

**In the National Company Law Tribunal
Mumbai Bench**

MA 1240 of 2019 in CP No.1340/I&BC/MB/MAH/2017

Application Under **Section 30(1) &(6)** and **Order under section 31** of Insolvency &
Bankruptcy Code 2016

In the matter of

Sanjay Talakshi Mamaniya

.....(Financial Creditor)

v.

GGs Infrastructure Private Limited

..... (Corporate Debtor)

Registered Office No. 5, Kashiram Jamnadas Building,
5, P. D. Mello Road Street Masjid,
Mumbai – 400009.

Mr. Naren Sheth
.....Applicant/ Resolution Professional

Date of Order :30.08.2019

Coram:Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Applicant : 1. Advocate Khushboo Shah Rajani, For Resolution Professional
2. Mr. AtivPatel i/b AVP Partners, For Financial Creditor
3. Advocate Kumar Anurag Singh.

Per M.K. Shrawat, Member (Judicial).

ORDER



1. An Application has been moved on 01.04.2019 by the Learned Resolution Professional by invoking the Provisions of Section 30(6) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) 2016 for **approval of a Resolution Plan**. On receiving this Application along with Resolution Plan an **Order** is hereunder passed as prescribed **U/s 31(1) of The Code**.
2. The Financial Creditor Sanjay Talakshi Mamaniya **had filed a Petition by invoking the Provisions of Section 7 of The Code** read with Rule 7 of The Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016 against the 'Corporate Debtor' GGS Infrastructure Private Limited for the **Financial Debt of ₹10,67,235/-**.
3. After considering the merits of the case, the said Petition was **admitted vide an Order dated 04.10.2017 (CP No.1340/I&BP/NCLT/MB/2017)**. Initially Mr. Martin Golla was appointed as IRP. A Committee of Creditors of GGS (hereinafter referred to as 'CoC') was constituted by IRP and the Committee confirmed the appointment of Mr. Martin S. K. Golla as the Resolution

Professional (hereinafter referred as the 'Resolution Professional'/'RP') at their meeting held on 23.11.2017.

4. In compliance with **Regulation 36A of the CIRP Regulations**, an invitation was published calling for 'Expression of Interest' in Financial Express, Mumbai Edition on 20.12.2017 and on 07.04.2018; inviting prospective Resolution Applicants to submit their Resolution Plan. A Resolution Applicant **Mr. Aahad Karim Jagmagia** (in short RA) expressed his interest to present a Resolution Plan for revival of GGS (Corporate Debtor).
5. Since the CIRP of GGS commenced on **04.10.2017 and 180 days' period of CIRP of GGS ended on 02.04.2018**. Vide order dated 02.04.2018 in M.A. No. 249 of 2018 in C.P.No. (IB)/1340/ (MB) 2017 an **Extension for a further period of 90 days** in accordance with Section 12(3) of the IBC, 2016 was granted. Also, a period of 245 days was excluded from the CIRP period vide order dated 08.05.2019 owing to an action by IBBI against the R.P. Mr. Martin Gola which consumed good number of days.
6. Subsequently on 28.01.2019, an order was passed in MA 358,766 & 767/2018 in CP (IB)- 1340 (MB)/2017 appointing Mr. Naren Sheth as the new Resolution Professional in place of Mr. Martin Golla because Mr. Martin Golla's registration was annulled. The new RP was directed to complete the CIRP proceedings.
7. This Resolution Plan is being submitted by Mr. **Aahad Karim Jagmagia** 'Resolution Applicant', who is eligible to present the Resolution Plan and fulfils the eligibility criteria of 'Resolution Applicant' as prescribed in Section 29A of IBC, 2016 read with Regulation 38 (3) of the CIRP Regulations. A disclosure cum affidavit to this effect has been submitted to the Resolution Professional and annexed in this application.
8. In the Ninth CoC meeting held on 25.03.2019, which ended on 28.03.2019, the CoC casted 90.93% vote to final/revised resolution plan through e-voting. The resolution plan stood approved by requisite majority in accordance with section 30(4) of the Code on 28.03.2019.
9. The Resolution Applicant has given declaration under Regulation 38(1)(b) of the IBBI(CIRP) Regulations, 2016 that neither the RA nor any of its related party has failed to implement or contributed to the failure of the implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past. The RP has duly perused the said declaration and affirmed the same.
10. That the salient features of the Resolution Plan are discussed herein below:

"Background of the Resolution Applicant

*"Profile of Aahad Karim Jagmagia
Qualification:*

- *B.Sc. Hospitality Management*



Summary: Aahad Karim Jagmagia is the third generation of the Jagmagia Family, started working in the Family Business since 2009. He has been revamping the family owned 45-year-old Restaurant/ Banquet brand 'Golden Gate' according to the latest trends and is opening at newer locations, the conception of which happened in the year 1973 at Andheri, Mumbai.

He belongs to a family which has few other businesses under their umbrella-

- *Auto Care Crane Hiring*
- *Auto Care – Gas Station of Hindustan Petroleum*

- Golden Gate Restaurant & Banquet
- Prangan Restaurant
- Hotel Golden Manor
- Sona Enterprises (Distributors of PVC - CPVC Pipes)

Aahad Jagmagia is currently concentrating on the latest venture at Vile Parle (W), Mumbai where there is a banquet hall named Golden Gate, restaurant named Prangan & a café named Bites & Blends under one roof.

He also runs a design firm named Studio Pixelkar – Interior Designing & Art Installations along with his partners. Also, he is a part of Spice & Grains Overseas Pvt. Ltd. which runs a food court at BKC, Mumbai having brands like Mc Donald's, Wok Express, Rajwada Thal etc.

Presence in the Industry and Synergy with business of GGS

Aahad Jagmagia has promoted an entity called Auto Care Crane Hiring in the crane industry and is looking for an opportunity to enter the crane hiring industry. He has identified GGS as an opportunity to consolidate his existing operations with the brand name of GGS and take this business to a next level considering the growth of Infra Industry post 2020.

11. The Resolution Plan broadly covers the following aspects:

A. Conversion of Loan into Equity:

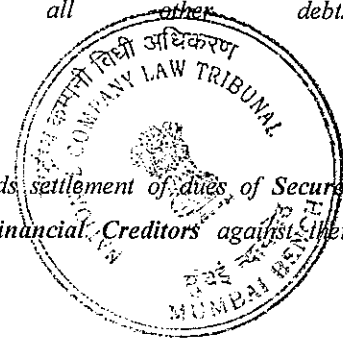
The RA is a financial creditor of the Corporate Debtor and the amount admitted against the claim is Rs. 280.81 lakhs. RA proposes to convert approximately 41% of the admitted claim standing in the name of Khadija Jagmagia, (being her son and Power of Attorney holder) into equity i.e. 11,50,000 Lacs Equity Shares of Rs.10/- each totalling to Rs. 115 Lakhs. The shareholding pattern post conversion of debt is given under Annexure C of this Resolution Plan. Such conversion is at par with the amounts paid to other Financial Creditors.

B. Payment of Corporate Insolvency Resolution Process Costs ("CIRP Cost") in priority to all other debt:

Any Payment due towards Corporate Insolvency Resolution Process Cost as per Regulation 31, 32, 33 & 34 of the CIRP Regulations in priority to all other debts.

C. Settlement of dues of Financial Creditors (Secured & Unsecured):

The Resolution plan provides for a payment of Rs. 733.10 Lacs towards settlement of dues of Secured Financial Creditors and payment of Rs.44.26 Lacs to Unsecured Financial Creditors against their outstanding dues as on Cut-off date.



D. Settlement of dues of Operational Creditors:

GGS has operational dues like trade payables, statutory dues and employee's dues which are outstanding as on Cut-Off date. The said dues are dealt as per Section 30 of IBC, 2016 read with Regulation 38 of the CIRP Regulations.

E. Initial payment to Financial & Operational Creditors

The Resolution Applicant shall facilitate through his goodwill and reputation, investment from third parties or NBFC into the corporate debtor for a sum of Rs. 550 Lacs to be paid to the Secured/ Unsecured Financial Creditors and operational creditors.

The said amount shall be paid in the following manner:

- Rs.234.05 Lacs shall be paid to the Secured Financial Creditors, Rs. 14.17 Lacs to unsecured financial creditors within 30 days of the order and Rs. 36 Lacs to operational creditors within 30 days from the date of receipt of Order confirming the approval of Resolution Plan by the Adjudicating Authority. Balance amount shall be used to make further payments to the financial creditors as and when due in accordance with the resolution plan and also revival of the operations of the company. The earnest money deposited (EMD) of Rs.82.30 lakhs (i.e 10% of Resolution Amount) shall be adjusted in accordance to the approval of the said resolution plan and will be a part of the said remittances.

F. Settlement of Contingent Liabilities

There are certain contingent liabilities in the books of accounts GGS as on Cut-Off date and same have been dealt with separately in the Resolution Plan.

12. Detailed Resolution Plan of GGS Infrastructures Pvt. Ltd. :

[The Cut-Off date for the purpose of this Resolution Plan shall be the Corporate Insolvency Commencement Date viz. 4th October 2017]

12.1. The Resolution Plan is structured in the following manner:

i. Conversion of Loan into Equity

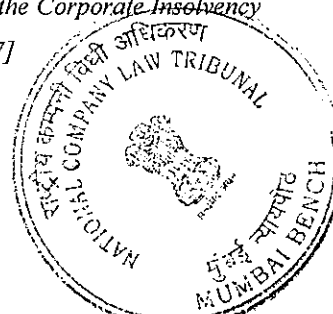
The RA is proposing to convert a sum of Rs.115 Lacs out of the admitted claim of ~~Rs. 280.81 Lacs~~ standing in the name of Khadija Jagmagia, (being her son and Power of Attorney holder) into 11,50,000 Lacs Equity Shares of Rs.10/- each.

It is further proposed to issue of 11,50,000 equity shares to the RA as per the provisions of Section 62 of the Companies Act, 2013. Accordingly, the Capital Clause in the Memorandum of Association and Articles of Association of the Company shall be amended as per the provisions of Section 13 of the Companies Act, 2013. The shareholders' approval for alteration of MOA & AOA is deemed to have been given on the approval of this Resolution Plan by the Adjudicating Authority.

It is further envisaged that the existing shareholders of the Corporate Debtor have renounced their right under Section 62 of the Companies Act, 2013 in favour of the RA to the extent issue of 11,50,000 equity shares under this Resolution Plan. Hence, the Resolution Plan complies with provisions of Section 62 of the Companies Act, 2013 with respect to issue of further shares. The shareholding pattern post issue of aforesaid shares is annexed in the Resolution Plan.

EARNEST MONEY DEPOSIT

The Resolution Applicant envisages raising in the manner specified hereinunder, and depositing 10% of the Resolution Plan pay-out as Earnest Money Deposit. The same shall be organized by the Resolution Applicant through his business associates, friends and relatives and shall form the composite part of the resolution plan. The EMD will be adjusted on successful approval of the resolution plan by the adjudicating authority and first pay within 30 days.



ii. **Settlement of dues of Financial Creditors (Secured & Unsecured)**

The Resolution Plan provides for settlement and payment of the dues of Financial Creditors as on Cut-off date in the following manner:

- a. A payment of Rs.733.10 Lacs shall be towards settlement of its outstanding dues of the Secured Financial Creditors
- b. An amount of Rs.44.26 Lacs shall be paid to Unsecured Financial Creditors towards settlement of its outstanding dues.

iii. **Initial payment to the Financial Creditors (Secured & Unsecured)**

The Resolution Applicant shall facilitate through his goodwill and reputation, investment from third parties or NBFC into the corporate debtor for the initial amount of Rs.234.05 Lacs to be paid to the Secured Financial Creditors, including but not limited to the fulfilment of the payment obligation by the personal guarantors of the Corporate Debtor under the personal guarantees.

The said amount shall be paid through subrogation of security interest in the following manner:

- Rs.234.05 Lacs shall be paid to the Secured Financial Creditors within 30 days from the date of receipt of Order confirming the approval of Resolution Plan by the Adjudicating Authority.
- The balance payment Rs.499.05 Lacs of dues shall be paid within a period of 1 year from confirmation of the resolution plan to be paid every quarter.

iv. **In-Principal Approval for sale of Assets & Release of Charge**

It is proposed as follows:-

- To dispose-off some of the old and obsolete cranes listed out in the Annexure D (as annexed in the Resolution Plan) during the implementation of the Resolution Plan.
- IDBI, SREI shall give approval for sale of the said assets on the approval of Resolution Plan by the Adjudicating Authority. IDBI & SREI shall release the charge of the said assets for the purpose of sale.
- To open an escrow account with IDBI Bank in which the sale proceeds shall be deposited.
- The said proceeds shall be utilized towards payment of balance dues of IDBI and SREI.
- IDBI and SREI shall release the hypothecation/charge created on the said assets and issue NOC for sale of the identified assets as per Annexure D on the implementation of Resolution Plan.

It is further proposed that IDBI and SREI shall also give permission to sell the assets other than the assets mentioned hereinabove under Annexure D and the sale proceeds shall be deposited in the Escrow account. The proceeds shall be utilized towards payment of dues of IDBI and SREI. On the specific request by RA or GGS, IDBI and SREI shall release the charge for sale of the said assets.

v. **Payment of Corporate Insolvency Resolution Process Costs ("CIRP Cost") in priority to all other debt;**

Any Payment due towards Corporate Insolvency Resolution Process Cost as per Regulation 31, 32, 33 & 34 of the CIRP Regulations in priority to all other debts.



vi. *Settlement of dues of Operational Creditors*

GGS has operational dues like trade payables, statutory dues and employee's dues which are outstanding as on Cut-Off date. The said dues are dealt as per Section 30 of IBC, 2016 read with Regulation 38 of the CIRP Regulations.

vii. *Settlement of Contingent Liabilities*

There are certain contingent liabilities in the books of accounts of GGS as on Cut-Off date and same has been dealt separately in the Resolution Plan.

Financial Settlement of dues of Financial Creditors12.2. *Details of Financial Creditors based on Information Memorandum*I. *Secured Financial Creditors as under:*

Sr. No.	Name of the Creditor	Principal Amount	Claim Amount Admitted as on 04.10.2017
		<i>Rs. in Lacs</i>	
1.	IDBI Bank Ltd	1252.72	2104.08
2.	SREI Equipment Finance Limited	213.47	645.48
Total – A		1466.19	2749.56

II. *Unsecured Financial Creditors:*

Sr. No.	Name of the Creditor	Principal Amount	Claim Amount Admitted as on 04.10.2017
		<i>Rs. In Lacs</i>	
1.	M/s. Catchy Bags	6.00	6.25
2.	Bharat Chheda	25.00	
3.	Sanjay TalakshiMamaniya HUF	5.00	9.41
4.	Sanjay TalakshiMamaniya	10.00	10.92
5.	BhaveshChheda	25.00	34.28
6.	Vasant Jain	10.00	51.40
7.	Khadija Jagmagia represented by AahadJagmagia	115.00	280.81
8.	*Kartik Corporation	7.52	7.52
Total – B		203.52	431.89

*Note: M/s Kartik Corporation filed a claim of Rs.58.47 Lacs during the CIRP and as per the records, the Corporate Debtor has already made payment of Rs.17.48 Lacs and hence, the RP has admitted an amount of Rs.7.52 Lacs. M/s. Kartik Corporation has also agreed to be paid the final amount of Rs.7.52 Lacs only. There is a pending suit filed u/s.138 of the Negotiable Instruments Act, 1881 in the Court of Chief Judicial Magistrate, Jalna and the RA insists that the admitted amount of Rs.7.52 Lacs will be paid on unconditional

andsimultaneous withdrawal of the said suit u/s.138 of the NI Act 1881 since the payment is being made for the amount disputed in the said suit. M/s. Kartik Corporation will be paid the said amount of Rs.7.52 Lacs by way of Demand Draft to be presented before the Court of Chief Judicial Magistrate Jalna, on filing of the consent terms and withdrawal application by M/s. Kartik Corporation. The details of payment made by GGS till date are follows:

Sr. No.	Date of Payment	Demand Draft No.	Amount (Rs. in Lacs)
1.	02.02.2015	191749	3.12
2.	03.03.2015	195534	3.12
3.	24.03.2015	198759	3.12
4.	11.05.2015	057172	3.12
5.	07.09.2015	210575	5.00
Total			17.48

III. Rejected Claims

Sr. No.	Name of the Creditor	Principal Amount	Claim Filed	Claim Amount Admitted
		Rs. In Lacs		
	Roma Enterprise	2500.00	2179.32	--
	Total- C	2500.00	2179.32	

Note 1: The claim filed by M/s. Roma enterprise was rejected by RP as GGS had already paid the entire dues as a part of the settlement that was agreed between Roma and GGS as per the Memorandum of Understanding (MoU) dated 18.11.2015. The said decision of RP was upheld by the Hon'ble NCLT, Mumbai Bench vide its order dated 2nd April, 2018 MA 238/2018 in CP No.(IB)/ 1340/ (MB)/2017 filed by Roma Enterprise. Now, Roma Enterprise has filed an appeal against the impugned order before the Hon'ble NCLAT and the first hearing was held on 22nd May, 2018. The said matter is pending before the NCLAT. The said appeal filed by Roma Enterprise is dismissed vide Hon'ble NCLAT order dated 22.02.2019 (Copy Enclosed as Annexure I).

IV. Total dues of Financial Creditors

Sr. No.	Name of the Creditor	Principal Amount	Claim Amount Admitted
		Rs. In Lacs	
1.	Secured Financial Creditors	1466.19	2749.86
2.	Unsecured Financial Creditors	203.52	431.89
3.	Rejected Claims	2500.00	--
Grand Total -A+B+C		4169.71	3181.75

12.3. Strategy that may be adopted to settle the dues of Financial Creditors.

12.3.1. It is thus proposed that Rs.733.10 of principal outstanding dues of Secured financial creditors as on Cut-off date shall be paid in full and seeking write off of interest, penal interest, overdue and other charges from financial creditors and retaining only such amount of debt on books of GGS

which is sustainable and serviceable and can be repaid from the infusion of funds, collection of receivables, internal accruals and cash flow over a period of 1 year.

12.4. The Detailed Structure and Method of Payment:

Settlement of Dues of IDBI Bank

The dues of IDBI Bank in the books of the GGS as on Cut-Off date are Rs.1252.72 Lacs and the dues of IDBI Bank as per claim admitted up to Cut-Off Date are as follows:

Principal Amount (Rs. In Lacs)	Interest & Other charges (Rs. In Lacs)	Total Claim (Rs. In Lacs)
1252.72	851.36	2104.08

- The dues of IDBI Bank as on Cut-Off Date shall be settled at Rs.626.36 Lacs against principal amount of Rs.1,252.72 Lacs
- The outstanding dues of IDBI shall be paid in the following manner:

IDBI Bank	Term of Plan
	1 Year Rs. In Lacs
Proposed Settlement Amount under the Resolution Plan	626.36
Initial payment of Rs.200.00 Lacs shall be in the following manner:	200.00
➤ Rs.200.00 Lacs shall be paid within 30 days from the date of receipt of order confirming the approval of Resolution Plan by the Adjudicating Authority.	
➤ Balance amount shall be paid in equal quarterly instalments over a period of 1 year after approval of Resolution Plan by the adjudicating authority.	426.36
Total	626.36

- No interest payable during the repayment period.
- Balance dues including interest, penal interest and other charges, if any, shall be completely written off by IDBI Bank.
- It is proposed to dispose-off some of the obsolete cranes listed out in the Application Annexure D on the implementation of the Resolution Plan and IDBI shall give In-Principal approval to sell the identified assets on the approval Resolution Plan by the Adjudicating Authority. IDBI shall release the hypothecation/charge of the said assets for the purpose of sale.
- An escrow account shall be opened with IDBI Bank for depositing the proceeds received from the sale of assets. The said proceeds shall be utilized for repayment of dues of IDBI Bank under this Resolution Plan.
- IDBI shall issue 'No Due Certificate' on receipt of entire settlement of amount as per Resolution Plan and shall satisfy all the outstanding charges registered with Registrar of Companies / Ministry of Corporate Affairs.

12.4.1. Settlement of dues of SREI Equipment Finance Limited

The dues of SREI Equipment Finance Limited ("SREI") in the books of GGS as on Cut-Off date are Rs.213.47 Lacs and the dues of SREI as per claim admitted up to Cut-Off Date are as follows:

Principal Amount (INR in Lacs.)	Interest & Other charges (INR in Lacs)	Total Claim (INR in Lacs)
213.47	432.01	645.48

- The dues of SREI as on Cut-Off Date shall be settled at Rs.106.74 Lacs against principal amount of Rs.213.47 Lacs

An initial amount of Rs.34.05Lacs shall be made to SREI, within 30 days from the date of receipt of order confirming the approval of Resolution Plan by the Adjudicating Authority.

- The balance amount of Rs.80.05 Lacs shall be payable in equal quarterly instalments over a period of 1 year.
- The dues of SREI shall be payable in the following manner:

SREI	Term of Plan
	1 Year Rs. In Lacs
Proposed Settlement Amount under the Resolution Plan	106.74
Initial Payment of Rs.34.05 Lacs shall be made in the following manner:	34.05
<ul style="list-style-type: none"> ➤ Rs.34.05 Lacs shall be paid within 30 days from the date of receipt of order confirming the approval of Resolution Plan by the Adjudicating Authority. 	
<ul style="list-style-type: none"> ➤ Balance amount shall be paid in equal quarterly instalments over a period of 1 year. 	72.69
Total	106.74

- No interest payable during the repayment period.
- Balance dues including interest, penal interest and other charges, if any, shall be written off fully by SREI.
- It is proposed to dispose off some of the obsolete cranes mortgaged with SREI listed out in the Application Annexure D on the implementation of the Resolution Plan. SREI shall give In-principal approval for sale of said assets on the approval of Resolution Plan by the Adjudicating Authority and SREI shall release the charge on the said assets.
- An escrow shall be opened with IDBI Bank and the sale proceeds shall be deposited in the said escrow account. The sale proceeds shall be utilized towards the payment of balance dues/instalments of SREI under this Resolution Plan.
- SREI shall issue 'No Due Certificate' on receipt of entire settlement of amount as per Resolution Plan and shall satisfy all the outstanding charges registered with Registrar of Companies / Ministry of Corporate Affairs



12.4.2. Settlement of Dues of Unsecured Financial Creditors

Claims have been received from the following Unsecured Financial Creditors during CIRP:

Sr. No.	Name of the Unsecured Creditors	Principal Amount	Claim Amount Admitted As on 04.10.2017	Proposed Settlement Amount
Rs. In Lacs				
1.	M/s. Catchy Bags	6.00	6.25	3.00
2.	Bharat Chheda	25.00	35.30	12.50
3.	Sanjay TalakshiMamaniya HUF	5.00	5.41	2.50
4.	Sanjay TalakshiMamaniya	10.00	10.92	5.00
5.	BhaveshChheda	25.00	34.28	12.50
6.	Vasant Jain	10.00	51.40	5.00
7.	Kartik Corporation	7.52	7.52	3.76
Total-A		88.52	151.08	44.26
8.	Khadija Jagmagia represented by AahadJagmagia	115.00	280.81	--
Total-B		203.52	431.89	44.26

Rejected claims

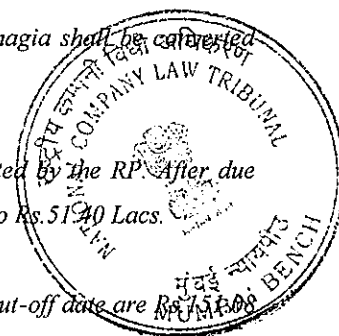
There are some rejected claims regarding certain Unsecured Financial Creditors. The details of the claim are as under:

Sr. No.	Name of the Unsecured Creditor	Principal Amount	Claim Amount Admitted As on 04.10.2017	Proposed Settlement Amount
Rs. In Lacs				
1.	Roma Enterprise	2500.00	--	--
Total		2500.00	--	--

Note: The claim filed by M/s Roma enterprise was rejected by RP as GGS had already paid the entire dues as a part of the settlement that was agreed between Roma and GGS as per the Memorandum of Understanding (MoU) dated 18.11.2015. The said decision of RP was upheld by the Hon'ble NCLT Bench vide its order dated 2nd April, 2018 MA 238/2018 in CP No.(IB)/ 1340/ (MB)/2017 filed by Roma Enterprise. Now, Roma Enterprise has filed an appeal against the impugned order before the Hon'ble NCLAT and the first hearing was held on 22.05.2018. The said appeal filed by Roma Enterprise is dismissed vide Hon'ble NCLAT order dated 22.02.2019.

The Dues of the Unsecured Financial Creditors shall be settled as follows:

- The Unsecured Loan of Rs.115.00 Lacs standing in the name of Khadija Jagmagia shall be converted into Equity Shares of Rs.10/- each.
- The claim of Rs.2756.62 Lacs filed by Vasant Jain has been partially admitted by the RP. After due verification of documents filed by Mr. Jain, the said claim has been admitted upto Rs.51.40 Lacs.
- Considering the above, the total outstanding dues of unsecured creditors as on cut-off date are Rs.151.08 Lacs.
- The total outstanding dues of Rs.151.08 Lacs of Unsecured Financial Creditors as on Cut-off date shall be settled at 44.26 Lacs and shall be repaid as follows:



<i>Unsecured Creditors</i>	<i>Term of Plan</i>
	<i>1 year (Rs. In Lacs)</i>
<i>Proposed Settlement Amount under the Resolution Plan</i>	<i>44.26</i>
<i>Initial payment of Rs.14.17 Lacs shall be made in the following manner:</i>	<i>14.17</i>
➤ <i>Rs.14.17 Lacs shall be paid within 30 days from the date of receipt of order confirming the approval of Resolution Plan by the Adjudicating Authority.</i>	
<i>Balance amount payable in equal quarterly instalments over a period of 1 year. (Details Enclosed in Annexure F)</i>	<i>30.09</i>
<i>Total</i>	<i>44.26</i>

- *Balance dues including interest, penal interest, if any, shall be written off fully by all the Unsecured Financial Creditors.*

13. Corporate Insolvency Resolution Process Cost (CIRP Costs)

13.1. *Corporate Insolvency Resolution Process Cost (CIRP Costs) is being met by the Corporate Debtor through receivables and internal accruals. The IM projects aggregate CIRP Cost Rs. 34.62 Lacs incurred during CIRP by Resolution Professional. The Costs of CIRP is annexed as an annexure with break up.*

- *The aforesaid CIRP cost has been paid by the Corporate Debtor through internal accruals and cash flows.*

Source of funds for the unpaid CIRP cost will be paid from the cash flow available with company on the date of the approval of the resolution plan or from the EMD.

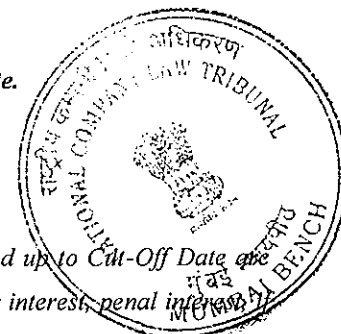
14. Waiver/Write-off of Un-sustainable Debt and Interest Accrued as on Cut-Off Date.

14.1. Secured Financial Creditors

The total outstanding dues of Secured Financial Creditors as per claim admitted up to Cut-Off Date are Rs.2,749.56 Lacs shall be taken as settled at Rs.733.10 and balance dues including interest, penal interest, if any, shall be completely written off by the Secured Financial Creditors. The details of settlement and waiver are as follows:

<i>Sr. No.</i>	<i>Name of the Creditors</i>	<i>Principal Amount</i>	<i>Claim Amount Admitted As on 04.10.2017</i>	<i>Proposed Settlement Amount</i>	<i>Waiver / Write-off of Balance Debt, Interest, Penal Interest</i>
<i>Rs. In Lacs</i>					
1.	<i>IDBI Bank</i>	<i>1252.72</i>	<i>2104.08</i>	<i>626.36</i>	<i>1477.72</i>
2.	<i>SREI Equipment Pvt Ltd.</i>	<i>213.47</i>	<i>645.48</i>	<i>106.74</i>	<i>538.74</i>
	<i>Total</i>	<i>1466.19</i>	<i>2749.56</i>	<i>733.10</i>	<i>2016.46</i>

14.2. Unsecured Financial Creditors



The total outstanding dues of Rs.151.08 shall be at settled at an amount of Rs. 44.26 Lacs. The details of settlement and waiver are as follows:

Sr. No.	Name of the Unsecured Creditor	Principal Amount	Claim Amount Admitted As on 04.10.2017	Proposed Settlement Amount	Waiver/ Write-off of Balance Debt, Interest etc
Rs. In Lacs					
1	M/s. Catchy Bags	6.00	6.25	3.00	3.25
2	Bharat Chheda	25.00	35.30	12.50	22.80
3	Sanjay TalakshiMamaniya HUF	5.00	5.41	2.50	2.91
4	Sanjay TalakshiMamaniya	10.00	10.92	5.00	5.92
5	BhaveshChheda	25.00	34.28	12.50	21.78
6	Vasant Jain	10.00	51.40	5.00	46.40
7	Kartik Corporation	7.52	7.52	3.76	3.76
Total -A		88.52	151.08	44.26	106.82

15. Details of Dues of Operational Creditors

GGS has outstanding dues of Rs.800.82 Lacs towards Operational Creditors as on the Cut-Off Date:

Sr. No.	Operational Creditors	Dues as on 04.10.2017	Claim Amount Admitted As on 04.10.2017
Rs. In Lacs			
1.	Contractual Creditors	429.13	--
Total		429.13	--

Note: According to the details provided by Corporate Debtor the amount claimed by contractual creditors as on the commencement date of CIRP have been partly paid off during the CIRP since the operations of the company was kept as a going concern, hence the dues outstanding towards contractual creditors will be Rs. 376 Lakhs.

i. Dues of Employees including workers:

Sr.	Category	Dues as on 04.10.2017	Claim Amount Admitted As on 04.10.2017
Rs. In Lacs			
1.	Workers	23.70	--
2.	Employees	2.81	--
3.	Other Payables (PF, ESIC, PT, Leave Encashment)	0.65	--
Total		27.16	--

Note: According to the details provided by Corporate Debtor the amount claimed by Workers & Employees as on the commencement date of CIRP have been partly paid off during the CIRP since the operations of the company was kept as a going concern, hence the dues outstanding towards contractual creditors will be Rs. 15 Lakhs.

ii. Other Statutory Dues:

Sr. No.	Operational Creditors	Dues as on 04.10.2017	Claim Amount As on 04.10.2017
<i>Rs. In Lacs.</i>			
1.	Goods & Service Tax Payable	9.30	--
2.	*Service Tax Payable	320.55	1929.86
3.	**TDS Payable	14.68	27.56
	Total	344.53	1957.42

**Note 1: Various claims amounting to Rs.1929.86 Lacs & Rs.27.56 Lacs have been received from the Service Tax department and Income Tax Department respectively. The said claims are being contested by the Corporate Debtor and are pending before the various forums and the amount of claim cannot be determined until the outcome of the said proceedings. Hence, the said amount of Rs.1929.86 Lacs & Rs.27.56 Lacs have been kept in abeyance. However, the amount that will come to be adjudicated, if any, will be settled at the appropriate time as per provisions of section 53 of IBC, 2016. This liability being a contingent liability, the same has been dealt with separately under the Resolution Plan.*

***Note 2: The aforesaid TDS amount of Rs.14.68 lacs has been paid by the CD during the CIRP (as per the information provided by the RP) as on cut off Date.*

Note 3: Any pending amount which is unclaimed by any creditors or amount which is claimed by creditors in incorrect format or amount which is rejected by Resolution Professional shall be waived off and the RA shall not be liable for the payment of the same.

16. Strategy adopted to restructure the Operational Dues

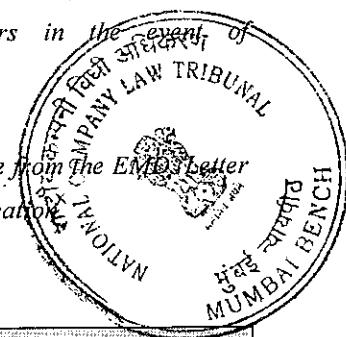
It is envisaged that dues of the Operational Creditors shall be settled and paid as per the provisions Section 30 (2) (b) of the Code and Regulations 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Section 30(2) (b) of the Code requires that the Resolution Plan shall provide for the repayment of the debts of the Operational Creditors in such a manner as may be specified by the Board, which shall not be less than the amount to be paid to the Operational Creditors in the event of liquidation of the Corporate Debtor under Section 53 of the Code.

The Source of Funds that will be used to pay the Operational Creditors shall be from the EMD's Letter of Intent of In Principal approval/ sanction from NBFC is annexed in the Application.

Payment Schedule of the Operational Creditors (in Lakhs)

Operational Creditors	Book Value as on Cut-Off Date	Settled Amount	Payment Details
Trade Creditors	376.00	18.75	Shall be paid within 30 days of confirmation of resolution plan by the Adjudicating Authority from the EMD funds.
Statutory Dues	344.53	16.50	Shall be paid within 30 days of confirmation of resolution plan by the Adjudicating Authority from the EMD funds.



Salaries, Wages & Other Payables	15.00	0.75	Shall be paid within 30 days from the approval of Resolution Plan by the Adjudicating Authority from the EMD funds.
Total	734.53	36.00	

5% of the operational dues as per books or minimum liquidation value whichever is higher due to Operational Creditors to be paid within 30 days in priority to financial creditors from EMD funds. The statement showing breakup of the payments to operational creditors is annexed as annexure G. Thus, the Resolution Plan fully complies with the provisions of the Code and CIRP Regulations and provides for significant payments to the Operational Creditors in priority to Financial Creditors.

17. Conversion of Shares

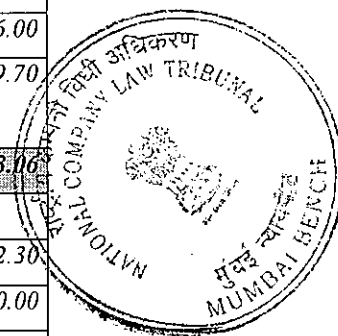
It is proposed to convert the outstanding loan of Rs.115.00 Lacs into equity shares. The required approval of the shareholders for issue of shares pursuant to Section 62 of the Companies Act, 2013 deems to have been given on the approval of Resolution Plan by the Adjudicating Authority. The Shareholding Pattern post conversion of the said loan is annexed as Annexure C to this Resolution Plan.

It is further envisaged that the existing shares of the Corporate Debtor shall be cancelled under Section 66 of The Companies Act, 2013.

- The Resolution Applicant shall facilitate through his goodwill and reputation, investment from 3rd parties into the Corporate Debtor, for a sum of Rs.550 Lacs to be paid to the Secured Financial Creditors, including but not limited to the fulfilment of the payment obligation by the personal guarantors under the personal guarantee

18. Cost of Resolution Plan and Means of Finance:

Cost of Resolution Plan		Rs. in Lacs
A	Settlement of dues of Secured Creditors	733.10
B	Settlement of Dues of Unsecured Creditors	44.26
C	Settlement of dues of Operational Creditors	36.00
D	Corporate Insolvency Resolution Process Cost (Pending/ Unpaid) (Annexure O)	9.70
TOTAL		823.06
Means of Finance		
A	EMD	82.30
B	Through NBFC	550.00
C	Receivables of GGS	100.00
D	Sale of obsolete cranes	75.00
E	Internal Accruals from business operations	15.76
TOTAL		823.06



- Letter of Intent showing In Principal Sanction from NBFC Annexed in the Application.
- The company also has confirmed old receivables along account confirmations from the clients. Company has confirmed orders in hand to be executed in current year.

19. Term of the Resolution Plan and its implementation schedule:

1 st Quarter	<p>Events within 30 days:</p> <ol style="list-style-type: none"> 1. Application for appointment of Directors. 2. Cancellation of Shares and issue of new fresh shares as per the terms of the resolution plan. 3. Part Disbursement of funds from the NBFC 4. Payment of the upfront amount as per the schedule mentioned in the resolution plan. 5. Intimations related to the approval of the resolution plan to all Statutory authorities <p>Events within next 60 days:</p> <ol style="list-style-type: none"> 1. 1st quarterly instalments shall be paid as per terms of the plan. 2. Part Sale of obsolete cranes as stated in the resolution plan and distribution of the proceeds as terms of the resolution plan 3. Part realisation from the debtors. 4. Commencement of the existing orders in hand and market for new order. 5. At the end of the 1st Quarter monitoring committee reviews the progress of implementation of the resolution plan
2 nd Quarter	<ol style="list-style-type: none"> 1. Part Disbursement of further funds from the NBFC 2. Part Sale of obsolete cranes as stated in the resolution plan and distribution of the proceeds as terms of the resolution plan 3. Part realisation from the debtors. 4. 2nd quarterly instalments shall be paid as per terms of the plan. 5. At the end of the 2nd Quarter monitoring committee reviews the progress of implementation of the resolution plan
3 rd Quarter	<ol style="list-style-type: none"> 1. Part Disbursement of further funds from the NBFC 2. Part realisation from the debtors. 3. 3rd quarterly instalments shall be paid as per terms of the plan. 4. At the end of the 3rd Quarter monitoring committee reviews the progress of implementation of the resolution plan
4 th Quarter	<ol style="list-style-type: none"> 1. Part Disbursement of further funds from the NBFC 2. Part realisation from the debtors. 3. 4th quarterly instalments shall be paid as per terms of the plan. 4. At the end of the 4th Quarter and final monitoring committee meeting on implementation of the resolution plan and getting NOC from the lenders.

20. Management and Control

Since the Resolution Applicant nominate 2 Directors on the Board of the Corporate Debtor pursuant to the provisions of Companies Act, 2013 and RA shall have sole right to appoint KMP's and managerial personnel to run the operations of the Corporate Debtor during the term of the Resolution Plan. The KYC of the proposed Directors and the KMP details along with DIN numbers of the Directors and the profile of proposed management are annexed in the Application along with this resolution plan.

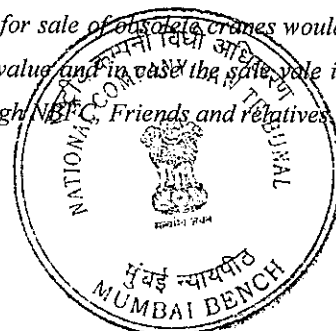
21. Supervision and Monitoring of the Resolution Plan

Monitoring Committee: The CoC has decided to setup a monitoring committee for supervision & monitoring during the implementation of the resolution plan. The members of the committee would be Resolution Professional, One member or both from IDBI & SREI and one member from the new management of Resolution Applicant. Further, it was decided that the meeting of the committee should be quarterly and the fees of RP would be decided mutually by RP and RA. The modus operandi for sale of obsolete cranes would be decided by the Committee but should not be sold below its liquidation value and in case the sale value is less than liquidation value the Resolution Applicant will make it good through NBFC, Friends and relatives.

22. Other Terms and Conditions

23.1 Withdrawal of Suits and waiver of Recompense

SREI and IDBI Bank shall withdraw all the cases filed under SARFEASI Act, 2002 before the Debt Recovery Tribunal, the Chief Metropolitan Magistrate (CMM), Notice of willful defaulter issued against GGS or any suits filed before any other forum including arbitration proceedings on approval of the Resolution Plan by Hon'ble NCLT. It is hereby also agreed that SREI and IDBI Bank will not initiate any legal suit or



proceeding against GGS in any matter except in the case where GGS has defaulted on the repayment schedule or terms and conditions of the Resolution Plan. Both IDBI Bank and SREI shall waive the right to Recompense on full payment of the principal amount as aforementioned under this Resolution Plan.

It is also proposed that M/s Kartik Corporation shall withdraw the suit filed under Section 138 of the Negotiable Instrument Act, 1881 against GGS on payment of settled amount as per this Resolution Plan and shall not initiate any legal proceedings against the Company, Resolution Applicant and or its Directors before any forum with respect to this subject matter and shall fulfill all other conditions as mentioned in Para 6 of this Resolution Plan.

23.2 Creation of Capital Reserve from Write Down in Liabilities to set off Accumulated losses:

The books of accounts of GGS as on Cut-Off date shows accumulated losses of more than INR 86.35 Lacs against Equity Share Capital of Rs.750 Lacs. These accumulated losses will create constraints in the restructuring for GGS to seek any investment and raise funds for further growth. It is thus proposed to transfer all the write-off of liabilities in the Resolution Plan including liabilities towards Financial Creditors, Operational Creditors, Promoters and their related parties to a Capital Reserve. This will help in strengthening the Balance Sheet of GGS and enable it to raise resources for further growth.

23. Contingent Operational Dues / Operational Dues which are subject matter of litigation (whether provided for or not provided for in the books of accounts):

Liabilities may arise with respect to Operational Debt for period prior to Cut-Off Date in respect of certain Contingent/ Disputed Liabilities (whether provided for or not provided for in the books of accounts) as under:

24.1. Un-disputed Statutory Dues:

There are some undisputed amount payable by GGS towards following statutory liabilities

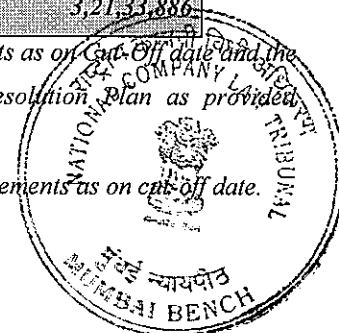
Name of Statute	Nature of Dues	Amount (Rs.)
*The Finance Act, 1994	Service Tax	3,20,55,000
The ESIC, 1948	ESIC	2,928
The EPF&MP Act, 1952	PF	7,350
The Profession Tax Act	Profession Tax	800
The Income Tax Act, 1961	Leave Encashment	67,808
TOTAL		3,21,33,886

The aforesaid dues have already been provided by GGS in the books of accounts as on Cut-Off date and the same shall be settled at par with other operational creditors in this Resolution Plan as provided hereinabove.

*Note: The aforesaid Service Tax amount is based on provisional financial statements as on cut-off date.

24.2. Disputed Dues

M/s. Roma Enterprise, being a financial creditor had filed its claim for Rs.2179.32 Lacs and post verification of documents, the Resolution Professional rejected the claim. The facts of the matter are as



follows:

Roma Enterprise had lent Rs.2500 Lacs to GGS in the year 2008 and they claimed that they had received Rs.1400 Lacs during the period from 2008 to 2010 against the principal and Rs.1266.01 Lacs (period from 2008 – 2012) towards interest. GGS could not pay the balance amount of Rs.1100 Lacs due to financial constraints. Thereafter, both parties discussed and settled their dues at Rs.476.00 Lacs vide MoU 1 dated 18.11.2015 towards settlement of Dues and MoU 2 regarding hypothecation of 4 cranes to Roma Enterprise. GGS had honoured the payment as per the terms and conditions of said MoU 1 and as agreed hypothecated 4 cranes to Roma as per terms and conditions of MoU 2. The MOUs also categorically, mention that no claim is outstanding against GGS Infrastructures Pvt. Ltd. pursuant to the said two MOUs. In consideration of above facts, the Resolution Professional rejected the claim filed by Roma Enterprise.

Note : The claim filed by M/s Roma enterprise was rejected by RP and the decision of the RP upheld vide the Hon'ble NCLT Bench passed its order dated 2nd April, 2018 MA 238/2018 in CP No.(IB)/1340/ (MB)/2017 filed by Roma Enterprise. Now, Roma Enterprise has filed an appeal against the impugned order before the Hon'ble NCLAT and the first hearing was held on 22nd May, 2018. The said appeal filed by Roma Enterprise is dismissed vide Hon'ble NCLAT order dated 22.02.2019 (Copy Enclosed)

24.3 Disputed Statutory Dues

There are some disputed statutory liabilities in respect of Service Tax, Income Tax and Custom Duty and GGS is strongly contesting the same before various appellate forums.

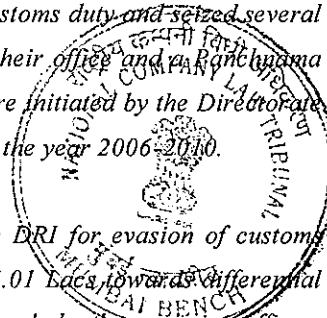
24.3.1. Contingent Liability - Custom duty Demand

According to the information , GGS is in the business of offering crane services on rent mainly to infrastructure projects and during the year 2006 to 2010 GGS imported about 126 'second hand' cranes from various countries at negotiated prices. The Delivery terms for some of the Cranes were FOB, some imported on CNF and some imported on CIF. GGS could use these second hand cranes after incurring minimal expenses on repairs and restoration. The payment against such imports were made through regular banking channels.

Once the cranes were imported, the required documents for custom clearance were submitted to respective department along with Chartered Engineers Certificate certifying the condition, residual value of the cranes and its value based on the parameters considered for such valuation.

Post examination of documents and valuation, the department had provided the custom clearance of the cranes and the due custom duty assessed by the field expert was duly paid by GGS before clearing the consignments. Meanwhile on 19.11.2010 officers of The Directorate of Revenue Intelligence (DRI) carried out search of the office of GGS alleging that GGS has evaded customs duty and seized several documents along with all original documents of cranes imported from their office and a Bench memo was prepared post seizure of documents. Subsequently investigations were initiated by the Directorate of Revenue Intelligence against the Cranes imports made by GGS during the year 2006-2010.

Later GGS received a Show Cause Notice Dtd.04.04.2013 (SCN) from DRI for evasion of custom duty by undervaluing the imports and demand was made to pay Rs.835.01 Lacs towards differential duty amount. The differential duty was imposed based on re-valuation made by the assessing officers pursuant to the investigation initiated against GGS. The said SCN had also imposed penalties on GGS and its Directors. Further, the department had detained/ seized all the cranes imported by GGS.



An initial Deposit of Rs.285 Lacs was made towards the differential duty payment 'under protest' by GGS. Later, GGS filed an appeal against the Order before the Commissioner of Customs (Imports) who also ruled against GGS. Subsequently, GGS appealed before CESTAT. The matter is still pending before the CESTAT. The said demand has however been kept in abeyance by the customs department, since demands raised by customs department on similar grounds in number of other cases were struck down by the CESTAT questioning the jurisdiction of the Department to issue such show cause Notices. GGS is hopeful that the Appellate Tribunal may remand back the matter to the department for reconsideration and reassessment.

During the CIRP, Department of Assistant Commissioner of Customs, Group -V has filed its claim in response to the intimation letters filed by the Resolution Professional:

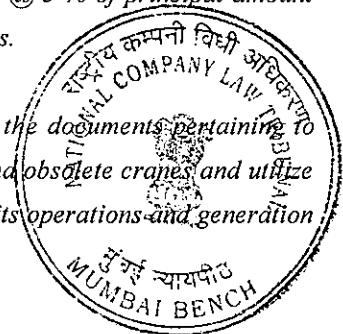
Description	Amount in Lacs
Amount of Duty Confirmed	835.01
Interest payable on the duty till the ICD	1210.87
Redemption Fine	658.50
Penalty imposed on GovindjiGopalji& Sons (Now GGS Infrastructure Pvt. Ltd.) under Section 114AA & 112A of Customs Act, 1962	935.01
Penalty imposed on Mr. DharmeshVador under Section 114AA & 112A of Customs Act, 1962	200.00
Total	3839.39

The said claim amounting to Rs.3839.39 Lacs are being contested by the Corporate Debtor before CESTAT and the amount of admitted claim cannot be determined until the outcome of the said proceedings. Hence, the said amount of Rs.3839.39 Lacs has been kept in abeyance. However, the amount that will come to be adjudicated, if any, will be settled at the appropriate time.

In the interest of safeguarding the sustainability of the Company and so as to not derail the company in the event of a substantial claim by the said departments, the liability, if any, that will crystalize will be settled at 5% of the amount (principal dues) adjudicated by the appropriate appellate authorities/tribunals and any interest including penal interest, penalty, redemption fee etc. imposed by the adjudicating authority shall be waived off.

The aforesaid claim falls under the definition of Operational Creditors and the said dues (principal amount) shall be settled at par with other Operational Creditors under this Resolution Plan. The Resolution plan provides for settlement of dues of Operational Creditors @ 5 % of principal amount only and provides for waiver of entire interest, penal interest and penalties.

Considering the above, it is further envisaged that the DRI shall return the documents pertaining to 126 cranes seized/detained by them so as to enable GGS to sell the old and obsolete cranes and utilize the said funds to buy new cranes which can be used by GGS for reviving its operations and generation of revenue.



24.3.2. Contingent dues - Service Tax

A Show Cause Cum Demand Notice dated 18.04.2015 for Rs.524.72 Lacs was issued by the Office of the Pr. Commissioner, Service Tax-II, Mumbai against GGS. The brief facts of SCN are given hereunder:

GGS is engaged in the business of providing crane services to various infra projects and provides taxable services under the head "Supply of Tangible Goods" & "Transport of Goods by Road". The Department alleged that mobilization charges which was being classified by them under GTA was incorrect and GGS is liable to pay the differential service tax liability of Rs.8.52 Crores arising due to wrong classification for the year from 2010-11 to 2013-14. Against the said dues, the department has already recovered Rs.5.52 Crores and Balance Rs.3.00 Crore is liable to be paid by GGS. It is to be noted that GGS has already accepted the service tax liability to the tune of Rs.320.55 lacs and provided in its books of accounts as on cut-off date.

Further, the department alleged that GGS was ineligible for certain exemptions claimed categorized under Sub-contractor providing services by way of works contract to another contractor providing exempted works contract services whereas GGS is supplying cranes and hence, cannot avail exemption under works contract services. The Department raised a demand for Rs.55.60 Lacs for from FY 2010-11 to 2013-14.

The department also alleged that GGS provided services for crane mobilization under which GGS transported cranes to clients work station. However, the same was categorized under the head goods transport Agency and had paid service tax under partial charge claiming abatement under GTA services. The department raised a demand for Rs.45.50 Lacs from FY 2010-11 to 2013-14.

The Department also alleged that GGS has availed wrong availment of Cenvat Credit of Rs.122.78 Lacs which has to be reversed by GGS.

Against the above SCN, the Service Tax department has filed its claim as under:

SCN No. 06/Commr/15-16 dated 18.04.15

Sr. No.	Head	Amount (in Lacs)
1.	Service Tax	528.00
2.	Interest Calculated up to 04.10.2017	705.38
3.	Late Fee	0.80
4.	Penalty under Section 78	523.93
	Total	1754.04

The Office of the Pr. Commissioner, Service Tax-II, Mumbai has issued another Show Cause Notice dated 13.02.17 demanding Rs.47.24 Lacs including interest thereon against default in payment of Service Tax under the head "Supply of Tangible Goods & Services" and "Goods Transport Agency Services" for the period April 2014 to March 2015.

Against the above SCN, the Service Tax department has filed its claim as under:

SCN No. Joint Commr / ST-II/Dn-IV/101/2016-17 dated 13.02.17

Sr. No.	Head	Amount (in Lacs)
1	Service Tax	47.24
2	Interest Calculated up to 04.10.2017	114.34
3	Penalty under Section	
	Under Section 76	
	Under Section 77	0.10
	Total	175.82

The total demand raised by the department under both the SCN's is Rs.1929.85 Lacs

GGS has already made a representation before the department and the adjudication of the Show Cause Notices mentioned hereinabove is pending before the Joint/Additional Commissioner and Commissioner, Mumbai Central GST Commissionerate.

The aforesaid claim falls under the definition of Operational Creditors and the said dues shall be settled at par with other Operational Creditors under this Resolution Plan. The Resolution plan provides for settlement of dues of Operational Creditors @ 5 % of principal amount and waiver of interest, penal interest and penalties. Therefore, it is specifically provided that the Service Tax liability under both SCN dated 18.04.2015 of Rs.528 Lacs out of which a service tax liability Rs.320.55 Lacs has been provided by GGS in its books of accounts as on cut-off date and the same has been already addressed and settled under the settlement of dues of Operational Creditors in the Resolution Plan.

The said claim amounting to Rs.1929.85 Lacs are being contested by the Corporate Debtor before the Joint/Additional Commissioner and Commissioner, Mumbai Central GST Commissionerate and the amount of admitted claim cannot be determined until the outcome of the said proceedings. Hence, the said amount of Rs.1929.85 Lacs has been kept in abeyance. However, the amount that will come to be adjudicated, if any, will be settled at the appropriate time.

In the interest of safeguarding the sustainability of the Company and so as to not derail the company in the event of a substantial claim by the said departments, the liability, if any, that will crystalize will be settled at 5% of the amount of principal dues adjudicated by the appropriate appellate authorities/tribunals and in case of interest, penal interest, penalties charged by the said authorities shall be waived.

24.3.3. Income-Tax Dues

The Income Tax Department had passed an order u/s 143 (3) of the Income Tax Act, 1961 by the DCIT- 7 (1) (1) on 24.02.2014 demanding Rs.62.90 Lacs towards income Tax dues. The demand was raised by the Department due to disallowance of certain expenses by the assessing officer categorized under business promotion and repairs and maintenance amounting to Rs.2.95 Lacs and Rs.195.44 Lacs respectively. GGS has preferred an appeal before the office of The Commissioner of Income Tax (Appeals).

Meanwhile, the Commissioner of Income Tax (Appeals) vide its 28.02.2018 on Appeal no. CIT (A)-13/ the DCIT- 7 (1) (1)/319/2015-16 set aside the order passed by the Income Tax and directed the assessing officer to allow the expenses which were earlier disallowed by the Assessing Officer in its order dated 24.02.2014. The said demand has been set aside by the Appellate Authority and hence, there shall not be any further demand or liability arising out of the said Order dated 24.02.2014 passed by the Income Tax Department.

24.3.4. Contingent Dues – Recovery of Outstanding TDS demand

The Income Tax Officer (TDS) has issued Notices dated 23.02.2017 against Govindji Gopalji and Sons & against GGS towards demand on account of (Late Payment of Interest) and meanwhile, the department has filed their claim of Rs.27.56 Lacs, which is towards late payment of interest. GGS is contesting the same as the Corporate Debtor has paid outstanding TDS dues during the CIRP. It is specifically provided the Resolution Plan that principal dues shall be settled @ 5 % and interest, penal interest, penalties shall be waived and hence, there is no liability towards TDS and the claim of Rs.27.56 which is towards late payment of interest shall be waived.

The aforesaid dues are subject matter of on-going litigation at several forums and the departments Customs and Service Tax. The said departments has already filed their claim with the Resolution Professional which has been addressed in this Resolution Plan and there are certain other dues which will be determined subject to outcome and final adjudication of claims of respective parties in the on-

going litigation after exhausting/ waiving available appellate legal remedies and the liquidation value accruing in the event of liquidation to such operational creditors is NIL and hence, it is envisaged that the dues, if any, arising out of such litigation shall be settled as under:

- No interest / penal interest/ penalty/ charges/ demurrages etc. shall be payable in respect of such liabilities and only Principal Liability shall form basis for determination of settlement amount and shall be settled @ 5% (at par with other operational creditors). If the amount is time barred then it shall be assumed to be within time limits as per the prevalent Act and the section on time barred shall not have any impact.
- The said dues shall be paid within 30 days (if at all payable as per Regulation 38 of the CIRP Regulation read with Section 30 of the IBC, 2016) upon final adjudication/determination of respective claims in on-going litigation and/or after exhausting/ waiving all available legal remedies and avenues.

The foregoing shall also apply to all other statutory dues arising from demands raised/ to be raised under various taxes and enactments viz. Road Tax, DGFT, Customs, Excise, Sale Tax etc.

24.3.5. Other Contingent Dues

The Corporate Debtor being in the business of operating cranes, has a fleet of cranes that are used for its business purpose. With the downturn in the business, the Corporate Debtor could not make the payment towards Road Tax etc. payable to the various Road Transport Organization (RTOs) where the respective cranes are registered. As a consequence, a substantial amount of RTO road tax/fees remains to be paid. Moreover, these cranes were idle for many months due to lack of orders. The Corporate Debtor seeks waiver from payment of road tax payable upto the Insolvency commencement date (ICD). The Corporate Debtor seeks an order to this effect by the Adjudicating Authority which will be produced to the respective RTO's for waiver and the Corporate Debtor undertakes to make the payment towards road tax/fee for the period commencing from the ICD date only. No claim to be raised by the respective RTO's for the period prior to the ICD. It is humbly prayed that the adjudicating authority considers this request since the liability on account of Road Tax will detail the entire Resolution Plan adversely.

24.4 Operational Creditors (Dues not provided for in books of accounts)

Any liability arising to any Operational Creditor in respect of any Operation Dues, which is not covered herein above and pertaining to a period before the Cut-Off Date, shall upon final determination after exhausting all legal remedies shall be settled as under:

- No interest / penal interest/ penalty/ charges/ demurrages etc. shall be payable in respect of such liabilities and only Principal Liability shall form basis for determination of settlement amount and shall be settled @ 5% (at par with other operational creditors). If the amount is time barred then it shall be assumed to be within time limits as per the prevalent Act and the section on time barred shall not have any impact.
- The said dues shall be paid within 30 days (if at all payable as per Regulation 38 of the CIRP Regulation read with Section 30 of the IBC, 2016) upon final adjudication/determination of respective claims in on-going litigation and/or after exhausting/ waiving all available legal remedies and avenues.



The foregoing shall also apply to all other statutory dues arising from demands raised/ to be raised under various taxes and enactments viz. Road Tax, DGFT, Customs, Excise, Sale Tax etc.

24. Pending Litigations before NCLT

GGs has filed various Miscellaneous Applications before the Adjudication Authority and its provided that in case the said applications remain pending after the completion of CIRP of GGS, the Adjudicating Authority shall have jurisdiction to entertain the pending applications and dispose off the matter in due course of time. The CD has filed 5 Miscellaneous Applications, out of which 3 (three) being withdrawn and other 2 (two) are pending before the Adjudicating Authority.

25. Termination

Under the circumstances that the Resolution Applicant is of the opinion that the implementation of the Resolution Plan is prejudicial to his interest or the interest of the corporate debtor, or for any other reasons deemed so fit by the Resolution Applicant, the Resolution Applicant is at liberty to unilaterally terminate the Resolution Plan during the period of the Plan, after giving due notice to the Committee of creditors and the Adjudicating Authority and the consequences of the same would result in forfeiture of the EMD and any other amounts paid to the creditor under the resolution plan.

26. Governing Law

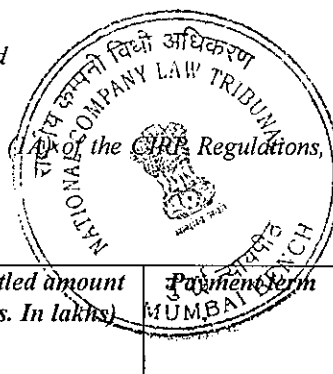
The Resolution Plan has been drawn in compliance with the provisions of Section 30 of the Insolvency and Bankruptcy Code read with Regulation 37, 38 & 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016.

The Resolution Plan complies with the conditions of Section 30(2) of the IBC, 2016 as under:

- Provides for payment of Corporate Insolvency Process Cost in priority to the repayment to the other Creditors;
- Provides for repayment to Operational Creditors in the manner provided by the CIRP Regulations and the Code which is significantly greater than amount to be paid to the Operational Creditors in the event of the Liquidation;
- Provides for Management of GGS after approval of the Resolution Plan;
- Provides for implementation and supervision of the Resolution Plan;
- Does not contravene any provisions of the law for the time being in force;
- As the Resolution Plan has been drawn as per the provisions of the IBC, 2016 and Regulations issued thereunder and as per Section 238 of the IBC, 2016, the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of such law;
- As per Section 30 the Resolution Plan and upon approval by the Adjudicating Authority, it shall be binding upon GGS, its employees, members, creditors (including Financial Creditors and Operational Creditors), guarantors and other stakeholders involved in the Resolution Plan.
- The Plan takes care of interest of all stakeholders as per Regulation 38 of the CIRP Regulations, 2016.

27. Statement showing Interest of all stakeholder table:

Sr.no	Name of the creditor	Admitted claims (Rs. In Lakhs)	Principal amt (Rs. In lakhs)	Settled amount (Rs. In lakhs)	Payment term



1	IDBI Bank	2104.08	1252.72	626.36	12 months
2	SREI	645.48	213.47	106.74	12 months
3	M/s Catchy Bags	6.25	6.00	3.00	12 months
4	Bharat Chheda	35.30	25.00	12.50	12 months
5	Sanjay Talakshi Mamaniya HUF	5.41	5.00	2.50	12 months
6	Sanjay Talakshi Mananiya	10.92	10.00	5.00	12 months
7	Bhavesh Chheda	34.28	25.00	12.50	12 months
8	Vasant Jain	51.40	10.00	5.00	12 months
9	Kartik Corporation	7.52	7.52	3.76	12 months
10	Khadija Jagmagia represented by Aahad Jagmagia	280.81	115.00	-	Principal amount to be converted to Equity
11	Operational Creditor	734.53	-	36.00	Within 30 days from the EMD Funds
	Total	3915.98	1669.71	823.06	

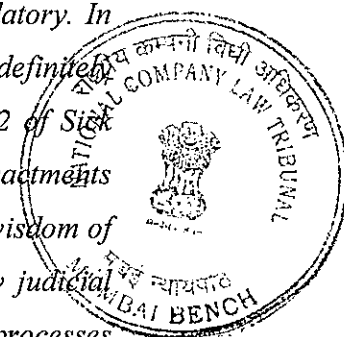
FINDINGS:

28. It has been brought to our notice that one of the justifications for approval of the Resolution Plan is that the Liquidation Value is less comparing the proposals made in the Resolution Plan. The **Liquidation value** is stated to be ₹ 6,88,35,095/- and the Fair Market Value of the Corporate Debtor is stated to be ₹ 15,33,44,300/-. The above stated **Resolution Applicant is paying ₹ 8.23 crores** as against the Fair Market Value of ₹ 15 Crores as determined by the approved valuer. Even fully knowing this fact, the members of the CoC have approved to accept the Resolution Plan which in terms of valuation is lower than the Fair Market Value.
29. The Procedure as prescribed under The Code is that a Resolution Plan is required to be submitted by a **Resolution Application U/s 30 of The Code**. On approval, the Resolution Professional is to submit U/s 30(6) the Resolution Plan, as approved by the Committee of Creditors, to the AA. Thereafter, u/s 31, as reproduced *supra*, AA is to examine the contents of the Resolution Plan. The mandate of this section is that if the AA is “**satisfied**” that the Resolution Plan as approved by the Committee of Creditors meets the requirement as referred to in section 30(2), shall by an Order, approve the Resolution Plan. So the prerequisite is that recording of “**satisfaction**” by AA is a condition precedent. A “**satisfaction**” is to be recorded in writing in the Judgment approving the Resolution Plan. “**Satisfaction**” is required to be based upon a conscious decision on examination of the terms of the Resolution Plan. In our humble opinion a thorough study of a Resolution Plan is required before recording a “**satisfaction**” in writing by AA. The ‘**satisfaction**’ as mandated in the statute can either objective or subjective or both, but it is a condition precedent. Naturally ‘**satisfaction**’ is to be recorded in writing with reasons after proper application of mind. The pros and cons of the scheme is required to be studied before recording subjective satisfaction. If the CoC has submitted the scheme of Resolution after visualising the advantage and disadvantage then such proposal can be termed as just and equitable fit for according satisfaction. An

'objective satisfaction' revolves around the object of enactment of the Code as enshrined in the Preamble of the I & B Code i.e. to revive the financially stressed corporate body. And the 'subjective satisfaction' depends upon logical analysis of the Financial Data supplied so as to match with the business model of the Corporate Debtor. A methodical scrutiny of Financial Statement is expected before concurring with approval of the CoC. Per contra, absence of recording of subjective satisfaction may lead to a situation that, being sanctioned without judicial analysis, may not be sustainable in the eyes of law. **There are no two views, and must not be, that this I & B Code provides greater accountability both on the Insolvency Professional, as also on CoC, mainly comprise of lender Banks.** Their approval of a Resolution Plan ought to be judged with due diligence. To sum up, in our humble interpretation the recording of an analytical 'satisfaction' is a condition precedent before granting of approval.

30. To sum up the above discussion, the Resolution Plan as approved by the Committee of Creditors is by and large hereby sanctioned by this Order in view of the recent judgement of the apex court in *K Sashidhar & Indian Overseas Bank & ors.* [Civil Appeal No. 10673/2018], Date of order: 05.02.2019. The Hon'ble Supreme Court in the said order has made the role of COC quite vital for deciding the fate of the company. It has been held that the Adjudicating authority is not required to go into the merits or reasoning of the decision taken by the COC for approval or rejection of a resolution plan. The only benchmark which is set up to be determined by the AA is to see whether the plan has been approved by 75% voting of the COC or not. Therefore, the commercial wisdom is not allowed to be interfered with. The relevant portion of the said judgement is reproduced herein below:

"As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the Corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes



within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable".

31. To conclude, the approval of a Resolution Plan by the CoC is to be accepted by the Adjudicating authority if a 66% voting share approves the said plan. Because of the latest decision, the scope of any suggestion or alteration in the impugned resolution plan is very limited. As far as the procedure is concerned, in this case, the same has been followed as per the provisions of the Insolvency Code, therefore, the Resolution Plan has to be approved. The Resolution Applicant has submitted an affidavit as required U/s 30(1) of the Code stating that he is eligible U/s 29A of the Code.
32. Regarding the exemptions sought, Government liabilities and statutory dues, it is worth to observe that the same should be restricted to those Government liabilities which are ascertained and crystallised as on the date when the CIRP commenced. Further, on commencement of CIRP, due to pronouncement of moratorium if any tax is levied, the same can be considered for waiver as held in the decision of NCLT, Chandigarh Bench, in the case of "**State Bank of India V. MOR Farms Pvt. Ltd.**" dated 15.06.2018 in CA No.s 71/2018 & 171/2018 in CP(IB)-51/Chd/Hry/2017 wherein waiver is granted in respect of tax dues. Although, the question of waiver has been dealt with in this order by the respected Coordinate Bench, NCLT, Chandigarh, however, it is worth to add that the Provisions of this Code can prevail over the provisions of other Acts if not inconsistent. Sec.238 I&BC is very clear that the provision of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force . As a consequence in our opinion the respective Tax Authorities, including Road Tax Department, are at liberty to take decision as per law but not to be against the spirit or provisions of this code.
33. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect. The "Moratorium" imposed under section 14 IBC shall cease to have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
34. That the incoming Management shall not be personally responsible for any act, omission, commission and/or offence committed by the erstwhile Management of the Corporate Debtor

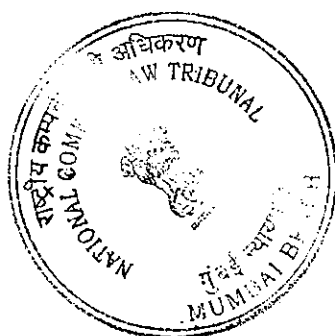
till commencement of CIRP.

35. That liberty is hereby granted that if deem fit and legally permissible, can move Miscellaneous Application if required in connection with implementation of this Resolution Plan. However the clause of Termination as per Clause 25 (supra) of the Resolution Plan needs modification to the extent that the Resolution Applicant can not opt out of the Resolution Plan voluntarily. He is under strict legal obligation to carry out the business of the Company for which an undertaking has been given, duly accepted by the Adjudicating Authority.
36. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Mumbai.
37. The directions embodied and period of implementation provided hereinabove shall be effective from the date this Order.

Sd/-
M.K. SHRAWAT
Member (Judicial)

Date :30.08.2019

Js



Verified True Copy
Copy Issued "free of cost"
On 30/08/19
B. A. Patel
Deputy Registrar
National Company Law Tribunal Mumbai Bench
Government of India