

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 2969 OF 2021

Under Section 60 (5) of Insolvency &
Bankruptcy Code, 2016

**Edelweiss Asset Reconstruction
Company Limited**

...Applicant

Vs.

PK Hospitality Services Private
Limited

...Respondent

I.A. 5843 OF 2023

I.A. 327 OF 2024

Under Section 60 (5) of Insolvency &
Bankruptcy Code, 2016

PKH Ventures Limited

...Applicant

V/s

Monitoring Agency of Amar Remedies
Limited & Another

...Respondents

I.A. 2057 OF 2023

I.A. 2969 OF 2021
I.A. 2057 OF 2023
I.A. 5843 OF 2023
I.A. 327 OF 2024
I.A. 2399 OF 2021
I.A. 2494 OF 2022

In
C.P (IB) 1053/MB/2017

Under Section 60 (5) of Insolvency &
Bankruptcy Code, 2016

PK Hospitality Services Private
Limited

...Applicant

V/s

Monitoring Agency of Amar Remedies
Limited & Another

...Respondents

I.A. 2399 OF 2021

Under Section 60 (5) of Insolvency &
Bankruptcy Code, 2016

PK Hospitality Services Private Limited

...Applicant

V/s

Securities and Exchange Board of India

...Respondents

I.A. 2494 OF 2022

Under Section 60 (5) of Insolvency &
Bankruptcy Code, 2016

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 2969 OF 2021
I.A. 2057 OF 2023
I.A. 5843 OF 2023
I.A. 327 OF 2024
I.A. 2399 OF 2021
I.A. 2494 OF 2022
In
C.P (IB) 1053/MB/2017

Anil Goel,

The Resolution Professional

...Applicant

V/s

PK Hospitality Services Private Limited

...Respondents

In the matter of

C.P.(IB) No. 1053/MB/2017

Amar Remedies Limited

...Corporate Applicant

Order delivered on: 11/03/2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant in 2969/2021 : Mr. Mustafa Doctor, Sr. Adv.
a/w Ms. Suchitra Valjee and Ms.
Riya Vasa, Advocates

For the Applicant in 2494/2022 : Ms. Prashansa Agarwal, Adv.

For the Respondent 2 in 327/2024 : Mr. Mustafa Doctor, Sr. Adv.
a/w Ms. Suchitra Valjee and Ms.
Riya Vasa, Advocates

THE NATIONAL COMPANY LAW TRIBUNAL
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I.A. 2969 OF 2021
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In
C.P (IB) 1053/MB/2017

For the R1 in 5843/2023 : Mr. Mustafa Doctor, Sr. Adv.
a/w Ms. Suchitra Valjee and Ms.
Riya Vasa, Advocates

For the Monitoring Committee : Ms. Prashansa Agarwal, Adv.

For the Successful Resolution : Mr. Vidit Divya Kumat, Adv.
Applicant

For the PKH Ventures Limited : Mr. Vikram Nankani, Sr. Adv.

For the Applicant in 2399/2021 : Mr. Amir Arsiwala, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 2969/2021 is filed by Edelweiss Asset Reconstruction Company Limited, (“Financial Creditors” or “MC Member”) in the matter of Amar Remedies Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code") seeking following prayers:

- a. *Order liquidation of the Corporate Debtor, i.e. Respondent No. 3, under Sections 33(3) r/w 33(1)(b) of the Insolvency and Bankruptcy Code, 2016;*
- b. *Order declaring that the Earnest Money Deposit of the sum of Rs. 25,00,000/-submitted by Respondent No.1 on 9th May, 2018, and the Bank Guarantee of the sum of Rs. 35,00,000/- and Rs. 2,00,00,000 submitted by Respondent No. 1 on 19th November, 2020 and January 16th, 2021 respectively stands forfeited in terms*

of in terms of Regulation 36B (4A) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016;

- c. Order directing that a meeting of the Committee of Creditors of Respondent No. 3 be held to fix the liquidation costs under Regulation 39D of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016;*
- d. Order declaring that the Resolution Plan approved by Order dated 25th March 2021 has been contravened, and has thus failed, and now ceases to have any effect in law;*
- e. Order directing the Resolution Applicant, i.e. Respondent No. 1, to handover possession of all the office premises and/or plants and/or factories and/or assets of Respondent No. 3 to Respondent No. 2, or to the Liquidator appointed by this Hon'ble Tribunal, or to such other person, as this Hon'ble Court may deem fit and proper;*
- f. Pending the hearing and final disposal of the present Application, Respondent No. 1 be restrained by an order of injunction from managing and/or participating in the affairs of the Corporate Debtor, i.e. Respondent No. 3, and from dealing with and/or utilizing and/or creating any right, title or interest by way of sale, lease, license, mortgage hypothecation or otherwise and/or creating any other encumbrance in the assets and/or properties of the Corporate Debtor, i.e. Respondent No. 3;*

g. Pass such other and further Orders as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case, and in the interest of justice, equity and good conscience.

2. The Chairman of Monitoring committee has filed another Application no. 2494/2022 on 16.08.2022 seeking direction to SRA to handover the assets of Corporate Debtor to the Monitoring Committee till the final adjudication of IA 2969/2021 filed by Financial Creditor.
3. Another Application no. IA 5843/2023 is filed by PKH Ventures Limited, the Successful Resolution Applicant (“SRA”) in the matter of Amar Remedies Limited under Section 60(5) of the Code seeking following reliefs:
 - a. Dismiss Interlocutory Application No. 2969 of 2021 filed by the Respondent No. 2;*
 - b. Declare that the Applicant is not liable to pay any interest upon the amount outstanding to be paid under the Sanctioned Resolution Plan;*
 - c. Permit the Applicant to deposit the entirety of the amount remaining to be paid under the Sanctioned Resolution Plan, i.e., Rs. 29.34 Crores, into an Escrow Account identified and opened by the Respondent for this very purpose, within a period of three weeks from the date of the order permitting it to do so;*
 - d. Direct that the amount deposited into the Escrow Account shall be appropriated by the Respondent towards payments to stakeholders under the Sanctioned Resolution Plan only after:*

(1) Change of status of Corporate Debtor from a company "in liquidation" to an "active" company, in the records of the Registrar of Companies, as sought in IA/2747/2021;

(2) Clarity as to the applicability of the amended provisions of the Securities Contracts (Regulations) Rules, 1959, as sought in IA/2399/2021:

(3) Setting aside of the illegal order of delisting of the shares of the Corporate Debtor during its CIRP. by the recognized stock exchanges.

- 3.1. The Successful Resolution Applicant filed another application 2747/2021 on 13.11.2021, seeking direction against the Registrar of Companies to update the status of Amar Remedies Limited from their records as "Active" and not "Under Liquidation".
- 3.2. The Successful Resolution Applicant filed another application 2399/2021 on 08.09.2021 seeking direction against the SEBI not to take any coercive action against the Applicant arising out of implementation of the Resolution Plan sanctioned by this Tribunal to the extent of reduction of public shareholding below 5%, or in alternate, seeking liberty to amend the Resolution Plan by filing an addendum, to bring the terms of the sanctioned Resolution Plan in line with the Provisions of the Securities Contracts (Regulation) Rules, 1957.
- 3.3. The Successful Resolution Applicant filed another application No. 2057/2023 on 17.5.2023 seeking extension of time for payment of total amount under the Sanctioned Resolution Plan to a period of 30 days after change in status of Corporate Debtor by the Registrar of Company, clarification on applicability of amended provisions of the Securities Contracts (Regulations) Rules, 1959, and setting

aside of order of delisting of shares of the Corporate Debtor as sought in Writ Petition No. 3275/2021.

3.4. The Successful Resolution Applicant filed an application 327/2024 seeking rectification of Order dated 4.1.204 passed by this Tribunal in IA 5843/2023. The prayer in these applications are covered in prayers in Application no. 5843/2023 or pertains to the prayer therein, accordingly these applications are also being adjudicated via this Order.

4. The Successful Resolution Applicant submitted a resolution plan to take over Corporate Debtor and the same was subsequently amended from time to time. This Resolution Plan was approved by the Committee of Creditors ("COC") of the Corporate Debtor at its 18th meeting held on the 8th of January, 2021. The Resolution Plan submitted by the present Applicant came to be approved by the COC with 88.78% of its voting share in favour. Accordingly, the erstwhile Resolution Professional issued a Letter of Intent dated the 15 of January, 2021, in favour of the present Applicant.

4.1. Under the terms of the approved Resolution Plan, the claims of the secured financial creditors who voted in favour of the Plan were to be settled by the payment of a sum of Rs. 26,86,96,729/-. The overall Resolution Plan value was Rs. 31,59,00,000/-. This amount had to be paid in entirety in four instalments within a period of 180 days from the date of approval of the Resolution Plan. Put otherwise, the entire amount had to be paid within 180 days of 25th March 2021, i.e., by 21 September 2021.

4.2. The erstwhile Resolution Professional filed an application being Interlocutory Application No. 137/2021 before this Hon'ble Tribunal under Section 30 (6) of the IBC seeking sanction of the Resolution Plan submitted by the Applicant in terms of section 31 of the IBC. This application was followed by way of an order dated the 25th of March, 2021. Under the terms of the sanction Resolution Plan, the present Applicant was to be handed over custody of the Corporate Debtor immediately upon its approval by this Tribunal. It was the commercial proposal of the Applicant that the industrial undertaking of the Corporate Debtor shall be operationalised as soon as possible so that it can start generating revenue. The commercial plan submitted by the Applicant envisaged that the Corporate Debtor would become operational, and it is for that reason that the Resolution Plan was found viable and feasible by all concerned.

5. It is the case of the Applicant that Respondent No. 1 has defaulted on each one of the instalments envisaged under the approved Resolution Plan, and not a single payment has been received by the Monitoring Agency or by any of the creditors of the Corporate Debtor till date. Moreover, these defaults have not been cured despite multiple reminders having been issued by the Applicant and/or by Respondent No. 2.

5.1. When the deadline to make upfront payment was approaching and given that SRA was yet to make any payments, an email was addressed to SRA on 4th June 2021 calling upon them to make upfront payment of Rs. 5.25 Crore (after adjusting the amount of

Rs. 25 Lakh received as EMD) latest by 23rd June 2021. Thereafter a follow up email was addressed on 15th June 2021.

- 5.2. The issue was also flagged in the meetings of the Monitoring Agency from time to time. The first meeting of the Monitoring Agency was held on 19th May 2021, when representatives of the Applicant herein, SRA as well as erstwhile Resolution Professional were present. At this meeting, when reminded of the terms of the approved Plan, SRA agreed to make the upfront payment of Rs. 5.25 Crores by 25th June 2021. Expectedly though, this promise, and assurance remained unfulfilled.
- 5.3. On 23rd June 2021, SRA is stated to have issued a letter to the Monitoring Committee of the Corporate Debtor informing that it had sought directions from this Tribunal to the effect that the National Stock Exchange and the Bombay Stock Exchange be directed to keep the equity shares/securities of the Corporate Debtor listed. SRA further stated that the Corporate Debtor ceased to be a going concern, as it was no longer a listed entity and hence this threatens the implementation of the Resolution Plan in toto.
- 5.4. SRA also apprised the other members that it had filed a Writ Petition before the Hon'ble Bombay High Court claiming reliefs similar to the ones sought before the Hon'ble NCLAT. In light of the proceedings filed before the Hon'ble NCLAT and the Hon'ble Bombay High Court, SRA tried to rely on Clause 8.1 of the approved Resolution Plan to contend that the effective date of payment had been postponed. Clause 8.1 reads as under

"In case of any objection/appeal is filed, against the approved Resolution Plan by the NCLT or any other party, with NCLAT/ or any other authority court, due to which the approved Resolution Plan is stayed/ injunction/ interim stay or challenged, the effective date will be, the date of the Final Approval by the Highest Authority."

- 5.5. The third meeting of the Monitoring Agency was held on 16 August 2021. By then, a sum of Rs. 14.50 Crores had become due and payable. Two instalments had fallen due, but both of them had been defaulted upon. The members of the Monitoring Agency thus observed that the terms of the approved Resolution Plan had been contravened. The meeting concluded with a discussion on the possible legal recourse that could be adopted for such default.
- 5.6. While the contravention of the terms of the approved Resolution Plan in terms of the payment obligations is plainly apparent, there has been a failure to take steps to manage the affairs of the Corporate Debtor post approval of the Resolution Plan, even though the management of the Corporate Debtor vested solely in the hands of Respondent No.1 as per the terms of the approved Resolution Plan. This breach occurred despite the fact that the Monitoring Agency had duly handed over possession of all the plants and the registered office of the Corporate Debtor to Respondent No. I in June 2021 itself. The handover was acknowledged by the Respondent No.1 by way of an email dated August 12th, 2021.

6. The SRA has filed affidavit in reply stating that it has always been ready and willing to implement the Resolution Plan, but has been prevented from doing so in the circumstances set out below. Unfortunately, however, for the reasons set out hereinafter, the operations of the Corporate Debtor could not be restarted. In the meanwhile, however, the present SRA has been taking all necessary steps to protect and preserve the assets of the Corporate Debtor including its plant & machinery. This has been done at the expense of the SRA. Till date, the SRA has expended approximately an amount of Rs. 1.15 Crores towards security and maintenance charges to protect and preserve the plant & machinery of the Corporate Debtor. Unfortunately, however, the SRA has not been able to utilize the industrial unit of the Corporate Debtor.

6.1. The issues plaguing the implementation of the Sanctioned Resolution Plan are summarised below:

- i. Legal uncertainty due to a notification published by the Ministry of Finance on the 18th of June, 2021, amending the Securities Contracts Regulation Rules, 1957 [to resolve this issue, the SRA herein has filed Interlocutory Application No. 2399 of 2021].
- ii. Inability to implement the Sanctioned Resolution Plan due to Registrar of Companies classifying the Corporate Debtor as "under liquidation" instead of "active", and refusal of erstwhile Resolution Professional to rectify this to resolve this issue. the Applicant herein has filed Interlocutory Application No. 2747 of 2021].

- iii. Unlawful and illegal delisting of the shares of the Corporate Debtor from the recognized stock exchanges during moratorium, which the erstwhile Resolution Professional took no steps to rectify [to resolve this issue, the Applicant herein has filed Writ Petition No. 3275 of 2021 before the Hon'ble Bombay High Court].
- 6.2. However, the Monitoring Committee took no heed of this real issue which had cropped up. Neither did the Monitoring Committee identify a solution, nor did it take any steps to address the issue itself. Instead, the Monitoring Committee began to issue veiled threats to the answering Respondent that it would seek liquidation of the Corporate Debtor. The SRA therefore wrote another letter to the Chairperson of the Monitoring Committee on the 3 of September, 2021, highlighting these issues and seeking to engage in a discussion as to the manner in which the issues can be resolved and the Resolution Plan can be implemented at the earliest.
- 6.3. As stated above, it was the intention of the SRA that the Corporate Debtor would (a) become operational immediately upon sanction of the Resolution Plan, and (b) remain a listed company. Both these aspects which were vital to the viability and feasibility of the Resolution Plan were threatened due to the in action on the part of the Registrar of Companies, and the uncertainty with respect to the implementation and applicability of the amended Securities Contracts (Regulation) Rules, 1957.

6.4. Since the Monitoring Committee was not taking any action on either of these issues, SRA was forced to file appropriate applications before this Hon'ble Tribunal. Therefore, on the 8th of September, 2021, SRA filed an application against SEBI seeking a waiver of the applicability of the amendment in the Securities Contracts (Regulation) Rules, 1957, thus ensuring that the Resolution Plan could be implemented without being in contravention of any law. This application was registered as Interlocutory Application No. 2399 of 2021, and pleadings are complete. However, this application has not yet been heard. Further, the SRA filed another application No. 2747/2021 on the 18th of November, 2021. against the Registrar of Companies seeking to change the status of the Corporate Debtor as an "active" company. Without this change of status, the answering Respondent will not be able to implement the Resolution Plan at all.

6.5. The Chairperson of the Monitoring Committee responded on 12.08.2022 despite numerous communications sent by SRA. Through this letter, it was surprisingly stated that the difficulties which is being faced in the implementation of the plan ought not to come in the way of payment being made under its terms. In other words, the Monitoring Committee fully recognised that the Resolution Plan cannot be implemented until the applications filed by SRA were heard and disposed of, but still demanded that the payment under the Resolution Plan be completed in full despite this issue.

- 6.6. Eventually, a meeting of the Monitoring Committee of the Corporate Debtor was proposed to be held on the 19th of April, 2023. Prior to this meeting, on the same day, SRA once again sent a letter to the Chairperson of the Monitoring Committee highlighting the issues and making an unequivocal statement that *"upon the relief sought in the pending litigation being granted, we will make full payment within 30 days"*.
- 6.7. In the meeting of the Monitoring Committee held on the 19th of April, 2023, the issues being faced by SRA were finally discussed. The representative of SRA highlighted the difficulties in implementing the Resolution Plan and contended that due to this, it virtually became impossible to implement the Resolution Plan. It is further stated by SRA that the Chairperson of the Monitoring Committee also confirmed that the assets of the Corporate Debtor were in the very same condition as they were in when handed over to the answering Respondent; thus justifying the assertion of the answering Respondent that it has been taking pains to maintain preserve and protect the assets of the Corporate Debtor at its own expense. Ultimately, it was suggested that the answering Respondent have a meeting with the Chairperson of the Monitoring Committee to work out a way forward. SRA is stated to have sent a follow-up letter on the 8th of May, 2023, seeking to engage with the Chairperson of the Monitoring Committee to work out a way forward.
- 6.8. At this stage, SRA claims that it has the necessary funds to implement the Resolution Plan. The net worth of the answering

Respondent is more than Rs. 262.75 Crores as on December 2022, and it has current assets worth Rs. 65.35 Crores as on December 2022 which can easily be liquidated to implement the Resolution Plan. There can be no doubt as to the financial capacity of SRA to implement the Resolution Plan as soon as the issues highlighted above have been resolved.

7. Heard learned counsel for the applicant and perused the material available on record.

7.1. The Resolution Professional had filed compliance certificate in form H certifying that the implementation of the Resolution Plan submitted by SRA is not contingent or dependent on happening of any event. Further, this Tribunal approved the plan as the same was not conditional plan, in case of which the Plan could not have been approved by this Tribunal.

7.2. The SRA has prayed for relief in sub clause(n) of Clause 5.3 of the Resolution Plan, which provides as under:

*“To exempt the company from the applicability of the various clauses as per the listing agreement not only during the period of suspension of trading, but also up to the restart of operations. After the restructuring of the capital structure as mentioned hereinabove and on written request by the Resolution Applicant, both the stock exchanges to allow immediate relisting of the company’s shares notwithstanding the current or present or future status of the company’s shares being suspended or delisted. **This forms a crucial part of this Resolution Plan and therefore the Resolution***

Applicant needs be reassured by the Adjudicating Authority to pass order or orders required for directing both, Bombay Stock Exchange and National Stock Exchange of immediate and smooth listing of the company on their exchanges on written consent of the Resolution Applicant regardless of the company's current status of being suspended or delisted"

7.3. Further the 'Notes' under Section 11 of the Resolution Plan states as under:

"Listing of the company and its shares on Bombay Stock Exchange and National Stock Exchange is of utmost necessity for this Resolution Plan to be followed by the Resolution Applicant. Adjudicating Authority is requested to direct SEBI, Bombay Exchange and National Stock Exchange for exemption of all accrued fees, demands, claims, penalties, interest etc. to be completely waived and to list the equity shares of the company at the earliest as per the revised capital structure once the application is made by the Resolution Applicant. To set aside any ruling due to which the equity shares of the Corporate Debtor and the Corporate Debtor are suspended/delisted/barred from both the stock exchanges and to smoothly allow relisting of the equity shares and the company back on both the stock exchanges as per the new capital structure".

7.4. Despite this prayer, this Tribunal in its wisdom considered it appropriate to pass Order in this relation at Para 18 of the order dated 25.03.2021 while approving the resolution plan and this Para reads as under:

“The Resolution Applicant has sought certain other reliefs and concessions. We however are not inclined to grant such concessions or reliefs. The Resolution Applicant needs to approach the authorities concerned (viz. SEBI, Stock Exchanges, etc.) for permits, licenses, renewal of various facilities like electricity connections etc. and when required. They shall have to be considered by appropriate authorities in a in accordance with law.

7.5. It is to be noted that despite this Tribunal granting relief and concessions in terms of the order dt. 25.03.2021 and Resolution Professional certified plan to be unconditional, the SRA chose not to file any Appeal before Hon’ble NCLAT to seek specific relief if grant of such relief was conditional to the implementation of the Plan. It is to be noted that the upfront payment fell due on 23rd June 2021 and the possession and control of the Corporate Debtor was handed over to the SRA in anticipation of SRA making payments without any condition. It is the case of SRA that it wrote to the Monitoring Committee on several occasions before the 25th of June, 2021, seeking a discussion on how to resolve the issues coming in the way of implementation of the Sanctioned Resolution Plan. We note that SRA filed Interlocutory Application before this

Bench in relation to updation of the status by ROC and directions to the SEBI in relation to the listing of shares of the Corporate Debtor on 13.11.2021 and 08.09.2021. Thereafter, SRA filed another Application on 17.05.2023, seeking modification of the Plan linking it to the updation of status, listing of shares of the Corporate Debtor and clarification on public shareholding.

7.6. The Application in IA 2057/2021 filed on 17.05.2023, clearly indicates the mindset of the SRA that the said plan is conditional and it shall implement the Plan only after i. status of the Corporate Debtor is updated on MCA Portal; ii. The shares of the Corporate Debtor are re-listed; & iii. Amendment to the security contract regulation act, mandating minimum 5% public shareholding, held to be not applicable to the present Resolution Plan.

7.7. Nonetheless, on 04.01.2024, this Bench passed an interim order in IA 5843/2023 providing the SRA another opportunity to deposit the amount of resolution money within the period proposed by it in escrow account and dealt with the conditions in this Application in the following manner :

“2. Heard the Counsel. The Ld. Counsel for SRA pleaded that the withdrawal of Resolution money by the CoC is depended on adjudication of three conditions, subject to which the money is agreed to be deposited. However, this Bench finds that, as far as prayer IV (3) is concerned, this Bench cannot deal with the same as this would tantamount to review of its own order.

Counsel for the SRA also accepts that this Bench may not deal with this prayer in this Application.

- 3. As far as prayer IV (1) is concerned, this Bench has already directed the RoC vide order dated 02.01.2024 to modify the status of the Corporate Debtor as “Active” subject to conditions placed therein.*
- 4. The only prayer which remains is IV (2). The registry is directed to post this IA on 10.01.2024.*
- 5. In view of this the SRA is directed to deposit the amount of resolution money within the proposed period in Escrow account and the CoC shall be at liberty to appropriate the same towards implementation of the Plan.*

- 7.8. Prior to this, learned counsel for SRA had submitted before us on 14.12.2023 that if the Monitoring Committee gives details of the Escrow Account, then they will deposit the amount within two weeks from the date of intimation. Accordingly, the money was to be deposited within two weeks from the order dated 04.01.2024, however, it is pleaded in the next hearing by the counsel for the SRA that the order dated 04.01.2024 was displayed on the DMS Portal on 14.01.2024. Accordingly, this Tribunal permitted the SRA to deposit the money within three weeks from 14.01.2024.

7.9. Instead of payment of the money SRA filed an application No. 327/2024 on 29.01.2024 praying for rectification of the order dated 04.01.2024 contending that without clarity as to whether the shares of the Corporate Debtor will be listed again on the recognized stock exchange, the deposit into Escrow account and appropriation of the funds by the CoC will be premature. This Application was taken up on 06.02.2024 and the learned Counsel for SRA submitted that the SRAs counsel had never proposed for deposition of the money as recorded in order dated 04.01.2024. After hearing the parties this Bench passed the following order:

“Ld. Counsel for the SRA in this case has filed another Interlocutory Application No.327/2024, seeking recall of Para 5 of the order dated 04.01.2024. However, this Bench finds that the recording was made after due deliberation of the Counsel present on that day and this deliberation was carried forward in the next hearing also when another Counsel appeared. Now the third Counsel has come before us saying that earlier two Counsels have never made any submission. The earlier Counsels shall be at liberty to place on record their personal affidavit, in case they still feel that the contents of Para 5 are not in accordance with what they pleaded before this Bench.”

7.10. The above discussion clearly evidence that the SRA has failed to implement the Resolution Plan in so far as it has time and again

linked the payment of Resolution Money to the issues raised by it. This Bench is of the considered view that the payment of resolution money is dehors any of the condition and holding this view, this Bench allows the another opportunity to the SRA to pay the money which is already fallen due after issuance of direction to the RoC to update the status of the Corporate Debtor and holding that the issue of listing has attained finality qua this Tribunal. We are of the considered view that the plea of listing and Applicability of amendments is either a condition precedent to the implementation of the Plan or the grounds made out for deferring the payment to unspecified time period. It is trite law that no conditional plan can be approved by this Tribunal u/s 31 of the Code and the insistence of the SRA at this juncture to link the payment with the successful resolution of issues raised by it makes the approved Resolution Plan a conditional Plan. Accordingly, we have no hesitation to hold that the SRA has failed to implement the Resolution Plan and the Corporate Debtor is to be liquidated in terms of the Provisions of IBC, Code. We direct the Resolution Professional to handover the control and management of the Corporate Debtor to the Liquidator appointing by this Tribunal along with all the records and assets in their possession.

- 7.11. Having said so, it is intriguing us as to how the Resolution Professional certified the plan to be unconditional if the listing of shares was a pre-condition for disbursement of resolution money by the SRA. We direct the Resolution Professional to

understand the clauses of the Resolution Plan completely before making any certification to the fact that the Resolution Plan needs requirement of Section 30 of the Code.

7.12. Since, we have arrived at a finding that SRA has failed to implement the Plan, we direct IBBI to initiate appropriate proceedings in terms of Section 74 of the Code and also seek clarification from the Resolution Professional whether the Resolution Plan certified by him as meeting requirements of Section 30 of the Code was conditional.

8. The Applicant in IA 2969 of 2021, has filed the consent letter of the Resolution Professional to act as the Liquidator of the Corporate Debtor. However, we draw the Applicant's attention to the advisory issued by IBBI having reference No. Liq-12011/214/2023-IBBI/840, dt. 18.07.2023, recommending appointment of IP other than RP as the Liquidator. Since, no other name is before us, we hereby appoint Mr. Anil Goel to act as the Liquidator of the Corporate Debtor, however, the erstwhile CoC may recommend any suitable name if they wish.

- a) The Corporate Debtor, Amar Remedies Limited, shall be liquidated in the manner as laid down in Chapter-III of the Code.
- b) Mr. Anil Goel having Registration No. IBBI/IPA-001/IP-P-00118/2017-18/10253 is appointed as Liquidator of Amar Remedies Limited.

- c) That the Liquidator for conduct of the Liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.
- e) Liquidator shall issue public announcement stating that Corporate Debtor is in liquidation.
- f) The Liquidator shall endeavour to sale the Company as a going concern during the liquidation in terms of Regulation 32A of the Liquidation Process Regulations. In case he is not able to do so within a period of 90 days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Liquidation Process Regulations.
- g) Subject to Section 52 of the Code no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- h) 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.

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- i) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code read with the Liquidation Process Regulations.
- j) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- k) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- l) The Liquidator shall submit progress reports as per Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- m) The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
- n) Registry shall furnish a copy of this Order to the Insolvency and Bankruptcy Board of India, New Delhi; Regional Director (Western Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Maharashtra; the Registered Office of the Corporate Debtor; and the Liquidator, Mr. Anil Goel, having E-mail ID anilgoel@aaainsolvency.com Mobile No. 9811055148.

9. In view of the above discussions and decision, IA No. 2969/2021, is allowed. IA 2057/2023 is disposed of in terms of Order of Liquidation.

THE NATIONAL COMPANY LAW TRIBUNAL
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I.A. 2494 OF 2022

In
C.P (IB) 1053/MB/2017

IA No. 5843/2023, IA 2399/2021, IA 2494/2022, and IA 327/2024 are dismissed. IA 2747/2021 has already been allowed in terms of Order dt. 04.01.2024. However, the said order has become infructuous in view of Liquidation order having been passed by this Tribunal.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)