

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH
INTERLOCUTORY APPLICATION NO. 1205 OF 2021

IN
CP(IB) NO. 1842/MB/2018

*Application u/s 60(5)(b) of the Insolvency and
Bankruptcy Code, 2016.*

In the matter of:

Sanjay Dave, erstwhile Promoter/

Director of Oracle Home Textile Ltd

...Applicant

In the matter of

ANDHRA BANK LTD.

...Operational Creditor

v/s.

ORACLE HOME TEXTILE LIMITED

(Through its Resolution Professional Mr. Jitendra
Kumar Yadav)

...Corporate Debtor

Order pronounced on 30.04.2024.

Coram:

Shri. Kuldip Kumar Kareer : **Member Judicial.**

Shri. Anil Raj Chellan : **Member Technical.**

Appearances (in physical mode)

For the Applicant: Counsel Mr. Pulkrit Sharma a/w Umang Mehta.

For the Respondent: Adv. Akshay Doctor a/w Naveli R.

ORDER

Per: Shri. Kuldip Kumar Kareer, Member Judicial.

1. This is an application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) filed by the Applicant, who is an erstwhile Promoter/Director of the Corporate Debtor praying for the following reliefs: a.) Direct that there cannot be a conditional approval of the Resolution Plan submitted by the present Applicant; b.) Direct the Resolution Professional to re-issue an unconditional Letter of Intent, as per the provisions of IBC, 2016 and the terms of the Applicant’s CoC-approved Resolution Plan; c) Direct that MSME status of the Corporate Debtor cannot be a ground for forfeiture of the EMD and Performance Bank Guarantee; and d) Defer the deposit of Performance Bank Guarantee till the final disposal of the present application.

Case of the Applicant (in brief):

2. The Applicant herein is the Resolution Applicant, whose resolution plan has been approved by the Committee of Creditors of the Corporate Debtor. The Resolution Plan submitted by the Applicant was voted on by the CoC and it came to be approved on 10.05.2021 when the voting period ended. The approval was notified to the Applicant vide email dated 10.05.2021. The

Applicant is also a suspended director of the Corporate Debtor but was permitted to file his resolution plan as the Corporate Debtor is an MSME. Mr. Jitendra Kumar Yadav was appointed as the Interim Resolution Professional ('IRP') and was later confirmed as the Resolution Professional ('RP').

3. However, the CoC through RP has granted a conditional approval and Letter of Intent to the present application. The condition attached to the aforesaid approval is that the approval has been made conditional to an order that may come to be passed by this Hon'ble Tribunal pursuant to the hearing held on 21.01.2021 in applications filed by the belated resolution applicants seeking time to submit their resolution plans. These interlocutory applications are IA Nos. 2311/2021 and IA No. 2195/2021 in CP No. 1842/2018.
4. Being aggrieved by the conditional approval of the Applicant's resolution plan by the CoC and RP, the Applicant is constrained to approach this Hon'ble Tribunal by way of this application. Hence this application.

Submissions of the Applicant

5. It is submitted on behalf of the present Applicant that there is no provisional basis for such conditional approval of the resolution plan, subject to outcome of the application moved by the third-party resolution applicants where the present Applicant is not even a party.

6. From a bare perusal of Section 30(4), it is evident that there is no scope of conditional approval of the resolution plan. Counsel for the Applicant submits that there could have been only two scenarios for the CoC, (i) either the CoC could have approved the Applicant's plan without it being conditional to the outcome of third party applications, where the present Applicant is not even a party, or (ii) the CoC could have expedited the pending order of 21.01.2021 through advocates or through the concerned resolution applicants. Counsel for the Applicant further submits that making the Applicant subject to a conditional approval of his resolution plan would be akin to dangling a sword over the head of the applicant where one has no control since the Applicant herein was never a party to those applications. The Applicant cannot be made subject to the outcome of third party applications, where the Applicant is not even a party. The Applicant cannot be prejudiced because some third parties are non-vigilant in regard to their applications.
7. It is submitted on behalf of the Applicant that no efforts have been taken by the third party resolution applicants in expediting the proceedings craving for leave to allow them to submit their resolution plan. Counsel for the Applicant submits that any financial investor would be most vary of any conditional approval in a scheme where the decision will be based on proceedings in which he is not even

involved or heard. Counsel for the Applicant further submits that no party can be prejudiced in proceedings where such party is not heard or represented.

8. The Letter of Intent indicates that the Applicant is required to furnish the Performance Bank Guarantee (“PBG”). As per the Request for Resolution Plan (‘RfRP’) the Applicant is required to furnish the PBG within a period of 7 days. Though the extension of upto 45 days on account of COVID-19 pandemic was granted, the Applicant apprehends that furnishing of PBG at this stage would be prejudicial to the Applicant’s interest. Hence, the Applicant prays for directions from the Hon’ble Adjudicating Authority to defer the deposit of PBG till the final disposal of the present application.

9. **Reply and Contentions of the Respondent:** The Respondent/RP has filed his Affidavit-in-Reply dated 15th September, 2021. The main contentions of the Respondent are briefly stated hereinbelow:

- i. The Applicant has come to this Hon’ble Tribunal with unclean hands with a motive to mislead the Tribunal and to delay the Corporate Insolvency Resolution Process (‘CIRP’) of the Corporate Debtor. The Suspended Director Mr. Sanjay Dave i.e. the Applicant has filed an Interlocutory Application No. 608/2020 seeking directions to extend CIRP period and to allow him to submit the Resolution Plan. The said Application came to be allowed vide Order dated 18.02.2020. Till 18th

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 1205 OF 2021
IN
CP(IB) NO. 1842/MB/C-II/2018

CoC meeting conducted on 06th March, 2020, the Applicant had not submitted his plan. Thereafter, in and around July 2020, the Applicant filed an Interlocutory Application No. 1070 of 2020 *inter alia* seeking exemption from depositing Earnest Money Deposit ('EMD') along with the resolution plan. The Hon'ble Tribunal did not accede to this request and directed the Applicant vide Order dated 21st August, 2020 to submit his Resolution Plan with EMD within 3 weeks and further directed CoC to take a decision on the same.

- ii. Pursuant to the above order, the Applicant submitted the EMD and his Resolution Plan and the same was discussed and deliberated upon by the CoC at its meetings. After the 27th CoC meeting, the Final Resolution Plan dated 31st December, 2020 along with its Addendum dated 05th May, 2021 submitted by the Applicant was voted upon and approved the same subject to the discussion held in 27th CoC meeting by 99.90% votes on 10th May, 2021.
- iii. In the meantime, on 21st January, 2021 the above Company Petition came up for hearing before the Hon'ble Tribunal at which other interested parties who were keen on participating in the CIRP process and submitting their respective Resolution Plans argued their respective

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 1205 OF 2021
IN
CP(IB) NO. 1842/MB/C-II/2018

application. After hearing the parties, the Hon'ble Tribunal indicated that it would pass a detailed order in respect of the same.

- iv. The 28th CoC Meeting was held on 21st May, 2021. At the said meeting, the Respondent/RP informed all the members present that the voting results approving the plan were subject to the order(s) to be passed subsequent to the hearing held on 21.01.2021. The Applicant requested the CoC to issue him a Letter of Intent ('LoI') on the letterhead of RP. Thereafter, vide email dated 24th May 2021, the RP circulated the draft LoI to the Applicant for his perusal and acceptance. The Applicant replied to the said email vide his Advocate's Letter dated 29th May, 2021, *inter-alia*, raising the preliminary objection to the LoI being conditional subject to the outcome of hearing dated 21.01.2021 and the additional conditions being sought to be imposed in the LoI. The Respondent submits that at that juncture only, the Respondent as RP had reiterated that the condition regarding the outcome of the hearing dated 21.01.2021 was intimated to the Applicant well in advance and was also recorded in the minutes of 28th CoC meeting.
- v. Even in response to the Applicant's Letter dated 29th May, 2021 referred-to-above, the Respondent addressed a Reply dated 31st May, 2021 reiterating that the condition under the LoI had been subsisting since the

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 1205 OF 2021
IN
CP(IB) NO. 1842/MB/C-II/2018

time of 23rd CoC meeting and contention in respect thereof cannot be accepted. In the meantime, the Applicant proceeded to file the above application and informed the Respondent of the same vide his Advocate's email dated 03rd June, 2021.

- vi. At 29th CoC meeting held on 11th June, 2021, the Applicant was requested to provide the duly corrected/modified resolution plan as per the discussions at earlier CoC meetings so that the application could be filed before the Hon'ble Tribunal. At the said meeting, the CoC had enquired with the Applicant if he has any specific objection w.r.t LoI and the Applicant answered in the negative. Thus, the CoC called upon the Applicant to submit a corrected Resolution Plan as per the RfRP document and further requested the RP to issue a fresh LoI. Pursuant to the above, the RP circulated a fresh LoI to the Applicant vide email dated 23.06.2021 and 7 days' time was granted to the Applicant to accept the same. The Applicant replied to the above email on the same day raising issues of LoI not being in conformity with the RfRP document and once again requested the RP to issue a fresh LoI. The RP on the same day replied that the latest LoI has been issued pursuant to the discussions held in 29th CoC meeting.

- vii. Thereafter, at 31st CoC meeting, the Applicant was asked by the CoC to give his final stand on the unconditional acceptance of the LoI as per the RfRP terms and conditions. However, the Applicant maintained his objections to the LoI and the conditions attached thereto and said that he cannot accept the LoI. Expressing its displeasure towards the prolonging of CIRP by the Applicant, the CoC passed the resolution at its 31st meeting that the EMD submitted by the Applicant would stand forfeited. Accordingly, the RP vide his Letter dated 02nd August, 2021 informed the Applicant of the forfeiture of EMD in view of CoC's rejection of his resolution plan and on account of Applicant's failure in accepting the LoI dated 23rd June, 2021 unconditionally.
- viii. The Applicant appears to be in a clear attempt to derail the CIRP process of the Corporate Debtor. Hence, the instant Application needs to be dismissed.

FINDINGS

10. We have heard the Counsel for the parties and have gone through the records.
11. This is an application moved by the Applicant, being an erstwhile Promoter and a Suspended Director of the Corporate Debtor, who is aggrieved by the conditions attached to the Letter of Intent issued by the Respondent in

accordance with the directions of the CoC of the Corporate Debtor. The three conditions with which the Applicant is aggrieved are as follows:

- a. The Resolution Applicant agrees that in case there is any amount realized from ECGC (Export Credit & Guarantee Corporation) of the Corporate Debtor, then the Corporate Debtor shall, on and from the Effective Date (i.e. date of receiving the Order), be entitled to keep and have benefits of the amount, title, or interest notwithstanding that it was not reflected in the Information Memorandum, no other entity or persons shall have any right of such realizations;
- b. The CoC members allow the Resolution Applicant a period of 45 days for providing the Performance Guarantee instead of 7 days considering the overall pandemic situation in the country and lockdowns in the state;
- c. Letter of Intent dated 23rd May, 2021 is being issued subject to the outcome of the decision of the Adjudicating Authority and/or any other courts or tribunals or regulatory authorities, as the case may be, under the applicable laws and the Applicant shall not hold the Resolution Professional or the CoC liable for such decisions of the Adjudicating Authority and/or any other courts or tribunals or regulatory authorities.

12. Counsel for the Applicant submits that there is no provision in law whereby the CoC can approve a plan subject to the outcome of litigations in which the Applicant is not even a party. Counsel for the Applicant further submits that that making the Applicant subject to a conditional approval of his resolution plan would be akin to dangling a sword over the head of the applicant where one has no control since the Applicant herein was never a party to those applications. The Ld. Counsel for the Applicant states that vide Letter of Intent dated 23.05.2021, received by the Applicant on 24.05.2021, certain overarching provisions were sought to be foisted on the Applicant that were over and above as also beyond what was submitted in the resolution plan and addendum already e-voted upon by the CoC and, therefore, the Ld. Counsel for the Applicant contends that such Letter of Intent beyond the scope of resolution plan could not have been issued by the Resolution Professional. It is the case of the Applicant that since the Respondent has vide Letter dated 31.05.2021 refused to issue an unconditional letter of intent, the Applicant is constrained to approach the Tribunal with the instant application.
13. On the other hand, Counsel for the Respondent submits that the condition under the Letter of Intent ('LoI') has been subsisting since the time of 23rd CoC Meeting held on 10th March, 2021. Counsel for the Respondent further submits that in the 28th CoC meeting, it was informed to the Applicant and all others

present in the meeting that the voting results approving the plan were subject to the orders to be passed by the Hon'ble NCLT subsequent to the hearing held on 21.01.2021. It is only after the 29th CoC meeting that that a fresh LoI was issued which too maintained the condition of approving the plan subject to the outcome of other litigations in relation to the submission of resolution plans by other resolution applicants.

14. We have carefully examined and weighed the aforesaid submissions and we have given our thoughtful consideration to the same.

15. On perusal of records, we find that the Applicant was virtually present in the 27th CoC meeting dated 06th May, 2021 wherein the Addendum dated 05th May, 2021 was received and briefly discussed. Clause 7.10.6 of the Addendum dated 05th May 2021, which was quoted in the minutes of the 27th CoC Meeting, is reproduced as follows: *“7.10.6 The Resolution Applicant further expressly clarifies, that in case there is any amount realized from ECGC (Export Credit & Guarantee Corporation) of the corporate Debtors, then the Corporate Debtor shall, on and from the Effective Date (date of receiving the Order), be entitled to keep and have benefits of the amount, title, or interest notwithstanding that it was not reflected in the Information Memorandum no other entity or persons shall have any right of such realizations.”*

It is not in dispute that the Addendum to the Resolution Plan was submitted by the Applicant on 06.05.2021. No objections were raised by the Applicant during

the 27th CoC meeting with respect to the above-quoted condition. The Applicant has also not placed on record the copy of the Addendum to the Resolution plan submitted by him to show that the conditions stated in the Letter of Intent, which are being disputed by the Applicant, were not forming part of the Resolution Plan read with the Addendum thereto submitted by him. It is a matter of record that the Resolution Plan and the Addendum to the Resolution Plan referred-to-above were put for e-voting and the e-voting lines for that purpose were extended upto 13:00 hours of 10th May, 2021. On 10th May 2021, the e-voting was concluded with 99.90% votes in favour of approving the Resolution Plan and the Addendum thereto, and the results of the e-voting were communicated to the Applicant by the Respondent by way of e-mail dated 10th May, 2021 itself and the Applicant was asked to provide 3 sets of the hardcopies of the finally approved resolution plan including the addendum.

16. The Letter of Intent dated 23rd May, 2021 states that the RP had sent a communication on 12th May, 2021 to the Applicant to include the first two conditions, as are referred-to-hereinbefore at Para 11 of this Order, since the same were missing in the files shared by the Applicant. However, the Applicant has plainly refused to include it even though those two conditions were quoted from Clause 7.10.6 and Clause 12.6.1 of the Addendum dated 05.05.2021

submitted by the Applicant. Thus, we are constrained to observe that the Applicant does not appear to be willing to go ahead with the approved resolution plan and that seems to be a reason for his refusal to give unconditional acceptance to the Letter of Intent.

17. The Hon'ble Supreme Court of India in *Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited and Another*, reported in (2022) 2 SCC 401, has inter alia held that the resolution applicant cannot withdraw or modify the resolution plan, after the same is approved by the Committee of Creditors. It is immaterial that post approval by the Committee of Creditors, there is consideration under Section 31(1) of the Code by the Adjudicating Authority for final approval. The judgment in *Ebix Singapore Private Limited* (supra) elaborates and sets out several reasons why the resolution applicant cannot be permitted to withdraw or modify the resolution plan after approval by the Committee of Creditors, and before an order under Section 31(1) of the Code is passed. These reasons include delay, consequences of the delay and the uncertainty and complexities that would arise in the Corporate Insolvency Resolution Process, which are unacceptable and not contemplated in law.
18. Thus, it is settled position in law that once the resolution plan submitted by the Resolution Applicant (i.e. the Applicant in the instant case) is approved by the CoC, then the Resolution Applicant cannot withdraw or modify the

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 1205 OF 2021
IN
CP(IB) NO. 1842/MB/C-II/2018

Resolution Plan. Therefore, in our considered view, the Applicant is precluded from raising any objections to the conditions stated in the Letter of Intent inasmuch as they are not alien to the resolution plan (along with the addendum thereto) submitted by the Applicant which was approved by the CoC. If the Applicant's objections to the conditions stated in the Letter of Intent are entertained at this stage, then the same would tantamount to withdrawing or modifying the resolution plan (along with the addendum thereto) by the Applicant/SRA after its approval by the CoC, which is not permissible in law.

19. Further, it is stated in the Letter of Intent dated 23rd May, 2021 that it is being issued subject to the outcome of the decision of the Adjudicating Authority and/or any other courts or tribunals or regulatory authorities, as the case may be, under the applicable laws and the Applicant shall not hold the Resolution Professional or the CoC liable for such decisions of the Adjudicating Authority and/or any other courts or tribunals or regulatory authorities. The Applicant seems to be aggrieved by this condition also. On perusal of records, such as the minutes of the 15th CoC Meeting held on 24.01.2020 annexed at Annexure 'A' to the Application, it is evident that the Applicant herein was present in the 15th CoC meeting wherein the resolution plans received from M/s. Faze Three Ltd and M/s. Munish Kohli & Associates were discussed and deliberated upon in the backdrop of M.A. No. 2005/2019 and M.A. No. 1618/2019 which were

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 1205 OF 2021
IN
CP(IB) NO. 1842/MB/C-II/2018

then pending for hearing before this Tribunal. The Applicant expressed his interest to submit a resolution plan vide Letter dated 11.02.2020 and he submitted his initial resolution plan only after passing of the Order dated 18.02.2020 by this Tribunal in MA No. 608/2020. Thus, it is evident from records that the Applicant was aware of the ongoing litigations with respect to submission of resolution plans by other resolution applicants and, therefore, it goes without saying that the Applicant herein cannot now insist on his plan being considered without subjecting it to the outcome of the decision of the Adjudicating Authority or any other court or tribunal under the laws of the land. Thus, the plea of the Applicant that the Applicant cannot be made subject to outcome of third-party applications where the Applicant is not even a party, is hereby rejected in toto as being irrational, absurd and untenable in law.

20. Since the forfeiture of Earnest Money Deposit is a subject-matter of controversy between the parties herein in another I.A. No. 2029/2021, we are not inclined to entertain the issue of forfeiture of Earnest Money Deposit in the instant I.A. under consideration. The apprehension of the Applicant that after deposit of performance bank guarantee, the MSME status of the Corporate Debtor may be challenged, whereupon the guarantee of the Applicant would be tremendously jeopardized, is not only a speculation but also a lame excuse or a novel method found out by the Applicant to refrain from furnishing the

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 1205 OF 2021
IN
CP(IB) NO. 1842/MB/C-II/2018

performance bank guarantee so as to wriggle out of his obligations under the resolution plan and the addendum approved by the CoC. Thus, the relief as prayed for in prayer clause (iv) at Para 38 of the application does not deserve to be granted. The relief craving for deposit of performance bank guarantee till the final disposal of the present application is of interim nature and the same cannot also be granted at the stage of final disposal.

21. No other issue remains to be addressed in the above-captioned matter.
22. Thus, in view of the above discussions and findings, the present **I.A. No. 1205 of 2021** is being **dismissed** with no orders as to costs.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH
INTERLOCUTORY APPLICATION NO. 2029 OF 2021

IN
CP(IB) NO. 1842/MB/2018

*Application u/s 60(5)(b) of the Insolvency and
Bankruptcy Code, 2016.*

In the matter of:

Sanjay Dave, erstwhile Promoter/

Director of Oracle Home Textile Ltd

...Applicant

v/s.

1. Andhra Bank Ltd.

(Now Union Bank of India)

2. Oracle Home Textile Ltd

(Through its Resolution Professional Mr.
Jitendra Kumar Yadav)

...Respondents

In the matter of

ANDHRA BANK LTD.

...Operational Creditor

v/s.

ORACLE HOME TEXTILE LIMITED

...Corporate Debtor

Order pronounced on 30.04.2024.

Coram:

Shri. Kuldip Kumar Kareer : Member Judicial.

Shri. Anil Raj Chellan : Member Technical.

Appearances (in physical mode)

For the Applicant: Counsel Mr. Pulkit Sharma a/w Umang Mehta.

For the Respondents: Adv. Akshay Doctor a/w Naveli R for the RP.

Adv. Smriti Shahani appeared for CoC.

RP also present-in-person.

ORDER

Per: Shri. Kuldip Kumar Kareer, Member Judicial.

1. This is an application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) filed by the Applicant, who is an erstwhile Promoter/Director of the Corporate Debtor, seeking the reliefs which *inter-alia* includes a) directions to RP/CoC to issue unconditional letter of intent; b) refund the earnest money deposit of INR 1,00,00,000/- (Rupee One Crore Only) which was wrongly forfeited by the RP/CoC; c) to accept performance guarantee within 45 days from the issuance of revised issue unconditional letter of intent; d) conclude CIRP by approving the resolution plan which has already been approved by the CoC with 99.90% as more than three years have passed since the commencement of CIRP of the Corporate Debtor; and e) all other applications filed by the prospective resolution

applicants may be heard only after disposal of Applicant's case in I.A. No. 1205/2021.

Facts of the case as per the Applicant:

2. The Resolution Plan dated 31.12.2020 along with the Addendum dated 05th May, 2021 was submitted by the Applicant and was voted by the CoC with 99.90% approval on 10.05.2021. The same was informed to the Applicant vide email dated 10.05.2021. Based on above, the Resolution Professional ('RP') issued a conditional Letter of Intent ('LoI') dated 23.05.2021, which according to the Applicant, was not in conformity with the approved resolution plan. The LoI dated 23.05.2021 declared that the Applicant is the Successful Resolution Applicant ('SRA').
3. While the RP issued a conditional letter of intent, but he had sought an unconditional acceptance of the letter of intent from the Applicant. The Applicant through his lawyers pointed out the deficiency, with a request to issue an unconditional letter of intent. However, this request was not considered by the RP and the CoC. The Applicant, therefore, preferred I.A. No. 1205/2021 seeking unconditional letter of intent.
4. The RP did not rectify the LoI dated 23.05.2021 and instead, issued a revised LoI dated 23.06.2021. However, the same was also not on the lines of the

request of the Applicant regarding unconditional letter of intent. During the course of further meetings and discussions, the RP and CoC finally agreed for rectifying the first and foremost deficiency as far as the worker's clause was concerned and the same was finally accepted as per the approved resolution plan only. The RP and the CoC also rectified the deficiency of unmentioned period of validity of the performance guarantee.

5. Based on the above corrections as decided in the CoC meetings, the RP had issued another revised LoI dated 23.07.2021. However, even the revised LoI dated 23.07.2021 was not in line with the decision of CoC meeting dated 06.05.2021 wherein the CoC had agreed to give 45 days for submission of performance guarantee from the date of issue of LoI. In the aforementioned revised LoI, a clause was inserted which stated that the Applicant is bound by the discussions and decisions during the CoC meetings. This condition is over and above the approved resolution plan and the addendum. Such a condition is also vague in nature because it does not refer to which discussions and what decisions during which CoC meetings, as more than 30 CoC meetings have taken place.
6. In the 31st CoC Meeting, it was decided to reject the resolution plan of the SRA as the Applicant failed to unconditionally accept the LoI thereby breaching the condition subsequent as stipulated in the request for resolution plan. Further, it

was also resolved to forfeit the earnest money deposit of Rs. 1 crore submitted by the Applicant along with the resolution plan, on account of non-acceptance of the LoI dated 23.06.2021.

7. Hence this application.

Submissions of the Applicant

8. Counsel for the Applicant submits that there is no statutory basis for such conditional approval of the resolution plan, subject to outcome of the application moved by the third-party resolution applicants where the present Applicant is not even a party. From a bare perusal of Section 30(4), it is evident that there is no scope of conditional approval of the resolution plan. Ld. Counsel for the Applicant further submits that once the CoC has voted in favour of a resolution plan, then it cannot by way of a letter of intent expand the scope of resolution plan.

9. Learned Counsel for the Applicant contends that once the resolution plan is approved by the CoC, then passing a resolution by the CoC for liquidation of the Corporate Debtor would become self-contradictory. Counsel for the Applicant submits that the main objective of the Code is to revive a company rather than sending it into liquidation. Ld. Counsel for the Applicant argues that when the Applicant is willing to implement the approved resolution plan

but for the conditional LoI, in such a scenario, sending the Corporate Debtor into liquidation would be against the entire objective of the Code.

10. Counsel for the Applicant further submits that subjecting the Applicant to the outcome of decision of the Adjudicating Authority in third-party litigations would be akin to dangling a sword over the head of the applicant where one has no control. The Applicant cannot be made subject to the outcome of third-party applications, where the Applicant is not even a party. The Applicant cannot be prejudiced because some third parties are non-vigilant in regard to their applications. Counsel for the Applicant submits that any financial investor would be most vary of any conditional approval in a scheme where the decision will be based on proceedings in which he is not even involved or heard. Counsel for the Applicant further submits that no party can be prejudiced in proceedings where such party is not heard or represented.

11. The Letter of Intent indicates that the Applicant is required to furnish the Performance Bank Guarantee ("PBG"). As per the Request for Resolution Plan ('RfRP') the Applicant is required to furnish the PBG within a period of 7 days. Though the extension of upto 45 days on account of COVID-19 pandemic was granted, the Applicant apprehends that furnishing of PBG at this stage would be prejudicial to the Applicant's interest. Hence, the Applicant prays for

directions from the Hon'ble Adjudicating Authority to defer the deposit of PBG till the final disposal of the present application.

12. Counsel for the Applicant has heavily relied upon the Judgment dated 09th February, 2023 of the Hon'ble NCLAT in "Express Resorts v/s. Amit Jain-RP of Neesa Leisure Limited" in Company Appeal (AT)(Ins.) No. 1158/2022, wherein it was held that once the CoC exercise their commercial wisdom, they cannot change their view since its bound by its own decision taken in approving the resolution plan.

13. **Reply and Contentions of the Respondents/RP:** The Respondents/RP have chosen not to file his reply but the Respondents/RP have been orally heard. The Respondents/RP have filed their Written Submissions on record. The contentions of the Respondents are briefly summarized hereinbelow:

- i. I.A. No. 3914/2023 has been filed by the RP before the Hon'ble Adjudicating Authority seeking directions to liquidate the Corporate Debtor u/s 33(1) of the Code. The liquidation application ought to be allowed for the reasons stated hereunder and therefore, the applications filed by the Applicant will not survive.
- ii. The CIRP period of the Corporate Debtor has come to an end on 21st February, 2023 and no resolution plan has been approved by the CoC and

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 2029 OF 2021

IN

CP(IB) NO. 1842/MB/C-II/2018

submitted to this Hon'ble Tribunal for its approval within the period of CIRP. Hence, under such circumstances, it is the mandate of law as enshrined u/s 33(1) of the Code that the Corporate Debtor must necessarily be sent into liquidation. In this regard, it is also relevant to highlight that the CoC in its 33rd Meeting held on 05th June, 2023 has approved the resolution to send the Corporate Debtor into liquidation with an overwhelming majority of 99.61% votes.

- iii. Suspended Director was given multiple opportunities to submit a complete and appropriate resolution plan that could be placed before this Tribunal for approval. However, the Applicant herein failed to do so. In fact, at the CoC meeting held on 11th February, 2020, the CoC had even passed a resolution for liquidation of the Corporate Debtor with a requisite majority of 99.61% of the votes in favour of liquidation. It was this very same meeting that the Applicant raised his voice and desire to submit a resolution plan. The Applicant had filed M.A. No. 608/2020 before this Tribunal seeking directions to allow the Applicant to submit the resolution plan and the same came to be allowed vide Order dated 18.02.2020. In terms of Request for Resolution Plan ('RFRP'), all Prospective Resolution Applicants were required to provide an EMD of Rs. 1 crore. The Applicant refused to give EMD and instead chose to file

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 2029 OF 2021

IN

CP(IB) NO. 1842/MB/C-II/2018

IA No. 1070/2020 before this Tribunal seeking exemption from submitting the EMD and the said IA came to be rejected vide Order dated 21.08.2020. As can be seen from above, even before proceeding to submit the Resolution Plan, the Suspended Director i.e. the Applicant attempted various maneuvers to delay the process on one pretext or another.

- iv. Pursuant to the Order dated 21.08.2020, the Applicant submitted a resolution plan for CoC's consideration. The plan submitted by the Applicant was deliberated upon in the 27th CoC meeting and the CoC required the Applicant to submit a revised plan in line with the discussions and decisions of the CoC meetings. Accordingly, the Applicant submitted a revised resolution plan and thereafter, the addendum. The revised Resolution Plan and the Addendum thereto were voted upon by the members of CoC subject to changes as discussed in the meeting were incorporated as a part of the plan and any order which this Hon'ble Tribunal may pass pursuant to the hearing that was held on 21st January, 2021. However, till date, the Suspended Director/Applicant has not submitted a complete copy of the corrected resolution plan. Also, the voting in respect of the incomplete plan was subject to the prospective orders that would be passed by this Tribunal and therefore, the resolution plan of the Applicant was never voted upon in absolute terms. It is further

imperative to mention that during the 33rd CoC Meeting held on 05th June, 2023, the Suspended Director/Applicant had *inter-alai* agreed that in the event a requisite majority of 66% votes is not achieved towards the approval of purported demands sought by him, the Corporate Debtor shall be sold under Liquidation under the provisions of the Code. This clearly shows that the Applicant himself has agreed to the Liquidation of the Corporate Debtor.

- v. The Applicant has come with unclean hands and with an oblique motive to mislead the Tribunal and to delay the Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor. The Suspended Director Mr. Sanjay Dave i.e. the Applicant has filed an Interlocutory Application No. 608/2020 seeking directions to extend CIRP period and to allow him to submit the Resolution Plan. The said Application came to be allowed vide Order dated 18.02.2020. Till 18th CoC meeting conducted on 06th March, 2020, the Applicant had not submitted his plan. Thereafter, in and around July 2020, the Applicant filed an Interlocutory Application No. 1070 of 2020 *inter alia* seeking exemption from depositing Earnest Money Deposit ('EMD') along with the resolution plan. The Hon'ble Tribunal did not accede to this request and directed the Applicant vide

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 2029 OF 2021

IN

CP(IB) NO. 1842/MB/C-II/2018

Order dated 21st August, 2020 to submit his Resolution Plan with EMD within 3 weeks and further directed CoC to take a decision on the same.

- vi. Pursuant to the above order, the Applicant submitted the EMD and his Resolution Plan and the same was discussed and deliberated upon by the CoC at its meetings. After the 27th CoC meeting, the Final Resolution Plan dated 31st December, 2020 along with its Addendum dated 05th May, 2021 submitted by the Applicant was voted upon and approved the same subject to the discussion held in 27th CoC meeting by 99.90% votes on 10th May, 2021.
- vii. In the meantime, on 21st January, 2021 the above Company Petition came up for hearing before the Hon'ble Tribunal at which other interested parties who were keen on participating in the CIRP process and submitting their respective Resolution Plans argued their respective application. After hearing the parties, the Hon'ble Tribunal indicated that it would pass a detailed order in respect of the same.
- viii. The 28th CoC Meeting was held on 21st May, 2021. At the said meeting, the Respondent/RP informed all the members present that the voting results approving the plan were subject to the order(s) to be passed subsequent to the hearing held on 21.01.2021. The Applicant requested the CoC to issue him a Letter of Intent ('LoI') on the letterhead of RP.

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 2029 OF 2021
IN
CP(IB) NO. 1842/MB/C-II/2018

Thereafter, vide email dated 24th May 2021, the RP circulated the draft LoI to the Applicant for his perusal and acceptance. The Applicant replied to the said email vide his Advocate's Letter dated 29th May, 2021, *inter-alia*, raising the preliminary objection to the LoI being conditional subject to the outcome of hearing dated 21.01.2021 and the additional conditions being sought to be imposed in the LoI. The Respondent submits that at that juncture only, the Respondent as RP had reiterated that the condition regarding the outcome of the hearing dated 21.01.2021 was intimated to the Applicant well in advance and was also recorded in the minutes of 28th CoC meeting.

- ix. Even in response to the Applicant's Letter dated 29th May, 2021 referred-to-above, the Respondent addressed a Reply dated 31st May, 2021 reiterating that the condition under the LoI had been subsisting since the time of 23rd CoC meeting and contention in respect thereof cannot be accepted. In the meantime, the Applicant proceeded to file the above application and informed the Respondent of the same vide his Advocate's email dated 03rd June, 2021.
- x. At 29th CoC meeting held on 11th June, 2021, the Applicant was requested to provide the duly corrected/modified resolution plan as per the discussions at earlier CoC meetings so that the application could be filed

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 2029 OF 2021

IN

CP(IB) NO. 1842/MB/C-II/2018

before the Hon'ble Tribunal. At the said meeting, the CoC had enquired with the Applicant if he has any specific objection w.r.t LoI and the Applicant answered in the negative. Thus, the CoC called upon the Applicant to submit a corrected Resolution Plan as per the RfRP document and further requested the RP to issue a fresh LoI. Pursuant to the above, the RP circulated a fresh LoI to the Applicant vide email dated 23.06.2021 and 7 days' time was granted to the Applicant to accept the same. The Applicant replied to the above email on the same day raising issues of LoI not being in conformity with the RfRP document and once again requested the RP to issue a fresh LoI. The RP on the same day replied that the latest LoI has been issued pursuant to the discussions held in 29th CoC meeting.

- xi. Thereafter at 31st CoC meeting, the Applicant was asked by the CoC to give his final stand on the unconditional acceptance of the LoI as per the RfRP terms and conditions. However, the Applicant maintained his objections to the LoI and the conditions attached thereto and said that he cannot accept the LoI. Expressing its displeasure towards the prolonging of CIRP by the Applicant, the CoC passed the resolution at its 31st meeting that the EMD submitted by the Applicant would stand forfeited. Accordingly, the RP vide his Letter dated 02nd August, 2021 informed the

Applicant of the forfeiture of EMD in view of CoC's rejection of his resolution plan and on account of Applicant's failure in accepting the LoI dated 23rd June, 2021 unconditionally.

- xii. The Applicant appears to be in a clear attempt to derail the CIRP process of the Corporate Debtor. Hence, the instant Application needs to be dismissed.

FINDINGS

14. We have heard the Counsel for the parties and have gone through the records.
15. The Applicant herein is aggrieved by the forfeiture of his earnest money deposit of Rs. 1 crore with the Respondent No.01 i.e. Andhra Bank. The Applicant is also seeking unconditional letter of intent from the RP as also the time period of 45 days instead of 7 days to furnish the performance guarantee.
16. As per our order of even date in I.A. No. 1205/2021, we have rejected the prayer of the Applicant seeking directions to the RP/CoC to issue unconditional letter of intent. Hence, the same issue which has already been decided in the above-mentioned application, cannot be reagitated here again. Further, as per our order of even date in I.A. No. 1205/2021, we have held that

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 2029 OF 2021

IN

CP(IB) NO. 1842/MB/C-II/2018

the conditions contained in the Letter of Intent dated 23.05.2021 were nothing but a part of the Addendum dated 05th May, 2021 to the approved Resolution Plan that were submitted by the Applicant himself. We further held that the Applicant is bound by the outcome of the decisions of Adjudicating Authority in applications preferred by other resolution applicants and hence, the Applicant cannot insist on deleting such a condition from the letter of intent. In view of our Order of even date passed in I.A. No. 1205/2021, we did not find any infirmity with the Letter of Intent dated 23.05.2021. Even in the Letter of Intent dated 23.06.2021 issued by the RP acting on behalf of CoC, the Applicant was subjected to the outcome of decision of the Adjudicating Authority and the Applicant shall not hold RP or CoC liable for the same. At the cost of repetition, we state that the aforesaid condition of subjecting the Applicant to the outcome of decision of the Adjudicating Authority has been upheld by us and therefore, the basis of our decision even in respect of the Letter of Intent dated 23.06.2021 would not change.

17. In our considered view, the Applicant should have given unconditional acceptance to the Letter of Intent dated 23.05.2021. However, the same was admittedly not done. Thereafter, the revised Letter of Intent dated 23.06.2021 was issued by the RP again reiterating the condition that the letter of intent is

being issued subject to the outcome of the decision of the Adjudicating Authority and that the Applicant shall not hold the RP or the CoC responsible for the such decisions. However, yet again, the Applicant failed to unconditionally accept the said letter of intent and consequently, the resolution plan along with the addendum thereto submitted by the Applicant, which was approved by the CoC by 99.90% votes in favour of the plan on 10.05.2021, could not be filed before the Adjudicating Authority for its approval u/s 30(6) read with Section 31 of the Code. Thus, we hold that the Applicant failed to comply with the resolution plan process and hence, the forfeiture of earnest money deposit of the Applicant worth Rs. 1 crore is in accordance with Clause 1.9.4, sub-clause (e) of the Request for Resolution Plan.

18. As per Clause 1.10.1 of the Request for Resolution Plan, the Successful Resolution Applicant (i.e. the Applicant in the instant case) was required to provide a Performance Security in the form of performance guarantee. Owing to the Covid-19 pandemic, it was mutually agreed between the Applicant and the CoC to extend the time of 7 days to 45 days for submission of performance guarantee. However, the Applicant failed to furnish the same till date. Therefore, in terms of Clause 1.9.4 (b) and Clause 1.10.1, the CoC was fully justified in passing the resolution in its 31st Meeting (held on 26.07.2021) to

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 2029 OF 2021
IN
CP(IB) NO. 1842/MB/C-II/2018

forfeit the earnest money deposit of the Applicant worth INR 1,00,00,000/- (Rupees One Crore Only). Hence, we hold that the actions of the CoC in forfeiting the earnest money deposit of the Applicant do not suffer from any illegality or legal infirmity so as to warrant interference of this Tribunal u/s 60(5) of the Code.

19. An application for approval of the resolution plan u/s 30(6) read with Section 31 of the Code is supposed to be filed by the RP. The Applicant cannot seek approval of his resolution plan invoking the jurisdiction of this Bench u/s 60(5) of the Code. Hence, the prayer in terms of clause (iv) seeking conclusion of CIRP by approving the resolution plan cannot be granted.

20. The Applicant has prayed that all IAs filed by the prospective resolution applicants may be heard only after disposal of Applicant's I.A. No. 1205/2021 since the Applicant is the successful resolution applicant. Counsel for the Applicant has heavily relied upon the Judgment dated 09th February, 2023 of the Hon'ble NCLAT in "Express Resorts v/s. Amit Jain-RP of Neesa Leisure Limited" in Company Appeal (AT)(Ins.) No. 1158/2022, wherein it was held that once the CoC exercise their commercial wisdom, they cannot change their view since its bound by its own decision taken in approving the resolution plan.

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 2029 OF 2021

IN

CP(IB) NO. 1842/MB/C-II/2018

In the above-quoted ruling, the Hon'ble NCLAT had rightly held that once the CoC has decided to approve a resolution plan, then it is bound by its own decision and cannot in the name of receiving higher offer, subsequently turn around and pray to the Adjudicating Authority to send the plan back for reconsideration. However, the aforesaid ruling does not apply to the facts of the present case, as the CoC has not prayed before the Adjudicating Authority for sending back the resolution plan submitted by the Applicant for reconsideration under the pretext of having received higher offers, but merely laid down a condition that in case the Adjudicating Authority directs the CoC to consider the interest expressed by other resolution applicants, then it will have to consider their plans as per the order of the Adjudicating Authority for which the CoC shall not be held responsible by the Applicant. Even otherwise, this issue is not relevant anymore since the applications of other resolution applicants have been dismissed by this Bench and now there is no question of considering the resolution plans submitted/to be submitted by other resolution applicants who had expressed their interests.

21. By repeatedly insisting for unconditional LoI even when the condition(s) put therein were not alien to the resolution plan read with the addendum thereto submitted by the Applicant, by filing an IA seeking relaxation from depositing

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 2029 OF 2021

IN

CP(IB) NO. 1842/MB/C-II/2018

the earnest money deposit and by not furnishing the performance bank guarantee till date, it seems to us that the Applicant is not interested in going forward with the resolution plan for revival and rehabilitation of the Corporate Debtor of which he was the promoter. The 31st CoC meetings were held on 19th July 2021, 23rd July 2021 and 26th July 2021. On 26th July, 2021 the Applicant was asked by the CoC to give his final stand on the unconditional acceptance of LoI as per the RfRP terms and conditions. However, the Applicant remained adamant on his stand that the LoI purported to impose additional conditions which he was not inclined to accept. Therefore, the CoC in its 31st Meeting held on 26.07.2021 decided to reject the resolution plan submitted by the Applicant, as the Applicant failed to provide unconditional acceptance to the LoI dated 23.06.2021, and also it was decided to forfeit the EMD of the Applicant of INR 100,00,000/- (Rupees One Crore Only). Thus, we observe that ample opportunities were given by the Respondents to the Applicant to submit the copies of the corrected/modified Resolution Plan and accept the LoI. However, despite that, the Applicant failed to accept the LoI and submit the corrected Resolution Plan as was agreed to in the previous CoC meetings. Thus, we are of the considered view that the CoC is fully justified not only in rejecting the Resolution Plan of the Applicant, but also in forfeiting the Applicant's earnest

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 2029 OF 2021

IN

CP(IB) NO. 1842/MB/C-II/2018

money deposit of Rs. 1 crore as per the terms and conditions of RfRP documents and the LoI, and going for liquidation of the Corporate Debtor.

22. Therefore, in the facts and circumstances of the present case, we find that I.A. No. 2029 of 2021 is devoid of any merit for the reasons recorded above and accordingly, **I.A. No. 2029 of 2021 is hereby dismissed** with no orders as to costs.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH
INTERLOCUTORY APPLICATION NO. 3914 OF 2023**

IN

COMPANY PETITION (IB) NO. 1842/MB/2018

*Application u/s 33 of the Insolvency and
Bankruptcy Code, 2016.*

In the matter of:

Mr. Jitendra Kumar Yadav

Resolution Professional of Oracle Home Textiles
Ltd.

11, Singh House, 02nd Floor, 23, Ambalal Doshi
Marg, Near BSE, Fort, Mumbai-400 001.

...Applicant

In the matter of

ANDHRA BANK LTD.

...Operational Creditor

v/s.

ORACLE HOME TEXTILES LIMITED

...Corporate Debtor

Order pronounced on 30.04.2024.

Coram:

Shri. Kuldip Kumar Kareer : Member Judicial.

Shri. Anil Raj Chellan : Member Technical.

Appearance (in Virtual Mode)

For the Applicant: Counsel Naveen R. for the RP and Counsel
Ms. Smriti Shahani for the CoC.

ORDER

Per: Shri. Kuldip Kumar Kareer, Member Judicial.

1. This is an application filed by the Applicant, who is the Resolution Professional of the Corporate Debtor, for liquidation of the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016.
2. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process ('CIRP') vide Order dated 09th August, 2018 passed u/s 7 of the Code in the above-captioned Company Petition and the Applicant herein was appointed as the Interim Resolution Professional ('IRP') and thereafter confirmed as the Resolution Professional ('RP') by the Committee of Creditors ('CoC').
3. Pursuant to the Public Announcement for invitation of Expression of Interest ('EoI') dated 23.10.2018, the following EOIs were received by the Applicant:
 - i. M/s. ASG Business (India) Pvt Ltd;
 - ii. M/s. Nagreeka Exports Ltd;
 - iii. M/s. Suraksha Asset Reconstruction Pvt Ltd;
 - iv. M/s. Faze Three Ltd;

- v. M/s. Phoenix ARC Pvt Ltd;
 - vi. M/s. Ganak Conglomerate Pvt Ltd.
4. The Applicant states that out of above 6 EoIs, only 1 Resolution Applicant submitted the Resolution Plan i.e. M/s. Faze Three Ltd. In the 17th CoC Meeting held on 11th February, 2020, the Resolution Plan submitted by Faze Three Ltd was rejected by CoC with 100% voting share and a resolution for liquidation of the Corporate Debtor was approved by 99.61% voting share. However, on an application filed by a suspended director before this Hon'ble Tribunal in MA No. 608/2020, this Tribunal vide Order dated 18th February, 2020 directed that the suspended director be permitted to submit his resolution plan to the CoC within 2 weeks from the date of the Order and upon receipt of the plan, the CoC to consider the same. It is pertinent to note that one of the key ingredients of Request for Resolution Plan ('RfRP') was that an Earnest Money Deposit ('EMD') of Rs. 1 crore was to be furnished by a Prospective Resolution Applicant ('PRA') while submitting the resolution plan.
5. In and around July 2020, the Suspended Director filed an IA No. 1070/2020, *inter alia*, seeking exemption from depositing EMD with his resolution plan. However, vide Order dated 21.08.2020, this Tribunal did not accede to the request and directed the Suspended Director to submit his Resolution Plan and EMD within 3 weeks and further directed the CoC to take a decision on the same. Pursuant to the above order, the Suspended Director submitted his

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 3914 OF 2023
IN
CP(IB) NO. 1842/MB/C-II/2018

Resolution Plan along with EMD. The Resolution Plan submitted by the Suspended Director on 31.12.2020 along with its Addendum dated 05.05.2021 was voted upon and approved by the CoC on 10th May, 2021 with 99.90% votes in favour. In the meantime, on 21.01.2021, the IAs in the above-captioned Company Petition came up for hearing before this Tribunal wherein other interested parties were keen to participating in the CIRP by submitting their resolution plans. After hearing the parties, the Tribunal indicated that it would pass a detailed order in respect of the same. In the 28th CoC Meeting held on 21st May, 2021 the Applicant informed all present in the meeting that the voting results approving the plan were subject to the orders which may be passed by the Adjudicating Authority subsequent to the hearing held on 21.01.2021.

6. On 24th May 2021, the Applicant circulated the draft Letter of Intent ('LoI') to the Suspended Director for his perusal and acceptance. Vide his Advocate's Letter dated 29.05.2021, the Suspended Director replied to the said email raising primary objection to the LoI being conditional subject to the outcome of hearing dated 21.01.2021 and the additional conditions being sought to be imposed in the LoI. Being aggrieved by the conditional LoI, the Suspended Director filed I.A No. 1205/2021. At the 29th CoC Meeting held on 11.06.2021, the Suspended Director was requested to provide the duly corrected/modified Resolution Plan as per the discussions at the earlier CoC meetings. At 30th CoC

Meeting held on 22.06.2021, it was discussed that despite repeated reminders, the Suspended Director had not submitted the final Resolution Plan with Addendums as requested. Pursuant to the decision taken at 30th CoC Meeting, the Applicant vide email dated 23.06.2021 circulated a fresh LoI to the Suspended Director. The Suspended Director disputed the aforesaid LoI for not being in conformity with the RfRP document.

7. At the 31st CoC meetings held on 19th July 2021, 23rd July 2021 and 26th July 2021, the Suspended Director was asked, over the course of three days, by the CoC to give his final stand on the unconditional acceptance of LoI. However, the Suspended Director continued to maintain his allegations that the LoI purported to impose additional conditions and that he cannot accept the LoI. Thereafter, the CoC expressing its displeasure at the conduct of the Suspended Director towards prolonging of CIRP, rejected the Resolution Plan submitted by the Suspended Director and also resolved to forfeit the EMD paid by the Suspended Director of Rs. 1 crore at the time of submitting the resolution plan. Being aggrieved by such forfeiture, the Suspended Director filed another IA No. 2029 of 2021. It is also pertinent to note that IA No. 1355 of 2021 has been filed by Faze Three Ltd seeking directions to quash and set aside the Minutes of the CoC held on 10th May, 2021 rejecting its resolution plan.

8. The CoC has resolved in its 33rd Meeting held on June 05, 2023 to liquidate the Corporate Debtor in the event requisite majority of 66% is not achieved to approve the resolution plan proposed by the Suspended Director. It is pertinent to note that the CoC has voted in favour of liquidation of the Corporate Debtor with voting result by a majority of 99.61%. The Applicant also states that the initial 180-day period of CIRP ended on 12.02.2019. Thereafter, the CIRP period was extended by the Tribunal from time to time. However, the Applicant submits that there is no point in extending the CIRP any further in view of the resolution for liquidation passed by the CoC with thumping majority.
9. In the aforesaid circumstances, the Applicant is filing the present IA for liquidation of the Corporate Debtor.
10. We have heard the learned Counsel for the Applicant and perused the material available on record.
11. The extract of the relevant resolution by the CoC in its 33rd Meeting held on 05th June, 2023 is reproduced hereinbelow:

Resolution No.01:

"RESOLVED THAT the following requests of Mr. Sanjay Dave, the Suspended member of the board and contesting resolution applicant, made on 2nd June, 2023 vide email and also circulated during the 33rd CoC Meeting, be approved by consent of the majority of the members of the Committee of Creditors of the Corporate Debtor:

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 3914 OF 2023
IN
CP(IB) NO. 1842/MB/C-II/2018

1. *That an Application for MSME certification under UDA YAM be filed by the Resolution Professional*
2. *That a fresh unconditional LOI be issued without any overbearing clauses or such clauses which may not be in consonance with the approved resolution plan.*
3. *That the LOI to clearly mention:*
 - a. *Amount of Performance Bank Guarantee (PBG) required;*
 - b. *Time period within which LOI to be accepted and the time to provide the Performance Bank Guarantee;*
 - c. *Tenure of "Performance Bank Guarantee validity period" to be communicated in LOI as per RFRP;*
 - d. *Removal / omit the sentence" and also the decisions taken after discussions in the COC Meetings having binding effect." from the fresh LOI to be issued;*
 - e. *That the forfeited Earnest Money Deposit (EMD) be restored.*

"RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorised to take steps as may be necessary, in relation to the above if required to do all acts arising out of and incidental thereto and sign and execute all applications, documents and writings that may be required and in general do all acts, deeds and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid Resolution."

Resolution No.02:

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 3914 OF 2023
IN
CP(IB) NO. 1842/MB/C-II/2018

"RESOLVED THAT in the event the requisite majority of 66% voting of the CoC is not achieved to approve Resolution No. 1 as above, then the Corporate Debtor i.e "ORACLE HOME TEXTILE LIMITED" be sold under Liquidation under IBC, 2016 by approval of the majority of the members of the CoC in its commercial wisdom, for which the Resolution Professional may file appropriate Interlocutory Application under Section 33(1)(a) before the Hon'ble NCLT, Bench-II, Mumbai seeking Liquidation of the Corporate Debtor.

"RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorised to take steps as may be necessary, in relation to the above if required including but not limited to giving consent to act as the Liquidator or obtaining consent from any proposed Liquidator as informed by the members of the CoC, and to do all acts arising out of and incidental thereto and sign and execute all applications, documents and writings that may be required and in general do all acts, deeds and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid Resolution."

12. On perusal of records and keeping in mind the facts and circumstances of the case, it is evident that since the successful resolution applicant failed to accept the Letter of Intent, no resolution plan as approved by the CoC could be submitted by the Applicant to the Adjudicating Authority u/s 30(6) of the Code. As the Adjudicating Authority has not received a resolution plan u/s 30(6) of

the Code before the expiry of maximum period (i.e. 330 days from the insolvency commencement date) permitted for completion of CIRP, therefore, in view of Section 33(1)(a) of the Code, it is fit case to order liquidation of the Corporate Debtor.

13. Further, since the CoC in its commercial wisdom has resolved in the 33rd Meeting held on 05th June, 2023 to put the Corporate Debtor under liquidation by a majority of 99.61% voting, there is no point in prolonging the CIRP of the Corporate Debtor any further. The Hon'ble NCLAT in **Gulab Chand Jain v/s. Resolution Professional of Vijay Timber Industries** (vide Order dated 02.03.2021 in Company Appeal (AT) (Insolvency) No. 142 of 2021) has observed as follows:

"2. ... That apart, under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read together with explanation inserted by Act 26 of 2019 enforced w.e.f. 16th August, 2019, the COC is empowered to take a decision in regard to liquidation of the Corporate Debtor even after an application has been filed by the Resolution Professional placing the Resolution Plan approved by the COC before the Adjudicating Authority for approval. Of course, the withdrawal of the Resolution Plan can be done before its approval by the Adjudicating Authority. **This implies that even after approval of the Resolution Plan by the COC and laying it before the Adjudicating Authority, the COC can change its mind and pass a Resolution liquidating the Corporate Debtor subject to only exception that such course cannot be adopted after its confirmation i.e. after approval of the Resolution Plan by the Adjudicating Authority.**"

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 3914 OF 2023
IN
CP(IB) NO. 1842/MB/C-II/2018

We also wish to observe that the aforesaid ruling of the Hon'ble NCLAT has been upheld by the Hon'ble Supreme Court of India in Civil Appeal No. 5640 of 2021 vide Order dated September 17, 2021. In the present case, the Resolution Professional could not submit the approved resolution plan before the Adjudicating Authority u/s 30(6) of the Code for the reasons discussed hereinbefore, therefore, having regard to the provisions of Section 33(2) and considering the ruling of the Hon'ble NCLAT in Gulab Chand Jain v/s. Resolution Professional of Vijay Timber Industries (supra), we are of the considered view that the CoC is not only empowered to pass a resolution for liquidation u/s 33(2) of the Code before the confirmation of resolution plan, but is also fully justified in passing such a resolution in the factual matrix of the instant case. Thus, this is also a fit case to order liquidation u/s 33(2) of the Code. The Applicant has prayed for appointing Mr. Mahesh Chand Gupta, a Resolution Professional to act as the Liquidator and has also annexed the written consent of the aforementioned Resolution Professional to act as a Liquidator of the Corporate Debtor.

14. One cannot brush aside an important fact that longer the delay, more likely it is that the 'Liquidation' will only be the sensible answer. No doubt, the 'Liquidation Value' tends to go down with an efflux of time as many 'Assets' suffer from high economic depreciation. The Corporate Debtor was admitted

into Corporate Insolvency Resolution Process ('CIRP') vide Order dated 09th August, 2018 passed u/s 7 of the Code in the above-captioned Company Petition and a long time has elapsed since the insolvency commencement date. Hence, we are of the firm view that the Corporate Debtor should go into the process of liquidation forthwith without any further delay in the interests of all stakeholders.

15. The Hon'ble Supreme Court in the matter of *K. Sashidhar Versus Indian Overseas Bank & Ors* (Neutral Citation: **2019 INSC 148**, Vide **Judgment dated February 05, 2019** in **Civil Appeal No. 10673 of 2018**) has held that the decisions of CoC based on its commercial wisdom are non-justiciable. The CoC with requisite voting as given under Section 33(2) has approved the resolution for liquidation of the Corporate Debtor in view of not being able to approve and submit any resolution plan u/s 30(6) of the Code for the reasons discussed hereinbefore. This Tribunal has very limited powers of judicial review in such matters of commercial wisdom.

16. In view of the above discussions and findings, this Bench is of the opinion that the Corporate Debtor is required to be liquidated in the manner as laid down under the Insolvency & Bankruptcy Code, 2016. Hence, we pass the following orders:

ORDER

- i. **I.A. No. 3914 of 2023 is allowed;**
- ii. The Corporate Debtor “**ORACLE HOME TEXTILES LTD.**” is **ordered to be liquidated** in terms of Section 33(2) of the Code read with the Regulations made thereunder;
- iii. This Bench hereby appoints **Mr. Mahesh Chand Gupta** having **Registration No. IBBI/IPA-001/IP-P01489/2018-2019/12304** (having Email: mcgupta90@gmail.com and Mobile: 9831046652/798044128) as the Liquidator of the Corporate Debtor. The Liquidator so appointed shall complete the Liquidation process as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Liquidation process) Regulation, 2016. The Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- iv. The Liquidation of Corporate Debtor is effective from the date of this order and the Moratorium u/s 14 of the Code declared vide Order dated 09.08.2018 in CP(IB) No.1842/NCLT/MB/2018, henceforth ceases to exist from the date of the order of liquidation;

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 3914 OF 2023
IN
CP(IB) NO. 1842/MB/C-II/2018

- v. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor, save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority;
- vi. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor, as the case may be, hereafter cease to exist. All these powers henceforth vest with the Liquidator. The personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- vii. The Liquidator is directed to first explore the sale of Corporate Debtor as going concern under clause (e) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with Regulation 39C of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 or sale of business of the Corporate Debtor as a going concern under clause (f).
- viii. The CoC is directed to contribute to the liquidation cost if any short fall occurs from the liquidation value of the Corporate Debtor.

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 3914 OF 2023
IN
CP(IB) NO. 1842/MB/C-II/2018

- ix. The Liquidator shall make a public announcement stating that the Corporate Debtor is in liquidation, in the manner laid down under Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. This Adjudicating Authority also directs the Liquidator to serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations, if any, of the Corporate Debtor so that the workman/employees could also be informed of this liquidation order through their association.
- x. This liquidation order u/s 33(7) shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- xi. The liquidator shall be at liberty to pursue pending the Interlocutory Application pertaining to avoidance transactions, if any.

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 3914 OF 2023
IN
CP(IB) NO. 1842/MB/C-II/2018

- xii. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.
- xiii. The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the Corporate Debtor, IBBI, the Resolution Professional, and the Liquidator by speed post as well as by e-mail within one week from the date of this order, after completion of all the formalities.

17. With the above directions, this **I.A. No. 3914 of 2023** filed u/s 33 of the Code is hereby **allowed** and stands disposed of.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)