

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT III



I.A. 68 of 2024

In

C.P.(IB)/565 (MB)/C-III/2023

*Under Section 30(6) of the Insolvency and
Bankruptcy Code, 2016*

Mr. Modilal Dhanraj Pamecha

*Resolution Professional of M/s Dhruvi
Properties Private Limited*

C-802 Padmarag, J.B. Nagar, Andheri (E),
Mumbai -400059, Maharashtra

... Applicant/ Resolution Professional

In the matter of

Well worth Apparels Private Limited

... Financial Creditor

Vs

Dhruvi Properties Private Limited

... Corporate Debtor

Order pronounced on: 09.09.2025

Coram:

Sh. Hariharan Neelakanta Iyer
Member (*Technical*)

Ms. Lakshmi Gurung
Member (*Judicial*)

Appearances:

For Applicant/RP : Adv. Kunal Kanungo, Adv. Tanushree Sogani,
Adv. Athishay Jain.



Per: Lakshmi Gurung, Member (Judicial)

1. The caption I.A. 68/2024 has been filed by the Resolution Professional of M/s. Dhruvi Properties Private Limited (**Corporate Debtor**) under section Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, (**CIRP Regulations**) 2016 seeking approval of the Resolution Plan submitted by M/s Gajra Real Estate Private Limited. The prayers are extracted below:
 - a) *To allow the present Application;*
 - b) *To approve the Resolution Plan of Gajra Real Estate Private Limited i.e., Successful Resolution Applicant as approved by the Committee of Creditors with 100% votes in the 5th CoC meeting dated 13.07.2024; and*
 - c) *To pass such other and further orders as this Tribunal may deem fit and appropriate in the facts and circumstances of the present case.*

Brief Facts

2. Commencement of Corporate Insolvency Resolution Process

The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (**CIRP**) vide order dated 15.12.2023 under Section 7 of the Code and the Applicant was appointed as the Interim Resolution Professional (**IRP**).

3. Constitution of Committee of Creditors (CoC)

3.1 The IRP made public announcement on 22.12.2023 under Regulation 6 of the CIRP Regulations inviting claims from the creditors of the Corporate Debtor. Claims were received, verified and admitted by the IRP. Accordingly, the Committee of Creditors (CoC) was constituted and the report certifying the constitution of CoC was taken on record vide order dated 21.02.2024.



3.2 In the 1st CoC meeting held on 19.01.2024, the CoC approved the appointment of the IRP as the Resolution Professional **(RP)**.

3.3 Upon verification of claims, the CoC was reconstituted on 12.02.2024. The Report certifying the reconstitution of CoC was taken on record vide order dated 19.04.2024.

3.4 The final list of members of the CoC is given below:

Name of the Unsecured Creditors	Claim Admitted (in Rupees)	Voting Shares (%)
Wellworth Apparels Pvt Ltd	9,98,49,560/-	1.88%
Anukaran Consultancy Pvt Ltd	4,13,59,69,805/-	77.76%
Rajdeep Clothing and Advisory Pvt Ltd	1,08,33,30,731/-	20.37%
Total	5,31,91,50,096	100.00%

4. **Valuation**

4.1 In the 2nd CoC Meeting held on 15.02.2024, the CoC approved the appointment of the Registered Valuers for determining the fair value and liquidation value of all the assets of the Corporate Debtor, as per following details:

Sr. No	Category	Details of Professional
1.	For Land and Building	Mr. Sunil Dhingra (IBBI/RV/02/2019/11126) Mr. Yatendra Paliwal (IBBI/RV/02/2020/13281)
2.	For Securities and Financial Assets	Mr. Manish Chandra (IBBI/RV/05/2019/10903) Mr. Mukesh Kumar Jain (IBBI/RV/03/2019/12285)

4.2 The details of the Assets of the Corporate Debtor are as follows:

**I. Land & Building:**

Industrial Land & Building Structure located at Plot no. A-126, A- 126/1, A-126/1 (P), MIDC Phase-1, Dombiwali, Dust-Thane, Maharashtra – 4212023.

II. Securities and/or Financial Assets**A. Current Assets**

- i) Cash and Cash Equivalents
 - a) Cash in Hand – Rs. 2109/-.
 - b) Bank Balance – Rs. 8,02,742/-
- ii) Trade Receivables – Rs. 5,05,66,726/- (as on 15.12.2023)
- iii) Other Current Assets – Rs. 6,28,832 (as on 15.12.2023)

B. Non-Current Investment

- i) Non-current Investments – Rs. 4,35,72,000/- (as on 15.12.2023)
- ii) Long Term Loans & Advances – Rs. 63,70,47,751/- (as on 15.12.2023)

4.3 According to the valuation summary and Form H, the Average Fair Value and Average Liquidation Value of the Corporate Debtor are as under:

Sr. No	Particulars	Valuer	Fair Value (In Rs)	Liquidation Value (In Rs.)
1.	Land and Building	Valuer 1	25,22,37,347	21,66,58,413
		Valuer 2	24,16,53,535	21,02,54,423
2.	Securities and Financial Assets	Valuer 1	8,54,851	8,54,851
		Valuer 2	8,63,061	8,63,061
Average			24,78,04,397	21,43,15,239



5. **Appointment of Transaction Auditor**

5.1 The RP, after consultation of the CoC in the 2nd CoC Meeting held on 15.02.2024, appointed M/s DDND & Associates as the Transaction Auditor to conduct transaction audit of the account of Corporate Debtor to determine the transactions falling under Section 43, 45, 50 and 66 of the Code. The Transaction Audit Report dated 10.07.2024 is annexed to the Application.

5.2 As per the Report, the transaction audit for the Corporate Debtor has been done for the period between 01.04.2021 to 15.12.2023. The Transaction Auditor has not determined any transaction to be covered under section 43, 45, 49, 50 and/or 66 of the Code. However, under the category 'other observations', it is stated as follows:

“There is difference in bank balance as on 31/03/2021 of Union Bank of India Balance. Balance as per Book is Rs.121184 and as per bank statement is Rs.631696.75. There is difference of Rs.510512.75 in opening bank balance.”

5.3 As regards the above observation, the following decision was taken by the CoC at its 5th CoC Meeting held on 13.07.2024:

“CoC is appraised that in substance of Transaction reported/ other observation. The Said Transaction is not clearly falling in the definition of avoidable Transaction within the meaning of section 49 and Section 66 of IBC Code 2016 and looking at the likely cost of the IA and time involve in filing of IA before Hon'ble NCLT and its Adjudication, it will not be cost effective i.e. Likely cost will be more than its benefit if any.

Resolution Professional appraised that after deliberation it was agreed that there will be No Application required to be tiled with Hon'ble NCLT for Avoidance of Transaction refereed under section 43, 45, 50, 66 of IBC code 2016.”



6. ***Expression of Interest & Publication of final List of PRAs***

6.1 In terms of Section 25(2)(h) of the Code, the RP made public announcement in Form G, inviting Expression of Interest (EoI) on 18.02.2024 and the Last Date of receipt of EoI was 04.03.2024.

6.2 Pursuant to the issuance of Form G, the RP received EoIs from 32 Prospective Resolution Applicants (PRAs). It is submitted that though the RP received EoIs from 32 PRAs, however, EMD was paid by only one i.e. M/s Gajra Real Estate Private Limited. Therefore, only Gajra Real Estate Private Limited was included in the Final List of PRAs.

7. ***Request for Resolution Plan (RFRP)***

7.1 The Resolution Professional issued RFRP, Evaluation Matrix and Information Memorandum to the PRA, as approved by the CoC at its 2nd CoC Meeting held on 15.02.2024.

8. ***Resolution Plans submitted***

8.1 On 03.05.2024, Gajra Real Estate Private Limited submitted the resolution Plan to the Applicant.

8.2 Thereafter, there was a fresh claim of Rs. 17 lakhs submitted by Ms. Vandana Prakash Guram , a home-buyer of the Corporate Debtor, which was admitted by the RP. Accordingly, amendments were carried out in the Information Memorandum and Resolution Applicant was also informed regarding the admission of the new claim by the Home-Buyer. It is pertinent to note here that the claim of the Home-buyer was filed in Form B as 'operational creditor' and was accordingly, admitted by the RP as operational debt. Therefore, the Home-buyer was not a part of the CoC.

8.3 Subsequently, the revised Resolution Plan was submitted by Gajra Real Estate Private Limited on 09.07.2024.



9. ***Approval of Resolution Plan by CoC***

9.1 In the 5th CoC meeting held on 13.07.2024, the revised Resolution Plan submitted by Gajra Real Estate Private Limited (**Successful Resolution Applicant/ SRA**) was approved by the members of the CoC with 100% vote. Accordingly, the RP issued the Letter of Intent (LoI) dated 16.07.2024 which was unconditionally accepted by the SRA.

About SRA and the Resolution Plan

10. ***Brief Background of the SRA***

10.1 As per the resolution plan, the SRA is engaged in business of real estate and has interest in acquiring stressed assets in the real estate sector. It also has interest in purchasing movable or immovable property including industrial, commercial, residential or farm lands, plots, building, houses, apartments. A copy of the Net Worth Certificate of the SRA is annexed to the application as *Exhibit Z*.

10.2 It is submitted that the Successful Resolution Applicant is not barred by Section 29A of the Code and an affidavit in this regard has also been submitted by the Successful Resolution Applicant along with the Resolution Plan. The said Affidavit is annexed as *Exhibit U* to the Application.

11. ***Financial Outlay under the Resolution Plan***

11.1 **CIRP Costs**

- (i) It is stated in the Resolution Plan that the CIRP cost has been estimated at Rs. 39,00,000/-.
- (ii) It is proposed that the CIRP costs shall be adjusted/paid from the upfront payment to Un-Secured Financial Creditors. If CIRP cost is more than Rs. 39,00,000/- then any additional amount of CIRP cost shall be adjusted from the payment of

Un-Secured Financial Creditors in the ratio of their voting share in CoC.



11.2 **Payment to Stakeholders**

According to the Form H dated 18.07.2024, the amounts provided for the stakeholders under the Resolution Plan are as under:

(Rs. in Lakh)

Sl	Sub-Category of stakeholder*	Amt Admitted	Amt provided under the Plan	Amt provided to the Amt Claimed (%)
1.	<i>Secured Financial Creditors</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
	<i>(a) Creditors Not having a right to vote under subsection (2) of Section 21</i>			
	<i>(b) Other than (a) above:</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
	<i>(i) who did not vote in favour of the Resolution Plan</i>			
	<i>(ii) who voted in favour of the Resolution Plan</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
	Total of (a) + (b)	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
2.	<i>Unsecured Financial Creditors</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
	<i>(a) Creditors Not having a right to vote under subsection (2) of Section 21</i>			
	<i>b) Other than (a) above</i>	<i>17,00,000</i>	<i>17,00,000</i>	<i>100</i>
	<i>(i) who did not vote in favour of the Resolution Plan</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
	<i>ii) who voted in favour of the Resolution Plan</i>	<i>5,31,91,50,096</i>	<i>31,83,00,000</i>	<i>5.98</i>
	Total (a)+ (b)	532,08,50,096	32,00,00,000	6.01



3	Operational Creditors (a) Related Party of the Corporate Debtor	Nil	Nil	Nil
	Other than (a) above			
	i) Government	Nil	Nil	Nil
	ii) Workmen	Nil	Nil	Nil
	iii) Employees	Nil	Nil	Nil
	iv) Other Operational Creditors	Nil	Nil	Nil
	Total (a) + (b)	Nil	Nil	Nil
4	CIRP Costs	38,76,026	39,00,000	100
	Total	532,47,26,122	32,39,00,000	6.08
5	Need basis for improvement of Operations/ WC/ Refurbishments in debt/ Contingency	Nil	75,00,000	Nil
	Grand Total	532,47,26,122	33,14,00,000	6.22

Payment Schedule

11.3 The Resolution Applicant has proposed a total payment of Rs. 32,39,00,000/- for unsecured financial Creditors and CIRP Cost as per following payment schedule:

(In Crores)		
Sl. No.	Particulars	Amount
a)	Within 60 days from the date of acceptance by NCLT (CIRP Cost)	0.39/-
b)	Within 360 days from the date of acceptance by NCLT (Payment to unsecured Financial Creditors other than home buyer)	1.83/-
c)	Within 1020 days from the date of acceptance by NCLT (Payment to unsecured financial creditors as home buyer in monthly instalment)	0.17/-



d)	<i>Within 420 days from the date of acceptance by NCLT (Payment to unsecured financial creditors other than homebuyer)</i>	5.00/-
e)	<i>Within 780 days from the date of acceptance by NCLT (Payment to unsecured financial creditors other than homebuyer)</i>	5.00/-
f)	<i>Within 780 days from the date of acceptance by NCLT (Payment to unsecured financial creditors other than homebuyer)</i>	10.00/-
g)	<i>Within 780 days from the date of acceptance by NCLT (Payment to unsecured financial creditors other than homebuyer)</i>	10.00/-
Total		32.39
Payments to the Operational Creditors		<i>Nil</i>
Payments against workmen dues		<i>Nil</i>
Payments towards existing shareholders		<i>Nil</i>
Additional Capital Expenditure		<i>As per Technical assessment</i>
Additional Operating Expenditure		<i>As per technical assessment</i>

11.4 It can be seen that, out of the total plan value of Rs. 32.39 crores, only CIRP cost is proposed to be paid within 60 days and next payment of Rs. 1.83 crores is proposed to be paid within 360 days, almost in one year.

11.5 We find it strange that payment claim of the homebuyer for Rs. 17,00,000/- is proposed to be paid to the homebuyer in next 34 months without any interest or allotment of house to her. It is equally strange to note that though the said homebuyer's claim has been admitted by the RP but her name does not figure in the list of CoC members.



12. **Performance Guarantee**

12.1 Clause 1.8 of the RFRP provides for submission of bank guarantee by resolution applicant. The relevant clause is reproduced below:

“1.8.1 Resolution Applicant(s) shall provide a Bank guarantee of Rs 2 Lakhs and Security Deposit of Rs. 1 Lakh in favor of The Jalgaon Peoples Co-Op Bank Ltd, payable at Mumbai, as/-part of the Binding Resolution Plan (herein after referred to as the “Binding Submission Bond Guarantee” or “BSBG”). The BSBG should be payable at Mumbai and should be executed from Scheduled Bank located in India. The BSBG shall be valid for the Plan Validity Period and shall be renewed / extended by the Resolution Applicant(s) for a period as may be required by the COC (“BSBG Validity Period”).

12.2 It is stated that as per Regulation 36B(4A) of the CIRP Regulations, the SRA has deposited an amount of Rs. 2 lakhs as Security Deposit and Rs. 1,00,000/- was deposited as EMD.

13. **Sources of Fund**

13.1 The clause relating to Sources of Fund as provided in the Resolution Plan is extracted below:

*“Gajra Real Estate Private Limited (**GREPL**) is a company has adequate liquidity at its disposal. GREPL is having financial Investor known as M/s Growex Investment Private Limited, who is having strong liquidity position and accordingly shall be able invest in case of need. To future business prospectus of Real Estate, Growex Investment Private Limited showed interest in investing in our Real estate and infrastructure business, Growex Investment Private Limited has agreed and accepted the proposal of GREPL for subscription of Debentures (CCDs) aggregating to Rs. 20/- Cr., to be issued by the SRA. Further*



Investment shall be done by other Investment companies /corporate bodies in the SRA for the Implementation of Resolution Plan. Also, with the restart of the operation of Corporate Debtor, it will generate cash profit in the coming years, so that the gap for the payment to the financial creditors shall be made good by SRA.”

13.2 From the SRA’s own submission, it is clear that SRA does not have financial capabilities to fund the resolution plan but is dependent upon one M/s Growex Investment Pvt. Ltd. which has agreed to subscribe to the Compulsory Convertible Debentures of the SRA aggregating to Rs. 20 crores.

13.3 We have also noticed the bank statement of the proposed investor namely M/s Growex Investment Pvt. Ltd. which is discussed in detail in later part of this order.

14. ***Details on Preferential, Undervalued, Fraudulent and Extortionate Transactions (PUFE) and Pending Litigations***

It is submitted that there are no PUFE applications and no litigation pending against the Corporate Debtor.

Analysis & Findings

15. Heard the Ld. Counsel for the RP and have perused the record.

16. From the perusal of the Resolution Plan submitted by SRA, it is noted that the total proposed payout under the Plan is Rs. 33,14,00,000/- (Rupees Thirty-Three Crore Fourteen Lakhs Only) including Rs.75,00,000/-, being need based fund proposed to be infused for improving operations. It was noticed that only Rs. 39,00,000/- was proposed to be paid within 60 days and rest of the plan implementation was spread over 34 months (1020 days within which payment to homebuyer is proposed to be made. So, query was



raised regarding the financial ability of the SRA to implement the plan and what was discovered is discussed below.

17. The Net worth Certificate dated 02.03.2024 was annexed to the present application which is extracted below:

“I/ We certify that the Networth of GAJRA REAL ESTATE PRIVATE LIMITED as per the computation given herein below is Rs. 38,42,189 (Rupees Thirty Eight Lakh and forty Two Thousand One Hundred and Eighty nine Only)

Computation of Networth

	(Rupees)
Share Capital	1,00,000/-
Add/Less: Free Reserve	37,42,189/-
Networth available	38,42,189/-

18. It is noted that the said Net worth is not certified by any Chartered Accountant but by the Director of the Resolution Applicant itself. Further, the Resolution Plan states the ‘Sources of Funds’ which is already reproduced above but it repeated for sake of convenience:

“6.7 SOURCES OF FUNDING

*Gajra Real Estate Private Limited (**‘GREPL’**) is a company has adequate liquidity at its disposal. Though a GREPL having financial Investors known as M/s Growex Investment Private Limited, who is having strong liquidity position and accordingly shall be able invest in case of need.*

To future business prospectus of Real Estate, Growex Investment Private Limited showed interest in investing in our Real estate and infrastructure business,



Growex Investment Private Limited has agreed and accepted the proposal of GREPL for subscription of Debentures (CCDs) aggregating to Rs. 20/- Cr., to be issued by the GREPL.

Further Investment shall be done by other Investment companies /corporate bodies in the GREPL for the Implementation of Resolution Plan. Also with the restart of the operation of CD, it will generate cash profit in the coming years, so that the gap for the payment to the financial creditors shall be made good by GREPL.”

19. A Letter dated 09.07.2024 issued by Growex Investment Private Limited is also annexed to the Application. In the said letter, Growex Investment has agreed for investing in the Corporate Debtor by subscribing of Debentures upto Rs. 20 crores only.
20. Perusal of Clause 6.7 (Sources of Funds) of the Plan shows that the remaining amount under the plan is proposed to be paid through investments by other companies and generation of cash profit once the operations of the Corporate Debtor restarts. This clearly indicates that the SRA does not have the financial ability to implement the resolution plan but is dependent upon third party investments, more specifically one M/s Growex Investment Private Limited.
21. Observing the obscurity of funds with the SRA, a clarification was sought vide order dated 11.04.2025 from the RP and further direction was given to the RP to place on record the eligibility criteria of the PRAs.
22. In compliance thereof, the RP filed Affidavit dated 03.05.2025 and submitted as follows:
 - (i) The CoC in its 2nd Meeting held on 15.02.2024 discussed the agenda regarding the approval of the Eligibility Criteria of the PRAs and the CoC preferred to set a minimum Net worth criteria of Rs. 10 lakhs for the PRAs for participating in the resolution process.



- (ii) The RP submits that the proposed pay-out of Rs. 33.14 crores under the Resolution Plan exceeds both the Fair Value of Rs. 24.78 crores and the Liquidation Value of Rs. 21.43 crores, as determined during the insolvency process.

23. Thereafter, when the matter was listed on 07.05.2025, the affidavit dated 03.05.2025 was taken on record. On perusal of the same, this Bench raised further clarification on the implementation of the Resolution Plan and also with respect to the relationship status of the shareholders of the Corporate Debtor and the shareholders of the CoC members.

24. Accordingly, the RP filed another Affidavit dated 10.06.2025 and made the following submissions:

- (i) A search in relation to Section 5(24) of the Code was conducted to ascertain the relationship between the shareholders of the Corporate Debtor and the CoC members. It was submitted that the search report issued by the Practicing Company Secretary - Ms. Taruna Kumbhar states that the CoC members cannot be termed as 'Related Party' of the Corporate Debtor under the applicable provisions of the Code.
- (ii) As regards the implementation of the Resolution Plan, it was submitted that M/s Growex Investment Private Limited had entered into a Memorandum of Understanding (MoU) dated 26.09.2024 with the SRA to invest amount of Rs. 35 crores through investment of compulsory convertible debentures (CCDs) and Non-Convertible Debentures (NCDs). A copy of the email dated 08.05.2025 sent by the RP to SRA, the Letter dated 02.06.2025 received by the SRA accompanied with bank balances as on 02.06.2025 and the audited financial statements of Growex Investment Private Limited as on 31.03.2025 are annexed to the Affidavit.



- (iii) Pursuant to the notification dated on 03.04.2025 of IBBI revising the format of Form H, the RP has also submitted the revised Form H dated 06.06.2025 and the same is annexed to the Affidavit.

Peculiar Facts

25. We note some unusual facts in this case. Though homebuyer's claim of Rs. 17,00,000/- has been admitted by the RP but her name does not figure in the list of CoC members. The Resolution Plan is stated to have been approved by the CoC by 100% voting while the homebuyer was not part of the CoC of the Corporate Debtor and did not vote on the plan.
26. We further note that the homebuyer's claim has been admitted under the category of 'Operational Creditor'. Even if as stated in the application, the homebuyer has submitted her claim in Form B which is for operational creditors, it is the duty of the RP to verify the nature of claim and admit it under the appropriate category in accordance with law. We are not satisfied with the conduct of the RP to treat a homebuyer an operational creditor. No plausible explanation has been provided as to why the RP had categorized the homebuyer as an operational creditor.
27. It is further noted that though the homebuyer's claim has been admitted as operational creditor, yet we find that in Form H, at Sl. No. 2(b)(i) of the table providing the amounts proposed to the stakeholders, claim of Rs. 17,00,000/- of homebuyer is mentioned under **unsecured financial creditor**. The revised resolution plan submitted by the SRA and was voted upon, after the admission of the claim of the said homebuyer but nothing has been mentioned about her voting. No explanation/clarification whatsoever has been provided on the categorization of the homebuyer and why despite being a financial creditor, the said homebuyer did not vote on the resolution plan.
28. Further, despite being a real estate company, the Corporate Debtor has only one homebuyer. It is noted from the Valuation Reports pertaining to 'land & building' that due to non-payment of development charges, the approval was cancelled by MIDC in the year 2019 and since then no construction



work was carried out by the Corporate Debtor. The CD was admitted to CIRP on 15.12.2023. We are unable to understand as to how only 1(one) homebuyer was left with outstanding claims whereas there are no other aggrieved homebuyers.

Valuation of Financial Assets

29. The Valuation Reports specially the ones on the financial assets of the Corporate Debtor need consideration.

- i) The book value of the 'Securities or Financial Assets' of the Corporate Debtor as on 15.12.2023, is Rs. 73,21,09,845/-, the details of which along with the valuation given by the two registered values are given below:

Particulars	Book Value	Fair value (Valuer 1)	Fair Value (Valuer 2)
Non-Current Investments	4,35,72,000	50,000	50,000
Long-term Loans & advances	63,70,47,751	-	-
Trade Receivables	5,05,66,726	-	-
Cash & Bank Balance	8,04,521	8,04,521	8,04,851
Other Current Assets	6,28,832	-	8210
Total	73,21,09,845	8,54,851	8,63,061

- ii) The Financial Assets with book value of Rs. 73,21,09,845 as on the ICD, have Fair Value, as determined by the Registered Valuers at Rs. 8.60 lakhs approx. It is noted that the Valuers have given nil/negligible value to trade receivables, long-term loans, and other current assets. The reasons for such determination provided in the report of Valuer 1 is reproduced below:

"II. NON-CURRENT ASSETS

i) Non-Current Investments

As per Latest Audited Balance as at 15.12.2023 there is Non-Current Investments amounting to Rs.4,35,72,000. As per details provided by the management, it consists of i)



Unquoted equity shares of Asahi Industries Limited Rs.6,60,000, ii) Unquoted equity shares of Reward Real Estate Co. Ltd. Rd. 4,28,62,000 and iii) Unquoted equity shares of Asmita Textiles & Real Estate Pvt. Ltd. **R. 50,000.** As per information of management i) Asahi Industries limited corporate insolvency process already completed ii) Reward Real estate Co. Ltd. under corporate Insolvency Process and share certificate also not available. Hence on the basis of above documents/ information therefore on the basis of available information we are taking its Fair Value and Liquidation Value is taken as Rs.50,000.

ii) Long Term Loans & Advances

As per Latest Audited Balance as at 15.12.2023 there is Long Term Loans & Advances amounting to Rs.63,70,47,751. As per details provided by the management, it consists of Loans & advances given to other companies as Unsecured Loans & Advances. And all above companies are under Corporate insolvency process (CIRP). Due to all companies under CIRP and claim also not submitted Hence therefore on the basis of available information, and after detailed evaluation its Fair Value and Liquidation Value is taken as **NIL.**

- iii) The reasons provided in the report of Valuer 2 is reproduced below:

“4.1 Non-Current Assets:

4.1.1 Non-Current Investments:

As per provisional financials as at 15/12/2023, Rs. 4,35,72,000/- shown as Unquoted Equity Shares. It includes M/s Asahi Industries Limited, m/s Reward Real Estate Company Limited and m/s Asmita Textile and Real Estate Private Limited. Since Asahi Industries Limited, and Reward Real Estate Company Limited both under CIRP process. As per public information and due to huge claim amount, there is no possibility to get any amount back. Third Investee company is M/s Asmita Textile and Real Estate Private Limited, which business operation seems doubtful and having no any tangible assets. So, its fair and liquidation value is considered as Rs. 50,000/- equal to its investment.

4.1.2 Long-Term Loans and Advances:

As per provisional financials as at 15/12/2023, Rs. 63,70,47,751/- shown as long term loans and advances. But all the companies which have received the loans are under CIRP process. And since all are unsecured loan there is very less amount probable to recover, So its fair and liquidation value is considered as nil.

4.2 Current Assets:

4.2.1 Trade Receivables:

As per provisional financials as at 15/12/2023, there is Rs. 5,05,66,726 shown in the trade receivables. But this amount is only carry-forward from more than five years. Even today there is no information to send any letters or through any other process to try debtor for recovery. Thus, these trade receivables seem unrecoverable. Considering this, its fair and liquidation value is considered as nil.”

30. It can be seen that the corporate debtor has made **non-current investments** by way of unquoted equity shares in three companies out of which two of them are under insolvency process and the third company's business operation are doubtful with no tangible.
31. Further, the **loans and advances** amounting to Rs. 63,70,47,751 has been given nil value due to non-submission of claims and less probability of recovery. It is unclear as to whether the CD's ex-management had taken any steps to recover these dues and further, what action was taken by the RP in this regard.
32. RP has not made any determination about the nature of the investments, loans and advances and trade receivables worth Rs. 73 crores odd with fair value of Rs. 8 lakhs only. The RP is an independent neutral professional who is required to examine such unusual and highly suspicious transactions and to take appropriate steps under the Code. There are no discussions about (i) non-current investment (ii) loans and advances (iii) trade receivables in any the CoC meetings. Any *bona fide* creditors would be interested in recovering such huge amounts of Corporate Debtor and to take appropriate steps under the Code. Non-action on the part of CoC and



RP could be possible only if such transactions are bogus/accommodation entries and CoC and CD do not want any action to keep the facts under the carpet. The conduct of CoC does not manifest exercise of commercial wisdom by an independent committee. The new shift in the position of creditors-in-possession from debtors-in-possession was with expectation that CoC would be responsible in unearthing the real nature of transactions by the CD and to resolve the crisis faced by CD in genuine cases not to abuse the process by giving clean chit to the suspicious transactions. We have discussed how CoC members are connected with CD and having influence, in the later part of this order.

33. Further, the fact that though the RP received 32 EoIs from PRAs, none except the SRA paid the EMD of Rs. 1,00,000/- and therefore, only the SRA was in the provisional and final PRA list is also comprehensible. Amount of Rs. 1,00,000/- as EMD was not deposited by all other entities except the SRA, while the figure of Rs. 1,00,000/- does not appear to be a large amount for a corporate debtor which has a fair value of approx. Rs. 24 crores. Therefore, question arises whether there was actually wide publication of Form G to attract genuine resolution applicants. We have also discussed how the resolution application is connected with CD in the later part of this order.
34. As already noted above, the Implementation of the Resolution Plan seems sceptical considering the Net worth of the SRA and the Sources of Funds stated in the Resolution Plan.
35. Further, M/s DTH & Associates LLP had issued certificate that the SRA is not ineligible under Section 29A of the Code, deep analysis of the Affidavits shows that there is relationship between the SRA and the Corporate Debtor which was also recorded by this Tribunal in the interim order dated 16.06.2024:

“6. We have also perused the certificate dated 29.05.2024 issued by M/s DTH & Associates LLP the Practicing Company Secretary



in compliance report under Section 29A of Code for SRA. It is noted that the SRA has following shareholders:

Sr. No.	Name of Shareholders	No. of Equity Shares held	% of share holding
1.	Adon Textiles Private Limited	5000	50
2.	Shivprasad Realcon & Textiles Private Ltd.	5000	50
	Total	10,000	100

M/s Adon Textiles Private Limited who is presently 50% shareholder of the SRA was in the past shareholder of the CD till 15.02.2021.”

36. The Company Petition was filed under section 7 of the Code on 27.06.2023. It is noticed that one of the shareholders of the SRA holding 50% shares in SRA was the shareholder of the corporate debtor and transferred its shares to Cyra Capital Private Limited on 15.02.2021.
37. It is further noted from the Affidavit dated 10.06.2025 that the SRA is relying on the investment by one M/s Growex Investment Private Limited. The Bank Statement of Growex Investment Private Limited for the period from 01.12.2024 to 02.06.2025 is annexed to the Affidavit. Perusal of the Statement of Account of Growex Investment Private Limited (from 01.12.2024 till 02.06.2025) shows that as on 01.06.2025, the amount available in the Bank account of Growex Investment was Rs. 5,01,558/- (Rupees Five Lakh One Thousand and Five Hundred and Fifty-Eight only). The Profit and Loss Statement of Growex Investment Private Limited as on 31.03.2025 reveals that the Company has a Net profit of Rs. 3,38,131/- (Rupees Three Lakhs Thirty Eight Thousand One Hundred and Thirty One only).
38. However, on 01.06.2025, after this Tribunal raised query about implementation of the resolution plan and the financial strength of the SRA, a total amount of Rs.14,75,39,050/- was credited to the said bank account of the SRA thereby raising the total balance amount available with Growex



Investment to Rs. 14,80,40,608/- (Rupees Fourteen Crores Eighty Lakhs Forty Thousand Six Hundred and Eight only). What is further alarming is that said amount of Rs. 14,75,39,050/- was transferred to the Investor's account by same M/s Adon Textiles Private Limited, past shareholder of the Corporate Debtor till 15.02.2021 and shareholder of the SRA, funding Growex Investment, which is stated to be the financial investor having strong liquidity position to fund future business prospectus of real estate and having agreed for subscription to debentures of the SRA. What is not disclosed is the entire funds of this so-called financial investor are provided by the past shareholder of the corporate debtor.

39. We have also analysed the transferee to whom this past shareholder of the corporate debtor has transferred its shares.

Relationship between the Successful Resolution Applicant and Corporate Debtor

40. We have referred to the website of the Ministry of Corporate Affairs (**MCA Website**) for relevant details of the companies involved in and connected to the present case.
41. It is a noticed that Adon Textiles Pvt. Ltd. was a 50% shareholder of the Corporate Debtor until February 2021 and thereafter, transferred its entire shareholding in CD to Cyra Capital.
42. Mr. Pramod Kumar was a common director on the Board of Adon Textiles Pvt. Ltd. and M/s Royal Compservices Pvt. Ltd. until May/June 2025. As per the definition of 'related party' under section 2(76) of Companies Act, 2013, a company is said to be a related party to another private limited company in which, a director is a member or director. Therefore, Adon Textiles Pvt. Ltd. (past shareholder of the CD and indirect funder of the resolution plan) and Royal Compservices Pvt. Ltd. are related party.
43. Another director of Royal Compservices Pvt. Ltd. is Mr. Ashokbhai Ramubhai, who is also a director of Cyra Capital (present 50% shareholder



of Corporate Debtor). By virtue of section 2(76) of the Companies Act, 2013, Compservices Pvt. Ltd. and Cyra Capital Pvt. Ltd. are related party. Thus, **Adon Textiles Pvt. Ltd., Royal Compservices Pvt. Ltd. and Cyra Capital Pvt. Ltd. are related parties.** Adon Textiles Pvt. Ltd, past shareholder of the CD holding 50% share capital of the CD has transferred its entire shares to another related entity i.e. Cyra Capital Pvt. Ltd. which is the present shareholder of the CD. It can be seen that past shareholder of the CD, after transferring its entire shareholding to another related party is indirectly funding the resolution plan.

44. Further, Mr. Pawitter Singh who is director of the Corporate Debtor, is also a director in M/s Ritu Multitrade Services Private Limited. Therefore, CD and Ritu Multitrade Services Pvt. Ltd. are related party. It is further noted that one Mr. Kran Ananta Nemade who is an ex-director of Ritu Multitrade (Until August 2023), was also a director of Adon Textiles Private Limited until May 2024. We find deep entanglement of the past shareholder of the CD who is funding the resolution plan and the CD.
45. As it is found that Adon Textiles Private Limited is funding the resolution plan and is related to the present shareholder of the CD, the resolution plan can be rejected on this ground alone. There are some more relationships which have been unearthed during the analysis.

Relationship between Adon Textiles and CoC Members

46. **Adon Textiles and Rajdeep Clothing and Advisory:** Mr. Pramod Kumar, who is a director of Rajdeep Clothing, was also a director of Adon Textiles until 02.05.2025. The plan was approved by the CoC in the 5th CoC meeting held on 13.07.2024 when both Adon Textiles Private limited and Rajdeep Clothing and Advisory Private Limited were related party by virtue of common director Mr. Pramod Kumar. We have already held that Adon Textiles Private Limited is related to CD and we now find that Adon is also related to Rajdeep Clothing and Advisory Private Limited which is a CoC member. Thus, relationship between CD and CoC member is also established.



47. **Adon Textiles and Anukaran Consultancy:** Mr. Ritesh Gujar was director of Adon Textiles and Picturesque Trading Private Limited till May 2024. Therefore, Adon and Picturesque Trading Private Limited were related party by virtue of a common director till May 2024. It is to be noted that Picturesque Trading Private Limited is a shareholder of Anukaran Consultancy holding 50% of share capital. Therefore, relationship between Adon, Picturesque and Anukaran cannot be ignored meaning thereby Anukaran Consultancy is also related party to the CD.

Intertwinement between the members of CoC and the Corporate Debtor and also relationship amongst the CoC Members

48. It is relevant here to also ascertain the relationship between the CoC members and the Corporate Debtor:

I. CD and Wellworth Apparels Private Limited

- i) Wellworth Apparels is the original petitioner and a CoC Member holding 1.88% voting share in the CoC.
- ii) Cyra Capital Pvt. Ltd. holds 50% share capital of the Corporate Debtor and also 50% share capital of Wellworth Apparels.
- iii) Vervain Trade and Mercantiles holds 50% share capital of Wellworth Apparels as well as 50% share capital of Cyra Capital (which is a shareholder of the Corporate Debtor).
- iv) Thus, Cyra Capital Private Limited is a common link between and the Corporate Debtor and Wellworth and controls both by virtue of 50% share capital of both the entities. Wellworth being related to the CD does not have any voting right in the meeting of CoC and therefore could not vote on resolution plan.

- v) It was at the behest of Wellworth Apparels that the CIRP of the Corporate Debtor commenced.

II. CD and Anukaran Consultancy Private Limited

- i) Anukaran Consultancy Private Limited is a member of CoC holding 77.76% voting share in the CoC, on account of guarantee and not by disbursing any loan to the CD.
- ii) Cyra Capital Private Limited (50% shareholder of Corporate Debtor): Mr. Ashokbhai Ramubhai Bhandari is a director of Cyra Capital and also of one M/s Kauser Textiles Private Limited. It is to be noted that Kauser textiles is a shareholder of Anukaran Consultancy holding 50% of its shares. Thus Anukaran Consultancy, Kauser and CD are related parties. Anukaran Consultancy being related to CD did not have voting right in the CoC and could not have voted in the resolution plan.

III. CD and Rajdeep Clothing and Advisory Private Limited (Rajdeep)

- i) Mr. Pawitter Singh: He is a director of the Corporate Debtor and also a director of M/s Expro Constructions. Thus, CD and Expro Constructions are related party. Further, Ms. Jyoti Ramnihar is a director of Expro Constructions and also a director of Rajdeep Clothing. Thus CD, Expro and Rajdeep Clothing are related parties.
- ii) Cyra Capital: Cyra Capital is a 50% shareholder in the Corporate Debtor. One of the directors of Cyra Capital is Mr. Ashokbhai Ramubhai Bhandari who is also a director in one M/s Royal Compservices. It is to be noted that Mr. Pramod Kumar Yadav is another director of M/s Royal Compservices and he is also a director in Rajdeep Clothing. Therefore, CD and Rajdeep are related party on this account also.



- iii) Thus, Rajdeep Clothing and Advisory Private Limited being related to CD did not have voting right in CoC and could not have voted for the resolution plan.

49. The relationship amongst the CoC are ascertained as followed:

I. Anukaran Consultancy Private Limited (Anukaran) and Wellworth Apparels Private Limited (Wellworth):

Mr. Chetan Vinodbhai Patel is director in Anukaran as well as Wellworth. Thus both CoC members are connected.

II. Anukaran and Rajdeep

Picturesque Trading Private Limited is a shareholder of Anukaran holding 50% of its shares. Mr. Pramod Kumar Yadav is a director of Picturesque Trading as well as Rajdeep.

III. Wellworth and Rajdeep Clothing

Wellworth is a connected to Anukaran which is a connected party of Rajdeep.

50. The Hon'ble Supreme Court in ***Phoenix ARC Private Limited vs Spade Financial Services Limited & Ors. [Civil Appeal No. 2842/2020]***, had observed that in determining whether an entity/person is participating in the policy making process of Corporate Debtor, *“while a strict determination of intent or mens rea may not always be possible by the NCLT and NCLAT in summary proceedings, it is possible to draw the inference from the facts at hand.”*

51. In the present case, the discussions and observations made in the preceding paragraphs clearly shows that the Corporate Debtor and its CoC members have a deep entanglement and there have also been interchanging of directors from one company to another which shows that the directors of these companies have a long-standing relationship which could potentially lead to influence over the management of the other companies and are covered as related party under section 2(76)(vii) of the Companies Act, 2013 and under section 5(24) of the Code.



52. Section 21(2) of the Code prohibits inclusion of a creditor in the CoC if such creditor is a related party of the Corporate Debtor. Section 21(2) is reproduced below:

“(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors.”

53. The intent of Section 21(2) of the Code is to prevent biasness on the decisions taken by the CoC during the CIRP of the Corporate Debtor which may be prejudicial to unrelated financial creditors.
54. We are of considered view that all of the 3 (three) CoC Members being related parties of the Corporate Debtor have been wrongly allowed to participate and vote in the CIRP of the Corporate Debtor. Further, the fact that Adon Textiles which is a 50% shareholder in the SRA, is connected to the CoC Members puts question mark on the authenticity of the entire CIRP process and the approval of the resolution plan. Accordingly, we hold the voting on the resolution plan as null and void, and consequently, the approval of the Resolution Plan submitted by the SRA is also held to be in gross violation of the provisions of the Code.
55. The Hon’ble NCLAT in ***STROS-Sedlcanske Strojirny, a.s. vs. Poonam Basak, IRP for STROS Esquire Elevators & Hoists Pvt. Ltd. [Company Appeal (AT) (Ins) No. 2159/2024*** (decided on 12.08.2025), held that a CoC could not be constituted where the Corporate Debtor has a sole financial creditor and such creditor is a related party. The Hon’ble NCLAT had considered liquidation of the Corporate Debtor as an appropriate scenario in such cases. The relevant observations are reproduced below:

“5.2. ...Even if the CD has commercial existence, still in a scenario where a CoC could not be constituted then the



resolution process can never commence. After all, constituting the CoC is central to the theme of resolution process and the IBC has not provided for commencing a CIRP without the CoC at the helm of the said process. The only avenue then open is to pursue liquidation.

6. Looking the issue from both the aspects stated above, the option open is to direct liquidation of the CD. So far as the impugned order is concerned, this Tribunal is not in agreement with the conclusion of the Adjudicating Authority. It has created an impasse. It must be underscored that no judicial for a which may include the Tribunals can declare its helplessness to remedy a situation and leave the one who approached it stranded without a solution. Necessarily, the Order now under challenge is liable to be interfered with.

7. In conclusion, this appeal is allowed and the Order of the Adjudicating Authority dated 06.09.2024, in I.A. 783/2022 in C.P.(IB) 308 of 2020 on the file of NCLT, Ahmedabad is set aside, and this Tribunal directs liquidation of the corporate-debtor. The matter is now remanded back to the Adjudicating Authority, and it is now required to appoint a liquidator in terms of the relevant provisions of the IBC and continue the liquidation process as envisaged in the Code.”

56. In the present case, since all the members of the CoC have been declared ineligible to participate and vote on the CIRP (including the resolution plan) of the Corporate Debtor, we are left with no option but to order for liquidation the Corporate Debtor under section 33(1)(b)(i) of the Code.

57. Accordingly, we direct liquidation of **M/s Dhruvi Properties Private Limited**, with the following directions:

- i) The Corporate Debtor, Dhruvi Properties Private Limited, is ordered to be liquidated under Section 33(1)(b)(i) of the Code, in the manner as laid down in Chapter-III of Part-II of the Code.
- ii) We hereby appoint **Mr. Amit Vijay Karia**, having Registration No. IBBI/IPA-001/IP-P-02600/2021-2022/13969 (e-mail id: ipamitkaria@gmail.com), as per Section 34(4) of the Code, as the



Liquidator of the corporate debtor to conduct liquidation process in accordance with law.

- iii) The Liquidator shall be paid in accordance with regulation 4(1-A) of IBBI (Liquidation Process) Regulation, 2016.
- iv) The Moratorium declared under Section 14 of the Code shall cease to operate from the date of this order. A fresh moratorium shall commence under Section 33(5) of the Code from the date of this order.
- v) The Liquidator is directed to proceed with the process of liquidation as laid down under Chapter III of the Part II of Insolvency and Bankruptcy Code, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- vi) The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- vii) The Liquidator shall comply with the Liquidation Regulations and accordingly submit quarterly Progress Reports as per Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and shall further apprise the Bench about the Liquidation Process of the Corporate Debtor.
- viii) This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the liquidator as per Section 33(7) of the Code.



- ix) Subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceedings on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
- x) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- xi) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of Chapter III Part-III of the Code read with the Liquidation Process Regulations.
- xii) All persons connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- xiii) Registry shall forward a copy of this Order to:
 - i. Insolvency and Bankruptcy Board of India, New Delhi;
 - ii. Regional Director (Western Region), Ministry of Corporate Affairs, e-mail id: rd.west@mca.gov.in;
 - iii. Registrar of Companies – Maharashtra, e-mail id: roc.mumbai@mca.gov.in;
 - iv. Erstwhile RP - Mr. Modilal Dhanraj Pamecha e-mail id: camodilalpamecha@gmail.com;
 - v. Liquidator- Mr. Amit Vijay Karia e-mail id: ipamitkaria@gmail.com
- xiv) With the above observations and directions, the Plan Approval IA 68/2024 stands **rejected**.



Relationship between the Corporate Debtor and Wellworth Apparels (Original Petitioner)

58. It is a matter of fact that Wellworth Apparels is the Original Petitioner at whose behest the Corporate Debtor was admitted to CIRP. It is pertinent here to look back at the sequence of events that had transpired during the hearing and admission of CP/565 which are summarised below:

- (i) 07.07.2023: The matter came on the Board for the first time and notice was issued to the Corporate Debtor with a direction that reply be filed within two weeks from the date of receipt of notice. Matter was posted on 16.08.2023.
- (ii) 16.08.2023: Since none appeared for the Corporate Debtor, the Corporate Debtor was set *ex-parte*.
- (iii) 28.11.2023: The Bench heard the Ld. Counsel for the Petitioner and the matter was reserved for orders.
- (iv) 15.12.2023: Corporate Debtor was admitted to CIRP.

59. The Corporate Debtor neither filed any reply nor represented during hearings. In fact, the Corporate Debtor did not participate in the entire proceedings. It was only on the basis of the material placed on record by the Petitioner that the admission of the Corporate Debtor into CIRP was ordered by this Tribunal.

60. It is noted that the CoC of the Corporate Debtor was initially constituted with Well worth Apparels Private Limited (Original Petitioner) as the sole creditor. Thereafter, in the 1st CoC Meeting was held on 19.01.2024 and the Applicant was confirmed as the RP. Thereafter, the CoC was reconstituted with three unsecured financial creditors. The revised list of creditors as on 15.02.2024 is as follows:

Name of the Unsecured Creditors	Claim Admitted (In Rupees)	Voting Shares (%)	Nature of Debt
Wellworth Apparels Pvt Ltd	9,98,49,560	1.88%	Loan disbursement



Anukaran Consultancy Pvt Ltd	4,13,59,69,805	77.76%	Guarantee given by CD
Raj deep Clothing and Advisory Pvt Ltd	1,08,33,30,731	20.37%	Guarantee given by CD
Total	5,31,91,50,096	100.00%	

61. It is pertinent to note that as per the Minutes of the 2nd CoC Meeting held on 15.02.2024, the Corporate Debtor is a Guarantor of the newly added two creditors i.e. Anukaran Consultancy Private Limited and Rajdeep Clothing and Advisory Pvt. Ltd.
62. The Search Report dated 30.05.2025 has been issued by Ms. Taruna Kumbhar, Practising Company Secretary (PCS) in respect of the details of directors and shareholders of the Corporate Debtor and that of the CoC Members. Though the Search Report concludes that none of the CoC Members can be termed as a related party to the Corporate Debtor, however, a deeper scrutiny and analysis as discussed in foregoing paragraphs reveals deep entanglement between the Corporate Debtor and the CoC Members including the Petitioner i.e. Wellworth Apparels Private Limited, at whose behest the CIRP of the Corporate Debtor was initiated.
63. The analysis in this regard is also captured in the interim order dated 16.06.2025 as follows:
2. ... As per the MCA record captured in the said report M/s Adon Textiles Private Limited was shareholder of the Corporate Debtor with 50% shareholding till F.Y. 2019-20. Thereafter, the shares held by Adon Textiles Private Limited stood transferred to Cyra Capital Private Ltd. on 15.02.2021. Thus, Cyra Capital Private Ltd. is presently 50% shareholder of the corporate debtor.
 3. It is further noted that Cyra Capital Private Ltd. is also holding 50% shareholder in Wellworth Apparels Private Ltd., which is the petitioner in the present C.P. at whose behest the insolvency proceedings has been initiated against the corporate debtor and is one of the CoC members. Thus, Cyra Capital Private Ltd. is the



common entity which is controlling the petitioner FC as well as the CD.

4. *It is further noted that shareholders of Wellworth Apparels Private Ltd., FC are:*

<i>Sr. No.</i>	<i>Name of Shareholders</i>	<i>No. of Shares</i>	<i>% of share holding</i>
1.	<i>Vervain Trade and Merchandise Private Limited</i>	<i>5,000</i>	<i>50</i>
2.	<i>Cyra Capital Private Limited</i>	<i>5,000</i>	<i>50</i>
	<i>Total</i>	<i>10,000</i>	<i>100</i>

5. *It is further noted that one of the shareholders of Cyra Capital Private Ltd. is Vervain Trade and Merchandise Private Limited holding 50% share. Undoubtedly, there is deep connection between the FC and CD in the present case.”*

64. In the present case, it is noticed that Wellworth Apparels is the only lender in the CoC that has directly disbursed loan to the Corporate Debtor. The claims of the other two creditors have been admitted on the strength of the Corporate Guarantees provided by the Corporate Debtor and therefore, there is no direct disbursement of money from these creditors to the Corporate Debtor. Moreover, in the 2nd CoC Meeting held on 15.02.2024, it is recorded that these two creditors have also filed their respective claims before the RP of the Principal Borrower.

65. We also note that vide the admission order dated 15.12.2023, the Original Petitioner i.e. Wellworth Apparels Pvt. Ltd. was directed to deposit an amount of Rs. 5 Lakhs towards the initial CIRP Costs. However, despite such a direction, Wellworth Apparels has not complied with the same even till the approval of the resolution plan, which is evident from the Minutes of the CoC Meetings, relevant portion of which are reproduced below:

“1st CoC Meeting held on 19.01.2024:

“xxx



Written mail was sent on 22/12/2023, 26/12/2023, 28/12/2024 and 10/01/2024 to wellworthapparels@hotmail.com (Wellworth Apparels Private Limited) Applicant to Deposit an amount of Rs 5 lakhs as directed by Hon' ble NCLT, However till date the Deposit is not yet made. Relevant extract of the order is as under

“(h) The Financial Creditor shall deposit an amount of Rs 5 Lakhs towards the initial CIRP cost by way of Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. (CoC)”

3rd CoC Meeting held on 14.05.2024

CoC is apprised that Applicant Financial Creditor Wellworth Apparels Pvt Ltd has not fully paid deposit of Rs 5 lakhs as directed by Hon'ble NCLT in its order.

Resolution Professional has send reminders mail to Applicant Financial Creditors many times and requested to ensure Compliance of the order of Hon'ble NCLT at the earliest.

CoC is further Appraised that CIRP is in advance stage, Resolution Plan is received and it is before CoC for their consideration.

Currently There is no funds available with Resolution Professional to fund the CIRP cost, however looking at the urgency of the situation certain urgent payments like Public Announcement of Form A, Form G , MCA Filing, etc is made by Resolution Professional from his own Funds.

RP has requested CoC to contribute to current CIRP cost in Proportion of Respective Voting Share, accordingly Mail has been sent to all CoC members to make their contribution at the earliest including Applicant CoC member i.e. Wellworth Apparels Pvt Ltd to make Balance Deposit of Rs 4.00 Lakhs to RP as directed by Hon'ble NCLT in its order in the Matter of Dhruvi Properties Pvt Ltd.”

“4th CoC Meeting held on 26.06.2024:

CoC is apprised that Applicant Financial Creditor Wellworth Apparels Pvt Ltd has not fully paid deposit of Rs 5 lakhs as directed by Hon'ble NCLT in its order. Resolution Professional has send reminders mail to Applicant Financial Creditor many times and requested to ensure Compliance of the order of Hon'ble NCLT at the earliest.



CoC is further Appraised that CIRP is in advance stage, Resolution Plan is received and it is before CoC for their consideration.

RP has requested CoC to contribute to current CIRP cost in Proportion of Respective Voting Share, accordingly Mail has been sent to all CoC members to make their contribution at the earliest including Applicant CoC member i.e. Wellworth Apparels Pvt Ltd to make Balance Deposit of Rs 4.00 Lakhs to RP as directed by Hon'ble NCLT in its order in the Matter of Dhruvi Properties Pvt Ltd."

66. It is still unclear as to whether or not the balance amount of Rs. 4 Lakhs has been paid by Wellworth Apparels. Further, it is also observed that the RP has not moved any application seeking direction for payment of the initial deposit as directed in the admission order dated 15.12.2023.

67. Considering the entire gamut of facts in the present case and the entanglement between Wellworth and Corporate Debtor as well as the relationship between the Wellworth and the other CoC Members of the Corporate Debtor, it is highly suspicious that the initiation of CIRP Process against the Corporate Debtor by Wellworth Apparels Private Limited has itself been done for purpose other than resolution of the Corporate Debtor.

68. Section 65 of the Code makes initiation of CIRP process with fraudulent or malicious intention a punishable offence as follows:

"65. Fraudulent or malicious initiation of proceedings. - (1)
If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees."

69. We refer to Rule 59 of the National Company Law Tribunal Rules, 2016 which states as follows:

"59. Procedure for imposition of penalty under the Act.

(1) Notwithstanding anything to the contrary contained in any rules or regulations framed under the Act, no order or direction



imposing a penalty under the Act shall be made unless the person or the company or a party to the proceeding, during proceedings of the Bench, has been given a show cause notice and reasonable opportunity to represent his or her or its case before the Bench or nay officer authorised in this behalf.

(2)In case the Bench decides to issue show cause notice to any person or company or a party to the proceedings, as the case may be, under sub-rule (1), the Registrar shall issue a show cause notice giving not less than fifteen days asking for submission of the explanation in writing within the period stipulated in the notice.

(3)The Bench shall, on receipt of the explanation, and after oral hearing if granted, proceed to decide the matter of imposition of penalty on the facts and circumstances of the case.”

70. Since this Tribunal is taking up this issue under section 65 of the Code *suo-moto*, we deem it appropriate to first issue notice to the Original Petitioner i.e. Wellworth Apparels Private Limited.

71. **Conclusion**

- a) We hold that the three members of CoC mentioned in the reconstituted list of CoC are related to CD and have no voting right in the CoC meetings. The resolution plan submitted by the SRA and approved by CoC members in 5th CoC is held to be in gross violation of the provisions of the Code. Accordingly, resolution plan is rejected and I.A. No. 68 of 2024 in C.P. 565 of 2023 is **dismissed**.
- b) Issue Notice to M/s Wellworth Apparels Private Limited under section 65(1) of the Code read with Rule 59 of the NCLT Rules, 2016 providing 15 days' time to show cause (in writing) as to why a penalty under section 65 of the Code should not be imposed on it.
- c) The Registry is directed to send a show-cause notice under section 65(1) of the Code to M/s Wellworth Apparels Private Limited.
- d) Copy of the order be forwarded to IBBI for its record.



- e) Registry is directed to allot a fresh Application number for the proceedings for which the Show-cause Notice is being issued to Wellworth Apparels under Section 65(1) of the Code, and list the new application as and when the application number is allotted.

Sd/-

Hariharan Neelakanta Iyer

Member (Technical)

Sd/-

Lakshmi Gurung

Member (Judicial)

Uma