

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) Nos.661-663 of 2023

(Arising out of Order dated 01.05.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai, Bench-V in I.A. No.2165 of 2021, I.A. No.963 of 2022 and I.A. No.112 of 2022, in C.P.(IB) No.1340 of 2020)

IN THE MATTER OF:

Puro Naturals JV Appellant

Vs

Warana Sahakari Bank & Ors. Respondents

Present:

**For Appellant: Mr. Amar Dave, Mr. Abhinav Agrawal, Mr. Kartik Sharma, Advocates.
Mr. Abhijit Naik, SRA (in-person)**

**For Respondents: Mr. Sumant Batra, Ms. Apoorva Chowdhary,
Advocates for R-1 and R-2.
PCA Udayraj Patwardhan**

With

Company Appeal (AT) (Insolvency) No. 651 of 2023

(Arising out of Order dated 01.05.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai, Bench-V in I.A. No.2165 of 2021, I.A. No.963 of 2022 and I.A. No.2917 of 2021, 112 of 2022, in C.P.(IB) No.1340 of 2020)

IN THE MATTER OF:

Ritesh R Mahajan Appellant

Vs

Shree Warana Sahakari Bank & Ors. Respondents

Present:

**For Appellant: Mr. Krishnendu Datta, Sr. Advocate,
Mr. Ramachandra Madan, Ms. Neha Agarwal,
Mr. Agam, Advocates for RP.**

**For Respondents: Mr. Sumant Batra, Ms. Apoorva Chowdhary,
Advocates for R-1 and R-2.**

PCA Udayraj Patwardhan

With
Company Appeal (AT) (Insolvency) No.1005 of 2023

(Arising out of Order dated 01.05.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai, Bench-V in in C.P.(IB) No.1340 of 2020)

IN THE MATTER OF:

Narayan Shivaji Patil & Ors.Appellants

Vs.

Shree Warna Sahakari Bank Ltd. & Ors.Respondents

Present:

For Appellants: Mr. Siddharth S. Chapalgaonkar, Ms. Sneha Botwe, Mr. Gajanan Tirthkar, Advocates.

For Respondents: Mr. Sumant Batra, Ms. Apoorva Chowdhary, Advocates for R-1 and R-2.

PCA Udayraj Patwardhan

O R D E R

ASHOK BHUSHAN, J.

These Appeal(s) have been filed against the same order dated 01.05.2023 passed by the National Company Law Tribunal, Mumbai, Bench-V in IA No.2165 of 2021 filed by Resolution Professional (“**RP**”) for approval of Resolution Plan submitted by Puro Naturals JV; IA No.963 of 2022 and I.A. No.112 of 2022 filed by Respondent Nos.1 and 2 objecting to the Resolution Plan. The Adjudicating Authority by the impugned order rejected IA No.2165 of 2021 filed by the RP - Ritesh R Mahajan for approval of the Resolution Plan and IA No. 963 of 2022 and 112 of 2022 filed by Respondent Nos.1 and 2 for rejection of the Resolution Plan submitted by Puro Naturals JV, were allowed. The Company Appeal (AT) (Ins.) Nos.661-663 of 2023 has been filed by the

Successful Resolution Applicant Puro Naturals JV challenging the impugned order. Company Appeal (AT) (Ins.) No.651 of 2023 has been filed by Ritesh R Mahajan, RP challenging the impugned order and Company Appeal (AT) (Ins.) No.1005 of 2023 has been filed by 38 Sugarcane Farmers and creditors of the Corporate Debtor, who have come up in this Appeal challenging the impugned order rejecting the Resolution Plan.

2. Brief facts necessary to be noticed for deciding these Appeal(s) are:

- (i) Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor – Shivaji Cane Processors Limited was initiated by an order dated 18.02.2021 passed by the Adjudicating Authority on an Application under Section 7 filed by ASREC (India) Limited (Financial Creditor). Mr. Ritesh R. Mahajan was confirmed as RP.
- (ii) In response to Invitation for Expression of Interest (“**EoI**”), Puro Naturals JV a Joint Venture between three entities filed a Resolution Plan. After discussion in the 5th Meeting of the Committee of Creditors (“**CoC**”) dated 19.07.2021, the Resolution Applicant revised the Resolution Plan to Rs.43.82/- crores and submitted its final Resolution Plan on the basis of inputs by the CoC on 29.07.2021. In the 6th CoC Meeting held on 30.07.2021, Resolution Plan was discussed and was passed with 78.03% voting.

Respondent Nos.1 and 2 namely – Shree Warana Sahakari Bank Limited and Kolhapur Urban Co-operative Bank having the vote share of 11.13% and 10.84% respectively, dissented with the Resolution Plan.

- (iii) After approval of the Resolution Plan, RP filed IA No.2165 of 2021 under Section 30, sub-section (6) for approval of the Resolution Plan before the Adjudicating Authority. Respondent No.1 - Shree Warana Sahakari Bank Limited filed IA No.112 of 2022 seeking to oppose the Resolution Plan. Similarly, IA No.963 of 2022 was filed by Kolhapur Urban Co-operative Bank – Respondent No.2 seeking to oppose the approval of the Resolution Plan. The RP filed reply to the IAs filed by both the dissenting Financial Creditors.
- (iv) The matter was heard and reserved on 20.01.2023 by the Adjudicating Authority. Thereafter on 14.03.2023, the matter was listed by Adjudicating Authority for clarification by Successful Resolution Applicant (“**SRA**”). The SRA by way of clarification, offered to make full payment to the dissenting Resolution Applicant within 90 days of the approval of the Resolution Plan.
- (v) On 01.05.2023, the impugned order was passed rejecting the Application filed by the RP for approval of the Resolution Plan on the ground that Resolution Plan seeks

to extinguish the personal guarantees and securities without the consent of dissenting Financial Creditors. The Adjudicating Authority also relied on judgment of the NCLT, Indore Bench dated 06.01.2023 in ***Naveen Kumar Sood RP of Ujaas Energy Ltd. & Anr. vs. Ujaas Energy Ltd. & Ors.***, where Indore Bench of the NCLT had rejected the Resolution Plan on the ground that Plan extinguish the rights of the dissenting Financial Creditors to proceed against the Personal Guarantor.

- (vi) It is useful to extract the main reason given by the Adjudicating Authority for rejecting the Resolution Plan. The reasons as contained in paragraph 13 of the judgment are as follows:

“13. The counsel for the Resolution Professional has sought to distinguish the above case by arguing extensively that the Resolution Plan only assigns the personal guarantees and does not extinguish the same. However, the argument is without any merit for two reasons. Firstly, the argument is in complete defiance of record and is factually incorrect, as the Resolution Plan in fact and indeed seeks to not just assign but extinguish the personal guarantee and securities in the garb of assignment in favour of a third party. Secondly, without prejudice to the above, such assignment is without consent of Dissenting Financial Creditors which cannot bind the Dissenting Financial Creditors. In a recent judgment, the National Company Law Tribunal, Indore Bench has in its order dated January 06, 2023

in the matter of Naveen Kumar Sood RP of Ujaas Energy Ltd & Anr v/s. Ujaas Energy Ltd & Ors has upheld the said settled position of law in the following terms:

“...10. Be that as it may we are not going in details of the plan since the said resolution plan contains a relief to extinguish the personal guarantee given to the lenders on the borrowings of the corporate debtor but the same is objected by Bank of Baroda. This Adjudicating Authority vide its order dated 04.08.2022 released the matter for clarification with respect to the said relief in the plan, however the resolution applicant wish to proceed without amending such reliefs and therefore, such conditional plan without the consent of all the secured financial creditors is not in accordance with the provisions of the Code

11. In our considered opinion the CoC can take any commercial decision relating to insolvency of the corporate debtor only, the CoC cannot extinguish right of the particular secured creditor to proceed against the personal guarantor of the corporate debtor under the garb of its commercial wisdom. Such provision in the resolution plan is not only prejudicial to the right of such secured creditor but also against the provisions of law. Hence we cannot approve such resolution plan as it contravenes the provision of section 30(2)(e) of the Code.

12. In view of the above, we are of the considered opinion that such resolution plan cannot be approved and deserves to be rejected as the CoC by majority votes cannot enforce its decision for extinguishment of the right of the dissenting creditor to proceed against the personal guarantor.....”

In the light of what has been held by the Hon'ble NCLT Indore Bench, it is clear that the COC can take any commercial decision relating to insolvency of the Corporate Debtor but it cannot extinguish right of the particular Secured Creditor to proceed against the personal guarantor of the Corporate debtor under the grab of its commercial wisdom. Such provision in the resolution plan is not only prejudicial to the right of such secured creditor but also is not in consonance with the provisions of law. Therefore, the plan cannot be approved as it contravenes the provision of section 30(2)(e) of the Code.”

Operative portion of the order as contained in paragraph 18, is to the following effect:

*“18. The above captioned Interlocutory Application 2165 of 2021 filed for approval of the Resolution Plan vide our detailed order above, we are of the considered view that such Resolution Plan **cannot be approved and deserved to be “rejected”**. Accordingly, I.A. No. 963 of 2022 filed by The Kolhapur Urban Co-Op Bank Limited, I.A. No. 112 of 2022 filed by Shree Warna Sahakari Bank Limited are **“allowed”** and IA No. 2917 of 2021 filed by Dombivli Nagari Sahakari Bank Ltd. are rendered **“infructuous and disposed of”**.”*

(vii) Aggrieved by the impugned order, these three Appeal(s) have been filed as noted above.

3. We have heard Shri Amar Dave, learned Counsel appearing for the Successful Resolution Applicant (in Company Appeal (AT) (Ins.) No. 661-663 of 2023); Shri Krishnendu Datta, learned Senior Counsel

appearing for RP (in Company Appeal (AT) (Ins.) No. 651 of 2023); Shri Siddharth S. Chapalgaonkar, learned Counsel appearing for Sugarcane Farmers, who have filed Company Appeal (AT) (Ins.) No.1005 of 2023; and Shri Sumant Batra, learned Counsel appearing for Respondent Nos.1 and 2 – dissenting Financial Creditors.

4. We shall proceed to notice the submission raised on behalf of the learned Counsel for the Appellant(s) together. The learned Counsel for the Appellant challenging the impugned order contended that very basis of order of the Adjudicating Authority, i.e., reliance on the judgment of NCLT, Indore Bench in ***Naveen Kumar Sood RP of Ujaas Energy Ltd. & Anr. vs. Ujaas Energy Ltd. & Ors.*** has been knocked out in view of the fact that the said judgment has been set aside by this Appellate Tribunal by its judgment and order dated 21.08.2023 in ***Company Appeal (AT) (Ins.) No.266 of 2023 – SVA Family Welfare Trust & Anr. vs. Ujaas Energy Ltd. & Ors.*** It is submitted that the law is now well settled that in the Resolution Plan the securities and the personal guarantees in favour of the Financial Creditors can also be very well dealt and extinguished. The Adjudicating Authority committed error in taking the view that securities and personal guarantees of dissenting Financial Creditor cannot be dealt with without they consenting to the same. It is submitted that scheme of the IBC as well as the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred as the “**CIRP Regulations**”) fully envisage the dealing with the security

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interest. It is further submitted that the Plan fully envisages the payment to dissenting Financial Creditors, to which they are entitled as per Section 30, sub-section (2) of the IBC. The dissenting Financial Creditors have been proposed to be paid the amount, which would have been available to them under Section 53 in priority to the payment to assenting Financial Creditor. It is further submitted that the Successful Resolution Applicant before the Adjudicating Authority has had made an offer and submitted that dissenting Financial Creditors shall be paid their entire amount within 90 days from the approval of the Resolution Plan. It is submitted that Respondent No.1 is also carrying the similar business, which was being conducted by the Corporate Debtor, hence Respondent No.1 is creating all hurdles in the approval of the Resolution Plan to keep out any competitors in the business. It is submitted that the Corporate Debtor was running the sugar factory and due to non-approval of the Resolution Plan, the Appellant and all other creditors are suffering. It is prayed that the order of the Adjudicating Authority being not in accordance with law, the Resolution Plan be approved, so that operations of Corporate Debtor begin as the sugarcane season having already commenced.

5. Shri Sumant Batra, learned Counsel appearing for Respondent Nos.1 and 2 refuted the submissions advanced by the learned Counsel for the Appellant(s) and submits that there were other grounds apart from the ground of extinguishment of securities and personal guarantee of the Financial Creditors to object the Resolution Plan. It is submitted that the payment to the dissenting Financial Creditor is

not in accordance with Section 30, sub-section (2) as well as Regulation 38 of the CIRP Regulations, 2016. Under the Resolution Plan, the payment to the Financial Creditors are being made upfront within 90 days, whereas the payment to dissenting Financial Creditors shall be made in three years, which payment is contrary to the scheme of the IBC. The learned Counsel has referred to clauses of Resolution Plan, i.e., Clause C-3 provisions for secured Financial Creditors of the Corporate Debtor. The learned Counsel for the Respondent has also placed reliance on judgment of Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (India) Limited and Ors.** – passed in **Civil Appeal No.3395 of 2020**. The learned Counsel for the Respondent further submits that according to the Resolution Plan all securities and personal guarantees are sought to be extinguished on mere payment of Rs.2 crores whereas the value of the securities and personal guarantees are much more and dissenting Financial Creditors are not being paid amount under the Plan as per the value of their securities. It is further submitted that Resolution Plan does not provide upfront payment to the dissenting Financial Creditor, which is mandatory provision under the IBC and CIRP Regulations.

6. We have considered the submissions of learned Counsel for the parties and have perused the records.

7. The Resolution Plan submitted by Puro Naturals JV has been approved with vote share of 78.03%. Respondent Nos.1 and 2, who were also secured Financial Creditors, dissented with the Resolution
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Plan and are dissenting Financial Creditors. Before we proceed to enter into submissions of learned Counsel for the parties, it is necessary to notice the relevant clauses of the Resolution Plan, dealing with payment to the Financial Creditors and payment to the dissenting Financial Creditors. Part-C-3 provision of the Resolution Plan deals secured Financial Creditor of Corporate Debtor. Clause-I of C-3 and Clause-II of C-3 provides for 'terms of payment of secured Financial Creditor' are as follows:

“C-3: Provision for Secured Financial Creditors of Corporate Debtor

I. *As per the information provided by the Resolution Professional and verified, the total amount of outstanding due to Secured Financial Creditors of Shivaji Cane Processors Limited is Rs.49,97,14,297/- (Rupees Forty-Nine Crores Ninety seven Lacs Fourteen Thousand Two Hundred and Ninety-seven only), claim received and admitted for, as per table given below:*

Sr. No.	Particulars	Claim received	Claim Admitted
1	ASREC Limited	24,26,03,896	24,26,03,896
2	Mahindra & Mahindra Financial Services Ltd.	10,19,77,016	8,84,76,767
3	Shri Warana Sahakari Bank Ltd.	9,53,59,580	8,54,17,090
4	The Kolhapur Urban Co-op Bank Ltd.	8,65,70,898	8,32,16,544
	Total	52,65,11,390	49,97,14,297

It is further given to understand that this amount is secured inter alia by the properties of the Corporate Debtor, Guarantees of the promoters and certain assets of the promoters. In view of the fact that the

above mentioned Secured Financial Creditors are secured by charge of assets, they are offered a higher amount than the other creditors.

- II. The Terms of payment of secured financial creditors:*
- a. The Resolution of the debt of Secured Financial Creditors, is proposed in the following manner*
- (i) Rs.20,48,71,434/- (Rupees Twenty Crore Forty Eight Lakhs Seventy One Thousand Four Hundred and Thirty Four only) towards the repayment of the debt;*
- (ii) Rs.2,00,00,000/- (Rupees Two Crore) towards assignment of balance debt after adjusting the settlement amount.*
- b. The Resolution Applicant proposes to pay an aggregate amount of Rs.22,48,71,434/- (Rupees Twenty Two Crores Forty Eight Lakhs Seventy One Thousand Four Hundred and Thirty Four Only). This amount is split in two portions, as detailed hereinabove. The first portion will be adjusted towards the debt and thereafter the balance debt will be assigned by the Secured financial Creditor for an aggregate consideration of Rs.2.00 Crore to the entity identified and nominated by the Resolution Applicant.*
- c. The assignment of debt will be of balance outstanding debt along with all the underlying securities, guarantees etc. The cost of assignment will be borne by the Resolution Applicant.*
- d. The Resolution Applicant, will pay the aforementioned amount in the following manner:*

- (i) Out of the aforesaid amount of Rs.20,48,71,434/- (Rupees Twenty Crores Forty Eight Lakhs Seventy One Thousand Four Hundred and Thirty Four Oly), the Rs.4,49,74,287/- (Rupees Four Crore Forty Nine Lakhs, Seventy Four Thousand Two Hundred and Eighty Seven only) shall be paid to the Financial Creditors within 90 day from the date of approval of the NCLT order approving the Resolution Plan.
- (ii) The balance payment of Rs.17,98,97,147/- (Rupees Seventeen Crore Ninty Eight lakhs Ninety Seven Thousand One Hundred and Forty Seven only) shall be paid within period of three years commencing after the expiry of one year from the effective date of approval of plan from NCLT along with interest as follows
1. Interest at the rate of 10% p.a. payable on reducing outstanding balance basis on the deferred payment amount
 2. Indicating interest amount calculated at aforesaid interest rate is Rs.4,16,01,215/- (Rupees Four Crore Sixteen Lacs One Thousand Two hundred and Fifteen Only)
- e. The payment to the Secured Financial Creditor in aggregate is Rs.26,64,72,649/- (Rs. Twenty Six Crore Sixty Four Lacs Seventy Two Thousand Six Hundred and Forty Nine Only).
- f. The payment to Secured Financial Creditors shall be made as follows:

Period of payment	Percentage of the Resolution	Amount (Rs)		
		Principal	Interest	Total

	<i>amount as attributable to Secured Financial Creditors</i>			
<i>Within 90 day from the date of approval of the NCLT order approving the Resolution Plan</i>	<i>20%</i>	<i>44974287</i>		<i>44974287</i>
<i>At the end of 12 months from the date of approval of the NCLT order approving the Resolution Plan</i>	<i>20%</i>	<i>44974287</i>	<i>17989715</i>	<i>62964001</i>
<i>At the end of 24 months from the date of approval of the NCLT order approving the Resolution Plan</i>	<i>20%</i>	<i>44974287</i>	<i>12367929</i>	<i>57342216</i>
<i>At the end of 36 months from the date of approval of the NCLT order approving the Resolution Plan</i>	<i>20%</i>	<i>44974287</i>	<i>7870500</i>	<i>52844787</i>
<i>At the end of 48 months from the date of approval of the NCLT order approving the Resolution Plan</i>	<i>20%</i>	<i>44974287</i>	<i>3373072</i>	<i>48347358</i>
<i>Total</i>	<i>100%</i>	<i>224871434</i>	<i>41601215</i>	<i>266472649</i>

**Payout to Secured financial creditors amount Rs.4.49 Cr includes assignment of Rs.2.00 Crores.*

- g. On approval of the Resolution Plan the entire debt of the Secured Financial Creditor will be settled and on assignment of debt at the end of four years there will be no liability remaining.”*

8. Clause-III, deals with 'Extinguishment of claims of secured Financial Creditors'. Clause-IV deals with 'Release of security on the assets of Corporate Debtor' and Clause-V, which deals with 'dissenting Financial Creditors' are as follows:

“III. Extinguishment of Claims of Secured Financial Creditors:

- a. *Liability of Corporate Debtor for Secured Financial Creditors shall be restricted to the Claims notified and accepted by Resolution Professional and forming parts of Information Memorandum and other email communication as sent by the Resolution Professional. All other claims of Secured Financial Creditors other than those mentioned in Information Memorandum shall be extinguished as per Extinguishment of Claim (C -13 of this Resolution Plan) with no recourse to the Corporate Debtor and/ or Resolution Applicant.*
- b. *Other than as specified in PART C-I above, any and all other claims or demands made by or liabilities or obligations owed or payable to (including any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated damages, notional or crystallized mark to market losses on derivatives and other charges already accrued/ accruing or in connection with any third party claims) any actual or potential Secured financial creditors of the Corporate Debtor or in connection with any financial debt of the Corporate Debtor (including any transactions in derivatives), whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known*

or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the profit and loss statement, the balance sheets of the Corporate Debtor, arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, shall be written off in full and shall stand permanently extinguished and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

- c. Any and all rights and entitlements of any actual or potential financial creditors of the Corporate Debtor not addressed in PART C- I, whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, shall stand permanently extinguished and the Corporate Debtor or the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.*
- d. In case of default by Resolution Applicant, consequences as per provisions of IBC, 2016 shall apply.*

IV. Release of Security on The Assets of Corporate Debtor / other Security Charged to Secure The Financial Debt:

1. *All Charges of the Secured Financial Creditors will be automatically modified in accordance with the terms of the Proposed Resolution Plan as envisaged in the Resolution Plan. All requisite documents as required by law will be executed by the Resolution Applicant and the Secured Creditors to give effect to the Resolution Plan once approved by Adjudicating Authority. Further necessary formalities for modification of charge with ROC and sub registrar of assurances shall also be carried out within 60 days of the date of execution of documents. It is expressly agreed that the Secured Financial Creditors shall execute the necessary relinquishment deed for release of the security as may be applicable under this Resolution Plan. Further, the Secured Financial Lenders shall, upon receipt of the payment from the Resolution Applicant, issue the No Objection Certificate for modification/satisfactions/ part payment and execute the Form CHG 1 for modification or Form CHG 4 for satisfaction, as the case may be within 7 days of receipt of the payment. In case of any delay or failure to issue NOC and/or execute Charge related forms, any related penalties shall be borne solely by such Secured Financial Creditor. It is required as a part of the Resolution Plan that the existing Secured Financial Creditors shall cease to have any charge on the Current Assets of the Company and they shall release their charge*

within 7 days of payment of upfront amount after the approval of the Resolution Plan by NCLT.

- 2. The Resolution Applicant will be entitled to raise fresh Financial Resources / Debts for the revival/overhauling /fresh capex/expansion of the business of Corporate Debtor, from time to time. Any fresh/new Lenders/ Financial Creditors will have first charge on the fresh capex asset (even though such capital assets become integral part of the existing assets of the Plant and Machinery). Existing Secured Financial Creditors shall issue No Objection Certificate to such borrowing by the Resolution Applicant/ Corporate Debtor, within 7 (Seven) days of receipt of such request. Further, in respect of the fresh/ new borrowing by the Resolution Applicant, Existing Secured Financial Creditors shall cede second charge on the existing Fixed Assets of Corporate Debtor in favour new lenders/ Financial Creditors.*
- 3. As of now, the current assets lying with Corporate Debtor are negligible and has no recovery value. Resolution Applicant shall require enormous amount of working capital to raise current assets. In such case, Resolution Applicant shall be allowed to raise fresh working capital from banks/FIs and new lenders shall have first and exclusive charge over the current assets and second charge on the Fixed Assets of Corporate Debtor. The Existing Secured Financial Creditors shall cede second charge on the Fixed Assets of the Corporate Debtor in favour of the new Lenders/ new Secured Financial Creditors.*
- 4. It is expressly clarified that no charge or encumbrance shall be created or deem to be created*

on any of the Assets of the Resolution Applicant or the personal properties/ assets of the Promoters/ Directors / KMP of the Resolution Applicant in favour of the Secured Financial Creditors by virtue of approval or implementation of the Resolution Plan. The existing credit facilities/ charges created by the Resolution Applicant in favour of its own Financial Creditors shall remain unaffected / unchanged.

- 5. Afore-mentioned provision will apply to the other security as well as those which are furnished by Corporate Debtor or others to secure the afore-mentioned loans.*
- 6. Resolution Applicant will have right of pre-payment of the amount envisaged under this Resolution Plan. If the Resolution Applicant exercises its right of pre-payment, its liability towards the payment of interest shall be reduced/ waived off proportionately.*

V. Dissenting Financial Creditors:

- i Payment to the dissenting Financial Creditors: The dissenting Financial Creditors (i.e. those Financial Creditors who vote against, or abstain from voting for, the Resolution Plan approved by the CoC) shall be paid an amount not less than an amount to be paid to them in accordance with Sec 53(1) in the event of Liquidation of the Corporate Debtor.*
- ii In terms of the code, if there are any dissenting Financial Creditors, then in such circumstances they shall be paid in accordance with Sec30(2) along with Sec 53(1) of the Code.*
- iii The upfront payment will be made 1 day before the payment to the assenting creditor. At the same time*

payment of instalment will be made 1 month before the due date of instalment to the assenting Financial Creditor. In view thereof payment will be made as per 30(2), 53(1) and in priority to the assenting financial creditor.

iv In the event, Resolution Applicant choose to make entire payment upfront, then in that event payment will be made as purchase consideration for assignment of debt and debt of dissenting financial creditor will also be assigned.”

9. Before we proceed further, it is relevant to notice that Adjudicating Authority itself has noted the approval of the Resolution Plan, vote share of dissenting Financial Creditor as well as the liquidation value and fair value of the Corporate Debtor and proposed pay out in paragraphs 2 (e), (f) and (g), which are as follows:

*“2e. The Resolution Professional received Resolution Plan from M/s. PURO Naturals Sugars JV (“Resolution Applicant”) on 02.07.2021 along with the demand draft of Rs. 25,00,000/- as bid amount. **The Plan were discussed in several meetings of the CoC and was approved in the 6th CoC meeting dated 27.07.2021, with 78.03% votes in favour of the M/s. Puro Natural Sugars JV. The two members of the Committee of Creditors (“CoC”) viz Shree Warana Sahakari Bank Limited (“SWSBL”) and Kolhapur Urban Cooperative Bank Limited (“KUCBL”), having 11.13% and 10.84% voting share respectively, have voted against the Resolution Plan of Puro Natural Sugars JV (hereinafter “SRA”) The same plan has been***

submitted before the Adjudicating Authority for approval under Section 30(6) of the IBC, 2016.

- f. The Interim Resolution Professional on 26.03.2021, according to Regulation 27 of the CIRP Regulations, 2016, appointed six registered valuers (two each for 'Land and Building' class, 'Plant and Machinery' Class and 'Securities or Financial Assets' class) to determine the fair value and the liquidation value of the Corporate Debtor. The liquidation value and fair value of the Corporate Debtor is reported at Rs. 21,15,61,184/- and Rs. 29,93,64,214/- respectively.
- g. The Resolution Applicant - M/s. Puro Natural Sugars JV has proposed to pay a sum of Rs. 43,82,17,730/- . The details are as follows:

Sr.	Particulars of Claim	Type of Claim	Admitted Amount (INR)	Settlement Amount (INR)
1	CIRP Cost	At actual		
2	Secured Financial Creditors	Secured	49,97,14,297	26,64,72,649
3	Unsecured Financial Creditors	Unsecured	30,32,37,640	6,06,47,528
4	Operational Creditors	Unsecured	8,01,9967	80,200
5	Workmen and Employees	Unsecured	48,50,844	48,50,844
6	Other Creditors	Unsecured	34,20,3574	3,42,036
7	Sugarcane arrears (Farmer's dues)	Unsecured	3,23,75,474	3,23,75,474
8	Redemption of Converted Preferential share capital	Unsecured	7,34,49,000	7,34,49,000

	Total		95,58,50,796	43,82,17,730
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10. Against the liquidation value of Rs.21,15,61,184/-, the Successful Resolution Applicant has proposed the payment of Rs.43,82,17,730/-. It is also relevant to notice that both the employees and workmen and sugarcane farmers are being paid 100% of their admitted claim, which is clear from table extracted in paragraph 2(g) of the order of the Adjudicating Authority as quoted above.

11. The two principal questions, which have arisen for consideration in these Appeal(s) are to the following effect:

- (I) Whether Resolution Plan providing for extinguishment of security interest and the guarantees of the Financial Creditors including dissenting Financial Creditors is contrary to the provision of Section 30, sub-section (2) and the CIRP Regulations?
- (II) Whether the payment, which have been proposed to the dissenting Financial Creditors in the Resolution Plan, is contrary to the provisions of Section 30, sub-section (2) and CIRP Regulations?

Question No.(I)

12. The first question is as to whether Resolution Plan could have contained any provision for extinguishment of security interest and the guarantees of the Financial Creditors, which was given by

Promoters to secure the debt of the Corporate Debtor. Various clauses of the Resolution Plan as extracted above, clearly notes that Resolution Plan specifically dealt with securities and guarantees of the Financial Creditors and the Plan envisage extinguishment of securities and guarantees also in addition to pay out to secured Financial Creditor. The Plan envisages that after payment of the amount proposed in the Plan secured Financial Creditors shall assign their debt on consideration of Rs.2 crores. The Plan envisages the extinguishment of security interest and the guarantees.

13. The Adjudicating Authority in the impugned order has taken the view that the Resolution Plan cannot extinguish the rights of the dissenting creditors to proceed against the personal guarantees. In paragraph 13 of the impugned judgment, the Adjudicating Authority has relied on judgment of NCLT, Indore Bench in ***Naveen Kumar Sood RP of Ujaas Energy Ltd. & Anr. vs. Ujaas Energy Ltd. & Ors.*** for coming to the conclusion that CoC can take any commercial decision relating to insolvency of the Corporate Debtor, but it cannot extinguish right of the particular Secured Creditor to proceed against the personal guarantor of the Corporate Debtor under the garb of its commercial wisdom. Against the order of NCLT, Indore Bench in the above case an Appeal being ***Company Appeal (AT) (Ins.) No.266 of 2023 – SVA Family Welfare Trust & Anr. vs. Ujaas Energy Ltd. & Ors.*** was filed, which was allowed by this Tribunal vide its judgment dated 21.08.2023, setting aside the order of Adjudicating Authority. This Tribunal held in the aforesaid judgment that security interest of the *Company Appeal (AT) (Ins.) Nos. 661-663, 651 & 1005 of 2023*

dissenting Financial Creditors by virtue of personal guarantee of the ex-director of the Corporate Debtor could have been very well dealt in the Resolution Plan. After considering all relevant judgments, this Tribunal laid down following in paragraph 28 and 29:

“28. The above judgment fully supports the submissions of the Appellant that security interest of dissenting Financial Creditor by virtue of personal guarantee of the ex-director of the Corporate Debtor could have been very well dealt in the Resolution Plan. It is further relevant to notice that each Financial Creditor has personal guarantee in their favour to secure the loan extended by them. All Financial Creditors has assented for relinquishment of such security except Bank of Baroda which had only 5.83% vote share. The decision of the CoC to accept the value for relinquishment of personal guarantee was a commercial decision of the CoC which cannot be allowed to be impugned at the instance of dissenting Financial Creditor.

29. In view of the foregoing discussions, we are of the view that the Adjudicating Authority committed error in rejecting the Application for approval of the Resolution Plan on the ground that plan could not have contained a provision for extinguishment of personal guarantee of the personal guarantors. Plan allocates a plan value for extinguishment of personal guarantee which has been accepted by the Financial Creditors by a vote share of 78.04%. We, thus, are of the view that the order of the Adjudicating Authority dated 06.01.2023 is unsustainable. In result, we allow the Appeal and set aside the order dated 06.01.2023 passed by the Adjudicating Authority. We hold that the Resolution Plan

submitted by the Appellant did not contravene any of the provisions of Section 30(2)(e) of the Code. The Adjudicating Authority shall proceed to pass a fresh order in IA 190 of 2021 praying for approval of the Resolution Plan along with necessary directions. Adjudicating Authority shall endeavour to pass fresh order on IA 190 of 2021 within a period of three months from the date when copy of this order is produced before it.”

14. This Tribunal took the view that Resolution Plan providing for extinguishment of personal guarantee as approved by the CoC, did not contravene any provisions of Section 30(2)(e) of the Code. It is also relevant to notice that against the order of this Tribunal in Company Appeal (AT) (Ins.) No.266 of 2023, Bank of Baroda filed Civil Appeal No.6602 of 2023, which Appeal has been dismissed by the Hon'ble Supreme Court vide its order dated November 06, 2023, which order is as follows:

- “1. In view of the facts and circumstances of the present case, no substantial question of law arises.*
- 2. The Appeal is accordingly dismissed.*
- 3. Pending applications, if any, stand disposed of.”*

15. In view of the above very basis of the order of the Adjudicating Authority, rejecting the Resolution Plan submitted by the Successful Resolution Applicant having been knocked out by judgment of this Tribunal dated 21.08.2023, the order of Adjudicating Authority is clearly unsustainable.

16. The present is a case where CoC deliberated over the issue and on such deliberation and inputs, the Successful Resolution Applicant submitted revised Resolution Plan and the Resolution Plan dealt with security interest and the personal guarantee also. We, thus, answer Question No.(I) holding that Resolution Plan in question has consciously dealt with securities and personal guarantees given to the Financial Creditors including the dissenting Financial Creditors and the said clauses of the Resolution Plan do not contravene any provisions of Section 30, sub-section (2) as well as CIRP Regulations, 2016. The view of the Adjudicating Authority that Resolution Plan is contrary to provisions of Section 30, sub-section (2) is unsustainable and deserved to be set-aside.

Question No.(II)

17. Section 30, sub-section (2) of the Code provides as follows:

“30(2). The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) The implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) confirms to such other requirements as may be specified by the Board.

[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”

18. Regulation 38 of CIRP Regulations, which provides ‘Mandatory contents of the Resolution Plan’. Regulation 38(1)(b) is as follows:

“38(1)(b). *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.”*

19. According to the scheme of the IBC, the payment to which a Financial Creditor, who does not vote in favour of the Resolution Plan is entitled for payment in accordance with sub-section (1) of Section 53, in the event of liquidation of the Corporate Debtor and further

dissenting Financial Creditor has to be paid in priority to the Financial Creditors who vote in favour of such Resolution Plan. The submission advanced on behalf of learned Counsel for Respondent Nos.1 and 2 that dissenting Financial Creditors are entitled to upfront payment is not in line with the statutory scheme as contained in the IBC and the CIRP Regulations. There is no provision which can be pointed out, which requires Successful Resolution Applicant to make upfront payment to the dissenting Financial Creditors. What is required by law is the payment **“in priority over the Financial Creditors who voted in favour of the plan”**. When we look into the relevant clauses of the Resolution Plan, i.e., Clause C-3(V), which dealt with dissenting Financial Creditors, the clauses clearly provided for payment to dissenting Financial Creditor in priority, since the payment in favour of the dissenting Financial Creditor has to be made prior to payment to the assenting creditors, be it upfront payment or payment by installments. The submission of the learned Counsel for Respondent Nos.1 and 2 that they were entitled for upfront payment and provision of not providing upfront payment violates the provision of IBC and CIRP Regulations cannot be accepted. The provisions of Resolution Plan in C-3(V) providing for payment to dissenting Financial Creditors are not in contravention of any provisions of Section 30, sub-section (2) or CIRP Regulations. We, however, have already noticed the clarification made by the Successful Resolution Applicant before the Adjudicating Authority that entire payment to the dissenting Financial Creditors shall be paid upfront within 90 days from the date of

approval of the Plan. The learned Counsel appearing for Successful Resolution Applicant has also made same submission before us that entire payment to the dissenting Financial Creditor shall be made upfront within 90 days, which clarification was given before the Adjudicating Authority also. The Successful Resolution Applicant having himself come out to make entire payment to the dissenting Financial Creditor within 90 days, we are of the view that there can be no question of any contravention of provisions of IBC as well as CIRP Regulations with regard to payment to dissenting Financial Creditors.

20. Shri Sumant Batra, learned Counsel for Respondent Nos.1 and 2 has also relied on the judgment of the Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (India) Limited and Ors.** and has referred to paragraph 118.2. In paragraph 118.2, the Hon'ble Supreme Court has laid down following:

“118.2. As noticed, the decision of this Court in Essar Steel [Essar Steel India Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] was delivered on 15-11-2019. A few days after this decision i.e. on 28-11-2019, amendment was carried out in clause (1) of Regulation 38 of the CIRP Regulations, which has direct co-relation with the aforesaid amended clause (b) of Section 30(2) of the Code. By way of this amendment of Regulation 38(1), the priority for the amount payable came to be specified, not only to the operational creditors but also to the dissenting financial creditors over their assenting counterparts. The aforesaid amendments and

the expositions of this Court in Essar Steel [Essar Steel India Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] make it clear that the interests of dissenting financial creditors are duly taken care of, while providing for the minimum amount they are entitled to and, for that matter, in priority over the assenting financial creditors.”

21. What was laid down by the Hon’ble Supreme Court in the aforesaid case is that by virtue of Section 30, sub-section (2) as well as Regulation 38, the priority for the amount payable came to be specified, not only to the operational creditors but also to the dissenting financial creditors over their assenting counterparts. The Hon’ble Supreme Court has reiterated the legal position as contained in Section 30, sub-section (2) as well as CIRP Regulations that payment has to be made in priority. As we have already noticed that payment to the dissenting Financial Creditors is in priority, hence, no contravention can be found out as contended. The same principles have been reiterated in paragraph 121.1 and 121.2, which have been relied by learned Counsel for Respondent Nos.1 and 2, which are as follows:

*“**121.1.** Therefore, when, for the purpose of discharge of obligation mentioned in the second part of clause (b) of Section 30(2) of the Code, the dissenting financial creditors are to be “paid” an “amount” quantified in terms of the “proceeds” of assets receivable under Section 53 of the Code; and the “amount payable” is to be “paid” in priority over their assenting counterparts, the statute is referring*

only to the sum of money and not anything else. In the frame and purport of the provision and also the scheme of the Code, the expression “payment” is clearly descriptive of the action of discharge of obligation and at the same time, is also prescriptive of the mode of undertaking such an action. And, that action could only be of handing over the quantum of money, or allowing the recovery of such money by enforcement of security interest, as per the entitlement of the dissenting financial creditor.

121.2. *We would hasten to observe that in case a dissenting financial creditor is a secured creditor and a valid security interest is created in his favour and is existing, the entitlement of such a dissenting financial creditor to receive the “amount payable” could also be satisfied by allowing him to enforce the security interest, to the extent of the value receivable by him and in the order of priority available to him. Obviously, by enforcing such a security interest, a dissenting financial creditor would receive “payment” to the extent of his entitlement and that would satisfy the requirement of Section 30(2)(b) of the Code [Though it is obvious, but is clarified to avoid any ambiguity, that the “security interest” referred herein for the purpose of money recovery by dissenting financial creditor would only be such security interest which is relatable to the “financial debt” and not to any other debt or claim.] . In any case, that is, whether by direct payment in cash or by allowing recovery of amount via the mode of enforcement of security interest, the dissenting financial creditor is entitled to receive the “amount payable” in monetary terms and not in any other term.”*

22. In the present case, it not the case of Respondent Nos.1 and 2 that they are not receiving the payment, which they could have been entitled under Section 53, sub-section (1). What have been contended is that payment to them is not in priority as compared to the payment to assenting Financial Creditors. We have already noticed and considered this submission and found that payment as provided in Resolution Plan is in accordance with the priority to the dissenting Financial Creditors, hence, we do not find any substance in the above submission.

23. We, thus, are of the view that the order impugned passed by the Adjudicating Authority is unsustainable and deserves to be set aside and the Application filed by RP deserves to be allowed.

24. It is relevant to notice that Resolution Plan submitted by Successful Resolution Applicant was approved by the CoC in the meeting dated 30.07.2021 and RP filed application for approval of Resolution Plan being IA No.2165 of 2021 immediately thereafter. The Corporate Debtor was engaged in sugar industry and was engaged in cane process. Sugarcane season has already begun as has been submitted by learned Counsel for the Appellant and inspite of the Plan having been approved on 30.07.2021 and 02.08.2021, the creditors including the Farmers are waiting for the amount to be paid and due to erroneous order passed by the Adjudicating Authority, rejecting the Resolution Plan, the Corporate Debtor could neither be revived nor

creditors can be paid. We have looked into the Resolution Plan, Clause C-11, which deals with ‘concession and relief sought’, is as follows:

“C-11: Concession and relief Sought

The Resolution Applicant, will approach all the concerned authorities for reliefs and concessions, if any hindrance is faced by the Resolution Applicant from any authority at later stage will approach the Tribunal after the sanction of the plan.

The carry forward losses are permitted under Section 79 of The Income Tax Act, 1961”

25. The Adjudicating Authority with regard to concession and relief has already observed that the Resolution Applicant will approach the concerned Authority after the sanction of the Plan, if any hinderance is faced by the Resolution Applicant. Thus, no further orders are required with regard to relevant concession and relief. We having held that Resolution Plan being fully in compliance with the provisions of Section 30, sub-section (2) and Regulation 38 of the CIRP Regulations, we are satisfied that Resolution Plan deserves to be approved by the Adjudicating Authority itself and Adjudicating Authority committed error in rejecting the IA No.2165 of 2021 filed by the RP for approval of the Resolution Plan. In view of the fact that more than two years have passed from the approval of the Resolution Plan by the CoC and all creditors are waiting for the amount to be paid and Corporate Debtor is waiting for being revived, who could not be revived due to

order impugned, we are of the view that Resolution Plan submitted by Puro Naturals JV be approved.

26. In the result, all the Appeal(s) are allowed. The impugned order dated 01.05.2023 is set aside. I.A. No.2165 of 2021 filed by the RP for approval of Resolution Plan is allowed. The Resolution Plan submitted by Puro Naturals JV is approved. Let steps for implementation of Resolution Plan be taken by all concerned.

27. I.A. No. 963 of 2022 and I.A. No.112 of 2022 filed before the Adjudicating Authority by Respondent Nos.1 and 2 are rejected.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Mr. Barun Mitra]
Member (Technical)**

NEW DELHI

24th November, 2023

Ashwani