



Sl. No. 3

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Virtual Hearing)**

**PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 24.04.2024 AT 01:00 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(IB)/19/10/AMR/2022	Under Liquidation	10 of IBC	Kumar's Kotex Limited (Corporate Applicant)
	IA(IBC)/58/2024	U/Sec 35(1)(N) & 60 (5) of IBC, 2016 R/w Regulation 45(3)(a) of IBBI (Liquidation Process), 2016	Mr.Raghu Babu Gunturu , Liquidator for Kumar's Cotex Limited
	IA(IBC)/68/2024	U/s 60(5) of IBC, R/w Rule 11 of the NCLT, 2016	Nuland Impex Private Limited Vs Mr.Raghu Babu Gunturu, Liquidator of Kumar's Cotex Limited

ORDER

IA(IBC)/58/2024:

Present: None appeared for the Applicant.

Orders pronounced. IA(IBC)/58/2024 is allowed and recorded vide separate sheets.

IA(IBC)/68/2024:

Present: None appeared for both the parties.

Orders pronounced. IA(IBC)/68/2024 is allowed and recorded vide separate sheets.

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**SANJAY PURI
MEMBER (TECHNICAL)**

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**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**



**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

**I.A.NO.58 OF 2024
in
CP(IB) NO.19/10/AMR/2022**

IN THE MATTER OF KUMAR'S COTEX LIMITED

(Having registered office at Dokiparru Village, Medikonduru Mandal, Guntur
District, Andhra Pradesh)

Mr. Raghu Babu Gunturu
Liquidator of Kumar's Cortex Limited
Having Office: at Plot No.9, Golden Heights
Near Raidurg Metro, Opp: Raheja Mind Space
Hyderabad – 500 081

..... Applicant

Date of Order: 24.04.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Parties / Counsels Present:

For the Applicant : Mr. V.V.S.N. Raju, Advocate

[PER : BENCH]

ORDER

1. This is an Application filed by the Applicant/Liquidator of Kumar's Cortex Limited under section 35 (1) (N) & 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 45 (3) (a) of the Insolvency

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and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 seeking for the following reliefs:

- a. To approve the closure of Liquidation Process of the Corporate Debtor under Regulation 45(3)(a) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and
- b. To approve the sale of Corporate Debtor without its dissolution.

2. The following are the facts of the case briefly:

- i. The Corporate Insolvency Resolution Process of the Corporate Debtor, M/s. Kumar's Cotex Limited was initiated by the Hon'ble NCLT, Amaravati vide its order dated 23.08.2022.
- ii. Further, this Authority vide order dated 17.02.2023 in IA No.50 of 2023 approved Liquidation of CD. Pursuant to the said order, the Applicant/Liquidator commenced Liquidation Proceedings in accordance with the Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 (Liquidation Regulations).
- iii. Pursuant to Regulation 31 of the Liquidation Regulations the Applicant/Liquidator has prepared the list of stakeholders on the basis of proofs of claims submitted and also prepared and filed the Asset Memorandum under Regulation 34 and the Preliminary Report under Regulation 13 on 03.05.2023 with this Hon'ble Tribunal.
- iv. In compliance with Regulation 31A of the Liquidation Regulations, the Applicant/Liquidator has constituted the Stakeholders Consultation Committee ("SCC"). The list of stakeholders that has been constituted as follows:

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S. No.	Class of Stakeholders	Member of Stakeholders Consultation Committee and the amount of claim admitted (In Rs.)	Voting (%)
1.	Secured Financial Creditors, who have relinquished their security interests under Section 52.		
		Stressed Asset Stabilization Fund	16,81,56,02,539 62.95%
		Asset Reconstruction Company India Limited	10,05,87,88,530 37.05%
2.	Unsecured Financial Creditors		- -
3	Workmen and employees	-	-
4	Governments		
		Employee Provident Fund Organization	6,40,521
		Central Tax Commissioner, Guntur	146,26,16,123
5	Operational Creditors other than Workmen, employees and Governments		
		Bombay Stock Exchange	21,44,202
6.	Shareholders, if any		- -

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The report of constitution of SCC has been taken on record with this Hon'ble Tribunal on 30.05.2023 vide IA No.198 of 2023.

- v. The Second Stakeholders Consultation Committee meeting was held on 27.03.2023 and in the said meeting the SCC took note of updates in Liquidation Process. Further, the Committee discussed the important terms of process document and sale of Land & Buildings, Plant & Machinery situated at Dokiparru Village, Medikonduru Mandal, Guntur District, Andhra Pradesh 524 332 in the name of Corporate Debtor. The SCC was briefed in various meetings about the status of IA filed for PUFEE transactions and its status.
- vi. As per Regulation 27 of IBBI (CIRP Regulations) 2016, the Resolution Professional appointed the following registered valuers who are registered valuers under IBBI and who submitted the fair value and liquidation value. The details of the registered valuers are as follows:

Particulars	Class of Assets
Er. Badam N.V.V.S. Sundar Rao	Land & Building
VLN Murthy	Land & Building
Srinivasa RA	Plant & Machinery
K.S. Chiranjeevi	Plant & Machinery

- vii. The E-auction sale notices were issued on 28.03,2023 (1st), in Financial Express (English) and Eenadu (Telugu), 18.04.2023 (2nd) and 11.05.2023 (3rd) in Business Standard (English) and Eenadu (Telugu) for sale of Land & Building and Plant and Machinery. Owing to the e-auction, Nuland Impex Pvt. Ltd stood as the

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Successful Bidder. A total amount of Rs.11,17,79,311/- including an interest of Rs.15,38,311/- @ 12% pa from 25.07.2023 (one month from issuance of letter of intent) till last payment receipt i.e., 22.09.2023 was received from Nuland Impex Private Limited (Successful Bidder) as against E-Auction Amount of Rs.11,02,41,000/- for sale as a going concern.

- viii. After receiving the full sale consideration, all original sale documents and link documents were handed over to Mr. Rajasekhar (Authorized Representative of Nuland Impex Pvt. Ltd) on 20.10.2023.
- ix. The Applicant has distributed the proceeds as received in from the sale of CD as a going concern as per the waterfall mechanism as defined in Section 53 of IBC, 2016.
- x. As per Regulation 44 of the IBBI (Liquidation Process) Regulations, 2016 the process of Liquidation is to be completed within a period of one year from the date of the commencement of Liquidation. The Liquidation period commenced on 17.02.2023 and is coming to an end on 17.02.2024. Therefore, the Applicant has completed the Liquidation proceeds as per the provisions of IBC.
- xi. In pursuance of Regulation 44A of the IBBI (Liquidation Process) Regulations 2016, the Stakeholders Consultation Committee were briefed about the status of PUFEE IA in various SCC meetings and update on hearings. Since the CoC members were the SCC members, it was decided during the CIRP period the manner in which the proceeds shall be distributed.
- xii. The balance in liquidation account is nil after distribution of all proceeds and the Liquidator has initiated for closure of Liquidation

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Account with Kotak Mahindra Bank. As a part of Liquidation closure, the Applicant is required to submit an application along with the final report and the compliance certificate in Form H to the Adjudicating Authority pursuant to Regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 as a part of Liquidation closure.

3. We have heard the Liquidator and perused the application filed by the Liquidator.
4. The Liquidator has filed necessary documents along with the application. The Final Report and Form-H are enclosed at page nos.19 to 227 to the application. This IA is filed under Regulation 45 (3) (a) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 praying the Adjudicating Authority to order for closure of the liquidation process of the Corporate Debtor Company, as liquidation process is complete. The said provision reads as under:-
“Regulation 45 (3) (a): Final report prior to dissolution.
(3) The liquidator shall submit an application along with the final report and the compliance certificate in form-H to the Adjudicating Authority for –
(a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern;
5. The Liquidator would contend, pursuant to public announcement M/s. Nuland Impex Private Limited was declared as Successful Bidder for sale of the Company as a going concern basis with bid amount of Rs.11,02,41,000/-

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6. On-going through the facts aforementioned and the material placed along with the Application, it is seen from Form-H that the amount of Rs. 11,02,41,000/- realized from the sale of Liquidation Estate and other receipts was distributed among the stakeholders as per Section 52 or 53 of the Code. A copy of the Statement of Receipts and Payments of Liquidation Account from 17.02.2023 to 31.01.2024 certified by M/s Raheem & Associates, Chartered Accountants is filed at page no.220 of the application. The details of distribution is shown in Form-H, which is enclosed at page no.222 to the application. Further, by going through the Final Report, it is evident that the Liquidator has sold the Corporate Debtor as a going concern, as such, it is a fit case for closure of Liquidation process.
7. As a sequel to the above, we hereby order closure of the Liquidation proceedings against the Corporate Debtor viz. M/s. Kumar's Cotex Limited from the date of this Order, in terms of Regulation 45 (3) of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Consequently, the Liquidator stands relieved.
8. The Liquidator is directed to send the copy of this Order within 7 days from the date of pronouncement to the Registrar of Companies, Vijayawada and hand over all the books and files of the Corporate Debtor, M/s. Kumar's Cotex Limited, which are in possession of the Liquidator to the successful bidder.
9. The Registry is directed to communicate this order to the Registrar of Companies, Vijayawada for updating the master data.

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10. A copy of this Order be also forwarded to the Insolvency & Bankruptcy Board of India, New Delhi. Accordingly, IA No. 58 of 2024 in CP(IB) No. 19/10/AMR/2022 is allowed and stands disposed of.

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SANJAY PURI
MEMBER (TECHNICAL)

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RAJEEV BHARADWAJ
MEMBER (JUDICIAL)

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IA(IBC)/68/2024 in CP(IB) NO.19/10/AMR/2022

Oder dated 24.04.2024

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI**

**IA(IBC)/68/2024
IN
CP(IB) NO.19/10/AMR/2022**

IN THE MATTER OF KUMAR'S COTEX LIMITED

(Having its registered office at Dokiparru Village, Medikonduru Mandal,
Guntur District, Andhra Pradesh – 5213312)

BETWEEN:

Nuland Impex Private Limited
A company within the meaning of the Companies Act, 2013
CIN:U51909TG2011PTC072727
Having its Regd. Office at:
Plot No.923, Road No.47, Jubilee Hills, Hyderabad
Telangana, India – 500 033 Applicant/Successful Bidder

AND

Mr. Raghu Babu Guntur
Liquidator of Kumar's Cotex Limited
Having Office at Plot No.9, Golden Heights
Near Raidurg Metro, Opp: Raheja Mind Space
Hyderabad-500081
Telangana Respondent

Date of Order: 24.04.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Parties / Counsels Present:

For the Applicant : Mr. Peri Ramakrishna, Advocate

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[PER : BENCH]

**APPLICATON FILED UNDER SECTION 60(5) READ WITH RULE 11
OF THE NATIONAL COMPANY LAW TRIBUNAL RULES 2016**

BRIEF FACTS OF THE CASE:

1. This is an Application filed by the Applicant/Successful Bidder under Section 60(5) of the Insolvency Bankruptcy Code, 2016 Read with rule 11 of National Company Law Tribunal Rules, 2016 seeking following reliefs :

- a. That permission be hereby accorded to the applicant to reconstitute the Board of Directors of the CD as mentioned below and direct the Ld. Registrar of Companies, Vijayawada ("RoC") to do all such acts deeds and things that are necessary to appoint the individuals recommended by the Applicant herein to enable the CD to file relevant returns required by applicable law.

Names of Directors:

1. Ravula Venkateswara Rao
2. Sandeep Ravula

- b. That the Hon'ble Tribunal may also declare that the existing shares of the CD be extinguished.
- c. Direct the Ld. RoC to change the status and records of the CD from "Liquidation" to "Active".
- d. Dispense with the holding of past AGMs that were not conducted by the Erstwhile Management of the CD and waive any penalties that were imposed for failure to conduct the meeting, if any.
- e. Declare that the any proceedings pending against the Corporate Debtor (other than against the erstwhile promoters or former members of the management of the Corporate Debtor) as on date with respect to its liabilities/inquiries/investigations/assessment/claims/disputes/litigations

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etc., on the CD shall not have any bearing against the assets sold in the process. The assets be declared to be free from any financial implications arising out of any pending proceedings before relevant authorities, if any. Further non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars etc., on the Corporate Debtor under various Acts and Regulations stands extinguished, qua the successful bidder.

- f. Direct Eastern Power Distribution Company of Andhra Pradesh Limited to waive any past dues towards arrears and true-up charges, along with interest, if any, which are pending before the date of sale certificate issued by the Liquidator.
- g. Waive off any proceeding/pending filing, charges, penalties, obligations, before any Stock Exchange Authorities and declare them to stand extinguished, if any.
- h. The Successful Bidder shall have the right to review and terminate any contract that was entered into prior to the date of issue of Sale Certificate.
- i. The Successful Bidder shall get all the rights, title and interest over whole and every part of the Corporate Debtor, including but not limited to contracts free from security interest, encumbrance, claim, counter claim or any demur.
- j. Declare that any proceeding/pending filing, pending filings, charges, etc., before the Registrar of Companies, Income Tax Authorities, GST, PF and any other Government/Statutory Authorities stand extinguished to ensure the Applicant can start the business on a 'Clean Slate' and
- k. Pass such other direction as this Hon'ble Tribunal may deem fit in the interest of smooth function of the CD and Pass such other orders and

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directions as are deem appropriate which would enable the Applicant to run the CD in a hassle-free manner.

2. It is averred that Nuland Impex Private Limited (“Applicant”), represented by its authorized representative, Mr. China Venkateswarlu Korana is the Successful Bidder of Kumar’s Cotex Limited (“CD”).
 - i. The Corporate Insolvency Resolution Process (“**CIRP Process**”) of Kumar’s Cotex Limited, (“Corporate Debtor”) was initiated under Section 10 of the Insolvency and Bankruptcy Code, 2016 and admitted by the order of this Hon’ble National Company Law Tribunal, Amaravati Bench (“**Hon’ble Tribunal/ Adjudicating Authority**”) vide its order dated 05.05.2022. Mr. Rajiv Bajaj was appointed as the Interim Resolution Professional. Subsequently, Mr. Raghu Babu Gunturu was appointed as Resolution Professional for the Corporate Debtor by the Hon’ble NCLT, Amaravati, vide its order dated 23.08.2022.
 - ii. That after his appointment, the Resolution Professional (“RP”) continued the proceedings of CIRP and conducted the meetings of the Committee of Creditors (CoC) as per the provisions of the Insolvency and Bankruptcy Code (IBC), 2016. In the 9th CoC meeting held on 21.01.2023, the CoC rejected plans submitted by PD Garg Trading and Manufacturing Pvt. Ltd and KK Spintex India Private Limited with 100% voting and approved for Liquidation of CD with 100% voting. The Resolution Profession pursuant to the commercial wisdom of CoC, filed an Application before this Authority for liquidation of the CD. The order for liquidation of Corporate Debtor was passed on 17.02.2023. Pursuant to the said order, the Liquidation Proceedings were started

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in accordance with the Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 (Liquidation Regulations).

- iii. E-auction sale notices were issued on 28.03.2023 (1st), in Financial Express (English) and Eenadu (Telugu), 18.04.2023 (2nd) and 11.05.2023 (3rd) in Business Standard (English) and Eenadu (Telugu) for sale of Land & Buildings and Plant & Machinery. It is submitted that owing to the e-auction, the Applicant herein stood as the successful bidder. An amount of Rs.11,17,79,311/- including an interest of Rs.15,38,311/- @ 12% P.A. against e-auction amount of Rs.11,02,41,000/- for purchase of CD as going concern was given by the Applicant herein. It is submitted that the Sale Certificate was issued by the Liquidator accordingly.
 - iv. To ensure the smooth functioning of the CD, Applicant herein is seeking certain **waivers/immunities** from the past liabilities of the CD, both Civil and Criminal including various statutory and non-statutory authorities as a going concern.
3. With the above background, Liquidator sold the assets of the CD during Liquidation in the modes stated in Regulation 32 of IBBI Liquidation Process Regulations 2016 and Liquidator sold CD as a going concern.

ORDER

4. We have perused the entire record and also heard the Ld. Counsel for the Applicant.
5. NCLT, Hyderabad vide orders dated 30.06.2022 in IA No. 157 of 2021 in CP IB 329/7/HDB of 2018 (**SREI Equipment Finance Ltd. Vs. Vishwa Infrastructures & Services Pvt. Ltd.**) observed the following:

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*“Since the decision to sell the Corporate Debtor as a going concern is taken by the Liquidator in consultation with the **creditors/stakeholders** and the proceeds from the sale of assets are going to be utilized for distribution to the creditors in the manner specified under Section 53 of the Code, all the creditors of the Corporate Debtor get discharged and assets are transferred free of any encumbrances. We are of the considered view that it is a fit case to grant certain reliefs in favour of the purchaser.”*

6. We also pursued the judgment rendered by NCLAT Delhi in the case of RMY Industries LLP Versus Apple Industries Pvt Ltd., through its official Liquidator (Company Appeal (AT) (Insolvency) No. 1114 of 2022) vide Order dated 12.10.2022 has observed as following:

“4. We are of the view that the Adjudicating Authority is empowered to consider any application filed by the Liquidator or Successful Auction Purchaser, which may arise with regard to terms and conditions of the auction sale or sale as a going concern as per the Liquidation Regulation, We, thus, are of the view that ends of justice be served in giving liberty to the Appellant to file an appropriate application before Adjudicating Authority, which may arisen from the terms and conditions of the auction sale or sale as a going concern, which may be considered by Adjudicating Authority. The Appeal is disposed of liberty aforesaid.”

7. We noted that the Liquidator can sell the assets of the Corporate Debtor during Liquidation in any of modes stated in Regulation 32 of IBBI Liquidation Process, 2016 and the Liquidator sold the CD as a going concern in Liquidation. The bidders purchased the Corporate Debtor as a going concern with a view to run business and in order to run the business mere purchase of the Corporate Debtor as a ‘going concern’ as per the Liquidation Process will not suffice. In order to ensure the smooth running of the business of the Corporate Debtor, it is imperative that certain additional reliefs/ concessions/ permissions are allowed which would be essential and necessary to run business of the Corporate Debtor as a ‘going concern’ under Liquidation Process Regulations will not achieved from the

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view point of Successful bidder. In fact, these permissions/ relaxations/ concessions/ reliefs are crucial to kick start the business of the Corporate Debtor.

8. The sale as a going concern is more or less in the nature of resolution of the Corporate Debtor and the Liquidation Process Regulations do not provide for granting certain specific type of relief to the purchaser of the CD and this Adjudicating Authority is empowered to grant reliefs. Under Section 60(5) of the code the Adjudicating Authority has jurisdiction to entertain or dispose of any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under section 60(5)(c) of the code. This Bench has authority to grant necessary certain immunities or protection from past liabilities to ensure the Successful bidder to start the business on a 'Clean Slate'
9. Therefore, in the light of the facts of the case, case laws, circumstances, we are of the view that the following reliefs can be allowed. Accordingly we pass the following orders :-
 - a) Permission is accorded to reconstitute the Board of Directors of the CD by the Successful Bidder of the Corporate Debtor and we further direct the Registrar of Companies, Vijayawada to do all such acts deeds and things necessary to appoint the individuals recommended by the Successful Bidder/Purchaser.
 - b) We hereby declare that the existing shares of the CD are extinguished without any consideration and rights and liabilities against the shares stands extinguished.

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- c) We direct ROC, Vijayawada to change status of Corporate Debtor in the ROC records as 'active' from the status of Liquidation.

- d) We grant dispensation with the holding of past AGMs that were not conducted by the Erstwhile Management of the CD and waive any penalties that were imposed for failure to conduct the meeting, if any.

- e) We direct that all the past liabilities and consequential actions of the Corporate Debtor which are in relation to any period prior to the date of acquisition are written off in full and shall stand permanently extinguished.

- f) We declare that the any proceedings pending against the Corporate Debtor (other than against the erstwhile promoters or former members of the management of the Corporate Debtor) as on date with respect to its liabilities/ inquiries/ investigations/ assessment/claims/disputes/litigations etc., on the CD will not have any bearing against the assets sold in the process. The assets are declared to be free from any financial implications arising out of any pending proceedings before relevant authorities, if any. Further non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars etc.,


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on the Corporate Debtor under various Acts and Regulations stands extinguished, qua the successful bidder.

- g) We direct Eastern Power Distribution Company of Andhra Pradesh Limited to waive any past dues towards arrears and true-up charges, along with interest, if any, which are pending before the date of sale certificate issued by the Liquidator.
- h) We hereby waive off any **proceeding/pending** filing, charges, penalties, obligations, before any Stock Exchange Authorities and declare them to stand extinguished, if any.
- i) We declare that Successful Bidder will have the right to review and terminate any contract that was entered into prior to the date.
- j) We declare that any proceeding/pending filing, pending filings, charges, etc., before the Registrar of Companies, Income Tax Authorities, GST, PF and any other Government/Statutory Authorities stands extinguished to ensure the Successful bidder to start the business on a 'Clean Slate'.


SANJAY PURI
MEMBER (TECHNICAL)


RAJEEV BHARADWAJ
MEMBER (JUDICIAL)