

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1128 of 2024

[Arising out of order dated 30.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench- II), in IA No. 3914/2023 in C.P.(IB) No. 1842(MB)/2018]

IN THE MATTER OF:

Sanjay Dave

Shareholder/ Suspended Director of Oracle Home Textiles Ltd.

B/42, Textile Society, Prabhadevi

Mumbai - 400 025

Email: sanjay.balkrishna.dave@gmail.com Cell:

+91 9820074574

...Appellant

Versus

1. Andhra Bank Ltd

(now Union Bank of India)

Stressed Asset Management Branch, Mumbai

Bharat House, M S Marg, Fort, Mumbai - 400 001

E-mail: samvmumbai@unionbankofindia.com

Contact: +91 8424048506

...Respondent No. 1

2. Mr Jitendra Kumar Yadav

Erstwhile Resolution Professional

Oracle Home Textiles Ltd

632, PJ Tower, BSE, Dalal Street,

Fort, Mumbai - 400 001

Email: jitendra.yadav0712@gmail.com

Cell: 09699024004

...Respondent No. 2

3. Mr Mahesh Chand Gupta

Liquidator

C/o Oracle Home Textiles Ltd

216/217 Creative Industrial Centre

12 N M Joshi Marg

Mumbai - 400 011

Email:oracle.lqdn@outlook.com

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...Respondent No. 3

4. Hind Commerce Ltd.

307 Arun Chambers, Tardeo Road

Mumbai - 400 034

Email:investor@hindcommerce.com Contact: +91
2240500100

...Respondent No. 4

5. HDFC Bank Ltd

HDFC Bank House

Senapati Bapat Marg

Lower Parel, Mumbai - 400028

Email:anurag.shirke@hdfcbank.com Contact: +91
22 66521000

...Respondent No. 5

Present:

**For Appellant : Mr. Sanat Jariwala, CA.
Ms. Purti Gupta, Ms. Henna George, Ms. Sangita
Selwal, Advocates.**
**For Respondents : Ms. Anjali Sharma, Mr. S.K. Sagar Advocates for R1.
Mr. Deepak Bashta, Advocate for R-3**

WITH

Company Appeal (AT) (Insolvency) No. 1131 of 2024

[Arising out of order dated 30.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench- II), in IA No. 1205/2021 in C.P.(IB) No. 1842(MB)/2018]

IN THE MATTER OF:

Sanjay Dave

Shareholder/ Suspended Director of

Oracle Home Textiles Ltd.

B/42, Textile Society, Prabhadevi

Mumbai - 400 025

Email: sanjay.balkrishna.dave@gmail.com

Cell: +91 9820074574

...Appellant

Versus

1. Andhra Bank Ltd.

(now Union Bank of India)

Stressed Asset Management Branch, Mumbai Bharat
House, M S Marg, Fort,
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E-mail: samvmumbai@unionbankofindia.com
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...Respondent No.3

4. Hind Commerce Ltd.
307 Arun Chambers, Tardeo Road
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Email:investor@hindcommerce.com
Contact: +91 2240500100

...Respondent No.4

5. HDFC Bank Ltd
HDFC Bank House
Senapati Bapat Marg
Lower Parel, Mumbai - 400028
Email:anurag.shirke@hdfcbank.com
Contact: +91 22 66521000

...Respondent No.5

Present:

**For Appellant : Mr. Sanat Jariwala, CA.
Ms. Purti Gupta, Ms. Henna George, Ms. Sangita
Selwal, Advocates.**
**For Respondents : Ms. Anjali Sharma, Mr. S.K. Sagar Advocates for
R1.
Mr. Deepak Bashta, Advocate for R-3.**

WITH
Company Appeal (AT) (Insolvency) No. 1134 of 2024

[Arising out of order dated 30.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench- II), in IA No. 2029/2021 in C.P.(IB) No. 1842(MB)/2018]

IN THE MATTER OF:

Sanjay Dave

Shareholder/ Suspended Director of
Oracle Home Textiles Ltd.

B/42, Textile Society, Prabhadevi
Mumbai - 400 025

Email: sanjay.balkrishna.dave@gmail.com

Cell: +91 9820074574

...Appellant

Versus

1. Andhra Bank Ltd.

(now Union Bank of India)

Stressed Asset Management Branch, Mumbai Bharat
House, M S Marg, Fort,
Mumbai - 400 001

E-mail: samvmumbai@unionbankofindia.com

Contact: +91 8424048506

...Respondent No.1

2. Mr Jitendra Kumar Yadav

Erstwhile Resolution Professional

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632, PJ Tower, BSE, Dalal Street,
Fort, Mumbai - 400 001

Email: jitendra.yadav0712@gmail.com

Cell: 09699024004

...Respondent No. 2

3. Mr Mahesh Chand Gupta

Liquidator

C/o Oracle Home Textiles Ltd
216/217 Creative Industrial Centre
12 N M Joshi Marg
Mumbai - 400 011

Email: oracle.lqdn@outlook.com

Contact: +91 9831046652

...Respondent No. 3

4. Hind Commerce Ltd.

307 Arun Chambers, Tardeo Road
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Email:investor@hindcommerce.com
Contact: +91 2240500100

...Respondent No. 4

5. HDFC Bank Ltd

HDFC Bank House
Senapati Bapat Marg
Lower Parel, Mumbai - 400028
Email:anurag.shirke@hdfcbank.com
Contact: +91 22 66521000

...Respondent No. 5

Present:

**For Appellant : Mr. Sanat Jariwala, CA.
Ms. Purti Gupta, Ms. Henna George, Ms. Sangita
Selwal, Advocates.**
**For Respondents : Ms. Anjali Sharma, Mr. S.K. Sagar Advocates for
R1.
Mr. Deepak Bashta, Advocate for R-3**

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

These three appeals arise out of three separate orders all dated 30.04.2024 (hereinafter referred to as '**Impugned Orders**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-II) in C.P.(IB) No.1842(MB)/2018. By these impugned orders, the Adjudicating Authority has dismissed I.A. No. 1205 of 2021 against which CA(AT)(Ins)No. 1131 of 2024 has been preferred; dismissed IA No. 2029 of 2021 against

which CA(AT)(Ins)No. 1134 of 2024 has been preferred and allowed IA No. 3914 of 2023 against which CA(AT)(Ins)No. 1128 of 2024 has been preferred.

2. All the three appeals arise out of the same facts and events which are as follows:

- On 09.08.2018, the Corporate Debtor was admitted into insolvency. Interested resolution applicants were given time to submit their resolution plans to the Resolution Professional (“**RP**” in short) on or before 22.04.2019.
- 270 days of CIRP period came to an end on 13.05.2019. On 10.06.2019, the Adjudicating Authority allowed exclusion of 91 days in the CIRP period to enable resolution applicants to approach the RP for submission of plans.
- On 11.02.2020, the resolution plan of Faze-3 was rejected in the 17th CoC meeting and decision was taken by CoC to proceed with liquidation of the Corporate Debtor with 99.61% vote share.
- On 18.02.2020, the Adjudicating Authority allowed MA No. 608 of 2020 filed by the Appellant to submit a resolution plan within two weeks. The Adjudicating Authority also directed the CoC to consider the resolution plan besides extending CIRP period by 135 days.
- The SRA had filed an IA No. 1070 for exemption from payment of EMD which was mandated by RFRP. The same was disallowed on 21.08.2020 by the Adjudicating Authority allowing three weeks’ time to the Appellant to submit EMD.

- The Appellant submitted their resolution plan along with EMD to the CoC. Before their plan could be considered by the CoC, IA No. 2311 of 2020 and IA No. 2195 of 2020 were filed by other resolution applicants before the Adjudicating Authority seeking permission for submission of plans. On 21.01.2021, the Adjudicating Authority reserved its orders on both IAs.
- After discussion of the plan in several CoC meetings, the Appellant submitted their final resolution plan with Addendum on 05.05.2021. Voting commenced on the resolution plan of the Appellant which was extended upto 10.05.2021.
- The RP informed the SRA by email on 10.05.2021 that the resolution plan was approved by the CoC with a voting majority of 99.90%. The RP while intimating the Appellant-SRA also informed that the approval of the resolution plan by the CoC was subject to the order reserved by the Adjudicating Authority on 21.01.2021 and requested SRA to submit hard copies of resolution plan and memorandum.
- On 12.05.2021, the RP wrote to the SRA to re-submit the plan after including Clause 7.10.6 and 12.6.1 which had purportedly been found missing by RP.
- On 21.05.2021 in the 28th CoC meeting, the SRA urged the RP to issue a Letter of Intent ("**LoI**" in short) as per RFRP terms following which on 23.05.2021, RP issued the LoI with request to SRA to accept the same.
- On 29.05.2021, the SRA addressed a letter to the RP through their legal counsel stating that the LoI was beyond the scope of approved

resolution plan and requested for issue of a fresh and unconditional LoI.

- On 31.05.2021, RP replied to the SRA stating that since LoI was issued in accordance with discussions held in CoC meetings in which SRA was present, he is not in a position to issue unconditional LoI.
- In the meantime, the SRA filed an IA No. 1205 of 2021 before Adjudicating Authority inter-alia seeking directions to be given to the RP to re-issue an unconditional LoI.
- The 29th CoC meeting on 11.06.2021 took note that clause 7.10.6 and 12.6.1 were missing from the resolution plan submitted by the SRA. Further, since timeline for unconditional acceptance of LoI as per RFRP document was over, the 29th CoC meeting on 11.06.2021 directed the RP to re-issue a fresh LoI after receiving corrected copy of the resolution plan and Addendum from the SRA.
- On 15.06.2021, the SRA re-submitted the resolution plan of 31.12.2020 with inclusions and Addendum dated 05.05.2021 to include the missing two points raised in the 29th CoC discussions on 11.06.2021. The SRA however made it clear that the said inclusions were made on the instructions of RP and Union Bank of India.
- On 23.06.2021, RP issued a second and fresh LoI after mentioning that the LoI of 23.05.2021 stood revoked.
- On 23.07.2021 during discussions in the 31st CoC meeting, the SRA wanted to make two changes in the LoI dated 23.06.2021. The first change was with regard to deletion of clause relating to employees' dues

and the second change was to add a clause providing for submission of unconditional PBG within seven days. The SRA also requested for a newly drafted LoI with the above suggested changes. The draft of a third and fresh LoI was provided to the SRA.

- On 26.07.2021, the SRA sent an e-mail to the RP objecting to the LoI issued subsequent to the 31st CoC meeting held on 23.07.2021. On the same date, the CoC in the extended 31st CoC meeting revoked the LoI and put to vote a resolution for forfeiture of EMD of Rs 1 Cr. of the SRA.
- On 02.08.2021, the RP informed the SRA that the CoC had resolved to forfeit the EMD.
- On 28.08.2021, the SRA filed IA No. 2029 of 2021 seeking inter alia directions from the Adjudicating Authority to the RP/CoC to issue unconditional LoI and for refund of EMD on ground of having been wrongly forfeited.
- On 05.06.2023, in the 33rd meeting of the CoC, resolution for liquidation of Corporate Debtor was passed by a voting majority of 99.61%.
- On 09.11.2023 Adjudicating Authority reserved orders in respect of IA Nos 1205 of 2021, 2029 of 2021 and 3914 of 2023.
- On 30.04.2024, the Adjudicating Authority dismissed IAs 1205 of 2021 and 2029 of 2021 filed by the Appellant while allowing IA No. 3914 of 2023 filed by the RP for liquidation of the Corporate Debtor. Aggrieved by the three impugned orders, the present three appeals have been preferred.

3. We have heard Shri Sanat Jariwala, CA and Ms. Purti Gupta, Ld. Counsel appearing for the SRA. Ms. Anjali Sharma, Ld. Counsel has appeared for Respondent No.1 and Shri Deepak Bashta, Ld. Counsel represented Respondent No.3.

4. Before we dwell into the rival contentions of the parties, we may note the reliefs which have been sought by the Appellant in the three appeals.

5. We may notice the prayers which had been made in IA No. 2029 of 2021 in Company Petition No. 1842 of 2018 by the SRA which are as follows:

- a) *Directions to RP/CoC to issue unconditional Letter of Intent.*
- b) *Refund the earnest money deposit of Rs 1,00,00,000/- 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.*
- e) *All other applications filed by the prospective resolution applicants may be heard only after disposal of Applicant's case in IA No. 1205 of 2021.*

6. Since the above prayers were not granted by the Adjudicating Authority, the reliefs which have been prayed by the SRA in CA(AT)(Ins.) No. 1134 of 2024 are as follows:

- a) *That the Hon'ble Appellate Tribunal may allow the instant appeal;*
- b) *That the Hon'ble Appellate Tribunal may quash and set aside the impugned order dated 30.04.2024 passed by the Ld. Adjudicating Authority Mumbai in IA No.2029/2021 in CP(IB) 1842 (MB-IV)/2018;*
- c) *That the Hon'ble Appellate Tribunal may direct erstwhile RP (Respondent No.2) as well as CoC (Respondent No.1) to immediately*

reinstate the EMD amount of Rs.1 crore for further consideration of the resolution plan as approved by CoC in accordance with the provisions of the Code and Regulations made thereunder, or refund the said EMD amount, as the case may be;

7. The prayers which had been made by the SRA in IA No. 1205 of 2021 in Company Petition No. 1842 of 2018 are as follows:

a) Direct that there cannot be a conditional approval of the resolution plan submitted by the present applicant.

b) Direct the Resolution Professional to reissue an unconditional Letter of Intent, as per the provisions of IBC, 2016, and the terms of the Applicant's of the 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.

d) Defer the deposit of Performance Bank Guarantee till the final disposal of the present application.

8. Since the above prayers were not granted by the Adjudicating Authority, the reliefs which have been prayed by the SRA in CA(AT)(Ins.) No. 1131 of 2024 are as follows:

a) That the Hon'ble Appellate Tribunal may allow the instant appeal;

b) That the Hon'ble Appellate Tribunal may quash and set aside the impugned order dated 30.04.2024 passed by the Ld. Adjudicating Authority Mumbai in IA No. 1205/2021 in CP(IB) 1842 (MB-IV)/2018;

c) That the Hon'ble Appellate Tribunal may direct erstwhile RP (Respondent No.2) to immediately file an application u/s 30(6) read with Regulation 39(4) along with Form H for seeking approval of the resolution plan as approved by CoC on 10.05.2021 u/s 31(1) of the Code in compliance with the Statutory and mandatory requirements of the Code and Regulations thereunder;

d) That the Hon'ble Appellate Tribunal may, pending consideration and disposal of the present appeal, stay all actions in furtherance of the impugned order including liquidation proceedings in respect of Respondent No. 3/corporate debtor; and

9. The reliefs which have been prayed by the SRA in CA(AT)(Ins.) No. 1128 of 2024 are as follows:

- a) That the Hon'ble Appellate Tribunal may allow the instant appeal;*
- b) That the Hon'ble Appellate Tribunal may, pending consideration and disposal of this Appeal, stay operation of the impugned order dated 30.04.2024 passed by the Ld. Adjudicating Authority Mumbai in IA No. 3914/2023 in CP(IB) 1842 (MB-IV)/ 2018;*
- c) That the Hon'ble Appellate Tribunal may quash and set aside the impugned order dated 30.04.2024 passed by the Ld. Adjudicating Authority Mumbai in IA No.3914/2023 in CP(IB) 1842 (MB-IV)/2018;*
- d) That the Hon'ble Appellate Tribunal may, pending consideration and disposal of the present appeal, stay all actions in furtherance of the impugned order including liquidation proceedings in respect of Respondent No.3/corporate debtor; and*

This Appeal has arisen from the admission of IA No. 3914 of 2023 filed by the RP of the Corporate Debtor seeking approval of the Adjudicating Authority for liquidation of the Corporate Debtor.

10. Making his submissions, the Ld. Counsel for SRA submitted that their resolution plan dated 31.12.2020 along with Addendum dated 05.05.2021 had been voted by the CoC with 99.90% approval on 10.05.2021. The approval of the plan by the CoC had been communicated to the SRA by e-mail dated 10.05.2021. Thereafter, the RP issued a Letter of Intent ("**LoI**" in short) dated 23.05.2021. However, the LoI was not an unconditional LoI as it imposed conditions which were not in conformity with the resolution plan approved by the CoC on 10.05.2021. Further, the resolution plan was also conditional as it was made subject to the outcome of IA No. 2311 and 2195 of 2020 moved by Potential Resolution Applicants ("**PRA**" in short) for

consideration of their resolution plans. Though the RFRP did not envisage any modification in the resolution plan by way of LoIs, yet the RP sought an unconditional acceptance from the SRA to a conditional LoI. Submitting that the RP was also apprised of these lacunae and deficiencies in the LoI, however, since neither the RP nor the CoC provided any redressal, the SRA was compelled to file IA No. 1205 of 2021 inter alia seeking directions to the RP to provide unconditional LoI. Once the CoC had voted in favour of the resolution plan, the scope of the resolution plan could not have been expanded by way of a LoI by adding certain conditions which were clearly over and above the approved resolution plan and Addendum thereto. It was contended that since the RP had thrice failed to give unconditional LoI to the SRA, the conditional LoI could not have been binding on them. Hence, the CoC could not have rejected the resolution plan of the SRA on the ground that it had failed to unconditionally accept the LoI. It was pointed out that Section 30(4) of the IBC does not provide scope of conditional approval of the resolution plan. The SRA was therefore genuinely aggrieved with the decision of the 31st CoC to reject the resolution plan and forfeit the EMD of Rs 1 Cr. It was erroneous on the part of the Adjudicating Authority in holding that Appellant should have given unconditional acceptance to the LoI dated 23.05.2021 at a time when the said LoI was conditional in nature. It has also been contended that the Adjudicating Authority was incorrect in holding that the Appellant was not interested in going forward with the resolution plan. It was also contended that the corrected resolution plan incorporating Clauses 7.10.6 on ECGC claim and Clause 12.6.1 on PBG time extension had also been submitted and

it was wrong on the part of the RP/CoC to hold that these Clauses went missing.

11. It is also the contention of the SRA that once the resolution plan was approved by the CoC, the CoC could not have passed a resolution for liquidation of the Corporate Debtor. It was also pointed out that the Hon'ble Supreme Court in ***Ebix Singapore Pvt. Ltd. Vs CoC of Educomp Solutions Ltd. and Another*** had held that the resolution plan even prior to the approval of the Adjudicating Authority is binding inter se the CoC and the SRA. It was also pointed out that in terms of the ***Ebix*** judgment it was not open for CoC to withdraw its approval to a resolution plan. The SRA has also contented that once CoC exercised their commercial wisdom, they cannot change their view as they are bound by their own decision in approving the resolution plan. It was also emphatically asserted that the objective of the IBC is to revive a Corporate Debtor and not send it to liquidation.

12. Refuting the contentions raised by the Appellant, the Ld. Counsel for Respondent No. 1 submitted that the CIRP had come to an end on 21.02.2023 and no resolution plan as approved by the CoC was made available which could be submitted to the Adjudicating Authority for its approval within the period of CIRP. Hence in accordance with Section 33(1) of the IBC, there was no option but to send the Corporate Debtor into liquidation. It was also submitted that the CoC in its 33rd meeting held on 05.06.2023 had approved the resolution plan to send the Corporate Debtor into liquidation with 99.61% votes. It is also their contention that though multiple opportunities were given to the SRA to submit a complete resolution plan, the SRA had failed to do so.

An Addendum to the resolution plan was filed by the SRA which was agreed to by the CoC. The Addendum included insertion of Clause 7.10.6 relating to ECGC benefit being extended to the Corporate Debtor and Clause 12.6.1 relating to extension of 45 days' time for furnishing PBG. Since both these clauses had been left out in the resolution plan, the SRA was asked to submit a revised plan with the Addendum as was voted upon by the members of the CoC. However, the SRA did not submit the complete copy of the corrected resolution plan. The 28th CoC was attended by the SRA also wherein it was clearly explained that the voting result approving the plan was subject to the orders to be passed by the Adjudicating Authority subsequent to the hearing held on 21.01.2021. The voting in respect of the incomplete plan was subject to the prospective orders that was to be passed by the Adjudicating Authority in respect of the IAs filed by PRAs which had been reserved for orders on 21.01.2021. It has also been contended that once the resolution plan submitted by the Appellant was accepted by the CoC, the Appellant realized that as it was not permissible to modify or withdraw the resolution plan. However, as it did not want to proceed with the resolution plan, it resorted to raising objections to the LoI for not taking forward the resolution plan. It was emphatically stated that the Appellant was trying to derail the insolvency process by raising frivolous objections and hence the CoC in its wisdom revoked the LoI and proceeded with forfeiture of EMD in accordance with the stipulations contained in the RFRP. The Appellant could not have raised these objections to the alleged conditions set out in the LoI since these conditions were not alien to the resolution plan and the Addendum submitted by them.

The Appellant by unilaterally forcing the RP to amend/modify the resolution plan by demanding issue of an unconditional LoI acted in a manner not permissible in law.

13. We have duly considered the arguments advanced by the Learned Counsel for all the parties and perused the records carefully.

14. The broad issues before us for our consideration are as outlined below:

- (i) Whether the LoIs issued by the RP with the approval of the CoC was conditional in nature and not in conformity with the resolution plan and addendum submitted by the SRA.
- (ii) Whether there is any infirmity in the impugned order passed in IA No. 3914 of 2023 ordering liquidation of the Corporate Debtor.

Since both the above issues are inextricably intertwined, we will proceed to deal with them conjointly.

15. To buttress their arguments that the LoI was conditional, we find that the SRA has pointed out that IA No. 2311 of 2021 and 2195 of 2021 filed by PRAs seeking time to submit their resolution plans had been reserved for hearing by Adjudicating Authority on 21.01.2021. The Adjudicating Authority had also committed a mistake in allowing new parties to submit their resolution plans. The SRA could not be prejudiced in proceedings where they were not present as a party nor heard by the Adjudicating Authority. It is also the case of the SRA that the CoC should have approved their plan without making it conditional to the outcome of third party applications or the CoC

could have expedited the pending order of 21.01.2021 passed by the Adjudicating Authority.

16. The CoC could not have imposed additional conditions of being bound by all earlier discussions and decisions during CoC meetings by way of LoI which was issued pursuant to the approval of the resolution plan. By imposing new and overarching conditions, new liability was thrust upon the SRA which was impermissible since CoC is not entitled to disturb the approved resolution plan as the same is binding on them as much as on the SRA. The resolution plan approved by the CoC is sacrosanct and cannot be subjected to any modification by way of LoI. The LoI does not have any legal sanctity over a resolution plan approved by CoC. It was also contended that the very fact that the CoC had agreed to altering the LoIs thrice shows that additional conditions kept on getting imposed by the CoC in the LoI which was unfair and not permissible under IBC. It is the contention of the Appellant that the CoC could not have modified time and again a duly approved resolution plan through a LoI. Since the RP had not issued an unconditional LoI, the SRA was constrained to approach the Adjudicating Authority with IA No. 1205 of 2021 which has been erroneously dismissed by the Adjudicating Authority on 30.04.2024.

17. At this stage, we may quickly have a look at how the Adjudicating Authority has dealt with the issue whether the LoI was conditional. The relevant extracts of the impugned order in dismissing IA No. 1205 of 2021 is as reproduced below:

“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 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 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.”

18. When we look at the material available on record, we find that the SRA had filed MA No. 608 of 2020 before the Adjudicating Authority following which the Adjudicating Authority on 18.02.2020 had permitted them to submit the resolution plan to the CoC within two weeks. Thereafter, the resolution plan could be submitted by the SRA only on 31.12.2020 by when IAs were filed by PRAs who were keen to participate in the CIRP. The Adjudicating Authority after hearing the IAs on 21.01.2021 had reserved the IAs for orders. Thus, it is amply clear that even at the time of filing MA No. 608 of 2020, the SRA was aware of ongoing litigations with respect to submission of resolution plans by other resolution applicants.

19. We notice that the 23rd and 28th CoC was attended by the SRA wherein it was clearly explained that the voting result approving the plan was subject to the orders to be passed subsequent to the hearing held on 21.01.2021. Apart from the fact that the SRA was contemporaneously aware of the litigation agitated by the PRA's, that the matter was pending adjudication was also brought to the knowledge of the SRA during the various CoC meetings and in exchange of correspondences between the RP and SRA which are as extracted below:

“Minutes of the Continuation of the 23rd Meeting of the CoC, held on 10.03.2021”

Matter to be discussed:

Agenda No. 2:

.....

The COC after the detailed discussion with Mr. Sanjay Dave (Member of the suspended board & Resolution Applicant) and the personnels of Team

India Ltd. (Financial supporter to the Resolution Plan) asked the RP to put the said resolution plan for e-Voting from Monday 15 March, 2021 as follows:

"RESOLVED THAT, THE RESOLUTION PLAN (dt. 31.12.2020) submitted by Mr. Sanjay Dave (Member of the suspended board & Resolution Applicant) in accordance to the terms of the RFRP (Request For Resolution Plan) documents and having a total outlay of Rs. 21,41,41,738/-, and discussed and deliberated in the 23rd COC meeting held on 1st March, 2021 & the continuation meeting held on 10th March, 2021 be approved & the said resolution plan be filed with Hon'ble NCLT(Mumbai) for approval"

The advocates to the RP again stated that in the last hearing held on 21 January 2021, the tribunal has indicated that it shall pass an appropriate orders and directions in the matter after going through the papers and proceeding sheets in detail, hence the same shall be binding on all, the participants agreed to the same."

(Emphasis supplied)

"Email dated 10th May, 2021

10th May, 2021

To,
The Successful Resolution Applicant

Dear Madam/ Sir

".....

The details of the eVoting result on the above said resolution plan (including addendum) is as follows:

Agree	Disagree	Abstain from voting	Total
99.90%	0.10%	0%	100.00%

As discussed in the above COC meetings, the above results are subject to the order reserved by Hon'ble NCLT in the hearing held on 21st Jan, 2021.

You are requested to provide a final signed hardcopy (3 sets) of the resolution plan including the addendum along with the word documents of the same after making due corrections as discussed in the above mentioned meetings of the committee of creditors, please also attach all

the revised and relevant documents including the board resolution and letter from the financial sponsors to the resolution plan in support of the final resolution amount as soon as possible so that the same can be filed before Hon'ble NCLT at the earliest."

Resolution Professional

(Emphasis supplied)

"Minutes of the 28th Meeting of the CoC, held on 21.05.2021

Discussion on Agenda No. 2:

The RP further informed that the above results are subject to the order reserved by Hon'ble NCLT in the hearing held on 21 Jan, 2021. The RP has already sent the intimation on 10th May, 2021 to Mr. Sanjay Dave (Member of the suspended board & Successful Resolution Applicant) and has asked him to provide a final signed hardcopy (3 sets) of the resolution plan including the addendum along with the word documents of the same after making due corrections as discussed in the above mentioned meetings of the committee of creditors, and also to attach all the revised and relevant documents including the board resolution and letter from the financial sponsors to the resolution plan in support of the final resolution amount as soon as possible so that the same can be filed before Hon'ble NCLT at the earliest.

Mr. Sanjay Dave (Member of the suspended board & Successful Resolution Applicant) stated that he has received the said communication on email but he is wanting the formal letter of Intent on letter head to proceed further. The COC asked the RP to issue the "Letter of Intent" on letterhead to Mr. Sanjay Dave (Member of the suspended board & Successful Resolution Applicant). Adv. A.K. Mishra (M/s MDP Partners-Advocates & Solicitors) Advocates for Resolution Professional suggested to issue the "Letter of Intent" on the letterhead giving reference of the email dt.10th May, 2021 and also the discussion being held in the current COC meeting. The COC members agreed to the same."

(Emphasis supplied)

20. The SRA never objected at any stage upto the 28th CoC meeting to making the resolution plan subject to the prospective orders to be passed by the Adjudicating Authority. Instead the SRA requested the CoC to issue him

a LoI. However, after the LoI was circulated to the SRA for his perusal and acceptance on 24.05.2021 by email, it is at this stage that the SRA through his Advocate on 29.05.2021 raised preliminary objections to the LoI being conditional for being subjected to the prospective orders of the Adjudicating Authority. This shows that the SRA was well aware before seeking the LoI from the CoC that the LoI was to be subject to the outcome of hearing dated 21.01.2021. Hence it becomes clear that it was an after-thought on the part of the SRA to raise the bogey of conditional LoI. If the SRA was so aggrieved, it could have sought impleadment in the matter before the Adjudicating Authority or taken up the matter with the RP/CoC to seek early resolution of the matter. In any case, it is an admitted fact that both the IAs filed by the PRAs stood dismissed for non-prosecution before the Adjudicating Authority took up IA 1205 for hearing.

21. We also find that the Adjudicating Authority has dealt at length in IA No. 3914 the allegation of the SRA that the LoI purportedly imposed additional conditions beyond the plan as approved by the CoC. It is an undisputed fact that the plan which had been submitted by the SRA along with Addendum was deliberated and voted upon in the 27th CoC meeting. We have already noticed that the SRA was informed by the RP on 10.05.2021 of the result of the e-voting and asked to provide three sets of hard copies of the finally approved resolution plan including the Addendum. This letter has already been extracted above at Para 19 above. The RP again sent a communication on 12.05.2021 to the SRA to include conditions at Clause 7.10.6 and Clause 12.6.1 which SRA had missed out through they were a part of the resolution

plan with the Addendum. The most exhaustive communication in this regard is letter dated 23.05.2021 which is reproduced as below:

Date: 23rd May, 2021

Ref No.: RP/OHTL/0523

Kind Attention: Mr. Sanjay Dave

Subject: Declaration of the Successful Resolution Applicant and issuance of letter of intent (“Letter of Intent”) on behalf of the Committee of the Creditors (CoC) of M/s Oracle Home Textiles Ltd. (Corporate Debtor)

Dear Sir,

This is with reference to the corporate insolvency resolution (“CIR”) process of M/s Oracle Home Textiles Ltd. (“Corporate Debtor”) initiated pursuant to the order dated August 9, 2018 passed by the Mumbai Bench of the Hon’ble National Company Law Tribunal (“Adjudicating Authority”).

.....

The above e-voting results, thereby approving the said final resolution plan (including the addendum) submitted by the member of the suspended board are subject to the order reserved by Hon'ble NCLT (Mumbai Bench) in the hearing held on 21 Jan, 2021, the same has already been discussed in the CoC meetings along with you and the same is in your knowledge too.

The Resolution Professional has already sent the intimation on 10th May, 2021 to Mr. Sanjay Dave (Member of the suspended board & Successful Resolution Applicant) on the success of your final resolution plan (including addendum) and has asked him to provide a final signed hardcopy (3 sets) of the resolution plan including the addendum along with the word documents of the same after making due corrections as discussed in the above mentioned meetings of the committee of creditors, and also to attach all the revised and relevant documents including the board resolution and letter from the financial sponsors to the resolution

plan in support of the final resolution amount as soon as possible so that the same can be filed before Hon'ble NCLT at the earliest.

The Resolution Professional (RP) has also sent communication on 12th May, 2021 to Mr. Sanjay Dave (Member of the suspended board & Successful Resolution Applicant) to include the following two (2) points which was discussed in the 27th COC meeting held on 6th May, 2021 but is now missing in the files being shared by Mr. Sanjay Dave (Member of the suspended board & Successful Resolution Applicant) as follows:

Quote from addendum dt. 5th May, 2021

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

12.6.1 The COC members allows 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.

The above points was also discussed during the COC meeting held on 21 May, 2021 (28th COC Meeting) Mr. Sanjay Dave (Member of the suspended board & Successful Resolution Applicant).

Pursuant to the approval of the Final Resolution Plan (including addendum) by the CoC, the Resolution Professional is issuing this Letter of Intent to the Resolution Applicant in accordance with the terms of the RFRP and as discussed during the COC meeting held on 21 May, 2021 (28th COC Meeting) and in addition to the intimation already sent on 10th May, 2021.

.....

The undersigned is issuing this Letter of Intent to you under the instruction of and authorisation from the CoC.

The Final Resolution Plan has to be filed with the Adjudicating Authority. Accordingly, we request you to immediately submit the accepted copy of this Letter of Intent. Please note that the Final Resolution Plan will be filed with the Adjudicating Authority along with the accepted copy of the Letter of Intent and a copy of the Performance Guarantee received from you.

.....

You hereby acknowledge and agree that this Letter of Intent 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 applicable laws and you 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.

(Emphasis supplied)

22. We also notice that the SRA through its advocate replied to the RP on 29.05.2021 in which objection was raised to the LoI for being conditional for subjecting to the outcome of hearing dated 21.01.2021 and additional conditions sought to be imposed in the LoI. Interestingly we notice that the additional conditions were not fleshed out in details in their correspondence.

23. Clearly these conditionalities cannot be held to be a surprise for the SRA as these alleged conditionalities were discussed and deliberated in the CoC meetings and it was clear to all the participants including SRA that these conditionalities were integral to the resolution plan of the SRA. We also notice that the RP had addressed the reply to the SRA on 31.05.2021 reiterating that the condition under LoI had been subsisting since the 23rd CoC meeting which letter encapsulated all decisions taken in previous meetings of CoC wherein the Appellant was present. In these meetings dated 01.03.2021, 10.03.2021, 29.04.2021 and 21.05.2021, CoC had raised both the issues of the

prospective order of the Adjudicating Authority as well as the requirement to correct the resolution plan.

24. Subsequently the SRA had also attended the 29th CoC meeting on 11.06.2021 wherein the CoC had enquired from the SRA if he had any specific objection with respect to the LoI. In this meeting, it was again pointed out that items 7.10.6 and 12.6.1 were missing from the resolution plan of SRA. Even at this stage, SRA stated that he shall provide the corrected addendum within 2 days' time as the said above points were deleted due to some misunderstanding. Even at this stage the SRA had indicated that they had no specific objections. Accordingly, the CoC called upon the SRA to submit a corrected resolution plan and a fresh LoI was circulated to the SRA on 23.06.2021 for counter signature and acceptance. The SRA again refused to accept the LoI and instead requested the RP to issue a fresh LoI. This issue was taken up again in the 31st CoC held on 23.07.2021 wherein the SRA again asked for two fresh changes relating to employees and PBG. Hence, the CoC agreed to issue a fresh draft LoI to accommodate these changes. Even after the 31st CoC meeting, the SRA remained persistent with his objections to the LoI and conditions attached thereto. Thus, we do not find any merit in the argument of the SRA that the CoC had been issuing and altering LoIs by imposing new conditions. The LoIs were issued based on the resolution plan of the SRA alongwith Addendum and CoC decisions in which the SRA was always a participant. Fresh LoI had to be issued either because SRA had not sent a corrected resolution plan or because the SRA was objecting to LoI and

demanding a fresh LoI. It is not a case where LoIs were wrongly issued by the RP/CoC as has been projected by the SRA.

25. It is further noted that the subsequent 31st CoC meeting held across three days again requested the SRA to give his final stand on the unconditional acceptance of LoI. However, the SRA again refused to accept the LoI alleging that the LoI had imposed additional conditions. The CoC had therefore expressed displeasure that despite being given repeated opportunities to the SRA, the SRA was prolonging the CIRP and therefore resolved to forfeit the EMD paid by the SRA. Aggrieved by the EMD forfeiture the SRA had filed IA No. 2029 of 2021. The same has been correctly dismissed by the Adjudicating Authority on 30.04.2024 on the ground that inspite of ample opportunities given to the SRA it did not give its unconditional acceptance to the LoI as per RFRP terms and conditions. We have already noted that IA No. 1205 has been dealt by the Adjudicating Authority wherein after noting the sequence of events it was observed by the Adjudicating Authority that the SRA did not appear to be willing to go ahead with the approved resolution plan. The Adjudicating Authority has relied on the correct interpretation of the judgment of Hon'ble Supreme Court in ***Ebix*** which was held that resolution applicant cannot be permitted to withdraw or modify the resolution plan after approval by the CoC. This answers the first question at para 14.

26. In the present case once CoC had approved the resolution plan, the SRA stood precluded from raising any observations to the conditions stated in the LoI as these were not alien to the resolution plan as submitted by the SRA

which was approved by the CoC. Present was not a case of conditional and addendum LoI but a case where the SRA was vacillating in accepting the LoI and not wanting to put his skin in the game by baselessly alleging that the LoI was conditional. The Adjudicating Authority rightly refused to entertain the objections of the SRA to the conditions in the LoI since withdrawal or modification of resolution plan after approval by the CoC is not permissible in law.

27. It is also noticed that the CoC in the 33rd meeting held on 05.06.2023 decided to liquidate the Corporate Debtor with 99.61% voting on account. The CoC had taken cognizance of the fact that the CIRP period of 180 days had ended on 12.02.2019 which kept on getting extended from time to time. It was however felt that there was no point in extending the CIRP any further since the SRA had failed to accept the LoI. No resolution plan, approved by the CoC, was available before it to place the same before the Adjudicating Authority for its approval. Since the Adjudicating Authority had not received a resolution plan under Section 30(6) of the IBC before the expiry of the maximum period of 330 days permitted for completion of CIRP, the CoC in its wisdom found this to be a fit case to order liquidation in terms of Section 33(1)(a) of the IBC. It is seen from material on record that the 33rd meeting of the CoC had deliberated at length and recorded their discussions in the meeting minutes.

28. In the given circumstances the Adjudicating Authority has correctly relied on the decision of this Tribunal in ***Gulab Chand Jain Vs RP of Vijay Timber Industries*** in ***CA(AT)(Ins) No. 142 of 2021*** wherein it was held that after approval of the resolution plan by the CoC, the CoC can always change

its mind and pass a resolution liquidating the Corporate Debtor as long as the resolution plan is not approved by the Adjudicating Authority. The Adjudicating Authority had not committed any error in arriving at the above finding since there was no approved resolution plan available with the RP to be placed before the Adjudicating Authority. The Adjudicating Authority was also of the view that with further delay, the assets of the Corporate Debtor would have suffered from economic depreciation as the liquidation value goes down with the efflux of time. A long time had elapsed since commencement of insolvency on 09.08.2018 and we are inclined to agree with the Adjudicating Authority that Corporate Debtor should go into liquidation forthwith in the interest of all stakeholders. The Adjudicating Authority also was of the view that it had limited powers of judicial review in matters of commercial wisdom of CoC as has been held by the Hon'ble Supreme Court in the matter of **K. Sashidhar Vs Indian Overseas Bank (2019) 12 SCC 150**.

29. The timely and quick resolution of stressed assets is key to the successful working of IBC. The outer limit of CIRP of 330 days had also expired and yet formal acceptance of the resolution plan by SRA was nowhere in sight because of deliberate procrastination on the part of the SRA. Further, delay was diluting the value of the assets. In such circumstances, we are of the considered view that opting for liquidation was the best option available before CoC. Thus, to answer our second question we find no infirmity in the decision of the Adjudicating Authority to approve the liquidation of the Corporate Debtor.

30. It is pertinent to note that the statutory construct of IBC in terms of Section 33 clearly empowers the CoC to decide to liquidate the Corporate Debtor any time before the confirmation of the resolution plan by the Adjudicating Authority. It may be useful to note the provisions of Section 33 of IBC which reads as under:-

Section 33. Initiation of liquidation.

(1) Where the Adjudicating Authority,--

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall--

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

Explanation.- For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

Since the CoC is statutorily empowered to decide on the liquidation of the Corporate Debtor at any time before the confirmation of the resolution plan. This decision is a collegiate, commercial wisdom of the CoC which is not subject to judicial review except for ensuring that the resolution plan meets the requirements of the IBC and related Regulations. The paramount supremacy of the commercial wisdom of CoC has been upheld in a catena of judgments by the Hon'ble Supreme Court. The Explanation to Section 33(2) of IBC makes it amply clear that the CoC is entitled to take a final call, to liquidate the Corporate Debtor prior to affirmation of the resolution plan by the CoC. This decision of the CoC is a business decision taken in the exercise of their commercial wisdom which is clearly not amenable to judicial review. There is no incidence of any statutory aberration having been committed by the RP or CoC in this regard.

31. For the above reasons, we find no good grounds to allow the three appeals. The Appeals being devoid of merit stand dismissed. The liquidator is directed to progress the liquidation proceeding in terms of the e-auction notice already under issue. No costs.

**[Justice Ashok Bhushan]
Chairperson**

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

**Place: New Delhi
Date: 29.10.2024**

Abdul/Harleen