

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In

CP(IB) No. 349/KB/2017

Ramsarup Industries Limited

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**CA(IB) NO. 37/KB/2019  
CA(IB) NO. 343/KB/2019  
CA(IB) NO. 349/KB/2019  
CA(IB) NO. 424/KB/2019  
CA(IB) NO. 440/KB/2019  
CA(IB) NO. 460/KB/2019  
CA(IB) NO. 461/KB/2019  
CA(IB) NO. 462/KB/2019  
CA(IB) NO. 497/KB/2019  
CA(IB) NO. 511/KB/2019  
CA(IB) NO. 522/KB/2019  
CA(IB) NO. 523/KB/2019  
CA(IB) NO. 527/KB/2019  
CA(IB) NO. 636/KB/2019  
CA(IB) NO. 637/KB/2019  
CA(IB) NO. 685/KB/2019  
CA(IB) NO. 921/KB/2019  
CA(IB) NO. 1026/KB/2019  
IN  
CA(IB) NO. 352/KB/2019  
IN  
CP(IB) NO. 349/KB/2017**

**In the matter of:**

An application under section 30(6) Section 31 read with section 60(5)  
of the Insolvency and Bankruptcy Code, 2016 for submission of  
Resolution Plan.

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**In the matter of:**

**Resolution plan dated March 6, 2019** approved by the Committee of Creditors of the Corporate Debtor on 16<sup>th</sup> March, 2019.

**And**

Corporate Insolvency Resolution Process (CIRP) of **Ramsarup Industries Limited**

**And**

Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**And**

**In the matter of:**

**M/S. RAMSARUP INDUSTRIES LTD.**, a Public Limited Company limited by shares registered under the provisions of the Companies Act, 1956 bearing CIN No. L65993WB1979PLC032113 having its registered office at 7C, Kiran Shankar Ray Road, Hastings Chambers, 2<sup>nd</sup> Floor, Kolkata – 700001, West Bengal.

**And**

**In the matter of:**

**MR. KSHITIZ CHHAWCHHARIA**, Son of Shri Sushil Chhawchharia, aged about 43 years, the Resolution Professional having registration number

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
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In  
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Ramsarup Industries Limited

IBBI/IPA-001/IP-P00358/2017-18/10616 B and residing at 10A, Alipore  
Park Place, Kolkata 700027.

**Applicant/Resolution Professional**

**AND**

**In the matter of:**

**Ramsarup Industries Limited**

**And**

**In the matter of:**

**M/S. VINAR SYSTEMS PRIVATE LIMITED**, having its registered office  
at 9C, Lord Sinha Road, Kolkata 700071.

**Applicant/Operational Creditor**

**AND**

**In the matter of:**

**M/S. IFGL REFRACTORIES LIMITED**, a Company incorporated under the  
provisions of the Companies Act, 1956 and existing within the meaning  
of the Companies Act, 2013 and having its head and corporate office at  
3, Netaji Subhas Road, Kolkata 700001 in the State of West Bengal under  
the aforesaid jurisdiction and registered office at Sector B, Kalunga  
Industrial Estate, P.O. Kalunga 770 031, District Sundergarh, Odisha  
outside the aforesaid jurisdiction.

**Applicant**

**Versus**

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
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In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**Ramsarup Industries Limited & Ors**

**Respondents**

**AND**

**In the matter of:**

**M/S. GODAVARI COMMODITIES LIMITED**, a Company within the meaning of Companies Act, 2013 and carrying on business from 18, Netaji Subhash Road, 2<sup>nd</sup> Floor, Kolkata 700001.

**Operational Creditor**

**Versus**

**Ramsarup Industries Ltd.**

**Corporate Debtor**

**AND**

**In the matter of:**

**M/S. SSS LOHA MARKETING PRIVATE LIMITED**, an existing company within the meaning of the Companies Act, 2013 having its Registered Office at 18/1, Maharshi Debendra Road, 7<sup>th</sup> Floor, Room No. 1A, Kolkata 700007

**Applicant/Operational Creditor**

**Versus**

**Mr. Kshitiz Chhawchharia, Resolution Professional**

**Respondent**

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**And**

**Ramsarup Industries Limited**

**Corporate Debtor/Corporate Applicant**

**Versus**

**ICICI Bank Limited**

**Applicant Bank/Financial Creditor**

**AND**

**In the matter of:**

**M/S. TRANTER INDIA PRIVATE LIMITED**, a Company incorporated under  
the Companies Act, 1956 having its registered office at Gat No. 127 &  
128, Dingrajwadi, Taluka – Shirur, Pune – 412208, Maharashtra (India).

**Operational Creditor**

**Versus**

**Mr. Kshitiz Chhawchharia, Resolution Professional**

**Respondent**

**Ramsarup Industries Limited**

**Corporate Debtor**

**Versus**

**ICICI Bank Limited**

**Financial Creditor**

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**AND**

**In the matter of:**

**M/S. GUPTA POWER INFRASTRUCTURE LIMITED**, a Company incorporated under the provisions of the Companies Act, 1956 and a company within the meaning of the provisions of the Companies Act, 2013 having its registered office at EN 62, Sector V, 7<sup>th</sup> Floor, Salt Lake City, Kolkata 700091

**Applicant**

**Versus**

**Mr Kshitiz Chhawchharia, Resolution professional**

**Respondents**

**Ramsarup Industries Limited**

**Corporate Debtor**

**Versus**

**ICICI Bank Limited**

**Financial Creditor**

**AND**

**In the matter of:**

**M/S. FURNACE AND FOUNDRY EQUIPMENT COMPANY**, a partnership firm registered under the provisions of the Indian Partnership Act, 1932, having its office at Plot No. 4, Sub Survey No. 1, Off Saki Vihar Road, Chandvli Farm, Mumbai 400072, India.

**Applicant/Operational Creditor**

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In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**Ramsarup Industries Ltd.**

**Corporate Debtor**

**AND**

**In the matter of:**

**M/S. FAFECO ENGINEERS PRIVATE LIMITED**, a Company registered under the provisions of the Companies Act, 2013, having its registered office at Plot No. 4, Sub Survey No. 1, Off Saki Vihar Road, Chandvli Farm, Mumbai 400072, India

**Applicant/Operational Creditor**

**Ramsarup Industries Limited**

**Corporate Debtor**

**AND**

**In the matter of:**

**ECKO Cables Pvt. Ltd.**, a Company incorporated under the Companies Act, 1956 having its registered office at 7B/4, Poorvi Marg, N.E.A. Old Rajinder Nagar, New Delhi – 110060.

**Applicant/Operational Creditor**

**Versus**

**Mr. Kshitiz Chhawchharia, Resolution professional**

**Respondent**

**And**

**Ramsarup Industries Limited**

**Corporate Debtor/ Corporate Applicant**

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In

CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**Versus**

**ICICI Bank Limited**

**Applicant Bank/Financial Creditor**

**AND**

**In the matter of:**

**S.M. Electric Trading Co. Pvt. Ltd., an existing Company within the  
meaning of the Companies Act, 1956 having its registered office at 54,  
Ezra Street, Kolkata 700001.**

**Applicant/Operational Creditor**

**Versus**

**Mr. Kshitiz Chhawchharia, Resolution Professional**

**Respondent**

**Ramsarup Industries Limited**

**Corporate Debtor/Corporate Applicant**

**Versus**

**ICICI Bank Limited**

**Applicant Bank/Financial Creditor**

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**AND**

**In the matter of:**

**ICICI BANK LIMITED**, having its office at ICICI Bank House, 3A, Gurusaday  
Road, Kolkata 700019

**Financial Creditor**

**And**

**Ramsarup Industries Limited**

**Corporate Debtor**

**Bank of India**, having its office at Large Corporate Branch, 5 BTM Sarani,  
Kolkata 700001

**Applicant/Financial Creditor**

**Versus**

**Mr. Kshitiz Chhawchharia & Ors.**

**Respondents**

**AND**

**In the matter of:**

**SBI GLOBAL FACGTORS LIMITED**, having its registered office at  
Metropolitan Building, 6<sup>th</sup> Floor, Bandra-Kurla Complex, Bandra East,  
Mumbai – 400051.

**Applicant**

**Versus**

**Mr. Kshitiz Chhawchharia, Resolution Professional & Ors.**

**Respondents**

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In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**ICICI Bank Limited**

**Financial Creditor**

**Ramsarup Industries Limited**

**Corporate Debtor**

**AND**

**In the matter of:**

**Pegasus Assets Reconstruction Pvt. Ltd.** through its Authorised  
Representative Office: Free Press House, 55-56, 5<sup>th</sup> Floor, Nariman  
Point, Mumbai – 400021.

**Financial Creditor**

**In the matter of:**

**1. KSHITIZ CHHAWCHHARIA,**

**Resolution Professional**

**2. Ramsarup Industries Limited**

**Corporate Applicant/**

**Respondents**

**AND**

**In the matter of:**

**Indian Renewable Energy Development Agency Limited**, having its  
registered office at CORE 4A, East Court, 1st Floor, Indian Habitat  
Centre, Lodhi Road, New Delhi – 110003 and having its Corporate  
Office at 3<sup>rd</sup> Floor, August Kranti Bhawan, Bhikaji Cama Place, New  
Delhi – 110066.

**Applicant**

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In

CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**M/s. Ramsarup Industries Limited**

**Corporate Applicant**

**Respondents**

**AND**

**In the matter of:**

**WEST BENGAL INDUSTRIAL DEVELOPMENT CORPORATION LIMITED, a**  
Company within the meaning of the Companies Act, 2013, having its  
registered office at "Protiti", 23, Abamniomndranath Thakur Sarani  
(Camac Street), kolkata 700017.

**Applicant**

**Versus**

**Mr. Kshitiz Chhawchharia, Resolution professional**

**Respondent**

**AND**

**Aashish Jhunjunwala & Ors**

**Applicants**

**Kshitiz Chhawchharia**

**Respondent**

**Versus**

**ICICI Bank Limited**

**Financial Creditor/Applicant Bank**

**Ramsarup Industries Ltd.**

**Corporate Debtor**





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511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**AND**

**In the matter of:**

**M/S. VANGUARD CREDIT & HOLDING PVT. LTD.,** a Company  
incorporated under the Companies Act, 1956 having its registered office  
at 7C, Kiran Shankar Roy Road, Hastings Chambers, 2<sup>nd</sup> Floor, Room No.  
1, Kolkata 700001

**Applicant**

**Versus**

**Mr. Kshitiz Chhawchharia, Resolution Professional**

**Respondent**

**ICICI Bank Limited**

**Applicant Bank/Financial Creditor**

**Ramsarup Industries Limited**

**Corporate Applicant/Corporate Debtor**

**AND**

**In the matter of:**

**M/S. ORISSA METALIKS PRIVATE LIMITED,** a company within the  
meaning of the Companies Act, 2013 having its registered office at 1,  
Garstin Plaxce, "Orbit House", 3<sup>rd</sup> Floor, Room No. 3B, Kolkata 700001.

**Applicant**

**Mr. Kshitiz Chhawchharia & Ors**

**Respondents**

**Ramsarup Industries Limited**

**Corporate Debtor/Corporate Applicant**

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In

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Ramsarup Industries Limited

**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &  
Shri Harish Chander Suri, Hon'ble Member (Technical)**

**Counsels on record:**

- |                                    |  |
|------------------------------------|--|
| 1. Mr. Anuj Singh, Advocate        | ] For SS Natural Resource                          |
| 2. Mr. R. Sarkar, Advocate         | ] Pvt. Ltd.  |
| 3. A. Das, Advocate                | ]  |
| 1. Mr. D.N. Sharma, Adv.           | ] For IREDA  |
| 2. Mr. Indranil Karfa              | ]  |
| 1. Mr. Abhik Sarkar, Advocate      | ] For SREI Multiple Asset<br>Investment Trust Fund |
| 1. Mr. Ramesh Chandra Prusti, Adv. | ] For SBI Global Factors                           |
| 2. Ms. Mahuya Ghosh, Adv.          | ] CA(IB)/1026/2019                                 |
| 1. Ms. Manju Bhuteria, Adv.        | ] For Kotak Mahindra                               |
| 2. Mr. Varun Kedia, Adv.           | ] Bank   |
| 3. Ms. Urvi Mitra                  | ]  |
| 1. Mr. Shaunak Mitra, Adv.         | ]  |
| 2. Mr. Soumabho Ghose              | ] For Financial Creditor                           |
| 3. Mr. Pratik Mukhopadhyay         | ] Bank of India                                    |
| 1. Mr. Kaushik Saha, Adv.          | ] For J.M. Financials                              |
| 2. Mr. Basabraj Chakraborty, Adv.  | ]  |
| 3. Ms. Kashmira Das, Adv.          | ]  |
| 1. Mr. Pramit Bag, Adv.            | ]  |
| 2. Mr. Anuj Kumar Mishra, Adv.     | ] For ARCIL  |

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In

CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| 1. Mr. Aniruddh Poddar, Adv.        | ] For CA(IB) Nos. 460, 511,           |
| 2. Ms. Moumita Bhattacharya, Adv    | ] 522 & 523/KB/2019                   |
|                                     | ] SSS Loha Marketing Pvt. Ltd,        |
|                                     | ] Ecko Cables, S M Electric &         |
|                                     | ] Tanter India                        |
| 1. Mr. Kshitiz Chhawchharia, RP     | ]                                     |
| 2. Mr. Ratnanko Banerjee, Sr. Adv.  | ]                                     |
| 3. Mr. Sidhartha Sharma, Adv.       | ] For Resolution                      |
| 4. Ms. Ujjaini Chatterjee, Advocate | ] Professional                        |
| 5. Mr. Diprani Thakur, PCS          | ]                                     |
| 1. Mr. Abhrajit Mitra, Sr. Adv.     | ]                                     |
| 2. Mr. R.N. Ghose, Adv.             | ] For OMPL                            |
| 3. Ms. Urmila Chakraborty, Adv.     | ]                                     |
| 4. Ms. Ankita Mukherjee             | ]                                     |
| 1. Ms. Swapna Choubey, Adv          | ] For Operational Creditor            |
| 2. Mr. Aditya Kanodia, Adv.         | ] Vinar Systems Pvt. Ltd.             |
| 1. Mr. Reetobroto Mitra, Adv.       | ]                                     |
| 2. Mr. Vikram Wadehra, Adv.         | ]                                     |
| 3. Ms. Vidushi Chokhani             | ] For the CoC                         |
| 4. Mr. Soumava Ghosh, Adv.          | ]                                     |
| 1. Mr. Rishav Banerjee              | ] Applicants in CA(IB) Nos.           |
| 2. Mr. Zeeshan Haque                | ] 1039, 1063, 461 & 462/KB/<br>] 2019 |

Date of pronouncement of the Order: 04/09/20109

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Ramsarup Industries Limited

## ORDER

### Per Jinan K.R., Member (Judicial):

All the above applications taken together for convenience and for avoiding repetition of facts and since common questions arises for consideration.

### CA(IB)No. 352/KB/2019

1. This is an Application filed by the Resolution Professional for approval of the Resolution Plan of M/s. Ramsarup Industries Limited/ Corporate Applicant which has been approved by the Committee of Creditors by a voting share of 74.41%. The Corporate Applicant/ M/s. Ramsarup Industries Limited had filed the **CP(IB) No. 349/KB/2017** for initiating Corporate Insolvency Resolution Process(in short CIRP) on the allegations of inability to pay the debt.

2. The Application was admitted vide Order dated 08-01-2019 by appointing Mr. Nilesh Sharma as the Interim Resolution Professional. However at the request of the CoC vide order dated May 2, 2018 Resolution Professional Mr. Nilesh Sharma was replaced by Mr. Kshitiz Chhawchharia. Upon appointment of the Resolution Professional, the CIRP commenced against the Corporate Applicant, M/s. Ramsarup Industries Limited. While continuing with the Resolution Plan, the extended period of CIRP also expired on 04-10-2018. Due to various reasons, including pending litigation,

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CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

certain unutilized period has been excluded for the purpose of counting the period of CIRP, for enabling the Resolution Professional to complete the process and CIRP period was finally extended to 23.03.2019. In the meanwhile, the Committee of Creditors succeeded in approving the Resolution Plan in the meeting held on 16-03-2019 and it is that Resolution Plan that has been placed before us for consideration and approval.

3. Innumerable Applications (30 in number) have been filed by various stakeholders including the Operational Creditors, Financial Creditors, unsuccessful bidders and Promoter Director of the suspended Board of Directors of the Corporate Applicant objecting to the approval of the Resolution Plan.

4. The Operational Creditors challenged the approval of the Resolution Plan by filing individual applications **CA (IB) No.343/KB/2019, CA(IB) No. 349/KB/2019, CA(IB) No. 440/KB/2019, CA(IB) No. 460/KB/2019, CA(IB) No. 523/KB/2019, CA(IB) No. 636/KB/2019, CA(IB) No. 637/KB/2019 & CA(IB) No. 685/KB/2019.**

5. **CA(IB)No.511/KB/2019** is filed by **Ecko Cables Private Limited/Operational Creditor** claiming priority in payment of claims of the Operational Creditor over the claims of the Financial Creditors. According to the Ld. Counsel for the Ecko Cables, the Resolution Professional should

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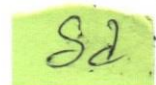
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

make provision in the resolution plan for payment to the Operational Creditors prior to the payment of claims of the Financial Creditors.

6. **CA(IB)No.522/KB/2019** is an application filed by another Operational Creditor, **SM Electric**, claiming that Operational Creditors should be given priority in payment over Financial Creditors. All the other operational creditors raised similar contentions mainly contending that the Operational Creditors were being discriminated in regard to distribution of resolution bid amount.

7. Since all the operational creditors have raised similar objections, their objection is dealt with together and not separately, for convenience. According to the Ld. Counsels for the Operational Creditors, their claim must get similar treatment as being given to the dues of the Financial Creditors and that equality of treatment has not been proposed to be done in regard to distribution of bid amount. Therefore, the Resolution Plan cannot be approved.

8. One another contention on the side of the Operational Creditors is that they were not given priority in payment over the Financial Creditors. Some of the Operational Creditors also raised objection that none of the Operational Creditors were given notice in participating the meeting and no copy of the Resolution Plan has been given to the Operational Creditors and therefore, there is flagrant violation of the provisions of the Insolvency &



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Bankruptcy Code, 2016 (in the Code) and Regulations and therefore, the Resolution Plan cannot be approved.

9. The RP has objected all these applications. Upon hearing the arguments on both sides and considering the evidence and on perusal of the resolution plan, we come to the following conclusions:-

(i) The amount claimed by the operational creditors need not be given priority in payment over financial creditors, but the amount due to the operational creditors under a resolution plan must be given priority in payment over financial creditors as per Regulation 38(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"). As per the plan under consideration the amount found due to the operational creditors **under the resolution plan** was given priority in payment over financial creditors. Therefore the said objection of the OC's are found devoid of any merit.

(ii) As per the amendment to Section 30 (2) of the Code, OCs shall be paid **not less than the amount payable to them in the event of liquidation of the CD or the amount payable to them** if realisation under the resolution plan were distributed in accordance **with the priority in the liquidation waterfall**, whichever is higher. The resolution professional seems to have examined the resolution plan so as to ensure that the amounts payable to the operational creditors under the resolution plan is not lesser than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor. The distribution of the bid amount in respect of the OCs under

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challenge is found in accordance with the said provisions and thus there is no violation of S.30(2) (b) as is attempted to be established on the side of the OCs.

(iii) Some of the operational creditors contend that there should not be any differentiation between OCs and financial creditors. According to them distribution must be equal irrespective of classification of creditors as FC and OC. There is no provisions under the code enabling us to hold that the distribution of bid amount would be equal to the OCs and to the FCs. On the other hand, in *Binani Industries Ltd & Adhunik Alloys & Power Ltd*: differential treatment is found permissible if creditors are not similarly situated. In **Swiss Ribbons v. Union of India** it was held that Financial Creditors and Operational Creditors are positioned differently in view of nature of transactions and nature of debt. In view of the abovesaid discussions, we are unable to accept any one of the objections of the OCs.

(iv) One among the OCs also contends that non service of notice in attending the COC's meetings and non furnishing of copies of the resolution plan makes the proceedings illegal. In **Vijay Kumar Jain v. Standard Chartered Bank and Ors.** The Hon'ble SC has held that "*only those operational creditors may participate in the meeting of the committee of creditors (that is, the operational creditors to whom the amount due is more than ten percent of the total debt of the Corporate Debtor), must be furnished with copies of the resolution plan.*" The applicant OCs have failed in proving any violation of S.24(3) (c) of the Code, so we also do not find any merit in the above said objection on the side of the OCs.

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10. Upon perusal of the proposed offer of the resolution applicant, it is understood that the very same treatment is proposed to be given to the OCs as is seen given to the Financial creditors as per the resolution plan. This is a case in which FCs have agreed to have a haircut of 94% and they would get 5.8% of their admitted claim of Rs.5853.00 crores, and OCs in total would get 10.50 Crores out of the total admitted claim of 224.05 crores. That would come to 38.82%. The payment to the workmen is 90% of the admitted claim. The Statutory Authorities have been offered Rs. 3,00,00,000/- (Rupees Three Crores Only). Thus total percentage of aggregated claim of Operational Creditors inclusive of statutory Authorities would come to 5.82%. The above sad distribution of the bid amount clearly indicates that the Operational Creditors are given similar treatment as being given to the Financial Creditors. In the above said peculiar nature and circumstances of the case, we are of the view that the objections raised on the side of the OCs are devoid of any merits.

11. As regards priority in the payment, the RP is seen to have followed Regulation 38(1) of the CIRP Regulation. As per Regulation 38(1), the liquidation value due to the operational creditors should be paid in priority to the FCs. Provision is seen made in the resolution plan to pay the amount found offered in any event one day prior to the date of the payment to the

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FCs. In view of the above-said, we hold that none of the objections of any one of the OCs are sustainable under law.

12. The next objectors are a batch of Financial Creditors. Their main challenge is against the methodology approved by the Committee of Creditors in regard to distribution of the bid amount on the basis of security interest. According to them it is not in accordance with the provisions of the Code and therefore, there is discrimination among the very same class of Financial Creditors. The Ld. Counsel appearing for the objecting Financial Creditors unanimously submits that the methodology adopted for distribution of the resolution bid amount is to be as per voting share and not on the basis of security interest and according to them there was no unanimous approval of the distribution methodology on the basis of security interest by the Committee of Creditors.

13. Bank of India filed **CA(IB)No.527/KB/2019** challenging the resolution plan that the methodology of distribution of process as per security structure and interest contravenes and in derogation of the provisions of the Insolvency and Bankruptcy Code, 2016 and results in creation of arbitrary clause amongst the Financial Creditors on the nature of security interest held by Financial Creditors. According to the Ld. Counsel appearing for Bank of India, the distribution methodology must be as per voting share as the Code does not specify any specific provision for the distribution in accordance with security interest.

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14. **SBI Global Factors Limited** filed **CA(IB)No.1026/KB/2019** is contending similar objections of State Bank of India and other Financial Creditors. According to the Ld. Counsel appearing for the applicant, the distribution methodology adopted for distributing the resolution bid is not in accordance with law and not equitable to all Financial Creditors and it would create arbitrary classification and, therefore, is liable to be set aside. According to him, the Resolution plan is liable to be set aside.

15. **Kotak Mahindra Bank** filed affidavit in the form of objection objecting to the approval of the resolution plan challenging the methodology. The Kotak Mahindra Bank and Bank of India have not voted in favour of the Resolution Plan and therefore, they are dissenting Financial Creditors. The challenge against the distribution methodology on the basis of security interest is not at all sustainable under law for two reasons.

16. Firstly, this methodology as per the available records and as per the averments advanced on the side of the Resolution Professional, has been deliberated within the Committee of Creditors from 02-02-2019 onwards till the final deliberation in regard to voting for approval of the Resolution Plan, held on 16-03-2019. The copy of resolution brought to our notice also proves that the distribution methodology on the basis of security interest was approved by the Committee of Creditors by a vote of 74.41%. This distribution cannot be challenged under law by the dissenting Financial

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Creditors who are Kotak Mahindra Bank and Bank of India. Moreover, this methodology is not in violation of Section 30 of the Code which has been amended vide notification dated 06-08-2019. The relevant portion of Section 30(b) reads as follows :

*“(b) in sub-section (4), after the words “feasibility and viability”, the words, brackets and figures “the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of Section 53, including the priority and value of the security interest of a secured creditor” shall be inserted.”*

17. So as of now, value of the security interest of the secured creditors can be considered as a methodology for the distribution of the bid amount. Therefore, we do not find any force in the argument advanced on the side of the above said Financial Creditors.

18. Two other Financial Creditors, **M/s. Pegasus Assets Reconstruction Pvt. Ltd.**, by filing **CA 424/KB/2019** and **M/s. JM Financial Assets Reconstruction Co. Pvt. Ltd.** by filing objection in the form of affidavit have also come forward for challenging the approval of the Resolution Plan. M/s. Pegasus Assets Reconstruction Pvt. Ltd. filed CA(IB) No. 424/KB/2019 contending that there has been an error in the calculation done by the process advisers to the Committee of Creditors in the methodology of distribution of proceeds and that the distribution of proceeds in respect of

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the two plants has wrongly been allocated to IDBI and therefore, Resolution Professional has failed in considering that M/s. Pegasus Assets Reconstruction Pvt. Ltd. has an exclusive charge over the Air Suppression Plant and sinter Plant of the Corporate Debtor.

19. **M/s. JM Financial Assets Reconstruction Co. Pvt. Ltd.** also raised same objections. On perusal of the records and letters exchanged in between the Consortium Lead Bank Merger and the Promoter Director, (Pages 58 & 70), it is understood that the assigners who assigned the debt of the Corporate Applicant in favour of the above said two FCs, have been assigned the debt to the above said two Financial Creditors by creating security interest over the Plants belonging to the Corporate Applicant and the Corporate Applicant has consented to the said arrangement.

20. **M/s. Pegasus Assets Reconstruction Pvt. Ltd.** has failed in proving that it has an exclusive charge on Air Suppression Plant and Sinter Plant. Admittedly, IDBI had also issued loans to the Corporate Applicant which was subsequently assigned in favour of ARCIL and ARCIL, inter alia, had charge over the Kharagpur Unit. The Resolution Professional had seen examined the mortgage deed executed by IDBI and according to Ld. Counsel for the Resolution Professional, the Mortgage Deed executed by IDBI indicates that IDBI had a charge of the property of the Corporate Applicant situated at Kharagpur.

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21. Both these objectors are the members of the Committee of Creditors and it is also understood that the security interest recorded for each Creditors has been made available to all the members of the Committee of Creditors before finalization of the approval of the Resolution Plan. Therefore, the challenge raised by the above said Financial Creditors claiming exclusive charge over the above said Plants is found devoid of any merits. They are estopped from contending that the RP has erred in recording the value of security interest of FCs after the approval of the methodology by the required majority wherein they were parties and participated in the discussions. On the other hand, the records available in the case proves that the position in regard to pari passu charges has been accepted and acted upon by the members of Committee of Creditors themselves including the Financial Creditors who came forward objecting to the methodology and therefore, the attempt of the Financial Creditors who had dissented the approval of the Resolution Plan can be considered as an attempt to protract the proceedings by raising untenable contentions.

22. On perusal of the deed of Mortgage executed by IDBI indicates that IDBI had the first pari passu charge over the movable fixed assets of the Corporate Applicant and the second pari passu was set with the working capital lenders over the current assets. Allahabad Bank assigned the debt to M/s. Pegasus Assets Reconstruction Pvt. Ltd.(Destining creditor) and UCO Bank had assigned the debt of the Corporate Applicant to M/s. JM

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Financial Assets Reconstruction Co. Pvt. Ltd.(Assenting Creditor). The **CA(IB) No. 424/KB/2019** requires no consideration and it is liable to be **dismissed**.

23. None of the Banks comes forward to raise a contention that they have had first pari passu charge over the Plant as the FCs alleged in the objections and in the applications. On the other hand, they are members of Consortium of Banks wherein the fact remains that IDBI has got the first pari passu charge and it has been acceded to by the Lenders. The Ld. Counsel for the JM Financial Assets Reconstruction Co. Pvt. Ltd submits the reason for the delay in raising the objection is that the assignee was not aware of the charge arrangement, but it was brought to its notice by the promoter director who is hotly contesting the application for approval. So JM Financial Assets Reconstruction Co. Pvt. Ltd comes before us as instigated by the promoter and not as of any of its right in respect of distribution of bid amount is affected. Voting in favour of the resolution plan and coming forward to challenge the plan also cannot be permitted in the nature of the case in hand. We do not find any justifiable reason to uphold the contentions raised on the side of the above said Financial Creditors.

24. The **CA (IB) No. 37/KB/2019** is an Application filed by **IREDA** seeking leave to intervene in the present proceedings, staying the

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proceedings for approval of the Resolution Plan by the Adjudicating Authority, on the ground that the schedule of assets included as the assets provided in the Resolution Plan is to be excluded as it belongs to it. The Ld. Counsel appearing for the Applicant submits that the Wind power Project of the Corporate Applicant is to be excluded from the Resolution Plan since the said assets were already recovered by Enforcement Directorate under the SARFAESI Act, 2002 and that the sale of the assets has been confirmed and the Applicant has realized the sale value. The Ld. Senior Counsel appearing for the Resolution Professional submits that the above said objection is unsustainable because the Debt Recovery Tribunal, Aurangabad stayed the sale stating that it was not conducted in accordance with the provisions of the SARFAESI Act, 2002 and that an Appeal preferred against the order of stay is pending before the Debt Recovery Appellate Tribunal. He further submits that the information memorandum includes the details of the pending litigation. Therefore, the Resolution Applicant is aware of the proceedings initiated under the SARFAESI Act, 2002. According to him, the Applicant IRDAI has been invited to be a member of the Committee of Creditors of the Corporate Applicant in regard to its claim against the Corporate Applicant and therefore, no prejudice is even caused to the Applicant herein in approving the Resolution Plan.

25. Being satisfied that the claim of the IRDAI is being considered by the RP, inclusion of the assets which were evidently sold illegally would in no

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way affect the right of the corporate applicant to hold it as its own assets until its right if any is reversed in the appeal. The above being the circumstance brought out in the case in hand, the relief sought for by the Applicant here in this case, cannot be allowed. Therefore, the objection raised by the Applicant as against the approval of the Resolution Plan is found unsustainable and accordingly, we are inclined to reject the objection of IRDAI by dismissing the application. Accordingly **CA(IB) No. 37/KB/2019** is liable to be **dismissed**.

26. One another objector is **West Bengal Industrial Development Corporation Limited(WBIDCL)**. It filed **CA(IB) NO 921/KB/2019**. The Ld. Counsel appearing for the Applicant, WBIDCL submits that it is not disputing the approval of the Resolution Plan. According to him, the Applicant submitted its claim in prescribed Form C under Regulation (A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 , 2016 as a Financial Creditor and contends that the Applicant being the first charge holder in respect of Saimanagar Unit of the Corporate Applicant, deployed security guards in the said premises from 30-07-2012 to 31-10-2018 against which the Applicant has incurred substantial expenses to the tune of Rs.1,14,25,806/-(Rupees One Crore Fourteen lakh twenty five thousand eight hundred six only) and another expenses of Rs.17,10,476/- (Rupees Seventeen lakh ten thousand four hundred seventy six only) and that security expenses have been incurred by the Financial Creditor. The

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Applicant has not been included in the portion of upfront amount payable by the successful Resolution Applicant to the Creditors. He would further submit that the security expenses incurred by the Financial Creditor, ARCIL, has been included as an upfront payment amount in priority of payment of bid amount to be distributed among the Creditors and that amounts to discrimination. He prays for issuing directions to successful Resolution Applicant to pay the security expenses incurred by the Applicant as an upfront payment.

27. The Ld. Senior Counsel for the Resolution Professional submits that the applicant has not made any request for distribution of the expenses by including in the upfront amount and raising the request first time by filing this application and that RP has no objection in issuing directions to the Resolution Applicant to pay the security expenses incurred by the Applicant which has been admitted in the Resolution Plan to be included in the upfront payment. The Ld. Counsel, appearing for the Resolution Applicant, also showed his readiness to pay the admitted amount of security expenses incurred by the Applicant as an upfront amount. Having regard to the above we are inclined to issue directions as prayed for. The said Application can be disposed of accordingly.

28. **CA(IB)No. 461/KB/2019** is an Application filed by **Shri Aashish Jhunjunwala**, Promoter Director of the Corporate Applicant/corporate

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Debtor challenging the approval of the Resolution Plan on the following grounds:-

(i) The resolution bid amount is substantially below the liquidation value of the Corporate Debtor of which Resolution Plan does not conform to the maximization of the assets of the Corporate Debtor for the Financial Creditors and other stakeholders,

(ii) The distribution modification must be on the basis of voting share and not on the basis of security share,

(iii) Charge of ARCIL with respect to IDBI Bank has been recorded erroneously.

(iv) The Resolution Plan approved by the Committee of Creditors must be unconditional. However, the Resolution Plan submitted with the Adjudicating Authority for its approval is not unconditional.

(v) The Resolution Applicant is not eligible to submit the resolution Plan as per section 29A of the Code.

(vi) The entire Resolution Plan deserves to be rejected since the entire CIRP has been manipulated and the same has not been conducted in accordance with the legal provisions of the Code as the voting time has

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been extended without any provision and without any basis whatever to suit the Resolution Applicant and to accommodate the Resolution Applicant.

29. **CA(IB) No. 462/KB/2019** is one another Application filed by the **Vanguard Credit Holding Limited**, a guarantor who is none other than the Promoter Director who filed the CA(IB) No. 461/KB/2019 contending that Vanguard Credit Holding Limited is the owner of the land situated at Durgapur and has allowed the Corporate Debtor to use the said land for setting up, establishing and running of the factory. Therefore, the approval of title of the property as per the Resolution Plan in favour of the Resolution Applicant is illegal. That proceedings under the Insolvency & Bankruptcy Code, 2016 have been initiated against the Corporate Debtor and that the Resolution Plans were formulated on the basis of the fact that the land belonged to the Corporate Debtor and not in accordance with the provisions of the Code and the Regulations. The land cannot be transferred by way of any scheme of Resolution of the Corporate Debtor without an express consent of the Applicant.

30. Though the above said grounds were taken in the above said CAs, an argument note was filed on the side of the applicant limiting the grounds under challenge as under:-

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(a) That the bid amount payable by the Resolution Applicant is substantially below the liquidation value and the Resolution Plan does not call for maximization of the assets of the Corporate Debtor and therefore, liable to be rejected,

(b) That distribution pattern under the Resolution Plan is discriminatory and contrary to the principle laid down in Binani Industries Limited Vs. Bank of Baroda by the Hon'ble NCLAT and therefore, liable to be either modified or to be rejected,

(c) The resolution plan cannot be conditional or contingent in nature.

(d) The resolution applicant is disqualified u/s.29A of the Code as the resolution applicant is a related party to one BRG iron and steel Company Ltd in respect of which CIRP is already initiated.

(e) The resolution plan deserves to be rejected since the entire CIRP has been manipulated and has been conducted not in accordance with the provisions of the Code and regulations.

31. Although several contentions are raised in the application filed by the Aashish Jhunjunwala promoter Director of corporate

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applicant/corporate debtor, at the hearing of the applications (CA 461 and 462) Ld. Sr. Counsel Mr. Abhrajit Mitra restricted his argument to the following objections:-

(a) The upfront amount payable by the Resolution Applicant is substantially below the liquidation value and the Resolution Plan does not call for maximization of the assets of the Corporate Debtor and therefore, liable to be rejected

(b) That the charge in favour of ARCIL which has given 55% voting shares among the members in the Committee of Creditors has been recorded incorrectly. ARCIL is only holding second charge over the movable and fixed assets of the Corporate Applicant. According to him the AXIS Bank and Punjab National Bank who were the original lenders to whom Vanguard Credit Holding Private Limited stood as a guarantor cannot hold first charge over the property and therefore, the distribution of bid amount considering the security interest held by the ARCIL is wrong

(c) The distribution pattern under the Resolution Plan is discriminatory and contrary to the principle laid down in Binani Industries Limited Vs. Bank of Baroda by the Hon'ble NCLAT and therefore, liable to be either modified or to be rejected,

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(d) The approval of the Resolution Plan by the Committee of Creditors, is contrary to Section 37(a) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Section 18(1)(f) and Explanation (b) of the Code and therefore, liable to be rejected.

32. Coming to the first objection that the upfront amount offered to be paid is less than the Liquidation value is not at all a ground to reject the plan. So also we do not find any merit in the submission of the Ld. Sr. Counsel for the promoter director that the resolution plan requires modification by raising upfront amount. According to the Ld. Sr. Counsel for the promoter director of the corporate debtor (CD), the offer for payment of upfront amount if it is less than the liquidation value is against the principle of law set out in **Padmanavan Venkatesh Vs. Venkatachalam and Others, CA AT (Insol) 128 of 2019** and against the objectives of the Code. However he submits that if the Resolution Applicant is willing to modify the Resolution Plan in regard to payment of upfront amount and agrees to ensure to maximize the value of the assets of the Corporate Debtor by increasing the resolution bid, the Applicant has no objection in regard to upfront amount proposed to be paid by the Resolution Applicant.

33. The following is the list of claims received and admitted by the Resolution Professional based on the last updated List of Creditors :

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<b>Creditor Claims*(INR Crore)</b>	<b>Amount Claimed (Rs. in crore)</b>	<b>Claim Admitted (Rs. in crore)</b>
Financial Creditors	6046.77	5853.09
Operational Creditors(other than Workmen and employee)	284.23	216.17
Operational Creditors(only Workmen and employees)	20.31	7.88
<b>Total Claims</b>	<b>6351.31</b>	<b>6077.14</b>

\*Shall be subject to change if any till the Cut-Off Date

34. The following table summarizes the proposed offer as a part of the Resolution Plan to the financial creditors of the Corporate Debtor ("Financial Creditors") as well as other creditors specified under the Code :

<b>Particulars</b>	<b>Amount (in Rs. Crores)</b>
CIRP Process cost *	[ * ]
Sustainable Debt to be paid upfront to the Financial Creditors	351.0
Payment to Operational Creditors	3.50
Payment to Workmen	7.00
Payment towards Statutory Liabilities	3.00
Capex/Working Capital	306.00

\*To be paid at actual

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35. The above being the offers based on the admitted claim of the creditors, the distribution of the resolution bid amount is found not in contravention of any of the provisions of the Code or Regulations. The total bid amount comes to 670.50 Crores which is higher than the liquidation value of Rs. 610.29 crores. The facts in the given case being not similar to the **Padmanavan Venkatesh** case above referred, the principle of distribution if any in the said case cannot be applied in the case in hand.

36. An argument also was advanced that the Operational Creditors were treated differently and thereby discriminated among similar class of Creditors. According to the Ld. Sr.Counsel the distribution among workmen and operational creditor is not equal and therefore there is evidence of discrimination.

Ld. Sr. Counsel appearing for the Resolution Professional while referring to **Essar Steel Ltd. & Ors. (Company Appeal (AT) (Ins.) No. 242 of 2019)** submits that treatment in regards to distribution of resolution bid is equal in respect of 'financial creditors' and "operational creditors" and there is no discrimination as alleged. He refers to paragraph 177 of the above said judgement, which reads as under :-

*"For the aforesaid reasons, if the employees are given 100% of their dues or those who have 'supplied goods' and 'rendered services' having claim less than Rs. 1 Crore are provided with 100% dues of their claim amount as provided in the present case, the other 'Operational Creditors' whose claim are more than Rs. 1 Crore or the 'Central Government' or the 'State Government' or the 'Local Authority', who raise their claim on the basis of the statutory dues, they cannot ask for same treatment as allowed in favour of the aforesaid class of 'Operational Creditor'."*

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37. The Hon'ble Appellate Tribunal in Essar Steel case as referred to above has observed that there are three classes of 'operational creditor', - (a) who have supplied goods and rendered services, (b) employees who have rendered services and (c) the Central Government, the State Government and Local Authority, who has not rendered any services but derived the advantage of operation of the corporate debtor pursuant to existing law and held that operational creditors can be classified in three different classes for determining the manner in which amount is to be distributed to them. However, they are to be given the same treatment, if similarly situated. The observation in paragraph 177 referred to above made it clear that workmen cannot be equated with the class of operational creditors who have supplied goods and rendered services and, therefore, the contentions on the side of the Ld. Counsel appearing for the promoter-directors that the treatment given to the operational creditors and the workmen being different and they are similarly situated is found unsustainable. In view of the above-said discussion, we find no merits in the objections on the side of the promoter director as regards distribution of the bid amount.

38. The Ld. Sr.Counsel appearing for ARCIL brought our attention to the observations of IBBI advisory board who recommended amendment to the CIRP regulation. He read over its para no.7 as under:-

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*“7. Regulation 38(1)(c) provides that the liquidation value due to dissenting financial creditors shall be paid before any recoveries are made by the financial creditors who voted in favour of the resolution plan. Though the enterprise value (resolution value) is usually higher than the liquidation value, the reverse is possible in some cases. Moreover, liquidation value, as estimated, may not be realizable and realised value is usually liquidation value minus cost of realisation. It may be difficult to pay out liquidation value in all cases, that too, before any payment to other financial creditors. In a sense, this becomes an incentive for a financial creditor to dissent. Further, it may be difficult to arrange liquid cash to pay upfront to dissenting creditors and such payment may impinge on resolution of the corporate debtor. However, the Advisory Committee felt that those who remain vested in the future of the debtor should give way to those who would like to exit. It is, therefore, proposed to leave the regulations as they are in this regard.”*

39. Referring to the above said observation the Ld.Sr.Counsel attempted to convince us that generally a plan is approved wherein resolution bid amount is higher than the liquidation value and that the board never recommended that the resolution bid amount must be above the liquidation value. He suggested instances of approval of plan wherein resolution bid amount is lesser than liquidation value and that the judgment of Padmanavan Venkatesh not at all laid down a principle that upfront amount in all cases to be above the liquidation value. Here is a company not functioning more than ten years prior to CIRP and that the resolution bid being above the liquidation value, the plan must be approved if it does not contravene any of the provisions of the Code and the regulation. He argued. He also relied upon **K.Sashidhar v.Indian Overseas Bank and Ors.** to stress an argument that the plan under consideration being passed by vote of 74.41% the distribution of bid amount approved by the CoC cannot be re-appreciated and cannot be altered unless there is any cogent evidence of discrimination among the same class of creditors. In the said case, the Hon'ble Supreme court has held that *“the commercial wisdom of the CoC is given paramount status”*. Bearing in mind the above said



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objective and the principles laid down by the Hon'ble Supreme Court, we are of the considered view that there is no error, illegality or any discrimination among the same class of creditors or there is no dissimilar treatment as attempted to be proved on the side of the promoter director and that the upfront amount offered by the Resolution Applicants though less than the liquidation value, it itself is not a ground for rejection of the Plan. We find no merit in the above said objection on the side of the promoter director of the Corporate Debtor.

40. The second objection stressed on the side of the promoter Director by the Ld. Senior Counsel is that the approval of the Resolution Plan only benefits the ARCIL and never balances the interest of all other stakeholders including the Financial Creditors and Operational Creditors because the ARCIL only held second charge over the security interest created to the assignors of the ARCIL and that if the Corporate Applicant Company goes into liquidation, the other Financial Creditors who dissented the approval of the Resolution Plan, would be more benefitted and thereby, the ARCIL who is having dominating voting percentage over others, decided to vote in favour of the Resolution Plan.

41. The above-said objection was also raised by the dissenting financial creditors and we found that the said objections are not sustainable as per the records available in this case. The Corporate guarantee and the mortgage deeds executed by the CD and Vanguard in the case in hand prove

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that the assignors, who are Axis Bank, and Punjab National Bank were given pari passu charge over the movable and immovable properties of the Corporate Debtor and Vanguard Credit Holding Private Limited (vanguard). Vanguard is a Company owned by the Promoter Director. He is holding 99.9% of the total shareholding of the Corporate guarantor, Vanguard Credit Holding Private Limited. The lenders, namely, Axis Bank, Punjab National Bank on the strength of mortgaging the land of the Corporate Applicant as well as the land owned by Vanguard Credit Holding Private Limited, (Vanguard) provided the loan on the basis that the repayment by the Corporate Applicant of the loan was secured by way of mortgage over the land provided by Vanguard Credit Holding Private Limited and by way of corporate guarantee provided by the Applicant itself. Therefore, the evidence submitted in the case in hand proves that Vanguard Credit Holding Private Limited has, by creating the mortgage over the land belonging to it, created security interest over the land in favour of Punjab National Bank which has been subsequently transferred to ARCIL and Axis Bank. The above said circumstances lead us to the conclusion that the land admittedly belonged to Vanguard Credit Holding Private Limited, wherein the Corporate Applicant has set up the Durgapur Plant, which has been encumbered by the Applicant to be utilized for the repayment of the debts of Punjab national Bank and Axis Bank. So, whatever right, interest etc. is held by the Punjab National Bank, and Axis Bank over the land belonging to

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Vanguard Credit Holding Private Limited has been legally transferred to the assignor, ARCIL. So also the deed of hypothecation executed by IDBI Bank indicates that the IDBI has the first pari passu charge over the movable fixed assets of the borrower and second pari passu charge is shared with the working capital lenders over the current assets. Therefore, the mortgage deed executed by the IDBI indicates that IDBI has the charge over the properties situated at Kharagpur. Therefore, there is nothing brought out on the side of the Applicant, Promoter Director of the Corporate Applicant that the charge in favour of ARCIL considered by the Committee of Creditors in the case in hand, has been recorded incorrectly.

42. An attempt is made on the side of the promoter-directors referring to a judgement of NCLT, Mumbai Bench in the matter of **Edelweiss Assets Reconstruction Co. Ltd. -vs- Bharati Defence and Infrastructure Ltd.** that title of a property cannot be transferred in favour of resolution applicant. The facts in the above said judgment is not similar to the facts in the case in hand. Here in the instant case, the owner of Durgapur land, namely, Vanguard Credit Holding Pvt. Ltd. had already created mortgage over the land in favour of the Axis Bank and Punjab National Bank and since Vanguard Credit Holding Pvt. Ltd. has created mortgage over the land; created security interest over the land in favour of the Bank the right, interest and title in respect of the mortgaged land can be assigned in favour

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of the Resolution Applicant. Accordingly, that argument does not hold good in the context of objections raised in the case in hand.

43. At this juncture, an argument is also advanced from the side of the Promoter/Director of the Corporate Applicant referring to Section 18(1) (f) and Explanation (b) of section 8 of the Code and Regulation 37(a) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, that the mortgagee has no right to transfer title of the properties of Vanguard and therefore resolution plan is liable to be rejected. According to him, as per the Resolution Plan, Clause 15.1, a mechanism for the transfer of the land to the Resolution Applicant has been laid down in regard to Durgapur land owned by the Vanguard Credit Holding Private Limited. According to him, Section 18, Explanation (b) of the Code and Regulation 37(a) of (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 restricts transfer of title of a third party or subsidiary of the Corporate Applicant in favour of the Resolution Applicant and therefore, is contrary to the said provisions and therefore, the Resolution Plan is liable to be rejected.

44. **Vanguard Credit Holding Private Limited**, admittedly, a Corporate guarantor, provided corporate guarantee dated April 23, 2009 to Axis Bank Limited and Corporate guarantee dated 30-07-2009 and May, 2009 to the Punjab national Bank. The Vanguard Credit Holding Private Limited has

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admittedly executed the guarantee deeds too. Thereby, the mortgaged land owned by it in Durgapur, measuring about 54 acres, named in the Resolution Plan as Durgapur land, by way of equitable mortgage in favour of Punjab National Bank, limited to secure the indebtedness of the Corporate Applicant which has subsequently been transferred to ARCIL on pari passu basis with Axis Bank Limited. Therefore, evidently, Vanguard Credit Holdings Private Limited, is a mortgagor. As a mortgagor, Vanguard Credit Holding Private Limited has its right to redeem its property after payment of the debt amount. Admittedly, the Vanguard Credit Holding Private Limited is a defaulter. So, Vanguard Credit Holding Private Limited was holding right to buy back the property without any encumbrance by paying the loan amount due to the Punjab National Bank and Axis Bank. That was not done in the case in hand. Therefore, upon approval of the Resolution Plan, the right to redeem held by the mortgagor/ Vanguard Credit Holding Private Limited would be lost. That being so, Durgapur land belonging to Vanguard Credit Holding Private Limited can be transferred to the Corporate Applicant. On the other hand such a sale is not restricted under Regulation 37(b). As per 37(b) CIRP Regulation "*sale of all or any part of the assets whether subject to any security interest is permissible.*"

45. One more argument also was advanced on the side of the Ld. Senior Counsel appearing for the Promoter Director/ Corporate Applicant that the

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action taken by Punjab National Bank as per Section 13 of the SARFAESI Act, 2002 and that taking possession of the land in exercise of its powers under Section 13(4) of the SARFAESI Act, 2002 will not give rise to any right over the Bank or ARCIL to transfer the right, interest of the mortgagee by way of assignment or sale. Section 13(4) of the SARFAESI Act, 2002, permits the secured Creditors to take possession of the secured assets including the right to transfer by way of lease, assignment or sale for realizing the secured assets. According to Ld.Sr.Counsel for the RP, the Bank referred to in the section includes its transferees and assignee's, and they will have the right to enforce possession under the SARFAESI Act, 2002 and therefore, transfer of all rights and interests in the Durgapur land and its marketable title to the Resolution Application, is perfectly legal and valid.

46. The third objection is about the distribution methodology which has been approved by the CoC by 74.41 % vote. According the Ld. Sr. counsel, the distribution of bid amount as per the Resolution Plan is discriminatory and contrary to the judgment of the **Hon'ble NCLAT in Binani Industries Limited Vs. Bank of Baroda** and another and that the Resolution Applicant has discriminated between the same set of group, such as, Financial Creditors or the Operational Creditors and the Operational Creditors are not getting the same treatment as that of Financial Creditors. The above said objection seen raised by the Operational Creditors. By

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answering their objection in this regard, we have already come to a conclusion that the Resolution Applicant has not discriminated between the Financial Creditors on the basis of charge held by the respective Financial Creditors and the Operational Creditors have not been differently treated as per the Resolution Plan. From a reading of the citation of Binani Industries Limited, what we understood is that differential treatment is permissible if the creditors are not similarly situated. The contention that the Financial Creditors to be equated with Operational Creditor is not sustainable even under the principles of law as settled in Binani Industry's case referred to and relied upon on behalf of the Promoter Director/Corporate Applicant. So also in Adhunik referred to above the differential treatment is permissible if creditors are not similarly situated. On the other hand in the case of Swiss Ribbons Vs. Union of India, the Hon'ble Supreme Court made it clear that Financial Creditors and Operational Creditors are positioned differently in view of the nature of transactions and nature of debt. Applying the above said principles of law settled in the above said decisions cited and referred to us, we do not find any justifiable reasons to hold that the distribution pattern under the Resolution Plan is discriminatory as is being tried to be set up by the promoter director.

47. The next and final objection raised by the Ld. Senior Counsel, appearing for the Applicant is that the Resolution Applicant is not eligible

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to submit the Resolution Plan in the light of the bar contained in Section 29A(j) of the Code. According to him the resolution applicant is ineligible on account of their connection with BRG iron & Steel Private Company Limited, of which CIRP is already initiated or going on.

48. The above-said objection seems to have been raised for the sake of raising objection so as to prevent this Adjudicating Authority and delaying the approval of the Plan. It is a bare contention without any supporting materials. The attempt on the side of the promoter director is that SSPL and SS naturals (resolution applicant) to be ineligible as a result of actions of a connected persons who was declared as NPA. But here in this case there is no proof to prove that resolution applicant is in any way connected to the company undergoing CIRP. The burden is heavy on the side of the objector to prove that the resolution applicant has direct control over the company undergoing CIRP for at least a period of one year from the date of commencement of CIRP. Such an evidence is lacking in the case in hand. So the said objection is found devoid of any merit. The resolution applicant is found eligible u/s 29A (j) of the Code. The above said discussions leads to a legitimate conclusion that any one of the objections on the side of the promoter director of the CD and Vanguard are sustainable under law and both applications deserve dismissal.

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49. An argument was advanced at this juncture on the side of the Resolution Professional as well as on the side of the ARCIL that the Promoter Director is only attempting to waste the precious time of this Tribunal by filing malicious applications. According to them, the resolution process has been completed and conducted legally and diligently and conducted the voting among the members of Committee of Creditors in accordance with Section 26 of the Code. All the objections including ineligibility of the resolution applicant was raised by the promoter before the CoC and the CoC deliberated the said issue and found the objections are not sustainable for want of supporting evidence. The only attempt on the side of the Promoter Director/Corporate Applicant is to see that the Resolution Plan could not be approved so as to see the Adjudicating Authority to pass an order of liquidation of the Corporate Applicant. They would further submit that the Promoter Director/Corporate Applicant has concocted and misrepresented the facts and to further prejudice the confidentiality undertaking, thereby jeopardizing the entire CIRP process for not only the present Corporate Applicant but for other Corporate Debtors as well as that are currently undertaking CIRP. He has approached this Tribunal with unclean hands and the present Application deserves to be dismissed with imposition of heavy cost on the Applicant, argued by the Ld. Senior Counsel.

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50. This is a unique case wherein the promoter director of the Corporate Debtor had filed the CP for CIRP under Section 10 of the Code showing his inability to pay. After admission and when the CIRP period expired and the application filed by the RP came up for consideration, the attitude of the promoter-director was seen changed. He filed **CA 461 of 2019** challenging the approval of the resolution plan. Filed **CA 1039 of 2019** challenging non admission of his claim by the resolution professional. Vide separate order, we dismissed the **CA 1039 of 2019**. It has come out in evidence that the promotor director had circulated among the financial creditors about the security interest they hold allegedly not within the knowledge of the Financial creditor. The Ld Counsel for the JM Financial Asset Reconstruction Company Pvt. Ltd admitted at the time of hearing that he had raised the objection against the distribution methodology because the Financial Creditor was in receipt of an e-mail sent by the promoter director that there is erroneous computation and concealment of facts pertaining to actual position of charges over the assets of the Corporate Debtor in favour of the ARCIL. In answering its objection, we hold that RP has not committed any error in recording the security interest hold by the Financial Creditors as per the available records brought to his notice. There was no traces of concealment of facts on the side of the RP but there are suppression of material facts on the side of the promoter director.

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51. Ld. Sr. Counsel, Mr. S. N. Mookherjee, appearing for ARCIL submits that the promoter-director, who has filed **CA(IB) No. 461/KB/2019**, has instigated Vanguard Credit Holding Pvt. Ltd., by filing **CA(IB) No. 462/KB/2019** wherein he had 99.99% shareholding to see that the resolution plan cannot be approved and his company is ordered to be liquidated. He further would submit that the promotor director did not come with clean hands to this Tribunal and the above said application is liable to be dismissed with exemplary costs.

52. In order to highlight his conduct in dealing with the shares he holds in the Ramsarup Industries Ltd/Corporate Applicant, he has cited an **Adjudication Order (SS/AS/2018-19/1625)** of the **Securities and Exchange Board of India** and referred to paragraph 14 in the above judgement, which is worthwhile to read, which reads as follows :-

*"In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. It is noted that the Noticee has not paid the disgorgement amount and interest thereof. It is to be noted that the Noticee had avoided potential loss of Rs. 98,11,465.32 by trading on the basis of Unpublished Price Sensitive Information ("UPSI") regarding un-audited financial results of the Company. Apart from such heinous act of insider trading, misusing the UPSI and abusing the fiduciary position of the Chairman and Managing Director of the Company, he has also disobeyed, disregarded and defied the directions of SEBI as confirmed by the Hon'ble SAT. Further, such defaults seriously compromise the regulatory framework. The Noticee has submitted that his demat account has been attached in the Recovery Proceedings and has assured cooperation in the process."*

53. The Adjudicating Authority by the said order imposed a penalty of Rs.5 lakh under section 15 HB of SEBI Act. Truly we are not influenced by the said order. However, by considering the above-said circumstances

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discussed in detail and considering the peculiar nature of defence taken by the promoter director and some of the FCs at his instances, we are of the considered view that the **CA 461 of 2019 & CA 462 of 2019** is to be dismissed with a cost not less than 25 Lakh fixing liability to pay on the promoter director Mr. Aashish Jhunjhunwala. The overall conduct of the applicant in filing multiple applications cannot be considered as with genuine object to get a relief as prayed for, but with the object to protract the matter. In our view is an abuse of the process of this Tribunal. If this kind of approach is not prevented, it would air a wrong message to the similarly situated directors of a CD companies. Filing of CAs by some of the financial creditors and belatedly challenging the qualification of the resolution applicant by two of the unsuccessful bidders at the instigation of this director also cannot be ruled out from the circumstances brought out in the case in hand. In our view fixing cost at 25 lakh is fair and just and it would meet the ends of justice in this case.

54. **CA(IB) No. 497/KB/KB/2019** is an application filed by **Orissa Metaliks Private Limited (OMPL)** challenging the eligibility of H-1 bidder S.S. Natural Resources Pvt. Ltd. (SS Natural) (Successful Resolution applicant) u/s. 29A of the I & B Code, 2016. The Ld. Sr. Counsel, Mr. Abhrajit Mitra, appearing for and on behalf of the OMPL submits that one of the directors of the SS Natural Mr. Bajranglal Agarwal is a common director in

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the SS Natural, Shyam Emco Infrastructure Limited and Emco Power Limited and since Emco Ltd. is a defaulter in repayment of loan and interest and as the account of Emco Ltd. has become NPA is being under the management or control of the SS Natural or its promoters, the SS Natural has become ineligible to submit a resolution in respect of the Corporate Debtor u/s. 29A of the Code. No material has been brought to substantiate the said contention that Mr. Bajranglal Agarwal has got control over the management of Shyam Emco Infrastructure Limited. From the available records and arguments advanced on both side what we understood is that the applicant is trying to set up a case that Mr. Bajranglal Agarwal is a shareholder in BRG Iron & Steel Company Private Ltd. which has been declared as NPA and CIRP proceedings has already been initiated against the BRG Iron & Steel Company Private Ltd., SS Natural is connected with the said company and, therefore, is ineligible.

55. According to him, SS Natural's shareholders are also shareholders in Shyam Emco Infrastructure Ltd. along with the Emco Power Ltd. and therefore, SS Natural is ineligible. For strengthening the above arguments no materials was brought in. Admittedly, Shyam Emco Infrastructure Ltd. is not an NPA company and does not have any investment in a company, who was declared as NPA. So also there are no allegations that Shyam Emco Infrastructure Ltd. or Emco Power Limited is declared as a NPA company.

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There are no allegations that the above company has any investment in a company declared as NPA. Therefore, in the absence of any evidence to prove the averments in the application, it enables us to understand that some of the shareholders in SS Natural have some shareholding in some group companies referred to above. Having shareholding in a group company does not in any way disqualify SS Natural u/s. 29A of the Code. Admittedly, the alleged shareholders do not have any shareholding in a company which has been declared as NPA. The eligibility criteria as provided u/s. 29A of the I & B Code never prescribed a restriction upon a shareholder of a resolution applicant, to be a shareholder in a group company wherein one of the companies is declared as NPA, in which the shareholders have no direct control or direct communication. Accordingly, we do not find any violation of Section 29A as attempted to establish on the side of the OMPL the unsuccessful bidder.

56. Ld. Counsel appearing for the Resolution Professional also submits that the challenge and objections raised by the OMPL, the H-2 bidder against the SS Natural have been dealt with by the CoC in the 23<sup>rd</sup> meeting held on 02/03/2019 and it came to the conclusion that SS Natural cannot be disqualified u/s. 29A of the Code as alleged by the OMPL.

57. Here in the case in hand during the resolution process at the final round, there were 4 resolution applications, SS Natural, OMPL, Srei

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Multiple Assets Investment Trades Vision India Fund (SMAIT-VIF) and Liberty House Group Private Limited. The copy of the minutes produced on the side of the Resolution Professional enable us to hold that OMPL was the successful bidder during the first round. In the initial period of bidding process, the CoC after deliberation agreed to re-consider the resolution applicants bid and decided to re-conduct the out-bid process with all the eligible bidders. In the said out-bid process OMPL did not improve its bid and thereby SS Natural out-bid the OMPL and became H-1 bidder. It is thereafter that the above said challenge came from the side of the OMPL/resolution applicant. So the conduct of the OMPL who had failed in out-bidding at the re-conducting outbid process, who also failed in convincing the CoC that SS Natural is not eligible under Section 29A of the Code filed this application challenging the very same objection, knowing well that its objections were over-ruled by the CoC, without any additional evidence over and above the evidence led in before the Resolution Professional and CoC, approached this Tribunal and interfered in the process of approval of the plan without any justifiable or sufficient cause. In the said circumstances, we are of the considered view that this application deserve dismissal with costs. Considering the nature and circumstances of the contentions raised, awarding a cost of Rs. 5 lakh would be fair and just.

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58. **CA(IB) NO 1093/KB/ 2019** is one another application filed by **SREI Multiple Asset Investment Trust-Vison India Fund(SREI)**, an unsuccessful bidder challenging the approval of the resolution plan. The SREI contends that Mr. Anoop Krishna, is an employee of Grant Thornton India LLP Process advisers to the RP. He had leaked information regarding the offers of bid to the SS Naturals (SSN) and SSN had access to bids of the other resolution applicants and thereby influenced the outcome of the outbidding process that was conducted to finalize selection of successful bidder.

59. One another allegation also raised by the Ld. Counsel appearing for the SREI is that the said Mr. Anoop Krishna is a director of the flagship company of the group to which SSN belonged since 18.02.2019 onwards. According to him SSN is a consortium company including Shyam Metaliks and Energy Limited and thereby a conflict of interest existed in the CIRP and therefore the entire process is vitiated and hence the plan is liable to be rejected.

60. The Ld.Sr. Counsel for the RP objected to this application. Since this application came up for consideration on the last day of hearing of the CP, for want of time we direct the RP to file written submissions and not reply affidavit. According to him, this application is a frivolous application filed at the instigation of the promoter director as the last attempt to derail the CIRP for enabling him to pass an order of liquidation. He also contends that there is no merit in the contention. He would submit that Mr. Anoop

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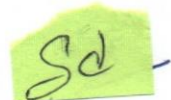
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Krishna is not an employee of the process adviser LLP, but worked for it as a consultant and to support the said contention, a copy of the agreement entered into in between them is produced for our perusal. He further submits that the out bidding process was conducted openly and there is no question of leaking the details of outbidding data.

61. Having heard the parties on both sides and perusal of the records, we are satisfied that the outbidding process was openly conducted by the CoC at the meetings of creditors, in the presence of members of the CoC and all the four resolution applicants including SREI who reached upto the final round. We also understood that multiple rounds of outbidding took place and each participating resolution applicant was given same opportunity to outbid the other resolution applicant. The above said factors brought out from the copies of minutes is self explanatory. Possibility of leaking any data for enabling the bidders to increase its bids never, ever arose in the said process adopted by the CoC. None of the resolution applicants is to be influenced by an insider or outsider. The outbidding process was conducted transparently and diligently. It is significant to note here that other than SREI, none other raised the said contention. The contention of the applicant is frivolous and raised only for the purpose of abusing the process by the unsuccessful bidder. Though an allegation was raised that it was instigated by the promoter director, we





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were not supplied any data, but we could not rule out that possibility too in the peculiar circumstances of the case in hand. The promoter director was present in the Tribunal on all days of hearing this CP, and he rushed in front of us denying the allegation and submits that he never wished to have an order liquidating his company. He also sought permission to make his submissions in person which we declined since Sr. Counsel was already appearing for him.

62. We also do not find any merit in the submission of the Ld. Counsel for the SREI that Mr. Anoop Krishna being a director of Shayam Metalics and Energy Limited SSN is a disqualified resolution applicant. It is significant to note here that Shayam Metalics and Energy Limited is not a successful resolution applicant. Truly the successful resolution applicant is a consortium of SSN and Shayam SEL and Power Ltd. In the absence of any materials brought out to prove that he is connected in any manner with SSN or its consortium members we are unable to hold that Mr. Anoop Krishna is connected with a company allegedly a group company of SSN and thereby entire process is vitiated by undue influence of an employee.

63. The above-said circumstance leads us to a legitimate and irresistible conclusion that this CA which was filed two days before the final hearing of the pending applications in the case in hand is to be dismissed with heavy costs but we are limiting it to Rs.10 Lakh. In our view awarding the said cost

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is just and proper to keep the proceedings in a time bound manner so as to achieve the objective of the Code. If we do not do so, it would give a wrong message to the similarly situated applicants who wish to come forward to raise challenge without any right cause. We accordingly **dismiss this CA** with a cost of Rs.10 Lakh.

64. To sum up, we are unable to uphold any one of the objections submitted on the side of the Operational Creditors, Financial Creditors and from the side of the Promoter Director Mr. Aashish Jhunjunwala and the two unsuccessful bidders viz., OMPL and SREI.

65. From the above said discussions, we have already come to a conclusion that the distribution methodology considering the value of security interest held by the FC's adopted by the CoC for distributing the resolution bid amount which has been approved by a vote of 74.41% is not contrary to any of the provisions of the Code or regulations and any of the principle of law settled by NCLAT and Hon'ble Supreme Court. This is a case wherein the Financial Creditors have taken a hair-cut of 94% by receiving about 6% of admitted claim and the Operational Creditors as a class were treated similarly. Therefore, none of the objections of the Operational Creditors are found sustainable. So also two of the unsuccessful resolution applicants challenging the approval of the resolution plan were found devoid of any merit. Being satisfied that none of the objections raised on

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the side of the objectors are worth consideration except CA filed by WBIDCL (CA 921 of 2019), are ordered to be dismissed. In the said circumstances, let us take the resolution plan.

66. The question is whether the application filed by the RP (CA 352 of 2019) for the approval of the resolution plan of consortium of SSN and Shyam SEL and Power Ltd. approved by the CoC by vote of 74.41% deserves to be approved?.

67. Though a form H is not required to be filed in this case since this application was filed before the amendment to CIRP regulation came into being, we directed the RP to file a Form H and he filed the same. The resolution plan that came up for our consideration is a plan approved by the CoC by a vote of 74.41%. Except certain wavier clause like, procedural requirement under the companies Act, waiver of any fee payable to any stock exchange, statutory liabilities other than operational debt specified in the information memorandum, Stamp duty and ROC fees in case of increase in the authorised capital etc., claimed as per the plan which according to us cannot be approved for the reason that those statutory fees, and taxes claimed in the case in hand are liable to be paid by the resolution applicant in accordance with applicable law. Any exemption for payment would be dealt with by the respective authorities if applied for. With the above observations, we are not inclined to approve the waiver as prayed for in

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the plan. It is left open for determination by the appropriate authorities if applied for the waiver/exemption as prayed for in the Plan.

68. As per clause 15.3 of the resolution plan, the resolution applicant has given an undertaking that ***“if the approvals, extinguishments and waivers sought under Annexure 3 are not granted, it will not any way jeopardize the implementation of the Resolution Plan, and the resolution applicant shall remain responsible for such implementation of the resolution plan.”***

The Ld. Counsel appearing for the resolution applicant was asked about the possibility of increasing the distribution percentage offered to the operational creditors other than workmen’s dues. He would submit that the resolution applicant is unwilling to vary and modify the plan and that the waiver asked for if not granted, the resolution applicant may withdraw from implementing the plan. We are afraid, the said submission is unmindful of the consequences of the clause 15.3 in the Plan.

69. A careful screening of the Form-H produced on the side of the Resolution Professional proves that all the requirements to be meted out under sub-section (2) of section 30 have been complied by the Resolution Professional. The resolution applicant S.S. Natural is a Consortium of SSNRPL and Shyam SEL & Power Limited. SSNRPL is the lead partner of the Consortium. All the Consortium members have given Affidavit in compliance of Section 29A of the Code. They have given declaration in

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conformity with Regulation 38(3) of the CIRP Regulation that the resolution applicant confirms that it is eligible to submit the resolution plan in accordance with Section 29A of the Code.

70. An undertaking under regulation 39(1)(c) of the CIRP Regulations (in Form VI) has already been submitted while submitting the Plan according to the Resolution Professional. Upon screening of the documents, we are of the considered view that the Resolution Plan is not contravening any of the provisions of the applicable law.

71. The Corporate Debtor company was incorporated in the year 1979. It was involved in the business of manufacturing Steel, TMT Bars and Steel Wires. Its manufacturing units are situated in Kharagpur, Durgapur, Shyamnagar and Kalyani. It also owned a windmill located at Dhule. However its manufacturing units had not been in operation for more than 10 years. According to the Resolution Applicant, the assets of the Corporate Debtor, including the plant and machinery are not in a working condition and considerable investment is required to be made before the factory and the plant and machinery of the Corporate Debtor can be made operational. This facts brought to our notice is unchallenged. It is in the said circumstance we found that out of 670.50 crore of the resolution bid amount keeping Rs.306.00 crore included in the resolution bid as

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

Capex/Working Capital for enabling it to run the CD Company as an on going concern is not unreasonable.

72. The resolution applicant is experienced in Iron and Steel/Ferro alloys Sector. As per the data furnished the group company namely Shayam group has an established position in the ferro-alloy industry with track record of around two decades and huge experience of successful running and scaling up operations. Having run similar business like that of the corporate debtor the choosing of resolution applicant appears to us is a wise selection and we believe that the Corporate Debtor is to be transferred to safer and healthy hands. It would benefit all its stakeholders inclusive of its workmen and employees.

73. As per Regulation 39A of the CIRP Regulations, liquidation value due to the operational creditors should be paid in priority to the Financial Creditors. Provision is seen made in the plan to pay aforesaid amount within 30 days from the Effective Date and in any event 1(one) day prior to the payment to the Financial Creditors.

74. Insolvency resolution cost is agreed to be paid in full in priority over payments to be made of any other debt as per the Code. It is also made clear that resolution applicant and its group companies have sufficient funds and do not envisage any challenge in terms of source for the payment. Payment to workmen's admitted due also is agreed to be paid

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In

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Ramsarup Industries Limited

by the resolution applicant and it is made clear that in any event any further due is admitted under the category, all the workmen and employees shall be paid pro rata based on the admitted claims by the RP.

75. While hearing the CA 921 of 2019, it is agreed by the Ld Sr. Counsel for the RP as well as the Id. Counsel for the Resolution Applicant that they have no objection in including the portion of security expenses incurred by the Financial Creditor/ West Bengal Industrial Development Corporation Limited(WBIDCL) which is admitted by the RP in the upfront amount payable by the Resolution Applicant to the Creditors. Accordingly the plan approved by this AA must include provisions for inclusion of portion of security expenses incurred by the Financial Creditor and admitted by the RP in the upfront amount payable by the Resolution Applicant to the Creditors.

76. The CoC by voting in favour of approval of resolution plan by a vote share of 74.41% after considering its feasibility and viability and that all other requirement specified by the CIRP regulation seen meted out by the CoC we are bound by the approval as per the principle of law settled in **K. Sasidhar case** referred to above.

77. Before parting with this case, it is fair and just for us to appreciate the herculean task done by the Ld. Resolution Professional who has succeeded in resolving the stressed assets of the Corporate Debtor. The Corporate

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

Debtor has been taken over by a Resolution Applicant who can safeguard the Company by infusing some healthy blood in to the dying flesh.

78. Having regard to what has been said above we hereby approve the resolution plan upon the following directions:-

### ORDERS

i) The **Resolution Plan of Ramsarup Industries Ltd.**, which is approved by the CoC with 74.41% voting share, is hereby **approved** under provisions of sub-section(1) of Section 31 of the Insolvency and Bankruptcy Code, 2016, which shall be binding on the Corporate Debtor, **M/s. Ramsarup industries Limited**, its employees, members, creditors, guarantors, the central Government, any State Government or any local authority and other stakeholders involved in the Resolution Plan subject to the below mentioned modification.

ii) The Resolution Plan approved by the CoC shall include the portion of security expenses incurred by the Financial Creditor/ West Bengal Industrial Development Corporation Limited(WBIDCL) which is admitted by the RP in the upfront amount payable by the Resolution Applicant to the Creditors.

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In

CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

- iii) The Resolution Plan, shall come into force from the date of pronouncement of this order.
- iv) The moratorium order passed under Section 14 shall cease to have effect.
- v) The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.
- vi) **CA(IB) No. 352/KB/2019 is allowed.**
- vii) **CA (IB) No 921/KB/2019 is disposed of** as directed above.
- viii) **CA (IB) No.343/KB/2019, CA(IB) No. 349/KB/2019, CA(IB) No. 440/KB/2019, CA(IB) No. 460/KB/2019, CA(IB) No. 523/KB/2019, CA(IB)No.636/KB/2019, CA(IB)No. 637/KB/2019, CA(IB) No. 685/KB/2019, CA(IB)No.511/KB/2019, CA(IB) No. 522/KB/2019, CA(IB) No. 37/KB/2019, CA(IB) No. 424/KB/2019, CA(IB) No. 1026/KB/2019 & CA(IB) No. 527/KB/2019 are dismissed.** However, without costs.

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In

CP(IB) No. 349/KB/2017

Ramsarup Industries Limited

- ix) **CA(IB) No. 461/KB/2019** and **CA(IB) No. 462 /KB/2019** is **dismissed** with cost of Rs.25 lakh payable by the promoter director **Mr. Aashish jhunjunwala** within 45 days from the date of receipt of this order to the account of the Corporate Debtor either by e-payment facility into bank account of Corporate Debtor or by way of DD.
- x) **CA(IB) No. 1093/KB/2019** is **dismissed** with a cost of Rs.10 lakh directing **SREI Multiple Asset Investment Trust-Vison India Fund(SREI)** to pay the said amount within 45 days from the date of receipt of this order to the account of the Corporate Debtor either by e-payment facility into bank account of Corporate Debtor or by way of DD.
- xi) **CA(IB) No. 497/KB/KB/2019** is **dismissed** with cost of Rs. 5 lakh directing the **Orissa Metalics Private Limited (OMPL)** to pay the said amount within 45 days from the date of receipt of this order to the account of the Corporate Debtor either by e-payment facility into bank account of Corporate Debtor or by way of DD.
- xii) If the cost as directed is paid the said amount is to be added to 3.50 Crores payable to operational creditors other than

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

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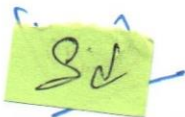
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

workmen and the Monitoring Agency shall pay the said amount in accordance with the percentage of distribution approved in the plan to the operational creditors.

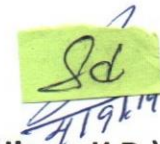
xiii) **CP (IB) No 349/KB/2017** is disposed of by listing **CA (IB) NO. 716/KB/2018** and **CA (IB) NO. 346/KB/2019** separately for hearing and disposal on **15/11/2019**.

xiv) Registry is hereby directed to communicate the order to all the Applicants, Respondents and to the Resolution Applicant through e-mail and free copy .

xv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



**(Harish Chander Suri)**  
**Member (T)**



**(Jinan K.R.)**  
**Member (J)**

Signed on this, the 4<sup>th</sup> day of September, 2019

VC

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH,  
KOLKATA**

**Coram :** Shri Jinan, K.R., Hon'ble Member (Judicial)  
Shri Harish Chander Suri, Hon'ble Member (Technical)

**CA(IB) No. 877/KB/2019 & CA(IB) No. 1051/KB/2019**  
in  
**C.P. (IB) No. 349/KB/2017**

**In the matter of:**

An application application under Rule 11 and 153 of the National Company Law Tribunal Rules, 2016;

-And-

**In the matter of:**

**RAMSWARUP INDUSTRIES LIMITED**, a Company within the meaning of the Companies Act, 2013 and having its registered office at 7C, Kiran Shankar Roy Road, Hasting Chambers, 2<sup>nd</sup> Floor, Room No. 1, Kolkatta 700001;

...

...

**Corporate Debtor**

-And-

**In the matter of:**

**EDELWEISS FINVEST PRIVATE LIMITED**, a Non-Banking Financial Institution and having its registered office at Edelweiss House, Off. CST Road, Kalina, Mumbai 400098;

...

...

**Applicant**

-Versus-

**KSHITIZ CHHAWCHHARIA**, being Resolution Profession appointed in C.P. No. 349/KB/2017

...

...

**Respondent/Resolution Professional**

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**Counsels appeared:**

- |    |                                    |                           |
|----|------------------------------------|---------------------------|
| 1. | Mr. Kshitiz Chhawchharia           | ] Resolution Professional |
| 2. | Mr. Ratnanko Banerji, Sr. Advocate | ]                         |
| 3. | Mr. Sidhartha Sharma, Advocate     | ] For the Resolution      |
| 4. | Ms. Ujjaini Chatterjee, Avocate    | ] Professional            |
| 5. | Ms. Diprani Thakur, Pr. CS         | ]                         |
| 1. | Mr. Kuldip Mallik, Advocate        | ] For Edelweiss Finvest   |
| 2. | Mr. Debasri Dutta, Advocate        | ] Private Limited         |

Order pronounced on 4<sup>th</sup> September, 2019.

**ORDER****Per Shri Jinan, K.R., Member (Judicial)**

1. The CA(IB) No. 877/KB/2019 is an Application filed by Edelweiss Finvest Private Limited, praying for permitting the Applicant/Financial Creditor to participate in the Resolution Process by issuing direction to the Resolution Professional to admit its claim of a sum of Rs. 7,63,28,919=00 (Rupees Seven Crores Sixty three Lakh twenty eight thousand nine hundred nineteen only) which includes interest @ 15% per annum from 11-10-2017 onwards. The Applicant has not chosen to submit its claim in the prescribed format within the time stipulated as per the provisions of the Insolvency & Bankruptcy Code, 2016 and the Regulations.

2. The CP(IB) No. 349/KB/2017 was admitted vide Order dated 08-01-2019 and this Application seen filed on 28-06-2019. The Resolution Plan here in the case in hand, approved by the Committee of Creditors on 16-03-2019 and that Plan is under consideration of this Bench. It is, at this juncture, this Application comes up for consideration. According to the Ld. Counsel for the

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Applicant, the Hon'ble Supreme court, vide Order dated 09-08-2019, issued direction to this Tribunal to consider this application and prays for issuing direction to RP for consideration of its claim. The direction he referred read as under:-

*"Taking into consideration the peculiar facts and circumstances of the case, the Appellant, with the consent of all the respondents, is permitted to participate in the resolution process which is going on before the National Company Law Tribunal, Kolkata in CP(IB) No. 349/KB/2017."*

3. While this Bench is considering the question of approval of the Resolution Plan submitted by the Resolution Professional, the Ld. Counsel, appearing for the Applicant in this CA, interfered the hearing on many occasions and this Bench, vide Order dated 21-08-2019, made it clear that the argument, if any, in respect of the Application above referred, would be heard after completion of the hearing of the pending CA s., challenging the approval of the Resolution Plan. Accordingly, this Application came up for final hearing on 29-08-2019. Neither the Applicant, nor the Ld. Counsel, has entered appearance for prosecuting the Application. In the meanwhile, a written notes of submission seen filed by the Ld. Counsel for the Applicant on 26-08-2019.

4. The objections seem to have raised in the written submission is that the Applicant, from the commencement of the proceedings initiated by the Corporate Applicant, in the case in hand, raised objections regarding the maintainability of this Petition before this Bench. Overruling the objections and dismissing the Application filed by the Applicant, this bench admitted the

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CP(IB) No. 349/KB/2017 and initiated CIRP process as against the Corporate Applicant. Aggrieved by the Order of dismissal, the Applicant went up to Hon'ble Supreme Court. The appeal preferred before the Hon'ble NCLAT was dismissed by the Order dated 14-12-2018. Dissatisfied with the Order of dismissal, the Applicant went up to Hon'ble Supreme Court. The Hon'ble Supreme Court, though stayed all further proceedings in continuing the CIRP process in the case in hand, vide Order dated 06-05-2019, dismissed the Application, however, making the observation referred to above.

5. The Applicant filed this Application allegedly on the strength of the Hon'ble Supreme Court observations in the above said Order that it is permitted to participate in the Resolution Process undergoing before the Tribunal including staying the proceedings so as to enable its claim which has not been submitted before the Resolution Professional till the date of approval of the Resolution Plan by the Committee of Creditors.

6. The CA(IB) No. 1051/KB/2019 is an Application filed on 16-08-2019 for early disposal of CA(IB) No. 877/KB/2019, before the disposal of the remaining pending Applications. Both these applications were opposed by the RP. We heard the Ld. Sr. Counsel for the RP and perused all the records.

7. The request for stay of the proceedings after approval of the Resolution Plan by the Committee of Creditors cannot be taken consideration because the CIRP period was expired on 23.03.2019. As per the objection raised in the written submission, the reason for non-submission of the claim before the resolution Professional is that the Applicant challenged the jurisdictional issue of this Tribunal in considering an Application under Section

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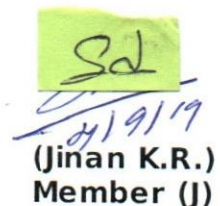
10 of the Code. We do not find any justifiable reason to hold that an Applicant, who failed in challenging the jurisdictional issue upto Hon'ble NCLAT, has not chosen to submit its claim before the Resolution Professional within the stipulated period as provided under the provisions of the Code and the Regulations. The pendency of the Appeal challenging the jurisdictional issue in admitting the CP by this Bench not at all prevented the Applicant in submitting its claim before the Resolution Professional for the consideration by the Committee of Creditors. That being so, we do not find any justifiable reason in upholding the contentions on the side of the Applicant that its claim submitted before us is to be referred to the Resolution Professional. There is no provision under the Code and Regulations to enable us to do so and accordingly, both these Applications deserve no consideration and therefore, are liable to be dismissed.

8. In the result both this applications are dismissed. However parties are directed to bare the respective cost.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



**(Harish Chander Suri)**  
**Member (T)**



**(Jinan K.R.)**  
**Member (J)**

Signed on this, the 4<sup>th</sup> day of September, 2019.

/hb./

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CA(IB) No. 1039/KB/2019

CA(IB) No. 1063/KB/2019

CA(IB) No. 1064/KB/2019

In CP(IB) No. 349/KB/2019

In the matter of :

Ramsarup Industries Limited

.. Corporate Debtor/Corporate Applicant

In the matter of :

Aashish Jhunjunwala

.. Applicant/ Financial Creditor

-Versus-

Mr. Kshitiz Chhawchharia, Resolution Professional of Ramsarup Industries Limited

.. Respondent

Coram : Shri Jinan, K.R., Member(Judicial)

Shri Harish Chander Suri, Member(Technical)

For the Applicants in CA(IB) No. 1039/KB/2019 – CA(IB) No. 1063/KB/2019

1. Mr. Rishav Banerjee, Advocate
2. Mr. Zeeshan Haque, Advocate

For the Resolution Professional :

1. Mr. Kshitiz Chhawchharia, RP
2. Mr. Ratnanko Banerjee, Senior Advocate
3. Mr. Sidhartha Sharma, Advocate
4. Ms. Ujjaini Chatterjee, Advocate
5. Mr. Diprani Thakur, PCS

For the Committee of Creditors :

1. Mr. Vikram Wadehra, Advocate
2. Ms. Vidushi Chokhani, Advocate
3. Mr. Soumava Ghosh, Advocate

Date of pronouncement of the Order : 04-09-2019

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## ORDER

Per Shri Jinan K.R., Member(Judicial)

**1. CA(IB)No.1039/KB/2019** is an application filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 and under Rule 11 of the National Company Law Tribunal Rules, 2016 by Ashish Jhunjhunwala/Promoter Director of the Corporate Applicant challenging the approval of the resolution plan contending that the Resolution Professional rejected the claim filed by the applicant/Financial Creditor without any jurisdiction, illegally and unlawfully. According to the Ld. Counsel appearing for the applicant, the Resolution Professional has partly accepted his claim initially and thereafter proceeded to reject the entire claim of the applicant/Financial Creditor arbitrarily overlooking the fact that all necessary documentation in support of the claim for the money actually transferred to the Corporate Debtor had been furnished by the applicant to the respondent, Resolution Professional. The rejection of the claim of the applicant has prejudiced the rights of the applicant/Financial Creditor. The Resolution Professional has no right to adjudicate the claim of the applicant and, therefore, rejection of claim is quite illegal and arbitrary and, therefore, his claim to the tune of Rs. 13,52,69,140/- (Rupees Thirteen Crore Fifty Two Lakh Sixty Nine Thousand One Hundred Forty Only) to be admitted.

**2. CA(IB)No.1063/KB/2019 and CA(IB)No.1064/KB/2019** are similar applications filed by N.R. Mercantile Private Limited and R.A.V Dravya Private Limited challenging rejection of the applicant/Financial Creditor which according to the applicant has been duly supported by adequate and proper documentary evidence. According to the Ld. Counsel for the applicant, the RP has proceeded to reject the entire claim of the applicant towards the said principal amount by overlooking the fact that all necessary documentation in support of the claim for the money actually given transferred to the Corporate

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Debtor by way of a loan have been financed by the applicant to the respondent RP. Therefore, according to him, rejecting entire claim of the applicant towards the principal amount of Rs. 2,81,14,090/- (Rupees Two Crore Eighty One Lakh Fourteen Thousand and Ninety Only) is to be cost and set aside and his claim is to be included for consideration of the approval of the resolution plan.

3. Heard both sides. Perused the documents and citation referred to on both sides.

According to the Ld. Senior Counsel for the Financial Creditor, the claim submitted by the applicant has been erroneously sent to the claimant and that the claim of the applicant has not been admitted due to insufficient proof of the claim. The Ld. Senior Counsel appearing for the Resolution Professional relied upon Annexure A, an e-mail dated 30.06.2019 addressed to the applicant. He was informed by that said e-mail that the earlier mail dated 16.02.2019 admitting the part of the claim of the applicant has been erroneously sent by the Resolution Professional's team member. However, when the claim has been verified, the RP was satisfied that document evidencing a contract for such loan by the financial creditor has not been submitted by the applicant even if demanded and hence he did not include the claims of the applicant.

4. According to the Ld.Counsel for the applicant the financial statement evidencing that such amount was actually drawn by the Corporate Debtor and evidence demonstrates that funds have not been paid back to the claimant. According to the Ld.Sr.Counsel for the RP despite submission of the document asked for what the applicant has done is that he sent a reply vide e-mail dated 02.07.2019 and 12.07.2019. He repeatedly requested to admit the claim of the claimant as well as the claim of the Promoter Group vide mail dated 07.03.2019. The Ld. Counsel for the applicant, also not submitted any explanation as to non production of document related to financial contract.

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He would repeatedly submit that the financial statement includes the amount due to the claimant and the financial statement for the year ending 2017 has been placed before the RP and that according to him the financial statement available with the Corporate Applicant in the annual account of corporate applicant company can also to be referred by the RP. The letter dated 12.07.2019 is worth for reading

*"Most importantly we have also informed you that the above loan figures of related party transactions has been appearing in the Annual Accounts of Ramsarup Industries Ltd., from last several years. In this regard please refer to my mail dtd. 04.02.2019 (copy attached) giving page number of Annual Accounts from the year FY 10-11 to FY 16-17 clearly reflecting related party transactions and loan given thereof. This is enough evidence that the debt has not been paid by the corporate debtor."*

5. The Ld. Counsel appearing for the Applicants further submits that the Resolution Professional has no power to reject the claim. What we understood from the records available in this Application and upon hearing the argument advanced on both sides, is that the Resolution Professional has not admitted the claim for want of proof. Mere disclosure of the amount due to the Applicants in the financial statements itself cannot be the supporting proof to prove that the debt is due to the Applicants and thereby the Resolution Professional has to admit the claim. Regulation 8(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short Regulation) states as follows :

*" The existence of debt due to the financial creditor may be proved on the basis of -*

- (a) The records available with an information utility, if any; or*
- (b) other relevant documents, including -*

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- (i) *a financial contract supported by financial statements as evidence of the debt;*
- (ii) *a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;*
- (iii) *financial statements showing that the debt has not been paid; or*
- (iv) *an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any."*

6. The attempt on the side of the Ld. Counsel for the Applicants is that Regulation 8(2)(b)(iii) refers to submission of financial statement showing that the debt has not been paid. So, according to him, the document enabling the Resolution Professional was given to him. Despite the sufficiency of the documents, the Resolution Professional did not admit the claim. On a reading of Regulation 8(2), what we understand is that not only the financial statement for enabling a claimant to prove that a debt disclosed in the financial statement is due to the Applicant, the Applicants need to establish right to realise that amount. It is in that regard, the Resolution Professional has demanded, necessary documents to substantiate their claim. The RP has not been served with all the necessary documentation or information as required in the Insolvency & Bankruptcy Code, 2016 to substantiate the claim amount of the Applicants.

7. The Ld. Senior Counsel, appearing for the Resolution Professional, submits that no record from any information utility or an order of a Court or Tribunal that has adjudicated upon a non payment of debt claimed by the Applicants is available, in the case in hand, to prove the existence of debt realizable from the Corporate Debtor. So, only on cause production of financial statement itself cannot be held that all the requirements for substantiating the claim has been fulfilled on the side of the Applicants. It has

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come out in evidence that the Applicant, in CA(IB) No. 1039/KB/2019, Mr. Aashish Jhunjhunwala, was asked to provide the document evidencing the contract for the loans in support of the amount shown in the financial statement evidencing that such amount was actually drawn by the Corporate Debtor and further evidence proving that, that fund has not been paid back to the related parties. No valid explanation is forthcoming as to non production of the above said documents asked for from the Applicants here in this case in hand. There are various correspondence by way of e-mail referred to us on the side of the Applicants. None of the e-mails referred to us enabled us to hold that the Applicants have meted out the requirement in order to see that the claim of the Applicants has been substantiated as alleged on the side of the Applicant.

8. The Ld. Senior Counsel, appearing for the Resolution Professional, cited an order of National Company Law Tribunal, Mumbai Bench in **Urban Infrastructure Trustee Limited Vs. Neelkanth Township and Construction Private Limited**, to strengthen his said submission. In the given case the ,Hon'ble NCLT, Mumbai Bench has considered documents other than what prescribed as per Regulation 8(2) so as to admit a claim by the RP. According to him, the relevant documents referred to in the Regulation cannot be independently sufficient enough to prove that the amount claimed by the Applicant is due to them and that there is a default in payment by the Corporate Debtor. That being so, non admission of the claim of the Applicants found not in violation of any of the provisions of the Code and Regulation and therefore, none of the Applications deserves consideration. Accordingly, the Applications are liable to be dismissed.

9. In the result, the Applications are dismissed. However no order as to cost.





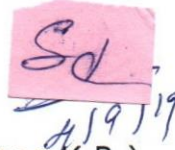
10. Free copy if asked for is to be issued. Registry is directed to send a copy by e-mail to the applicants and to the RP.

11. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)

Member(Technical)



(Jinan K.R.)

Member(Judicial)

Signed this, the 4<sup>th</sup> day of September, 2019

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