

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH**




**IA 320/2019 in IA 259 of 2018 in/with
CP (IB) No. 48/ NCLT/AHM/2017**

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 26.07.2019**

Name of the Company: Reliance Industries Ltd.
V/s.
Ajay Joshi RP of Alok Industries Ltd. & Anr.

Section of the Companies Act: Section 60(5) of the Insolvency and Bankruptcy
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Mr. Navein Palwa with	Sr. Adv	for coe	
2.	Ms. Himani Chhabra for Shaukhan & Palwa	Adv		
2.	GRISHMA ANUJA CHARU MISRA FOR, SHARDUL AMARCHAND MANGALDAS & CO	} ADVOCATES FOR RP	RP	
3.	Mr. Keertikant S. Navavati ajw Ms. Saubh G. Amin ajw Ms. Raneel S. Patel ajw Ms. Kanya A. Shah	Sr. Adv } Adv	Respondent Applicant	

ORDER

The Parties are represented through their respective Learned Counsel(s).

The instant application is filed by the Applicant i.e. Successful Resolution Applicants of the Corporate Debtor under Section 60(5) of the Code, seeking certain clarification/rectification of typographical error occurred in the order dated 08.03.2019 for successful and effective implementation of certain aspect of the Resolution Plan which was approved on 08.03.2019 in IA No. 259 of 2018 in CP(IB) 48 of 2017.

It is submitted by the Learned Lawyer of the applicant that the clarification/rectification of typographical error so sought for, is not going to change the nature and character of the Resolution Plan in any manner, rather, if the same is allowed, then it will help in effective implementation of resolution plan approved vide order dated 08.03.2019 in IA No. 259 of 2018.

Heard the Learned Lawyer of the Successful Resolution Applicant and also perused the record. It is found that there is/are certain typographical error occurred due to inadvertence, which in our opinion need to be rectified/clarified. Hence on considering all facts and circumstances, following clarification/typographical error are further clarified/rectified in the order dated 08.03.2019, passed in IA No. 259 of 2018 in CP(IB) 48 of 2017, which are as under;

1. Para no. 1.2 sr. no. (iii) (a) at page no. 3 of the Resolution Plan reflects a sum of Rs. 5,552 Crores will be arranged by the Resolution Applicants from the Yes Bank Ltd. and the same will be extended to the corporate debtor for making disbursement of Rs. 4.852 Crores to the Financial creditor and to meet other requirements, the commitment letter of Yes Bank was annexed with the



Resolution Plan as Annexure-6. The Yes Bank Ltd. has now informed that, it is seeking an increased rate of interest, which is not in line with the terms agreed earlier by the Resolution Applicants and hence it is not acceptable to the Resolution Applicants.

Consequent upon which now resolution applicant made an alternate arrangement(s) for the above disbursement through State Bank of India. Hence seeking direction to allow the Resolution Applicant to arrange the said loan of Rs. 5,552/- Crores from the State Bank of India or any other third party lender.

- 1.2 In this regard, this bench is of the view that, after the approval of the Resolution Plan, the control and management has been transferred to successful Resolution Applicant(s) i.e. (present applicant). Now it is prerogative of the applicant to approach any bank(s) as per their choice and convenience and it is also prerogative of any Bank(s)/third party lender(s), whichever it may be, to disburse any loan as per their/his own term(s) and condition(s). Hence, Successful Applicant may approach any bank(s) /third party lender(s) of their own choice, further approval of plan does not bar any bank(s) /lender(s) to disburse any loan on their own terms and conditions, which is/are the sole prerogative of the borrower(s) and lender(s).
2. With regard to the typographical error occurred in Tabulation at page no. 45-46, clause 1.3 “ *Distribution of the Total Financial Outlay*” of the Resolution Plan of the order dated 08.03.2019 (column-order of priority -forth row remained blank) whereas page no. 12 of the Resolution Plan annexed with the application shows Rs. 4.83 Crores the said inadvertence occurred due to

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typographical error, consequent upon which, the total has also been changed in the order dated 08.03.2019 from Rs. 6252/- Crores to Rs. 6247.17 Crores.

- 2.1 Hence, clause no. 1.3 “***Distribution of the Total Financial Outlay***” (order of priority forth) be read as an amount of **Rs. 4.83 Crores** and thereby totalling to **Rs. 6,252 Crores** instead of **Rs. 6247.17 Crores** as reflected in the note below table. For the sake of convenience, column 1.3 ***Distribution of the Total Financial Outlay***” has been reproduced herein below which will form the part of the Resolution Plan approved on 08.03.2019 (corrected portion is underlined).

Order of priority	Total Financial Outlay	Amount (in Rs.) (in Crores)
Third	<u>Liquidation Value and other dues owned to workmen.</u>	19.33
Fourth	<p><u>Liquidation Value due to Operational Creditors (other than workmen) is NIL. Consequently, amount required to be paid to Operational Creditors for liabilities until the Insolvency Commencement Date is NIL.</u></p> <p>However, as part of this Plan it is being proposed that the dues owned by the Company to certain Operational Creditors (to each of whom the Company, as on the Insolvency Commencement Date, owes up to Rs. 3,00,000 (Rupees Three Lakhs) and whose details are set out in Annexure 9) shall be discharged.</p>	<u>4.83</u>
Fifth	<p><u>Liquidation Value due to the dissenting Financial Creditors (if any). for the purpose of the Financial proposal, we have assumed that there are no dissenting Financial Creditor.</u></p> <p><i>Note 1 : in the event there are dissenting Financial Creditors then the liquidation</i></p>	Refer to Note 1

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	<i>value due to such dissenting Financial Creditors will be discharged out of the Financial Creditors settlement amount, in priority to any payments being made to the other Financial Creditors who vote in favour of the plan.</i>	
Sixth	Subject to the adjustments in Section 3.2.2 of this Plan, payment of the Financial Creditors Settlement amount.	5,052
Seventh	<p>Need based working capital of the Company and any payment towards outstanding workmen and employee dues as per the provisions of this plan, excluding any amounts paid towards the liquidation value of workmen as stated under the third step above (it being clarified that: (i) no payments shall be made to any employees belonging to the Existing Promoter Group, and (ii) all accrued but unpaid statutory dues owned by the Company with respect to any of its employees not belonging to the Existing Promoter Group shall be paid in accordance with this Plan)</p> <p><i>Note 2: please note that payments to and by the Company under any supply and offtake arrangement with RIL will be made to augment and meet the additional working capital requirements of the Company.</i></p> <p><i>Note 3: This amount shall stand reduced by an amount determined in accordance with Section 1.2 (v) (b) (A) of this Plan towards any Excess CIRP Costs.</i></p>	441.84
Eighth	Capital expenditure of the Company	500
TOTAL FINANCIAL OUTLAY		6,252

3. Further, there were/are certain typographical error occurred in column 3 item no. 4 at page no. 22-23 of the order dated 08.03.2019, which is hereby rectified and read as under: (corrected portion is underlined>)

4	Section 30(2) (c) of the Code	(c) provide for the management of the affairs of the corporate debtor after approval of the resolution plan;	Clause 7 of the Resolution Plan provides for the management of the corporate debtor for (a) the period between the NCLT approval date and closing date;
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			<p>and (b) the period following the closing date.</p> <p>In terms of Clause 7.1.1 of the Resolution Plan, from the date of approval from the NCLT till the receipt of approval from the competition commission of India (“CCI”) the corporate debtor will be managed by a monitoring committee (“MC”) which is comprised of the erstwhile resolution professional (as he will become after the Resolution Plan) and 4 representatives of the Financial Creditors. During the period following the approval of the CCI until the closing date, the corporate debtor will be managed by a reconstituted MC comprising of 4 representatives of the <u>Financial Creditors, 2 representatives of the Resolution applicants and</u> the erstwhile Resolution professional. After the closing date, a new board of Directors constituted by the Resolution Applicants will replace the MC and it will have adequate representation from the members of the Resolution Applicants and as requirements under applicable law.</p>
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4. With regard to 11.1.6 page no. 36 of the Resolution Plan, (para 28 of the order dated 08.03.2019), it is hereby clarified that approval ^{of} this bench (NCLT) in respect of Face Value Reduction and the Promoter Capital Reduction is/are dispensed with, however the applicant shall approach to the Competent Authority(s) viz. MCA and SEBI and any other competent authorities, as the case may be for necessary compliances.

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5. This further clarification/rectification order be form the part of the order dated 08.03.2019 passed in IA 259 of 2018 in CP(IB) 48/17 for all intent and purpose.
6. Accordingly, instant IA 320 of 2019 partially allowed and stands disposed off with the above, further clarification/rectification.


MANORAMA KUMARI
MEMBER (JUDICIAL)


HARIHAR PRAKASH CHATURVEDI
MEMBER (JUDICIAL)

Dated this the 26th day of July, 2019.