority as required under Section 30(2)(b) read with Regulation 38(1)(b) of the CIRP Regulations. He submits that the allocation mechanism under the Resolution Plan therefore completely disregards the principles of fairness, equitable distribution and balancing of stakeholder interests envisaged under the Code. The Ld. Adjudicating Authority therefore rightly concluded that the Resolution Plan was non-compliant with Section 30(2) of the IBC.

IV. He further submits that Section 30(4) of the IBC obligates the Committee of Creditors to consider the feasibility and viability of a Resolution Plan before approval. The said statutory requirement was introduced to ensure that only workable, implementable and sustainable Resolution Plans are approved during CIRP.

V. Further, Regulation 38(3) of the CIRP Regulations specifically mandates that a Resolution Plan must demonstrate:

(i) that it addresses the cause of default;
(ii) that it is feasible and viable;
(iii) that it contains provisions for effective implementation; and
(iv) that the Resolution Applicant possesses capability to implement the plan.

He submits that in the present case, the Minutes of the 7th CoC Meeting clearly demonstrate absence of any meaningful deliberation regarding feasibility and viability of the Resolution Plan. The SRA merely expressed generalized confidence regarding revival of the Corporate Debtor based upon alleged prior experience in distressed assets. However, no operational framework, restructuring analysis, revival mechanism or business feasibility study was ever produced before the CoC.

VI. Ld. Counsel further submits that the SRA is an NBFC engaged in lending and financing activities whereas the Corporate Debtor operated in an entirely distinct business sector namely digital content distribution, film exhibition and entertainment business. No material was placed to demonstrate that the SRA possessed technical expertise, operational capability or industry experience necessary for revival of the Corporate Debtor. He reiterated that the Resolution Plan was therefore approved without satisfying the mandatory statutory test of feasibility and viability contemplated under Section 30(4) of the Code and Regulation 38 of the CIRP Regulations.

VII. SEBI also relied upon the judgment of the Hon'ble Supreme Court in *State Tax Officer vs. Rainbow Papers Ltd.* Ld. Counsel further submits that the aforesaid principle has subsequently been reaffirmed by the Hon'ble Supreme Court in *Sanjay Kumar Agarwal*

vs. State Tax Officer while dismissing review petitions against *Rainbow Papers*. In the present case, SEBI had filed its statutory claim arising from adjudication proceedings under the SEBI Act for violations committed by the Corporate Debtor under securities laws. The penalties imposed under the SEBI Act constitute statutory dues recoverable by a Government Authority and are payable to the Consolidated Fund of India.

VIII. Ld. Counsel reiterated that despite the admitted nature of such dues, the Resolution Plan provides merely a token allocation collectively for all Operational Creditors and statutory authorities. The Resolution Plan therefore effectively extinguishes sovereign statutory liabilities contrary to the law laid down by the Hon'ble Supreme Court. The Ld. Adjudicating Authority therefore rightly rejected the Resolution Plan as being contrary to settled law.

IX. He submitted that the Resolution Plan seeks blanket waiver in respect of violations committed by the Corporate Debtor under:

(i) SEBI Act, 1992;
(ii) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015;
(iii) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations; and
(iv) various Listing Agreement obligations.

SEBI, being a statutory market regulator constituted under the SEBI Act, is entrusted with the duty to protect investors and maintain integrity of the securities market.

X. Ld. Counsel submits that the Corporate Debtor cannot be permitted to use CIRP proceedings as a mechanism to wash away violations committed under securities laws. The Hon'ble Adjudicating Authority in ***Roofit Industries Ltd. v. BSE Ltd.*** rightly observed that companies undergoing CIRP are not exempt from compliance with other statutory enactments. Similarly, the Hon'ble Madras High Court in ***National Sewing Thread Co. Ltd. vs. Superintending Engineer, TANGEDCO*** held that CIRP cannot be utilised to obliterate liabilities arising under other statutes.

XI. Ld. counsel further submits that the regulatory framework under SEBI laws permits waiver only in exceptional circumstances and based upon merits of each individual case. Blanket waiver of all past violations affecting securities market integrity is wholly impermissible. The Resolution Plan therefore seeks reliefs beyond the scope of the IBC and contrary to public interest. He submits that the SRA is not merely the Resolution Applicant, but also the largest unsecured financial creditor of the Corporate Debtor. The records demonstrate that the SRA advanced an unsecured loan of approximately Rs. 72 Crores to the Corporate Debtor despite the Corporate Debtor being financially distressed and on the verge of

insolvency. Subsequently, the SRA itself initiated CIRP proceedings and thereafter emerged as the sole Resolution Applicant.

XII. Ld. counsel further submits the principle of *nemo judex in causa sua* squarely applies to the present facts. He reiterated that the Hon'ble Supreme Court in *K. Sashidhar vs. Indian Overseas Bank* and *Arcelor Mittal India Private Limited vs. Satish Kumar Gupta* has held that approval of a Resolution Plan is always subject to satisfaction of the Adjudicating Authority regarding compliance with Section 30(2) of the Code. The Ld. Adjudicating Authority therefore rightly exercised judicial scrutiny and rejected the Resolution Plan.

XIII. He submits that Section 65 of the IBC empowers the Adjudicating Authority to examine whether CIRP proceedings have been initiated fraudulently or with *malicious* intent for purposes other than genuine insolvency resolution. This Hon'ble Appellate Tribunal in ***Shree Ambica Rice Mill vs. Kaneri Agro Industries Ltd.*** held that the Adjudicating Authority is obligated to investigate suspicious transactions and prevent misuse of IBC proceedings. Ld. counsel further submits that this Appellate Tribunal in ***Expert Realty Professionals Private Limited vs. Logix Infrastructure Private Limited*** held that fraud vitiates every stage of CIRP including approval of a Resolution Plan. In the present case the SRA advanced substantial unsecured loans despite weak financial condition of the Corporate Debtor; the SRA thereafter initiated CIRP

proceedings itself; the SRA emerged as sole Resolution Applicant; the SRA approved its own Resolution Plan using dominant voting share; and the Resolution Plan substantially benefits the SRA itself without genuine value infusion.

XIV. Ld. counsel submits that the alleged "infusion" of funds under the Resolution Plan is illusory since the proposed amounts effectively circulate back to the SRA itself. The entire CIRP process therefore appears structured primarily to secure financial benefit for the SRA while extinguishing claims of Operational Creditors and statutory authorities. The Ld. Adjudicating Authority therefore rightly rejected the Resolution Plan. In view of the foregoing submission, he sought the dismissal of Appeal.

Submissions of Resolution Professional

10. Ld. Counsel for the RP submits that his submissions in second appeal be taken as his submissions in the first appeal also. His submissions are as follows:

I. Ld. Counsel submits that the adverse observations recorded by the Ld. Adjudicating Authority against the present Appellant/Resolution Professional in Paragraph Nos. 4 & 12-17 of the Impugned Order are unsustainable both on facts and in law and deserve to be expunged from the record. The findings have been rendered on erroneous appreciation of the factual matrix, misreading

of documents already placed on record, and contrary to the settled principles governing the limited scope of judicial review under the Code.

II. At the outset, he submitted that the Resolution Plan was approved by the Committee of Creditors with requisite voting share after due deliberations and in exercise of its commercial wisdom under Section 30(4) of the Code. The Ld. Adjudicating Authority itself, in Paragraphs 2 and 3 of the Impugned Order, observed that the Resolution Plan provided fair and equitable treatment to stakeholders. Having recorded such finding, the subsequent adverse remarks against the Resolution Professional are self-contradictory and legally untenable.

III. Ld. Counsel further submits that the observation of the Ld. Adjudicating Authority that the Appellant failed to include the premises of the Corporate Debtor in the Information Memorandum, thereby causing prejudice to stakeholders, is factually incorrect. The property referred to by the Ld. Adjudicating Authority is merely the registered office of the Corporate Debtor and not an asset owned by the Corporate Debtor. The said premises is a rented property, which fact stood specifically disclosed in the 1st CoC Meeting dated 23.02.2023. Therefore, no question arose for inclusion of the said rented premises as an asset in the Information Memorandum or in

the Resolution Plan. The adverse remark has thus been rendered on an erroneous factual premise and deserves to be set aside.

IV. It is submitted by RP that the Ld. Adjudicating Authority further erred in holding that the Appellant failed to consider the Revenue Department as a secured creditor in view of Section 142A of the Customs Act and the judgment in *State Tax Officer vs. Rainbow Papers Ltd.* The said finding is contrary to both facts and settled law.

V. Firstly, the claim submitted by the Revenue Department itself specifically disclosed that no security interest was held in respect of its claim. Thus, the Revenue Department never asserted itself to be a secured creditor at the stage of claim verification.

VI. Secondly, Section 142A of the Customs Act is materially distinguishable from Section 48 of the Gujarat VAT Act considered in *Rainbow Papers*. Unlike Section 48 of the Gujarat VAT Act, Section 142A of the Customs Act does not override the provisions of the IBC. Consequently, the status and treatment of such claims necessarily fall for determination in accordance with Section 53 of the Code.

VII. Thirdly, the Appellant had already considered and communicated the treatment of the Revenue Department's claim during CIRP proceedings, and no objection was raised by the Revenue Department at the relevant stage. Objections were raised only at the stage of approval of the Resolution Plan.

VIII. The finding of the Ld. Adjudicating Authority is also contrary to the law laid down by the Hon'ble Supreme Court in *Sundaresh Bhatt, Liquidator of ABG Shipyard* vs. *Central Board of Indirect Taxes and Customs* wherein it was categorically held that the provisions of the IBC shall prevail. Accordingly, the observation against the Appellant on this count is liable to be expunged.

IX. Ld. Counsel further submits that the Ld. Adjudicating Authority further *committed* an error in observing that there existed a glaring inconsistency in Form-H on account of the word "Yes" being mentioned in Item No. 9. A bare reading of Form-H demonstrates that Item No. 9 contains two separate columns namely:

1. "Clause of Resolution Plan"; and
2. "Compliance Yes/No".

The Appellant merely indicated "Yes" in the compliance column signifying that the Resolution Plan complied with the applicable requirement, while simultaneously referring to Clause 3.5 of the Resolution Plan. The finding of inconsistency is therefore a result of complete misreading of the format and contents of Form-H. The Resolution Professional cannot be faulted for an erroneous interpretation of the document by the Ld. Adjudicating Authority.

X. It is contended by the RP that the observation that there exists a discrepancy between the total plan value of Rs. 2.65 Crores and

total outlay of Rs. 3.01 Crores is ex facie contrary to the record. The breakup of the Resolution Plan clearly demonstrates that:

(i) Rs. 1,00,000/- was earmarked towards Operational Creditors;

(ii) Rs. 35,00,000/- towards CIRP Costs; and

(iii) Rs. 2,65,00,000/- towards payment to unsecured financial creditors.

The figure of Rs. 2.65 Crores pertains only to payments proposed for unsecured financial creditors, whereas the total outlay under the Resolution Plan was Rs. 3.01 Crores inclusive of CIRP costs and operational creditor payments.

XI. Ld. Counsel further submits that the Ld. Adjudicating Authority, despite recording these figures elsewhere in the Impugned Order, erroneously treated the same as inconsistency. Such contradictory findings clearly demonstrate non-appreciation of the financial structure of the Resolution Plan.

XII. Ld. Counsel submits that finding of the Ld. Adjudicating Authority that Resolution Professional failed to place all CoC minutes, Information Memorandum, and RFRP on record, thereby raising concerns regarding transparency, is wholly unjustified. It is submitted that throughout the proceedings for approval of the Resolution Plan, the Ld. Adjudicating Authority never directed the Appellant to produce any additional document. The matter was repeatedly adjourned on multiple dates and ultimately heard and

reserved for orders. At no point was any deficiency recorded by the Ld. Adjudicating Authority regarding the documents filed by the Appellant. In absence of any direction calling upon the Appellant to furnish additional material, the adverse observations alleging lack of transparency are wholly unwarranted and violative of principles of natural justice.

XIII. RP submits that the Ld. Adjudicating Authority further erred in holding that the Resolution Plan failed to justify payment to dissenting financial creditors in terms of Section 30(2)(b) of the Code. The Resolution Plan specifically provided that dissenting financial creditors shall receive an amount not less than the liquidation value due to them and that such payment shall be made in priority to assenting financial creditors. The relevant clause stood incorporated in the Resolution Plan itself. The dissenting financial creditor, holding approximately 22% voting share, was fully aware of the distribution mechanism and exercised its commercial wisdom by dissenting to the plan. The finding of violation under Section 30(2)(b) is therefore contrary to the express terms of the Resolution Plan and deserves to be set aside.

XIV. It is submitted by the RP that the Ld. Adjudicating Authority gravely erred in law by observing that the Committee of Creditors acted merely as an “eyewash” and failed to exercise commercial wisdom. Such observation is contrary to the settled legal position

repeatedly affirmed by the Hon'ble Supreme Court that the commercial wisdom of the Committee of Creditors is non-justiciable except on limited grounds provided under Section 30(2) and Section 61(3) of the Code.

XV. Ld. Counsel for RP submits that the Resolution Plan was duly deliberated upon and approved by the Committee of Creditors in accordance with Section 30(4) and Section 30(5) of the Code. Merely because one creditor dissented to the Resolution Plan cannot lead to a conclusion that the CoC failed to exercise commercial wisdom. The findings of the Ld. Adjudicating Authority therefore amount to impermissible substitution of judicial opinion over commercial decision-making of the CoC.

XVI. Ld. Counsel further submits that the Ld. Adjudicating Authority further erred in observing that the feasibility and viability of the Resolution Plan was "orchestrated" merely because the Resolution Applicant was itself a CoC member. The Code does not prohibit a financial creditor, who is a member of the CoC, from submitting a Resolution Plan and participating in the voting process, subject to compliance with statutory requirements.

XVII. It is submitted by the RP that the feasibility and viability of the Resolution Plan were duly examined by the Committee of Creditors and approved by requisite majority. The dissenting financial creditor participated in the process and exercised its rights

under the Code. The observation that the dissenting creditor remained a "spectator" is therefore contrary to the statutory framework of the IBC.

XVIII. Ld. Counsel for RP submits that the finding that the Resolution Plan failed to provide for contingent liabilities is equally unsustainable. The treatment of disputed and contingent claims falls squarely within the commercial domain of the Resolution Applicant and Committee of Creditors. The Resolution Applicant had undertaken to deal with disputed claims in accordance with law. The Hon'ble Supreme Court has consistently held that once a Resolution Plan satisfies the requirements under Section 30(2), the Adjudicating Authority cannot sit in appeal over the commercial wisdom of the CoC.

XIX. Ld. counsel further submits that in view of the aforesaid facts and settled position of law, it is respectfully submitted that the adverse remarks recorded against the Appellant/Resolution Professional in Paragraph Nos. 12 to 17 of the Impugned Order are based on patent errors of fact, misreading of documents, contradictory findings, and impermissible interference with the commercial wisdom of the Committee of Creditors. The said observations have caused serious prejudice to the professional standing and reputation of the Appellant despite there being no finding of misconduct, mala fide, suppression, or statutory violation

attributable to the Appellant. Accordingly, this Hon'ble Appellate Tribunal may be pleased to expunge and set aside the adverse observations recorded against the Appellant in the Impugned Order and grant such other reliefs as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

Analysis and Findings:

11. We have gone through the records of the case and heard the Ld. Counsels in detail. The Respondent No.1 Commissioner of Income Tax, Mumbai has been set ex-parte as he did not participate in the proceedings despite service of notice.

12. The findings of the Adjudicating Authority have been given in paras 19 to 21 of the impugned order which is extracted below:

"19. Considering the facts and, circumstances of the present case particularly the objections raised by the objectors, we are of the opinion that the Resolution Plan submitted by Micro Capitals Private Limited has demonstrated multiple violations of the Code and Regulations, specifically:

- ***Section 30(4)*** *of the Code and* ***Regulation 38(3)(b)*** *of IBB] Regulations, 2016 - The Resolution Plan submitted by the SRA fails to demonstrate the Feasibility and Viability in the present Plan.*
- ***Regulation 39(3)(b)*** *- The CoC failed to record its deliberations on the feasibility and viability of the Resolution Plan in the 7th CoC meeting.*
- ***Section 30(2)(b)*** *of IBC and Regulation 38(1)(b) of IBBI Regulations, 2016 - The plan fails to demonstrate bifurcation of*

payment to dissenting financial Creditors over assenting Financial Creditors.

. RP failed in collation of the assets of the corporate Debtor as the property has been left out of the valuation of the Corporate Debtor. Thus this is a violation of the very basic objective of the code. that is, maximization of value of assets of the Corporate Debtor.

20. *Furthermore, the plan contains several material inconsistencies and deficiencies that cannot be overlooked.*

. Discrepancy in the total plan value - stated as Rs. 2.65 Crores in the Resolution plan but Rs. 3.01 Crores in Form H and the Application.

• Absence of crucial documents including minutes of 2nd to 6th CoC meetings, Information Memorandum, and RFRP.

• Glaring inconsistency in Form H regarding the Resolution Applicant's track record of implementation of previous resolution plans.

21. *In light of the above violations, inconsistencies and the fact that the Resolution Applicant is virtually acting as a sole CoC member approving its own plan, this Bench finds the Resolution Plan submitted by Micro Capitals Private Limited unsuitable for approval in view of the afore- stated violation of material provisions and regulations of the Code. The principle of* ***"nemo judex in causa sua"*** *has been violated, and the commercial wisdom, if any. exercised in this case fails to protect the interests of all stakeholders as envisioned under the Code. Accordingly, the Application seeking approval of the Resolution Plan is hereby rejected."*

13. One of the main contentions of the Respondents against the Resolution Plan has been that a Financial Creditor cannot submit a resolution plan and at the same time approve the same as he holds the majority share in the CoC. Approval of such plan by CoC violates the principle of *nemo judex in causa sua.* The Ld. Adjudicating Authority has also relied extensively on this principle.

14. The answer to the question 'whether a Financial Creditor who is also a resolution applicant can vote on his own resolution plan' is in fact provided in the Code itself, in Proviso to Section 30(5). The aforesaid Section 30(5) of the Code is reproduced below:

> ***"30. Submission of Resolution Plan***
>
> *(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:*
>
> *Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor."*

15. The proviso to Section 30(5) has two parts. The first part says that the Resolution Applicant shall not have a right to vote on his own resolution plan. The second part of the proviso gives the exception to the norm laid down in the first part i.e. a financial creditor, if he is a resolution applicant, would have the right to vote on his own resolution plan.

16. We note that neither the respondents nor the resolution professional brought this provision to the notice of Ld. Adjudicating Authority. This provision has been provided in the Code itself by the legislature and the same has been done after detailed discussions in the Bankruptcy Law Reforms Committee ('BLRC'). A provision in the Code which has been passed by the Parliament after detailed discussions, cannot be ignored on the plea that nobody should be a judge in his own case. The provision is very much part of the statute and Ld. Adjudicating Authority has failed to take it in consideration, while examining the application for approval of Resolution Plan, which in our view, is a grave error.

17. The CoC has approved the resolution plan with requisite voting share as provided under the Code; in such a situation, the role of the Adjudicating Authority would be limited to satisfying the requirements of Section 30(2) of the Code and Regulation 38 of the CIRP Regulations. The finding of the Ld. Adjudicating Authority that the resolution plan was vitiated merely because resolution applicant was a member of the CoC and he voted on his own plan is clearly unsustainable in law in view of Section 30(5) of the Code.

18. The appellant has relied upon the judgment of this Appellate Tribunal in **"*Midpoint Commodeal Pvt. Ltd. v. Neha Chhawchharia and Others, 2024 [CA (AT) (Ins) No. 1839 of 2024]*".** The relevant paras 8, 13 & 14 are extracted below: -

***"8**. When this, Appellant is Secured Financial Creditor as well as Resolution Applicant and has proposed in the plan itself providing that RA being secured creditor will adjust the settlement amount payable against the admitted claim, we do not find that above is a sufficient ground for interfering with the Resolution Plan which has been approved by the CoC. It is also relevant to notice that appellant has 99.87%; vote share in the committee of creditors which has been captured by Adjudicating Authority in paragraph 34 of the Judgment Para 34 is as follows:*

"34. The Committee of Creditor is comprising of Two (2) Financial Creditor, Namely;

S.No.	***Name of the Financial Creditors***	***Voting Share (%)***
1.	*Midpoint Commodeal Pvt. Ltd.*	*99.87*
2.	*GDSK Jewels Pvt. Ltd.*	*0.13%;*

Though the Committee of Creditor of the Corporate Debtor is having Two Financial Creditors in its constitution, it is pertinent to note that all the meetings of which the minutes are attached with this Application and in which all the important decisions in relation to this CIRP process is attended and voted by the Successful Resolution Applicant i.e, Midpoint Commodeal Private Limited only".

***13.** We do not find that there were sufficient reasons to reject the plan and direct the Corporate Debtor for liquidation. The liquidator having already been appointed we direct the appellant to make the payment of Rs. 2 Lakhs towards all expenses and professional fee within a period of two weeks to the Liquidator.*

14. *In result, we allow the appeal, set aside the impugned order passed by Adjudicating Authority. Allow the IA/844 (AHM) 2023 and approve the resolution plan."*

19. The facts of the Midpoint (supra) are identical to that of the present case. The SRA who is also the Financial Creditor had 99.87% voting power in the CoC and was the only attendee of the CoC meetings. On similar grounds the Ld. Adjudicating Authority had rejected the resolution plan, which was set aside by this Appellate Tribunal and the resolution plan was approved.

20. The second important finding of the Ld. Adjudicating Authority related to the amount payable to the dissenting Financial Creditor namely, Axis Bank. Ld. Adjudicating Authority have noted that the plan does not provide the exact amount payable to the dissenting Financial Creditor and therefore it is in violation of Section 30(2)(b) of the Code and Regulation 38(1)(b) of the CIRP Regulations.

21. The relevant provisions of the Resolution Plan relating to the dissenting Financial Creditor are given in Clause 3.2, Clause 4.3.3(1) and Clause 4.4, which are extracted below: -

3.2 *The Resolution Applicant confirms that the amount payable under Resolution plan to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan. (Reg 38 (1)(b) as mentioned in sub-section 4.4.*

4.3.3 *Out of the Admitted Financial Debt of the Financial Creditors, Resolution Applicant proposed to make payment as under;*

a. Proposal for Financial Creditors

Particulars	*Admitted Amount*	*Financial Debt Proposed to be Paid*
Financial Creditors	*955982050.50*	*2,65,00,000 Within 180 days*

i. The Resolution Applicant proposes to distribute the amount proposed to secured financial creditors in the following order of priority: -

1) Dissenting Financial Creditors shall be paid amounts not less than the Liquidation value due to each dissenting financial creditors, in case the proposed amount is less than the liquidation value.

2) The Assenting financial Creditors shall be paid the remaining amount on a pro rata basis of claim value due to each such financial creditors.

4.4 Dissenting members of the COC

Liquidation value of the Company is not known to the Applicant. In terms of IBC, and under regulation made thereunder, the amount payable in respect of Financial Creditors who do not vote in favour of the Resolution Plan would be paid not less than the amount to be paid to such creditors in accordance with sub-section (1) of Section 53 in the event of liquidation of the Company. The dissenting members of CoC will be paid the proceeds as per the clause 4.3.3, within 30 days of the effective date. As per the Insolvency & Bankruptcy Code, 2016, the dissenting financial creditors should be paid in priority to the

assenting financial creditors, but in this particular case, the total payment is to be done within 180 days, therefore the dissenting creditors will also be paid within 180 days of the approval of the Resolution Plan."

22. We note from the above that the Clause 3.2 of the Resolution Plan provides that dissenting Financial Creditors shall be paid in priority over the financial creditors, who voted in favour of plan. Clause 4.3.3(1) of the resolution plan provides that the dissenting Financial Creditors shall be paid amounts not less than the liquidation value due to each dissenting Financial Creditor, in case the proposed amount is less than the liquidation value.

23. Further, it has been recorded in para 4.4 that the liquidation value of the Company is not known to the Applicant. The dissenting Members of CoC would be paid in accordance with Section 53(1) of the Code, which provides that the dissenting Financial Creditor should be paid in priority to the assenting Financial Creditors. At one place it is stated that the dissenting members of CoC will be paid the proceeds as per Clause 4.3.3, within 30 days of the effective date, but in the next sentence it is stated that as the total payment is being done in 180 days therefore dissenting creditor would also be paid within 180 days of approval of the resolution plan.

24. It appears from the above that even though plan seems to be compliant with Section 30(2)(b) of the Code and Regulation 38(1)(b) of the CIRP Regulations with regard to minimum payment to the dissenting

Financial Creditor and priority in payment to it, but there is a confusion about time period in which this payment will be made. However, it is very clear that dissenting Financial Creditor will be paid in accordance with the provisions of the Code and in priority to the assenting Financial Creditor. We further note that the Appellant has submitted during the hearing and in his written submissions that the Dissenting FC would be paid within 30 days from the effective Date i.e. the date on which the resolution plan is approved. Accordingly, we do not find any infirmity on this count.

25. Insofar as the findings concerning feasibility and viability of the Resolution Plan are concerned, one of the findings of the Adjudicating Authority is that the CoC failed to record its deliberations on the feasibility and viability of the Resolution Plan in the 7th CoC Meeting and the same is in violation of Regulation 39(3)(b) of the Code. We note from the minutes of the meeting that the Regulation 39(3) of the CIRP Regulations, 2016 was brought to the notice of all CoC Members which is extracted below :-

> *"The Committee shall-*
> *(a) Evaluate the resolution plans received under sub-regulation (2) as per evaluation matrix;*
> *(b) record its deliberations on the feasibility and viability of each resolution plan; and*
> *(c) vote on all such resolution plans simultaneously.*
> *"The Committee of Creditors shall approve the Resolution Plan considering the feasibility and viability of the resolution plan in order to maximise the value of the Corporate Debtor."*

26. We note that the consultant of the resolution applicant briefed the members present about the revised resolution plan submitted by the Micro Capital Limited (SRA). It is further noted that in the Minutes of the Meeting that after due discussion the following resolution was put-up for consideration:

> *"RESOLVED THAT in terms of Section 30(4) of the Insolvency and Bankruptcy Code, 2016 and the Rules and Regulations made thereunder, the Committee of Creditors, be and is hereby approve the Resolution Plan submitted by Micro Capitals Private Limited."*

We note from the above that there was due discussion in the CoC Meeting about the Resolution Plan submitted by the appellant in compliance with Regulation 39(3)(b) of the Code. We therefore find no infirmity with regard to the compliance with the same.

27. We further note that the Clause 3.4(b) of the Resolution Plan specifically deals with feasibility and viability and records the experience of the Resolution Applicant in revival of distressed entities along with projected revenue statements for five years. The Clause 3.4(e) of the Resolution Plan to demonstrate that the Resolution Applicant possesses relevant experience in the same line of business and would also be assisted by a team of professionals possessing requisite technical expertise. These are extracted below:

> ***"3.4** Pursuant to Regulation 38 (3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) (Third Amendment) Regulation 2018, clauses are addressed as under:*
> ***(b)** Feasibility and viability of the Resolution plan (38(3)(b)): The plan submitted by the Resolution applicant is with the objective to revive the*

Corporate Debtor and to maximize the value of assets. The Resolution Applicant is confident that the Corporate Debtor can be turned around and be a viable unit. The feasibility of revival and resolution of the Corporate Debtor is on account of the large experience of the Resolution Applicant to invest in distressed companies and then manage them professionally. The Applicant's projected revenue is as under: -

Particulars	FY -1	FY-2	FY-3	FY-4	FY-5
Revenue /Sales	18.00	21.60	23.76	26.14	28.75
Operating Profit	4.85	5.97	6.72	7.71	8.25
Profit Before Tax	3.50	4.11	5.35	6.85	7.39

(c) ……
(d) ……

(e) Capability of Resolution Applicant to implement the Resolution plan under Regulation 38(3)(e)

The Resolution Plan would be implemented under the personal supervision of the Board of Directors of the Resolution Applicant & the Monitoring Committee as provided in sub-section 3.7 & sub-section 4.13 of this Resolution Plan. With rich experience in the same line of activity and team of professionals having both financial and technical capabilities, the Resolution Applicant is confident of successfully turning-around the Corporate Debtor."

28. The SRA has relied upon its capability to turn around similar units and has submitted projected financial figures for next five years, which show a growing turnover and increased profit over this period. Similarly, they have stated that the SRA has experience in similar line of activity

and would be able to turn the CD into a viable unit. It is the settled position that the commercial wisdom of CoC is supreme and judicial authorities should not substitute their own judgment over the commercial wisdom of the CoC. In view the settled legal position we are of the view that Ld. Adjudicating Authority should not have substituted its own subjective assessment over the commercial wisdom exercised by the CoC.

29. Regarding the finding of the Adjudicating Authority that the collation of all the assets of the Corporate Debtor has not been done by the RP and properties have been left out of the valuation of the Corporate Debtor. This finding of the Ld. Adjudicating Authority does not seem to be borne on facts, as the property under reference is the registered office of the Corporate Debtor, which is not an asset of the Corporate Debtor. The said property is a rented property, which was specifically brought to the notice of CoC in its very first meeting held on 23.02.2023 and is part of minutes of the meeting. The question of inclusion of a rented property as an asset of the CD in the information memorandum does not arise at all.

30. The Ld. Adjudicating Authority has held that the claims of Department of Customs would be treated as those of its secured creditors in view of the judgment of Hon'ble Supreme Court in the matter of ***"State Tax Officer vs. Rainbow Papers Ltd., (2023) 9 SCC 545"*** which was reaffirmed by the Hon'ble Supreme Court in *Sanjay Kumar Aggarwal vs. State Tax Officer & Anr.* The Ld. Adjudicating Authority held that the

statutory provision creating the "first charge" in favour of the relevant Government or Statutory Authority *viz.* Section 142A of the Customs Act, 1962 is *pari materia* with the provisions of Section 48 of the GVAT Act, 2003. Therefore, the statutory dues owned to the Government Authorities deserved to be treated equally with other secured creditors as per Section 53 of the IBC.

31. The Hon'ble Supreme Court in its judgment in *Rainbow Papers (supra)* and subsequent judgment in review petition has held that the ratio of the judgment has to be applied strictly in accordance with the facts of the aforesaid case, which specifically related to Section 48 of the GVAT Act, 2003 which is extracted below: -

> *"48. Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person on account of tax, interest or penalty for which he is liable to pay to the Government shall be a first charge on the property of such dealer, or as the case may be, such person."*

In this case the charge created by Section 48 on the property of the dealer was treated as secured debt and accordingly the Gujarat Tax Department was treated as Secured Operational Creditor in CIRP/Liquidation Proceedings. It should be mentioned that the Rainbow Papers was further distinguished by the Hon'ble Supreme Court in subsequent judgment in ***"Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Limited & Ors., {Civil Appeal Nos. 7976 of 2019}"*** which held that the

Rainbow Papers (supra) did not notice the "waterfall mechanism" under Section 53 in the judgment. Section 53 places the dues payable to secured creditors at a higher footing, than dues payable to Central and State Government. In the instant case, the Revenue Department and SEBI are Central Government Department and Statutory Authority respectively, whose dues under waterfall mechanism fall below those of secured creditors.

32. The Respondent No.2 Revenue (Customs) Department has relied upon Section 142A of the Customs Act, 1962 to claim that it is also a secured creditor, and in view of the *Rainbow Papers (supra)* should be treated as the same. Ld. Adjudicating Authority has upheld this contention of Customs. The Section 142A of the Customs Act, 1962 is extracted below: -

> ***"142A. Liability under Act to be first charge.***— *Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any other person under this Act, shall, save as otherwise provided in section 529A of the Companies Act, 1956 (1 of 1956), the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002) and the Insolvency and Bankruptcy Code, 2016 (31 of 2016)."*

33. We note from the language of the Section 142A that the liability under the Act is to be the first charge, however, it is clearly mentioned that the same is subject to the provisions of Insolvency and Bankruptcy

Code, 2016. The Hon'ble Supreme Court in ***"Sundresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes & Customs; (Civil Appeal No. 7667 of 2021)"*** had dealt with interplay of Section 142A of Customs Act and the Insolvency and Bankruptcy Code, 2016. In para 40 & 41 of the judgment the Hon'ble Supreme Court held as follows: -

> ***"40.*** *We may note that the IBC, being the more recent statute, clearly overrides the Customs Act. This is clearly made out by a reading of Section 142-A of the Customs Act. The aforesaid provision notes that the Customs Authorities would have first charge on the assets of an assessee under the Customs Act, except with respect to cases under Section 529-A of the Companies Act, 1956; Recovery of Debts and Bankruptcy Act, 1993; Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the IBC, 2016. Accordingly, such an exception crated under the Customs Act is duly acknowledgment under Section 238 of the IBC as well.*
>
> ***41.*** *Additionally, we may note that Section 238 of the IBC clearly overrides any provision of law which is inconsistent with the IBC. Section 238 of the IBC provides as under:*
>
> > ***"238. Provisions of this Code to override other laws****- The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.**"***

34. It is clear from the judgment of Hon'ble Supreme Court in the *Sundresh Bhatt (supra)* that provisions of the IBC would prevail over the provisions of Customs Act. We have already noted that the ratio of *Rainbow Papers (supra)* would not be applicable to the facts of this case. The waterfall mechanism provided in Section 53 of the Code gives the

priority of claims in liquidation proceedings. Any dues to Central Government are treated as operational unsecured debt. It is clear from the ratio of both these judgments that the claims of Income-Tax, Customs and SEBI have to be dealt with in accordance with Section 53(1)(e)(i) of the Code as unsecured operational creditor. Therefore, the finding recorded by the Adjudicating Authority treating Customs and SEBI as secured creditor is not in accordance with provisions of the Code and judicial precedents.

35. Regarding compliance of Regulation 38(1B) the Resolution Professional has given the following in item no.9 of Form-H (Compliance Certificate).

Section of the Code/ Regulation No.	*Requirement with respect to Resolution Plan*	*Clause of Resolution Plan*	*Compliance (Yes/No)*
Regulation 38(1B)	*(i) whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.*	*Para 3.5 on Page No. 18*	*Yes*
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	*N.A.*	

36. It is clear from the information provided in item no.9 regarding compliance with Regulation 38(1B) that the RP has mentioned "Yes" against item seeking information, whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the

failure of implementation of any resolution plan approved under the Code. The entry in the fourth column of table above only shows whether the resolution plan is compliant with the relevant section of Code/Regulation. The entry "YES" in the fourth column means that the resolution plan is compliant with relevant regulation, which is 38(1B) in this case.

37. The relevant clause 3.5 of the Resolution Plan is extracted below: -

> *"3.5 The Resolution Applicant confirms that as on date the Resolution Applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the NCLT at any time in the past (Reg 38(1B))."*

It is clear from the above affirmation of Appellant in the resolution plan that the Resolution Applicant is compliant with the Regulation 38(1B) of the CIRP Regulations. Therefore, we do not find any infirmity in the resolution plan on this count also.

38. Similarly, the observation of the Ld. Adjudicating Authority that there is a discrepancy between the total plan value of Rs.2.65 Crores and total outlay of Rs.3.01 crores is contrary to record. The figure of Rs.2.65 Crores pertains to proposed payments for unsecured Financial Creditors whereas the figure of Rs.3.01 crores pertain to total outlay of resolution plan.

39. Ld. Adjudicating Authority has also come to a finding that there was no additional infusion of funds by the SRA and the CoC was merely protecting its own interest as whatever funds are infused would return

back to the SRA as it holds 78% voting rights in the CoC. This determination is contrary to the logic of Section 30(5) proviso which allows a financial creditor who is a member of CoC and also a Resolution Applicant to vote on its own plan. Secondly, we note from the Clause 2.3 (vi) and Clause 4.20.4 (b) of the Resolution Plan that the SRA has made relevant provisions. The clauses are extracted below: -

*"**2.3** Business Plan*

(vi) Financial Projection; Financial Projection for next 3 years are attached herewith. (Rs. In Crores)

Particulars	FY -1	FY-2	FY-3	FY-4	FY-5
Revenue/ Sales	18.00	21.60	23.76	26.14	28.75
Operating Profit	4.85	5.97	6.72	7.71	8.25
Profit Before Tax	3.50	4.11	5.35	6.85	7.39

In order to operate the Corporate Debtor as a going concern, need base working capital of upto Rs 5.00 Crores (approx.) would be infused through Financing within 6 months and an additional amount of Rs 5.00 Crores within 12 months of the Approval of this Resolution Plan to ensure that operations of CD run efficiently. The decision to infuse funds will be taken according to the need at that time. Accordingly, the infusion can be increased or decreased as well. The additional funding will not affect rights and interest of financial creditors and also not deal with assets of corporate debtor till time debt financial creditor has been repaid.

4.20.4

(b) Infusion of Fund by Applicant

(i) To enable the implementation of the Resolution Plan, Applicant may incorporate / use a Special Purpose Vehicle ("SPV"). The SPV shall be funded by way of equity infusion by Applicant or its Promoters/Relatives/ Associates/ Investors ("Subscribers") and debt raised at the SPV/ Applicant Level.

(ii) Simultaneously, with the Capital Reduction, the Applicant will make necessary subscription for allotment of 3,00,00,000 (Three Crores) equity shares of Rs. 1 each at par aggregating to Rs. 3,00,00,000 (Rupees Three Crores only) in order to enable the Company to make necessary allotment of equity shares to the Subscribers."

40. It can be seen from the Clause 2.3(vi) of the Resolution Plan that it is specifically provide for infusion of working capital of Rs. 5 Crores within six months and further infusion of Rs.5 Crores within twelve months. Clause 4.20.4 (b) provides for infusion of Rs.3 crores through creation of a Special Purpose Vehicle (SPV) funded by equity infusion and subscription of its shares by the Resolution Applicant aggregating to Rs.3 crores. We do not find any infirmity on this account in the Resolution Plan.

41. We further note that the Adjudicating Authority also noted that certain important documents like Information Memorandum, RFRP and Minutes of 2nd to 6th CoC Meetings were not attached with the Resolution Plan. In this regard, it is to be noted that in terms of Regulation 39(4) the Compliance Certificate in Form-H of the Schedule-I and evidence of

performance security required under Sub Regulation (4A) of Regulation 36B are only required to be submitted to the Adjudicating Authority along with Minutes of the Meeting approving the Resolution Plan. We note that the same were duly submitted to the Ld. Adjudicating Authority. In such situation, no violation of concerned regulation is made out. More importantly, Ld. Adjudicating Authority had all the powers under the Code to seek any information or document from the Resolution Professional/ CoC and to ensure fair and timely disposal, they could have directed the RP/CoC to produce the same.

42. It is the settled proposition that resolution of a corporate debtor should always be a preferable option to liquidation. In this case there was only one resolution plan and rejection of the same would lead to the liquidation of the corporate debtor. As noted in earlier paras, we have not found any material irregularity in the resolution plan which should lead to rejection of the Resolution Plan. We note that the Resolution Plan value of Rs.3.01 Cr is higher than the liquidation value of the CD. We further note that Dissenting Financial Creditor-Axis Bank, which could have been a person aggrieved from the aforesaid resolution plan has not filed any application before the Ld. Adjudicating Authority or before us against the provision made for it in the Resolution Plan. We have also gone through the other judgements relied upon by the Respondents and note that none of them are applicable to facts of the case.

43. The adverse remarks against the Resolution Professional who is the Appellant in the 2nd Appeal arise from these very issues, which have been discussed in the above paragraphs and have been found lacking merit.

44. In view of the findings above, we allow both the appeals, set aside the impugned order passed by the Adjudicating Authority and allow I.A. (IBC) (PLAN) No. 04 of 2024 and approve the resolution plan. Adjudicating Authority may pass consequential orders, consequent to the approval of the plan within a period of one month from the date of this order. A copy of this order be produced before the Adjudicating Authority. The parties to bear their own cost.

[Justice N. Seshasayee]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

Place: New Delhi

Harleen