NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins.) No. 790 of 2025
& I.A. No. 3029, 3030, 3031, 3660, 3867 of 2025

(Arising out of the Order dated 09.04.2024 passed by the National Company Law Tribunal, Mumbai Bench-I in I.A. No. 880 of 2025 in C.P. (IB) No. 1318/MB/2022)

IN THE MATTER OF:

M/s. Nirmal Ujjwal Credit Co-operative Society Ltd.,
193, Nandanvan Main Road, Nagpur - 440 009
Email ID: nirmalujjwal@gmail.com **…Appellant**

Versus

1. **Ravi Sethia**
   Resolution Professional for Morarjee Textile Ltd.
   KPMG Restructuring Service LLP, Building No.10, Tower C 8th Floor, DLF Cyber City, Phase II, Gurgaon, Haryana ,122002
   Email ID: cirpmorarjee@kpmg.com, ravisethia@kpmg.com **…Respondent No. 1**

2. **Shriniwas Spintex Industries Pvt Ltd**
   Through Mr. Govind Rathi H. No. 9, Gandhi Ward, Hinganghat, Maharashtra, - 442301.
   E-mail - shriniwasginning@gmail.com **…Respondent No. 2**

3. **Committee of Creditors**
   Of M/s. Morarjee Textiles Limited Having Registered Office: 242, Floor -G-1, New Mahalaxmi Silk Mill, Harishchandra L Nagoankar Marg, Mathuradas Mills Compound, Lower Parel , Mumbai, Maharashtra, India - 400013 **…Respondent No. 3**

Present

For Appellant:	Mr Arun Kathpalia ,Sr. Advocate along with Mr. Akash Agarwalla, Mr Kanishk Khullar, Ms. Pooja Singh, Ms. Honey Satpal, Mr. Aniruth Purushothaman, Advocates.
For Respondents:	Mr Abhijeet Sinha, Sr. Advocate along with Mr. J. Rajesh, Mr. Dhrupad Vaghani, Mr. Yash Wardhan Agarwal & Mr. Md. Arsalan Ahmed. Mr Saiket Sarkar, Ms. Prachi Johri, Mr Sharad Agnihotri for Intervenor IA. 3867/25. Mr Krishnendu Datta, Sr. Advocate along with Mr. Jatin Kumar, Mr. Pashray Chaudhary & Mr. Yash Tandon for SRA. Mr. Gopal Jain, Sr. Advocate along with Mr. Rajesh Kumar Gautam, Ms. Likivi K Jakhalu, Mr. Deepanjal Choudhary & Mr. Dinesh Sharma, for CoC.

J U D G E M E N T

(21.08.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e. Nirmal Ujjwal Credit Co-Operative Society Limited under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('**Code**') against the Impugned Order dated 09.04.2025 passed by the National Company Law Tribunal, Mumbai Bench ('**Adjudicating Authority**'), in I.A. No. 880 of 2025 in C.P.(IB) No. 1318 (MB)/2022.

2. Ravi Sethia, who is the Resolution Professional for Morarjee Textile Ltd, is the Respondent No.1No.1 herein.

Shriniwas Spintex Industries Pvt. Ltd. who is the Successful Resolution Applicant is the Respondent No.2 herein.

Committee of Creditors (**CoC**) is the Respondent No.3 herein.

3. The Appellant submitted that it is a Cooperative Society registered under the Multi-State Cooperative Societies Act, 2002 (the "**2002 Act**"), established as a 'body corporate' under Section 9 thereof, constituting a separate legal entity. The Appellant submits that one of its verticals of permitted business for profit is the textile business, operated under the name and style of 'Nirmal Textiles'.

4. The Appellant submitted that the Corporate Insolvency Resolution Process (‘**CIRP**’) of M/s. Morarjee Textiles Limited (the "**Corporate Debtor**") commenced on 09.02.2024, and the Appellant, meeting the eligibility criteria with a net worth exceeding Rs. 123.29 Crores (against the minimum Rs. 25 Crores), submitted its Expression of Interest (‘**EoI**’) on 18.05.2024. The Appellant was included in the provisional list of Prospective Resolution Applicants (‘**PRAs**’) on 23.06.2024 and the final list on 02.07.2024. The Appellant submitted its Resolution Plan, participated in CoC meetings (including the 13th CoC on 12.11.2024, 16th CoC on 09.12.2024, and 18th CoC on 03.01.2025), and improved its offer to Rs. 170 Crores, which is higher than the next offer of Rs. 156 Crores, thereby maximizing stakeholder value.

5. The Appellant contended that the Resolution Professional (RP) erroneously rejected its eligibility on 10.02.2025 citing: (a) disqualification of Director Mr. Pramod Manmode under Section 164(2) of the Companies Act, 2013; (b) restrictions under Section 64 of the Multi-State Cooperative Societies Act, 2002 (the "2002 Act"); and (c) Bye-Law 52 (incorrectly referred to as 53) of the Appellant. The Appellant submitted that Adjudicating Authority rightly resolved Issue No. I in the Appellant's favor, holding no disqualification under Section 29A of the Code read with Section 164(2)(a) of the Companies Act, 2013, as the disqualification ceased on 28.11.2023. The Appellant submits that the impugned order however erred on Issue II by wrongly holding the Appellant incapable of investing in the Corporate Debtor due to misinterpretation of the 2002 Act and the Appellant's Bye-Laws.

6. The Appellant submitted that the impugned order wrongly held that no general body resolution was placed on record to promote the Corporate Debtor as a subsidiary. The Appellant contends that its General Body, at the 35th Annual General Meeting on 23.09.2024, passed a resolution authorizing participation in the CIRP. Further, the Appellant's Resolution Plan expressly states the intent to make the Corporate Debtor a subsidiary, which can be effected through amendable Bye-Laws under Section 11 of the 2002 Act and Clause 28(M) of the Appellant’s bye-laws. The Appellant asserts that no separate resolution is mandatorily required at the Resolution Plan stage, and the impugned order's

presumption of non-amendment is unfounded, as there is no denial by the Appellant to amend its Bye-Laws.

7. The Appellant contends that the impugned incorrectly interpreted Section 64(d) with Section 19 of the 2002 Act. The Appellant submits that Section 64(d) permits investment in shares, securities, or assets of a "subsidiary institution or any other institution in the same line of business as the multi-state cooperative society." The words "any other institution" expansively cover institutions registered under any law in force, including companies under the Companies Act, 2013, and not merely subsidiaries or financial institutions as narrowly construed. The Appellant asserts that Section 19 allows promotion of subsidiaries registered under any law, rendering the Corporate Debtor (engaged in cotton and man-made fabrics, akin to the Appellant's agro-based cotton processing) eligible for investment. The impugned order's isolation of Section 64 from Section 19 adopts a narrow interpretation, omitting the broader spectrum intended by "any other institution.

8. The Appellant submits that the impugned order erroneously interpreted Clause 5(s) of its bye-laws as restrictive, limiting the Appellant to agro-products only. The Appellant contends that Clause 5(s) is an enabling provision empowering the Appellant to purchase, distribute, and process agro-products, without restricting investments in textiles. The Appellant asserts that the Corporate Debtor's business in cotton fabrics qualifies as agro-based, as recognized in judicial precedents like Shree Meenakshi Mills Ltd. v. Union of

India (1974) 1 SCC 468 (holding textiles include cotton yarn and cloth) and the Maharashtra Textile Policy 2018-23 (classifying cotton ginning/pressing as agro-based, distinct from but within textiles). The impugned order's distinction between agro-based cotton and man-made fibers ignores this classification and fails to conclude that the Appellant is barred from non-agro businesses.

9. The Appellant submitted that Section 11 of the 2002 Act and Clause 28(M) of its Bye-Laws permit amendments to align with business requirements, including making the Corporate Debtor a subsidiary. Such amendments do not violate the 2002 Act, and the Appellant's express intent in the Resolution Plan suffices. The impugned order's deprivation of this right infringes the Appellant's fundamental right to trade under Article 19(1)(g) of the Constitution of India.

10. The Appellant submitted that the RP's decision dated 10.02.2025 was premised on Clause 52 of the Appellant's bylaws not aligning with Section 64(d) of the 2002 Act, as Section 64 uses the phrase 'any other institution', which Clause 52 purportedly lacked.

11. The Appellant contended that the CoC took no decision on the Appellant's eligibility in its 21st or 22nd meetings, leaving the issue open before the CoC. The Appellant submits that the RP's unilateral decision is bad in law.

12. The Appellant contended that it runs its textile business under 'Nirmal Textile' based on 100% cotton as raw material and has a Spinning Unit. The Appellant submitted that it is within the Resolution Applicant's purview to decide the nature of business in the Corporate Debtor to maintain it as a going concern.

The Appellant relies on this Appellate Tribunal's judgment in the matter of ***Next Orbit Ventures Fund v. Print House India Pvt. Ltd. & Ors.,*** passed in *Company Appeal (AT) (Insolvency) No. 417 of 2020*, holding that nothing in the Code prevents a Resolution Applicant from changing the line of business to add value, create synergy, or convert obsolete business to viable and feasible operations,

13. The Appellant contended that it submitted Resolution Plan and reflected its intent to make the Corporate Debtor as its subsidiary of the Appellant upon approval, i.e., by acquiring majority shareholding. The Appellant submitted that Appellant explanation to Section 19 of the 2002 Act clarifies that control of management, board of directors, or governing body deems an entity a subsidiary institution.

14. The Appellant submitted that the Adjudicating Authority erred in interpreting Section 64(d) of the 2002 Act by omitting the phrase "or any other institution" following "subsidiary institution." Section 64(d) of 2002 Act, allows investment in shares, securities, or assets of any other institution in the same line of business, and this broader language cannot be ignored.

15. The Appellant contended that the RP/CoC are not empowered to adjudicate business eligibility or interpret legal constraints beyond the Code's scope, as held by the Hon'ble Supreme Court in the matter of ***Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors.,*** *[(2019) 2 SCC 1]*.

16. The Appellant submitted that Section 64(d) of the 2002 Act is an enabling provision allowing investment in "shares, securities or assets of a subsidiary

institution or any other institution" in the same line of business. The Appellant further contended that Section 19 of the 2002 Act allows cooperative societies to promote subsidiary institutions registered under any law, including the Companies Act, 2013.

17. The Appellant submitted that it approached the Adjudicating Authority challenging the RP's decision dated 10.02.2025, prior to CoC approval of the SRA's Resolution Plan. The Appellant contended that the RP's unilateral side lining of the Appellant post-negotiation and highest bid constitutes material irregularity. The Appellant submitted that it relies on the Hon'ble Supreme Court in the matter of ***Ngaitlang Dhar v. Panna Pragati Infrastructure Private Limited*** passed in *Civil Appeal Nos. 3742-3743 of 2020*, holding that 'material irregularities' relate to procedural defects and decision-making manner.

18. The Appellant contended that ***M.K. Rajagopalan v. S. Rajendran, RP Vasan Health Care Pvt. Ltd. and Anr.,*** passed in *IA No. 215 of 2023 in Company Appeal (AT) (CH) (INS) No. 58 of 2023* does not apply here, as Section 61(3)(ii) of the Code provides 'material irregularity' as a ground for challenge. The Appellant submitted that, with no CoC decision and irregular RP procedure, the CoC cannot retroactively claim a decision via submissions before this Appellate Tribunal, as held in the matter of ***Mohinder Singh Gill v. Chief Election Commissioner*** passed in *Civil Appeal No. 1297 of 1977*.

19. The Appellant submitted that, as few developments occurred post-reservation of the matter for orders by this Appellate Tribunal on 15.07.2025, the

Appellant filed an Interlocutory Application with E-Filing number 9910138/06622/2025 on 21.07.2025 to bring new facts and documents on record, but this Appellate Tribunal did not allow same during mentioning by the Appellant on 22.07.2025. The Appellant submitted that it relied on the judgment of the Hon'ble Supreme Court in State Bank of India & Ors. v. S.N. Goyal, Appeal (Civil) 4243-4244 of 2004, holding that a quasi-judicial authority becomes functus officio only when its order is pronounced, published/notified, or communicated to the party concerned.

20. Concluding his arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and to allow the appeals.

21. Per contra, the Respondent No.1denied all averments made by the Appellants as misleading and baseless.

22. The Respondent No.1 contended that, in accordance with the Code and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**"), Form G was published on 1st May 2024, with the last date for submission of Expression of Interest (EoI) as 22nd May 2024. Thereafter, in consultation with the CoC, Form G was amended on 23rd May 2024, extending the EoI submission deadline to 12th June 2024 and the resolution plan submission to 19th July 2024.

23. The Respondent No.1 submitted that, in accordance with Regulation 36A of the CIRP Regulations and based on documents submitted by the Appellant, a provisional list of Prospective Resolution Applicants (PRAs) was issued on 23rd

June 2024, including the Appellant. In the absence of objections, the Appellant was included in the final list on 2nd July 2024, as per Regulation 36A(10) and (12) of CIRP Regulations.

24. The Respondent No.1 submitted that the Appellant submitted its initial resolution plan on 27th August 2024, in accordance with the Request for Resolution Plan (RFRP). The Respondent No.1 further submitted that, during the 10th CoC meeting on 1st October 2024. Axis Bank Limited raised concerns about the Appellant's eligibility as a financial institution governed by the 2002 Act. Vide email dated 11th November 2024, the Respondent No.1 sought clarification on the Appellant's eligibility and status of cases against its promoter/director under Section 29A of the Code, with a follow up on 17th November 2024. The Respondent No.1 contended that, after persistent follow-ups, the Appellant responded on 18th November 2024 and 26th November 2024, stating it could participate as a cooperative society. The Respondent No.1 further stated that the CoC called for revised plans by 11th November 2024, and the Appellant submitted a revised plan while participating, despite unconfirmed eligibility.

25. The Respondent No.1 submitted that he reviewed the Resolution Plan of the Appellant under Section 30(2) of the Code read with Regulations 38 and 39 of the CIRP Regulations and vide email dated 27th November 2024, he shared a compliance checklist raising eligibility concerns and seeking pending documents under the RFRP, with follow-ups. The Respondent No.1 stated that PRAs,

including the Appellant, submitted final plans by 2nd January 2025, with the Appellant providing a legal opinion on eligibility on that date.

26. The Respondent No.1 contended that Clause 52 of the Appellant's bylaws limits investments to: Cooperative Banks; Securities under Section 20 of the Indian Trust Act, 1882; Shares and Securities of other Cooperative Societies/Subsidiary institutions; and any other Scheduled Bank/Nationalised Bank. Further, the Respondent No.1 submitted that Clause 5(s) of the bylaws specifies the Appellant's main objectives as purchasing, producing, and distributing agro products, and making modern techniques available for processing agro products. The Respondent No.1 contended that the bylaws do not permit investment in the Corporate Debtor, a textile company, rendering the Appellant ineligible. The 2002 Act limits investments to specified institutions, excluding the textile industry, not in the same line as the Appellant's business. The Respondent No.1 contended that Section 9 of the 2002 Act constitutes the Appellant as a body corporate to do things necessary for its purpose, but the bylaws and Section 64 of 2002 Act prohibit the Appellant to make investment in textiles business of the Corporate Debtor.

27. The Respondent No.1 contended that the Appellant's eligibility as a cooperative society under the 2002 Act was discussed in the 14th, 15th, 16th, and 21st CoC meetings. The Respondent No.1 contended that the CoC decided on eligibility in the 22nd meeting on 4th February 2025, where RP and CoC counsel analyzed bylaws and applicable laws, concluding ineligibility due to non-

permission for acquisition, contravening compliance with laws. The Respondent No.1 submitted that the CoC decision relied on compliance reports from RP and CoC counsel noting ineligibility under bylaws and 2002 Act. The Respondent No.1 contended that the CoC, after declaring ineligibility, approved Shrinivas Spintex Industries Private Limited's plan in the 22nd meeting, authorizing the RP to file IA/Plan/45/2025 for Adjudicating Authority approval.

28. The Respondent No.1 contended that the Appellant's intent to amend bylaws would misuse process, as eligibility is to be checked at plan submission stage as held by the Hon'ble Supreme Court of India in ***Bank of Baroda & Anr. v. MBL Infrastructure Limited & Ors.,*** holding subsequent ineligibility governs if continuing till approval. The Respondent No.1 submitted that the Resolution Plan submitted by the Appellant contravenes Section 30(2)(e) of the Code, as the Appellant lacked authority. The Respondent No.1 further contended that amending bylaws would ratify an ultra vires act, not permissible. The RP's duty is to opine on compliance, and the CoC decides eligibility as per the Hon'ble Supreme Court in ***Arcelormittal India Private Limited (Supra)***.

29. The Respondent No.1 submitted that Section 64(d) of the 2002 Act allows investment in subsidiary or other institutions in the same line, but the Appellant is ineligible on both. The Respondent No.1 contended that the Impugned Order read "any other institution" as subsidiary, as "institution" conjoins with "financial" or "subsidiary". The Respondent No.1submitted that the Appellant failed to demonstrate its involvement in textiles business as of the Corporate

Debtor and the Corporate Debtor handles cotton and man-made fabrics, beyond raw cotton conversion, including synthetic processes. The Respondent No. 1 stated that textile industry is not exclusively agro-based.

30. Concluding his arguments, the Respondent No.1 requested this Appellate Tribunal to dismiss the appeal.

31. The Respondent No. 2 submitted that upon passing of the Impugned Order, the Resolution Professional issued a Letter of Intent dated 09.04.2025 in favour of the Respondent No. 2, declaring it the Successful Resolution Applicant, as its resolution plan secured 75.61% affirmative votes of the CoC. The Respondent No. 2 tendered a Performance Bank Guarantee of Rs. 20 Crores to the RP, in accordance with the RFRP and CIRP Regulations.

32. The Respondent No. 2 contended that in view of the CoC's approval of its resolution plan, the Company Appeal does not survive, as it effectively challenges the CoC's decision, which is impermissible under law, relying on ***M.K. Rajagopalan (Supra)***, where this Appellate Tribunal held that an unsuccessful Resolution Applicant lacks locus to assail a Resolution Plan or its implementation, not being a stakeholder under Section 31(1) of the Code or an aggrieved person under Section 61(1) of the Code.

33. The Respondent No. 2 submitted that even pending approval under Section 31 of the Code, the approved resolution plan is binding on all stakeholders, relying on ***Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited & Anr.,*** passed in *Civil Appeal No. 3224 of 2020*,

where the Hon'ble Supreme Court held that a Resolution Plan is binding inter se the CoC and successful Resolution Applicant prior to Adjudicating Authority approval, not construable as a mere contract under the Contract Act, but producing binding effects under the IBC framework.

34. The Respondent No. 2 submitted that Clause 5(s) of the Appellant's bylaws limits its purpose to: "To purchase, produce, procure, distribute the agro products for the processing of product and by product. It is also proposed to make available to members modern technique used in processing of agro products and other activities in processing sector." The Respondent No. 2 contended that this clause limits the Appellant to activities directly related to agricultural products and their processing, precluding endeavors outside "agro products."

35. The Respondent No. 2 submitted that the Corporate Debtor produces cotton and man-made fibers such as Viscose with activities including Yarn Manufacturing (Spinning), Fabric Manufacturing (cotton, modal, viscose), Dyeing, Printing, Processing and Finishing, and Design and Product Development. The Respondent No. 2 contended that significant portions of the Corporate Debtor's activities, involving man-made fibers and processing into fabric, are not agro-based but industrial manufacturing of synthetic and blended textiles and the Corporate Debtor's industry does not align with Clause 5(s) of the Appellant's bylaws.

36. The Respondent No. 2 contended that due to the mismatch between the Appellant's bylaw-mandated scope and the Corporate Debtor's operations, the

Resolution Professional correctly determined the Appellant legally constrained from tendering a resolution plan, and its disqualification from the CIRP is devoid of legal infirmity.

37. The Respondent No. 2 contended that the Appellant's admission in its Appeal of intending to amend bylaws to acquire the Corporate Debtor as a subsidiary confirms the current bylaws prohibit such acquisition, validating disqualification at the time of EoI and plan submission. The Respondent No. 2 submitted that the said admission by the Appellant implies the amendment process under Section 11 of the 2002 Act could cripple the CIRP and implementation, as current bylaws prohibit investment in the Corporate Debtor. The Respondent No. 2 contended that Section 11 of the 2002 Act timelines include: 15 clear days' notice for general meeting; resolution by two-thirds majority; application to Central Registrar within 60 days; disposal by Central Registrar within 3 months; forwarding of registered amendment within 1 month, potentially taking 195 days.

38. The Respondent No. 2 submitted that amending bylaws requires two-thirds majority at a general meeting, challenging given the Appellant's thousands of members in Vidarbha Region and Maharashtra, consuming weeks or months. The Respondent No. 2 contended that even with majority vote, validity is subject to Central Registrar's discretionary approval under Section 11(7) of the 2002 Act, assessing compliance with the Act, cooperative principles, and members' economic interests. The Respondent No. 2 submitted that rejection by members

or Central Registrar would render the plan unimplementable, leading to liquidation, defeating the Code's objective of resolution over liquidation.

39. The Respondent No. 2 contended that the Adjudicating Authority observed the Appellant failed to submit any resolution complying with Section 19(1) of the 2002 Act, rendering the plan in contravention of law. Even in the Company Appeal, no such resolution pre-dating plan submission is on record. The Respondent No. 2 submitted that such resolution is prerequisite for acquiring or promoting the Corporate Debtor as a subsidiary under the Code.

40. The Respondent No. 2 submits that the Appellant is a multi-state cooperative society under the 2002 Act, with Mr. Pramod Manmode as promoter. It is submitted that Mr. Manmode is accused in multiple FIRs across Nagpur police stations. The Respondent No. 2 submitted that a Show Cause Notice dated 13/09/2023 from the Central Registrar alleges financial irregularities, fund diversion, violations of the 2002 Act, and failure to submit annual filings, impacting the Appellant's feasibility and viability to implement a plan. The Respondent No. 2 submitted that outstanding issues regarding Mr. Manmode and the Appellant's financial probity raise questions about trustworthiness and execution capacity, justifying exclusion to safeguard stakeholders and ensure effective resolution.

41. Concluding his arguments, the Respondent No.2 submitted that the Impugned Order is just, fair and legal and therefore this appeal deserves to be dismissed.

42. The Respondent No. 3 contended that the Adjudicating Authority's order, upholding the RP's decision communicated as per the CoC's resolution in the 22nd CoC Meeting on 04.02.2025, is well-reasoned and merits no interference. The Respondent No. 3 submits that the Adjudicating Authority, in paragraph 4.3.3, held that the CoC must consider the implications of legal cases against the Appellant and its members on the Resolution Plan's feasibility and viability, and that the Appellant's bylaws lack clarity to expand its agro-based scope to promote a subsidiary institution, rendering the CoC's eligibility decision non-justiciable.

43. The Respondent No. 3 submitted that the Appellant's claim of eligibility to submit the Resolution Plan is without merit, as the CoC's decision, based on legal opinions and CoC own discussions is non-justiciable, per the Hon'ble Supreme Court in ***K. Sashidhar v. Indian Overseas Bank*** *[(2019) 12 SCC 150]*, which held that the CoC's commercial wisdom in rejecting a Resolution Plan is non-justiciable, and the Adjudicating Authority lacks jurisdiction to evaluate such decisions.

44. The Respondent No. 3 submitted that even if the Appellant were eligible, the CoC's majority decision in the 21st (21.01.2025) and 22nd (04.02.2025 and 05.02.20250 CoC meetings, finding the Appellant's Resolution Plan not feasible and viable, is non-justiciable under Section 30(4) of the Code, as the Adjudicating Authority correctly declined interference. The Respondent No. 3 submitted that under Section 30(2)(e) of the Code, the RP and CoC are obligated to ensure Resolution Plans comply with applicable laws.

45. The Respondent No. 3 submitted that the Appellant's admission in paragraph 4.2.6 of the impugned order, intending to acquire and run the Corporate Debtor for profit, confirms the Corporate Debtor is not currently a subsidiary, violating Clause 52 of the By-laws. The Respondent No. 3 contends that Sections 65-68 of the 2002 Act restrict transactions with non-members, and as the Corporate Debtor is not a member, the Appellant is barred from investing in the shares of the Corporate Debtor.

46. The Respondent No. 3 submitted that the Appellant's reliance on Section 64(d) of the 2002 Act, allowing investment in shares, securities, or assets of a subsidiary or other institution in the same line of business, is misplaced, as Clause 52 of the Bylaws does not incorporate this provision. The Appellant cannot rely on Section 64(d) of the 2002 Act without amending Clause 52 of the Bylaws, approved by the Central Registrar, and even then, the Corporate Debtor's textile business does not align with the Appellant's credit society operations.

47. The Respondent No. 3 contended that the Appellant's admission of intent to amend bylaws to make the Corporate Debtor a subsidiary, acknowledges current bylaws prohibit such investment, rendering the Resolution Plan non-compliant with Section 30(2)(e) of the Code.

48. The Respondent No. 3 submitted that the 22nd CoC Meeting on 04-05.02.2025 noted the RP's and CoC's Legal Counsel's opinions that the Appellant's Resolution Plan does not comply with the Code. The CoC decided the plan was non-compliant and discussed forfeiture of the Appellant's EMD.

The Respondent No. 3 submitted that the CoC's decision in the 22nd Meeting, finding the Appellant's plan non-compliant, is unassailable, and the Adjudicating Authority rightly upheld the RP's communication dated 10.02.2025. The Respondent No. 3 contended that under Section 30(4) of the Code, the CoC is duty-bound to assess the feasibility and viability of compliant plans. The Appellant's plan, being non-compliant, was correctly excluded from voting.

49. Concluding his arguments, the Respondent No.3 requested this Appellate Tribunal to dismiss the appeal.

Findings

50. We have already noted the facts of the case while recording the submissions made by the parties herein above. Based on the pleadings before us, as well as submissions made by the various parties, the following issues emerge which are required to be determined in order to decide the present appeal.

Issue No. I Whether, the Appellant was entitled to be treated as eligible resolution applicant to submit its EoI/ RFRP.

Issue No. II Whether the Appellant's bye-laws restricted its activities to agro based activities.

Issue No. III Whether the Appellant bye-laws restricted the Appellant to invest in the Corporate Debtor.

Issue No. IV Whether, the Appellant was in the same line of business as of Corporate Debtor in order to make the Appellant eligible to submit the Resolution Plan.

Issue No. V Whether, the bye-laws of the Appellant as available at the time of submission of the Resolution Plan, entitled the Appellant to submit the Resolution Plan in accordance with 2002 Act and bye-laws of the Appellant.

Issue No. VI Whether, the CoC can exercise commercial wisdom in deciding eligibility of the Appellant to submit the Resolution Plan.

Issue No. VII Whether, the Adjudicating Authority has wrongly interpreted Section 64(d) of 2002 Act.

Issue No. VIII Whether the Adjudicating Authority has misinterpreted and mis applied the Appellant bye-laws in declaring the Appellant as non-suited for submitting the Resolution Plan.

Issue No. IX Whether the Adjudicating Authority ignored the Appellant intention to make the Corporate Debtor its subsidiary and its intent to amend its bye- laws and thus ignored eligibility of the Appellant to submit Resolution Plan.

51. Since, all these issues are inter-dependent, inter-connected and inter-related, we shall deal these issues in conjoint and combined manner in the following discussions. At the outset, we note that all such points arise out of eligibility/ ineligibility of the Appellant as valid Resolution Applicant entitling itself to submit the Resolution Plan.

52. It is the case of the Appellant that CIRP of the Corporate Debtor i.e., M/s Morarji Textile Limited commenced vide order dated 09.02.2024 and subsequently Resolution Professional invited EoI from prospective Resolution Applicant in terms of Section 25(2) (h) of the Code and the Appellant being eligible submitted its EoI on 18.05.2024. The Appellant stated that according to eligibility criteria of EoI, the minimum consolidated networth of Rs. 25 Crores at group level was required wherein the Appellant had networth of Rs. 123.29 Crores at relevant period, hence, the Appellant met the required criteria. The appellant brought to our notice that RP circulated provisional list PRAs on 23.06.2024, which included Appellants name and RP issued final list of PRAs on 02.07.2024, in which again the name of the Appellant was correctly included.

53. The Appellant submitted that in its 35th Annual General Meeting held on 23.09.2024, members of the Appellant deliberated and passed a resolution authorising the Appellant to participate in the CIRP, based on which, the Appellant submitted its Resolution Plan. It is the case of the Appellant that it was invited and therefore, participated in various CoC Meetings including 13th CoC Meeting held on 12.11.2024, 16th CoC on 09.12.2024 & 18th CoC Meeting on 03.01.2024, wherein the Appellant was requested to improve the offer which he did. The Appellant assailed the conduct of the RP who vide e-mail dated 10.02.2025, communicated the Appellant about its ineligibility citing three reasons. We note these three reasons as per Appellant are following :-

(a) Alleged disqualification of Mr Pramod Manmode who held the position of the Director in the Appellant under Section 164 (2) of the Companies Act, 2013.

(b) The Appellant was found ineligible based on Section 64 2002 Act.

(c) The Appellant was treated as ineligible in terms of clause 52 of bye-laws clause of the Appellant, which according to RP restricted the Appellant's investment avenues to specified limited options, which significantly excluded the Appellant to invest in the Corporate Debtor.

54. We note that the Appellant has challenged its rejection by the RP being PRA vide IA No. 880 of 2025 before the Adjudicating Authority and the Adjudicating Authority rejected the same vide Impugned Order dated 09.04.2025. We observe that while Adjudicating Authority vide Impugned Order as rejected the RP's contentions regarding alleged eligibility of the Applicant under Section 29A of the Code, however, the Impugned Order declared Appellant to be ineligible to invest in Corporate Debtor in terms of bye- laws of the Appellant and 2002 Act.

55. Since, the Appellant has been found to be ineligible in terms of relevant sections of 2002 Act, we would like to take into consideration these relevant Sections which reads as under :-

> ***"Section 11- <u>Amendment of bye-laws of a multi-State co-operative society.—</u>***
>
> *(1) <u>No amendment</u> of any bye-law of a multi-State co-operative society <u>shall be valid, unless such amendment has been registered under this Act.</u>*

(2) The amendment to the bye-laws of a multi-State co-operative society shall be made by a resolution passed by a two-third majority of the members present and voting at general meeting of the society.

(3) No such resolution shall be valid unless fifteen clear days' notice of the proposed amendment has been given to the members.

(4) In every case in which a multi-State co-operative society proposes to amend its bye-laws, an application to register such amendments shall be made to the Central Registrar together with—

(a) a copy of the resolution referred to in sub-section (2);

(b) a statement containing the particulars indicating—

(i) the date of the general meeting at which the amendments to the bye-laws were made;

(ii) the number of days' notice given to convene the general meeting;

(iii) the total number of members of the multi-State co-operative society; (iv) the quorum required for such meeting;

(v) the number of members present at the meeting;

(vi) the number of members who voted in such meeting;

(vii) the number of members who voted in favour of such amendments to bye-laws;

(c) a copy of the relevant bye-laws in force with the amendment proposed to be made together with reasons justifying such amendments;

(d) four copies of the text of the bye-laws incorporating therein the proposed amendments signed by the officer duly authorised in this behalf by the general body;

(e) a copy of the notice given to the members and the proposal to amend the bye-laws;

(f) a certificate signed by the person who presided at the general meeting certifying that the procedure specified in sub-sections (2) and (3) and the bye-laws had been followed;

(g) any other particular which may be required by the Central Registrar in this behalf.

(5) Every such application shall be made within sixty days from the date of the general meeting at which such amendment to the bye-laws was passed.

(6) The procedure given in sub-sections (2) to (5) of this section shall apply to the amendment of the bye-laws of a co-operative society desiring to convert itself into a multi-State co-operative society as per the provisions of section 22.

(7) If, on receipt of application under sub-section (5), the Central Registrar is satisfied that the proposed amendment—

(a) is not contrary to the provisions of this Act or of the rules;

(b) does not conflict with co-operative principles; and

(c) will promote the economic interests of the members of the multi-State co-operative society, he may register the amendment within a period of three months from the date of receipt thereof by him.

(8) The Central Registrar shall forward to the multi-State co-operative society a copy of the registered amendment together with a certificate signed by him within a period of one month from the date of registration thereof and such certificate shall be conclusive evidence that the amendment has been duly registered.

(9) Where the Central Registrar refuses to register an amendment of the bye-laws of a multi-State co-operative society, he shall communicate the order of refusal together with the reasons therefore to the Chief Executive of the society in the manner prescribed within fifteen days from the date of such refusal:

Provided that if the application for registration is not disposed of within a period of three months specified in sub-section (7) or the Central Registrar fails to communicate the order of refusal within that period, the application shall be deemed to have been accepted for registration and the Central Registrar shall issue registration certificate in accordance with the provisions of this Act.

Section 19. Promotion of subsidiary institution.—

(1) Any multi-State co-operative society may, by a resolution passed at general meeting by a majority of members present and voting, promote one or more subsidiary institutions, which may be registered under any law for the time being in force, for the furtherance of its stated objects.

(2) Any subsidiary institution promoted under sub-section (1) shall exist only as long as general body of the multi-State co-operative society deems its existence necessary: Provided that a multi-State co-operative society while promoting such a subsidiary institution, shall not transfer or assign its substantive part of business or activities undertaken in furtherance of its stated objects.

Explanation.—For the purposes of this section,—

(a) an institution shall be deemed to be a subsidiary institution if the multi-State co-operative society—

(i) controls the management or board of directors or members of governing body of such institution; or

*(ii) holds more than half in nominal value of equity shares of such institutions; 2*** 3* * * * * *

(b) a subsidiary institution shall not include a partnership firm.

(3) The annual reports and accounts of any such subsidiary institution shall be placed each year before general meeting of the promoting multi-State co-operative society

Section 64. Investment of funds**.—**A multi-State co-operative society may invest or deposit its funds—

(a) in a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or

[(b) in any of the securities issued by the Central Government, State Government, Government Corporations, Government Companies, Authorities, Public Sector Undertakings or any other securities ensured by Government guarantees;]

*(c) **in the shares or securities of any other multi-State co-operative society or any co-operative society; or***

***(d) in the shares, securities or assets of a subsidiary institution or any other institution; [in the same line of business as the multi-State co-operative society]** or*

[(e) with any other scheduled or nationalised bank.

Explanation.—For the purposes of this clause, the expression,—

(i) "scheduled bank" shall have the same meaning as assigned to it in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934); and

(ii) (ii) "nationalised bank" means a corresponding new bank constituted under sub-section (1) of section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980); or

(iii) (f) in such other manner as may be determined by the Central Government.]

65. Restriction on contribution

No multi-state cooperative society shall make a contribution, either in money or in kind, whether directly or indirectly, to an institution which has an object of furtherance of the interest of a political party.

66. Restriction on loans

(1) A multi-state cooperative society, other than a cooperative bank, shall not make a loan to a member on the security of his share or on the security of a non member.

(2) Notwithstanding anything contained in sub-section (1), a multi-state cooperative society may make a loan to a depositor on the security of this deposit.

67. Restrictions on borrowing

(1) A multi-state cooperative society may receive deposits, raise loans and receive grants from external sources to such

extent and under such conditions as may be specified in the bye-laws:

Provided that the total amount of deposits and loans received during any financial year shall not exceed ten times of the sum of subscribed share capital and accumulated reserves:

Provided further that while calculating the total sum of subscribed share capital and accumulated reserves, the accumulated losses shall be deducted.

(2) Subject to provisions of sub-section (1), a multi-state cooperative society may accept funds or borrow funds f or the fulfilment of its objects all such terms and conditions as are mutually contracted upon.

(3) A multi-state cooperative society may Issue nonconvertible debentures or other instruments subject to the provisions of any law for the time being in force to raise resources f or the fulfilment of its objectives to the extent of twenty-five per cent of its paid-up share capital.

68. Restrictions on other transactions with non-members

Save as provided in sections 66 and 67, the transaction of a multi-state cooperative society with any person other than a member, shall be subject to such prohibitions and restrictions, if any, as may be specified in the bye-laws."

(Emphasis Supplied)

56. We note that the Adjudicating Authority in the Impugned Order has recorded that the 2002 Act does not define the word "institution", however, Section 19 of the 2002 Act provide for "promotion of subsidiary institution". The

Adjudicating Authority interpreted with the word "institution" is required to be read in conjunction with the word " financial" or "subsidiary". The Adjudicating Authority accordingly interpreted that the word any other institution is further required to be understood to mean a subsidiary institution of any other society in terms of Section 11 of the Code only and do not cover Corporate Debtor as its intended subsidiary. On this aspect, it is the case of the Appellant that the words "any other institution" as mentioned in Section 64 of the 2002 Act covers broader spectrum of institutions which are not restricted to co-operative societies under 2002 Act, but also cover any body corporate registered under any other laws for the time being. It is further the case of the Appellant that Section 64(d) of the 2002 Act clearly stipulate that investment of fund can be done in the shares, security or assets in any subsidiary institution or any other institution, therefore, the intention of Section 64(d) of 2002 Act is expansive of covering in other institution registered under other laws like the Corporate Debtor, which is registered under Companies Act, 2013. The Appellant also pleaded that the Adjudicating Authority erred in interpreting Section 64 of the 2002 Act in isolation of provision of Section 19 of the 2002 Act which allows the co-operative society to permit the subsidiary institution to be registered under any law for the time being in course. The Appellant emphasised that the Adjudicating Authority has taken very narrow interpretation of the word "any other institution".

57. We note that according to the Appellant, Section 64(d) of the 2002 Act empowers the Appellant to invest its fund in the shares, security or assets of its

own subsidiary institution or in any other institution, thus the Appellant was entitled to invest in the shares of the Corporate Debtor. The Appellant further argued that the Adjudicating Authority has given wrong finding about interpretation to Section 65 to 68 of the 2002 Act as the Section 65 of the 2002 Act merely to be restrictive on the co-operative society not to make contribution to an institution having objective for furtherance of the political party. Similarly, Section 66 of the 2002 Act only restricts the co-operative society from making loan to member on security of his shares and Section 67 of the 2002 Act put restriction on the borrowing of the co-operative society. Section 68 mentions prohibitions and restrictions which are not applicable in the present case. Thus, according to the Appellant, it was competent to invest in the Corporate Debtor.

58. We need to understand that Appellant is the co-operative society registered under 2002 Act and registered as body corporate which carries permitted business activities for profit and the net profit is distributed to its member for furtherance member's interest and in accordance with the bye laws. It is a fact that the Appellant has one of the vertical which permitted its business for agro based textile under the name and style of 'Nirmal Textile'.

59. We note that Section 64 of 2002 Act describe investment of fund which can be made by the co-operative society and according to this Section, co-operative society like Appellant herein may invest or deposit its funds in co-operative bank, state co-operative bank, co-operative land development bank or central co-operative or any other security issued by Central Government, State

Government and the Government Co-operative, Government companies, authorised, PSUs or such similar entities or in the shares or securities of any other Multi-State Cooperative Societies Act, 2002 or any other co-operative society or in the shares and security or assets of subsidiary institution or any other institution in the same line of business as Multi-State Cooperative Societies Act, 2002 or with any other schedule nationalised banks.

60. Thus, the crucial words which touches the core of the present appeal before us lies in Section 64 (d) of the 2002 Act which reads as under :-

> *"64(d) In the shares, securities or assets of subsidiary institution or any other institution (in the same line of business as the Multi State Corporative Society) ."*
>
> *(Emphasis Supplied)*

61. We observe that although the co-operative society is allowed to invest its funds or deposit in the shares, security or assets of the subsidiary institution or any other institution, this is qualified with the words i.e., it has to be in the same line of business as a multi state co-operative society like the Appellant herein. This implies that Section 64(d) of 2002 Act entitles as well as restricts the co-operative society to invest its fund only in subsidiary institution or an institution in the same line of the business or the multi state co-operative society.

62. It is an undisputed fact that the Corporate Debtor was not a subsidiary institution as of date of the submission of the Resolution Plan. We have also

noted that the Appellant was indeed in business of agro based textile under the name and style of 'Nirmal Textiles', however, the business of the Corporate Debtor was man-made fibre/ viscos which Resolution Professional, CoC and Adjudicating Authority differentiated with business of the Appellant as Agro based textile processing.

63. We find logic as contained in the Impugned Order that the Appellant was not in the same line of the business and therefore was not entitled to invest in fund of the Corporate Debtor to acquire the business as a going concern. We further note that the objective and functions of the Appellant as of society have been clearly mentioned in Clause (5). We are conscious that Clause 5(s) of the bye-laws entitles the Appellant society to purchase, produce, procure, distribute like agro product for processing of product and by product and further entitles to make available to its member modern technique used in processing agro products and other activity in processing. Thus, we find that the objectives of the Appellant are clearly relative to agro based project which is different from business of the Corporate Debtor.

64. In this context, we need to decide whether the investment in shares, security or assets or subsidiary institution in terms of Section 64 of the 2002 Act should be on the date of the relevant date of making investment decision by the Appellant in existing subsidiary or in the same line of business or it can be made in institution, which such Appellant Society intend to make its subsidiary later. We are of the opinion that such subsidiary should be in existence, where the co-

operative society wants to invest. Further it can be looked into from another perspective that as to how CoC will determine the eligibility of the PRA if such PRA intend to modify or make subsidiary after investment. This will create uncertainties and opaqueness which is not commercial prudent. We find that the CoC in exercise of its commercial wisdom has taken the legal opinions including independent legal opinion before coming to conclusion that Appellant was not eligible to submit the Resolution Plan, in view of the relevant Sections of the 2002 Act as well as the restrictions on the Appellant by its own bye-laws, which we have already discussed at length in our earlier discussions.

65. Further the word "in the same line of business" as multi state corporative society word were later inserted in Section 64 (d) of the 2002 Act. We find merit in the argument that the legislative intent, wherein this amendment was made was to make investment of the co-operative society restrictive to the investment which such co-operative society could make. The words "in such other mode as may be provided by the bye-laws" in Section 64(f) of the 2002 Act were substituted with the words "in such other manner as may be determined by the Central Government," which makes it clear that only bye-laws permitting the investment in a particular line of business are insufficient. In other words, the Appellant's submission that the bye-laws could be amended to permit investment in the textile business may not be correct as the bye-law of the Appellant would conflict with Section 64(d) of the 2002 Act.

The legislative intent behind such an amendment was recorded in the Joint Parliamentary Committee Report ("**JPC Report**") on the amendment. The JPC Report recorded that the earlier expression 'any other institution' is too broad and prone to misuse by some Multi-State Cooperative Societies. It seems that the legislative intent was to restrict investment of Multi-State Cooperative Societies Act to entities that operate within the same line of business as the multi-state co-operative society, whose primary business is to provide financial services to its members.

66. The judgment relied upon by the Appellant, ***Next Orbit Ventures Fund v Print House India Pvt. Ltd. & Ors.*** passed in *Comp App (AT)(Ins) No. 417 of 2020*, is law for the proposition that a plan cannot be rendered as not feasible because it proposes a change in the business of the Corporate Debtor. However, this Judgement cannot be relied on, to permit an Multi-State Cooperative Societies like the Appellant to invest in institutions outside the same line of business as required by Section 64(d) of 2002 Act. Even otherwise, ***Next Orbit (Supra)*** is a judgment on feasibility and viability at the time of approval of the plan by the Adjudicating Authority and not on eligibility.

67. Thus, based on above, we find that the Appellant was not eligible in accordance with 2002 Act, to submit its Resolution Plan and same was correctly not approved by the CoC as well as the Adjudicating Authority in its Impugned Order.

68. Now, we would also look into the relevant bye -laws of the Appellant society which according to the Resolution Professional and CoC as well as the Adjudicating Authority prohibited the Appellant to submit its Resolution Plan. The relevant bye-laws reads as under :-

5 OBJECTIVES AND FUNCTIONS :

The following are the objectives & functions of the society :

a. To encourage the members to thrifty and abide by the cooperative principles.

b. To Accept Deposit from Members and Nominal Members and advancing Loans to Members.

c. To own land or building for the use of the society with prior permission of Central Registrar of the society.

d. To arrange for the recovery of the loans by disposal of the movable or immovable property that has been pledged towards the society against loans receivables.

e. To manage the properties of the society, maintain it and to run it smoothly.

f. To serve the interest of the poor and middle class of people more than one state by admitting as members.

g To solve the **Housing Problems** of the **Members, Employees and the Agents** of the **Society**, for the purpose **Purchase Land** and **Construct Houses** for them.

h. To enhance or build the social, ethical and educational level of the members and to bring about religious awareness/movement amongst them.

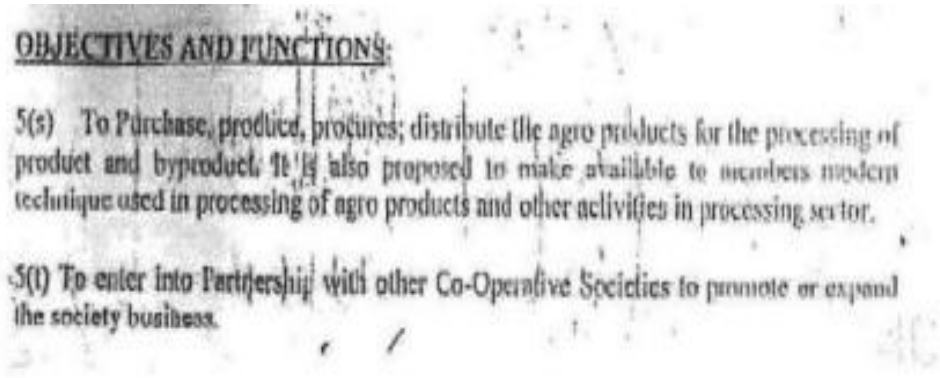
i. To make available the services of health, nutrition and diet, services shall be to the member, employees, representatives and general public from the humanitarian point of view of the society.

j. To arrange for the transportation or conveyance for the members, employees and representations of every branch of the society, also conveyance to and fro from school for their wards and other children.

k. To provide for financial aid for the purposes of better education of the wards out of Nagpur and also provide for their accommodation in hostels and provide them with Libraries.

l. To construct godowns for storage of farm produce and sanction loans of 50% of the price of such stored produce.

m. To provide service of ambulance and funeral cortege vans. To construct & run multi - -specialty hospitals.



OBJECTIVES AND FUNCTIONS:

5(s) To Purchase, produce, procures; distribute the agro products for the processing of product and byproduct. It is also proposed to make available to members modern technique used in processing of agro products and other activities in processing sector.

5(t) To enter into Partnership with other Co-Operative Societies to promote or expand the society business.

69. We note that the Adjudicating Authority has analyzed clause-5(s) of bye-laws of the Appellant Society which describes the objectives and functions of the society. According to these objectives, the Appellant could purchase or distribute agro products and further make available its members modern techniques used in processing of agro product only. The Adjudicating Authority further concluded that the business of the Appellant is in field of cotton and its processing till conversion of raw cotton into fabric and therefore Appellant falls into category of agro based industry as per Clause 5(s) of the bye-laws of the Appellant Society.

70. We observe that the Adjudicating Authority has differentiated between the business of the Appellant i.e., agro based vis-a-vis with the business of the Corporate Debtor which is engaged in the business of cotton and man made fabrics. We also take into consideration that the Impugned Order referred to textile policy 2018-23 of Maharashtra Government and Impugned Order stated that the said policy recognized the distinction between agro based textile product of cotton ginning and pressing of the Appellant's on one hand v/s man made fibre i.e., manufacturing viscos filament on the other hand of the Corporate Debtor.

71. It is the case of the Appellant that the Adjudicating Authority misinterpreted Clause 5(s) of the bye-laws of Appellant Society as restrictive provisions and further erred in stating that Clause 5(28) of bye-laws of the Appellant restricted it from investing or making Corporate Debtor its subsidiary. It is the case of the Appellant that 5(28) of the bye-laws of the Appellant is rather an enabling provisions which empowers the Appellant to make investment in agro based industry and nowhere restricted Appellant from investing in textile business of the Corporate Debtor. The Appellant further argued that while the Impugned Order incorrectly dismissed the Appellant I.A. No. 880/2025, however, the Adjudicating Authority has not given any conclusion that the Appellant cannot deal with any product or any business other than agro products.

72. We further note the contention of the Appellant that the Appellant could have amended the bye-laws in accordance with the Act any time and thus, it could invest in the Corporate Debtor. The Appellant pleaded that the Adjudicating Authority has failed to consider that Section 11 of the Act r/w Clause 28(m) of bye-laws of the Appellant allows the Appellant to amend its bye-laws as per business requirement and further Section 19 of the 2002 Act allows Appellant to promote a subsidiary registered under any law. The broad meaning of "under any law" which according to the Appellant, includes any other body corporate like Corporate Debtor registered under Companies Act, 2013. In the appeal paper book before us as well as during pleadings, it was conceded by the Appellant that

as on date of submission of Resolution Plan, the Appellant did not amend the same.

73. We observe that the Appellant was indeed included in the provisional list of PRA as well as final list of the PRAs, however, during the subsequent CoC's meeting, the legal advise was taken by the Resolution Professional /CoC and legal advise, of the Counsels of the Resolution Professional as well as independent legal advise came to conclusion that Appellant was not found to be eligible to submit its Resolution Plan.

74. We also note that the eligibility of the Appellant was discussed in 14, 15, 16 and 21's CoC Meeting and more documents were sought from the Appellant. We note that in 22nd Meeting of CoC held on 4th and 5th Feb, 2025, the CoC considered the Independent legal opinions and CoC Counsels opinion and finally concluded that Appellant is bye-laws did not permit the Appellant for the acquisition of Corporate Debtor's textile business and declared Appellant ineligible to submit Resolution Plan. We take into consideration that Resolution Professional filed an IA/ Plan/ 45/2025 for approval of Resolution Plan submitted by Shrinivas Spintex Private Limited which is pending before the Adjudicating Authority.

75. We take into consideration the pleadings of the Appellant that it intended to acquire 100% shares of the Corporate Debtor and thus the Corporate Debtor would have become the subsidiary of the Appellant society and as such, it falls well within its rights to invest in Corporate Debtor through Resolution Plan.

However, this argument ignores the fact that the subsidiary is required to be in existence on the crucial debt i.e., while submitting the Resolution Plan and cannot be a future probable event. This principal is squarely covered under the ratio of the judgment delivered by the Hon'ble Supreme Court of India in the matter of ***Arcelormittal India Private Limited (Supra)*** and ***Phoenix ARC Private Limited v. Spade Financial Services Ltd. and Ors. [(2021) 3 SCC 475],*** where it was held that disqualification applied in the praesenti and eligibility must be assessed at the time of submission of Resolution Plan.

76. We would also like to touch upon the aspect whether the Appellant which is primarily a Co-operative Society involved primarily in finance functions and is normally involved in banking and financial services. We also note that the vertical of Nirmal Textile is indeed involved in the agro based textile, can be treated as the same line of business of the Corporate Debtor. However, during pleadings before us, the Respondent No. 1 has brought to our notice that Nirmal Textile is only small vertical of the Appellant and not a separate body corporate and except GST certificate the Appellant has not provided any document to substantiate that the main line of the business of the Appellant is to manufacture textile. During submissions, Respondent No. 1 also referred to the Profit and Loss Account of the Appellant for the year ended 31.03.2024, which detailed the revenue of the Appellant, wherein the interest earned from the banking business was Rs. 194.27 Cr., however the income from Agro based textile vertical in the name and style of Nirmal Textiles showed a loss of Rs. 3.37 Cr. Thus, it can

argued that the Appellant is predominantly is involved in the financial business and not in the textile business.

77. We consciously observe that the Appellant has admitted at page 51 & 52 of the Appeal Paper Book that the bye-laws as on the date of the submission of the resolution plan have not been amended, and do not permit the Appellant to submit a resolution plan for the Corporate Debtor.

The Appellant, however, contended that the amendment could be done post the approval of the resolution plan within one year as per Section 31(4) of the Code, by issuing a fifteen-day notice of the proposed amendment as per Section 11 of the 2002 Act. However, the Appellant's submission may not be correct because Section 31(4) of the Code applies to 'approvals' and not the issue of eligibility. Even if the bye-law is approved in terms of Section 11 of the 2002 Act, it would only apply prospectively, as has been provided in Section 12 of the 2002 Act. Post-facto approval of the amendment to the bye-laws cannot cure the defect of ineligibility at the time of submission of the resolution plan.

78. We note the submission of the Respondents that the Appellant submitted its Resolution Plan on 27.08.2024 without a board resolution. The Board Resolution dated 23.09.2024, purportedly approving the decision to participate in the CIRP, was passed during the 34th Annual General Meeting of the Appellant, after the submission of the resolution plan. It is therefore the case of the Respondents that in view of the above, the Appellant was ineligible in terms of the provisions of the 2002 Act, its own bye-laws and the decision of the CoC in

its 22nd meeting communicated by Respondent No. 1 vide email dated 10.02.2025, which was correctly upheld by the judgement of the Adjudicating Authority dated 09.04.2025. We find logic in the arguments.

79. It has been pleaded before us that there is a fundamental mismatch between the Appellant's bylaw mandated scope of activities and the Corporate Debtor's diverse industrial operations. Consequently, the Resolution Professional determined that the Appellant was legally constrained by its own bylaws from tendering a resolution plan for the Corporate Debtor. We have already observed that the Appellant's Appeal explicitly states its intention to amend its bylaws to acquire the Corporate Debtor as a subsidiary, confirming that the Appellant Society the then prevailing bylaws do not permit such an involvement in shares of Corporate Debtor. Thus, at the stage EoI and Resolution Plan, the Appellant was ineligible to bid for the Corporate Debtor as per relevant rules.

80. It is observed that the Appellant is admittedly a "Credit Cooperative Society" registered under 2002 Act and Clause 5 (s) of its own bye laws under the heading Objective and Functions reads as under:

> ***"OJBECTIVES AND FUNCTIONS***
>
> *5(s) To purchase, produce, procure; distribute the agro products for the processing of the product and byproduct. It is also proposed to make available to members modern technique used in processing of agro products and other activities in processing sector. "*

The Object and Functions of the Appellant, as seen from above Bye Laws, reveals that the Appellant Society can purchase, produce, procure, distribute the Agro Products for the processing of the Product and by product and to make available to the members of modem techniques used in processing of Agro Products and other activities in processing sector. The Adjudicating Authority in para 4.2.1 of the Impugned Order dated 09.04.2025, has recorded that the Corporate Debtor is engaged in the business of Cotton and Man-made Fabrics. The Adjudicating Authority has also rejected the reliance placed by the Appellant Society in the Textile Policy 2018-2023 of Maharashtra Government in support of the argument of the Appellant Society that "Textile Industry to be within the purview of Agro Based Industry", for the reason that the said Textile Policy recognizes the distinction between Agro based products i.e. Cotton, Ginning and Pressing (4.1 of Policy) and Man-made Fibre i.e. manufacturing Viscose Filament Yam I Viscose Staple Fibre (4.15 of Policy). Therefore, the Adjudicating Authority held that since the Corporate Debtor is in the business of "Cotton and Man-made Fabrics" whereas, the Appellant Society as per its Bye-Laws i.e. Section 5(s) can purchase, produce, procure and distribute only the Agro Products for the processing of product and by product and accordingly as per the Bye-Laws of the Appellant Society, the Appellant Society cannot get into the business of Cotton and Man-made Fabrics.

81. We take into consideration the appeal paper book wherein the Appellant categorically stated that it intend to modify its bye-laws. This implies that the

relevant date and it did not have enabling provisions in its bye-laws. The relevant para of the appeal is reproduced as under :-

> *"7.16 Further, the Appellant in its Resolution plan has expressly cleared its intention to make the Corporate Debtor its subsidiary, which can be done by making necessary amendments in its bye-laws and doing that will not violate any statutory laws*
>
> *7. 18 The impugned order failed to consider the Rs.1Cr. that there is no expressed denial on the part of the Appellant not to amend its bye laws for making the corporate debtor its subsidiary. Therefore, Ld. Adjudicating Authority cannot presume that the required amendment will not be made by Applicant and the Applicant will not be able to invest in the Corporate Debtor."*
>
> *(Emphasis Supplied)*

82. Thus, the Appellant's Appeal explicitly states its intention to amend its bylaws to acquire the Corporate Debtor as a subsidiary, confirming that the Appellant Society was not meeting eligibility criteria as per the then prevailing bye-laws while submitting its Resolution Plan.

83. Based on above discussion, we find merit that at the time of submission of Resolution Plan, the Appellant was not in sync with its own bye-laws and thus was correctly held ineligible by CoC as well as Adjudicating Authority. We have gone through Impugned Order on this issue and do not find any error in the

Impugned Order. Thus, we are unable to accept pleadings of the Appellant on this aspect.

84. We heard the parties at length and reserved the matter for orders on 15.07.2025 and subsequent to this, the Appellant is stated to have filed an IA through e-filing No. 9910138/06622/2025 on 21.07.2025 to bring some new facts and documents and the Appellant wanted to reopen the hearing of the case, however, this was not allowed by this Appellate Tribunal during mentioning on 22.07.2025. In this regard, it is a standard norm that once the matter is fully heard and reserved for the orders, no further documents or facts should to be entertained otherwise it will be unending process. As such we have not taken into consideration any purported new facts or documents which were not brought to our notice or discussed during pleadings or even mentioned in the appeal book, before reserving the order on 05.07.2025.

85. In this connection, we would refer to one judgement passed by this Appellate Tribunal earlier in the matter of ***Loramitra Rath vs JM Financial Asset Reconstruction Company Ltd.*** *passed in Company Appeal (AT)(Insolvency) No. 1359 & 1360 of 2023,* where the relevant portion of our earlier order reads as under :-

> *"13. It is a well settled proposition of law that the two stages of reserving of judgment and pronouncement of judgment are in a continuum with no hiatus or gap as such in the two stages. That being the well accepted and time-tested practice in court proceedings, subsequent pleadings filed by way of an*

I.A. after the judgement is reserved is normally not entertained for reasons of procedural propriety. The Adjudicating Authority while dismissing the I.A. has applied the same settled position of law that when a matter is reserved for orders, there is no scope for entertaining application from parties to re-hear the matter. The Adjudicating Authority has relied on the judgment of the Hon'ble Supreme Court in Arjun Singh v. Mohindra Kumar & Ors. 1964 5 SCR 946 and Hon'ble Rajasthan High Court in Rajasthan Financial Corporation v. Pukhraj Jain & Ors. in AIR 2001 Raj 71 to hold that no application could be moved after the final arguments were heard and the case was closed for judgment. Hence, we find that the Adjudicating Authority had committed no error in not entertaining the I.A. particularly so when the I.A. contained facts which were already in existence at the time of filing of reply and at the time of making pleadings in the main company petition. Neither do we find any cogent grounds having been cited to explain what had impeded the Appellant from flagging these issues during the hearing of the main company petition. It also does not stand to any logical reasoning as to why the issues raised in the I.A. could not have been raised in the main company petition. Raising such technical issues and that too after detailed hearing in the main petition was concluded clearly shows that the Appellant was merely trying to raise feeble grounds in the I.A. to somehow delay and derail the admission of CIRP. Hence in our considered opinion, the Adjudicating Authority had rightly rejected the I.A.

253/2023."

(Emphasis Supplied)

86. We note that in the above quoted earlier judgement, this Appellate Tribunal, made reference to judgements of the Hon'ble Supreme Court of India, which discourages such tendency of any party to try to reopen the closed for order matters. We are bound by our own earlier orders as well as the Supreme Court's judgment. As such, we have ignored the contentions of the Appellant submitted on this aspect.

87. The Appellant further castigated the role and conducted of both Resolution Professional as well as CoC for wrong and restrictive interpretation of appellant capabilities to do any other textile business other than agro based textiles. The Appellant further submitted that there is no role of Resolution Professional to any such decision making and the commercial wisdom of the CoC is to maximise the value of the Corporate Debtor and definitely the Appellant gave the better offer than the SRA. The Appellant stated that non-suiting the Appellant was not within the domain of commercial wisdom of the CoC.

However, we feel that it is the RP/ CoC, who are duty bound to examine that Resolution Plan does not contravene any of the provision of law for the time being in force, as stipulated under Section 30(2)(e) of the Code.

In terms of Section 30(2)(e) of the Code, the Resolution Plan need to be complied with all laws. Section 30(2)(e) Code reads as under :-

"Section 30(2)(e) Does not contravene any of the provisions of the law for the time being in force."

(Emphasis Supplied)

88. The Adjudicating Authority has also examined this aspect in detail and has come to the conclusion correctly that the Appellant Resolution Plan would be in violation of 2002 Act and thus will hit Section 30(2)(e) of the Code.

89. As regard, commercial wisdom of CoC is concerned, w.r.t. determining eligibility of the Resolution Plan, it is well settled principal that the CoC are within its jurisdiction to decide such suitability. We need to understand that the eligibility criterial are left to decided by the CoC, in accordance with the Code and the Regulation, and assessing suitability as well as compliance/ non-compliance of the same is also responsibility of the CoC. Thus, it cannot be argued that there is no role of the Resolution Professional or the CoC in declaring any particular PRA as not eligible. Thus, we are of the opinion that deciding eligibility or otherwise of any PRA lies within commercial domain of the CoC.

We hold that in terms of ***K. Sashidhar (Supra),*** the determining suitability of any PRA to submit Resolution Plan lies within the commercial wisdom of the CoC. We also find that CoC, indeed had done its due diligence, after obtaining various legal opinion in holding that Appellant was not found eligible to submit Resolution Plan. Thus, we do not find any error on this issue.

90. Based on above detailed analysis, we are of the opinion that the Appellant was not eligible to submit its Resolution Plan. We do not find any error in the

Impugned Order. The Appeal devoid of any merit stand rejected. No cost. I.A., if any, are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

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