**NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

**M.A. No. 367 of 2020**

Filed under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 by

**Mr. Vijay Lulla**

Resolution Professional Having address at: 201, Satchitanand Bldg.,2nd Floor, 12th Road, Khar (West), Mumbai – 400 052

**...Resolution Professional/Applicant**

In the matter of

**CP No. 1668/I&BP/2018**

**The Greater Bombay Co-Operative Bank Ltd.**

**...Petitioner**

versus

**Parole Hotels Private Limited and Ors.**

**...Corporate Debtor**

**Order Delivered on: 06.10.2020**

**Coram**:

**Hon'ble Shri. Venkata Subba Rao Hari, Member (Judicial)**

**Hon'ble Shri. Shyam Babu Gautam, Member (Technical)**

**Appearance:**

**For Resolution Professional:** Mr. Chaitanya Nikte, and Ms. Raina Birla, Advocates

**Resolution Professional:** Mr. Vijay Pitamber Lulla

**For Resolution Applicant:** Mr. Rohit Gupta and Mr. Umang Mehta, Advocates

**For Committee of Creditors:** Mr. Rishabh Shah and Ms. Anuja Bhansali, Advocates

***Per: Hon'ble Shri. Shyam Babu Gautam, Member (Technical)***

## ORDER

1. This Application is filed under Section 30(6) and 31 of Insolvency and Bankruptcy Code, 2016 (hereinafter called the 'Code' in Company Petition No. 1668 of 2018 which was admitted vide order dated 04.12.2018 of this Tribunal initiating Corporate Insolvency Resolution Process against Parole Hotels Private Limited (hereinafter the 'Corporate Debtor') which was filed by The Greater Bombay Co-operative Bank Ltd. (hereinafter called the 'petitioner').

2. Based on the abovementioned order passed by this Tribunal, Mr. Vijay Lulla (hereinafter called "the applicant") who is applicant in the present application was appointed as the Interim Resolution Professional (IRP). Later in the first meeting of the CoC, the sole member of the Committee of Creditors (CoC) i.e. The Greater Bombay Co-operative Bank Limited resolved to continue him as the Resolution Professional.

3. The counsel for the RP mentioned that in furtherance to the order dated 04.12.2018, a public announcement inviting claims from all the creditors in Form A of the Schedule II as per Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was duly made by the IRP on 10.12.2018. Pursuant to this announcement, the RP has interalia received collated claims from the creditors of the Corporate Debtor and constitutued the CoC. Pursuant to Section 21 of the Code, based upon the financial position of the Corporate Debtor there is only one member in CoC therefore, having a voting percentage of 100%.

4. Accordingly, meetings of the CoC were conducted. In the first meeting, which was convened on 04.01.2019, the IRP was confirmed as the RP. Discussion regarding the petition filed by Mr. Vijaykumar Fadke before the Goa Bench of the High Court challenging the order of this Tribunal admitting this petition. Mr. Narayan Mandrekar, the other Director of the Corporate Debtor stated he was not aware of any such case filed by him and he agreed to co-operate in the matter and handed over the latest available balance sheet and the RP was also permitted to take symbolic

possession and placed his security on the premises. It was also decided that the collections will be deposited in the account with the Corporation Bank and the hotel expenses will be paid from the account by the IRP/RP.

5. The second meeting of the CoC was held on 16.01.2019 wherein the RP informed the CoC members that the Goa Bench of the High Court on 14.02.2019 dismissed the appeal challenging the order of this Tribunal of taking the Corporate Debtor into CIRP on the grounds that the plea can be filed with this Tribunal and that Goa Bench had no jurisdiction to take up such case. In this meeting, the CoC also approved the cost of CIRP and approved the Fees of Valuers.

6. During the third meeting of the CoC held on 25.02.2019, the RP met Mr. Mandrekar and the Chartered Accountants of the Corporate Debtor namely Deelip Phadte on 11.02.2019 to call on data and statutory records so that Information Memorandum can be prepared. They assured that they will provide all the documents within one week but even on several requests by the RP did not provide the said documents.

7. The fourth meeting of the CoC was held on 27.03.2019 wherein the applicant had informed the CoC that Mr. Fadke being the Director of Corporate Debtor has claimed that he has 99% of shareholding of the Company and on the other hand Mr. Mandrekar claims that only an agreement has been entered into between them and no shares are transferred. He said that since four months, no significant cooperation was received from the Corporate Debtor other than false assurances. He further informed that hotel licenses are all expired and the renewed ones as claimed by the erstwhile management have not been provided as promised on many occasions and therefore, the RP filed an application for non-co-operation on 11.03.2019. The members of CoC further ratified publication of Form G and approved eligibility criteria to be incorporated under EOI to be 2 crores as on 31.03.2018 which will be the possible tangible net worth of the Prospective Resolution Applicants and refundable deposit of Rs. 25,000/- was to be taken from them. Also, in the said meeting, the Evaluation matrix was prepared by the RP and the same was circulated during the CoC meeting.

8. In the fifth CoC meeting held on 24.04.2019, it was informed by the applicant to the CoC that Mr. Mandrekar had promised to get the licenses of the hotel renewed but has failed to do so. The RP had written a letter dated 13.04.2019 to the erstwhile director of CD Mr. Vijay Kumar Fadke who claims that he has 99% of the shares of the Company requesting him to provide information about his share holding and records of the Company. Mr. Fadke has vide his letter dated 22.04.2019 replied that most of the documents are either with his company secretary or with Greater Co-operative Bank to which the CoC members noted that this is again a tactic of non-cooperation of the directors by making false statement to delay the CIR Process.

9. In the sixth CoC meeting dated 06.05.2019, the CoC wanted the RP to take up this matter very strongly before this Tribunal and also, he was directed that the time for submitting the EOI will be 08.05.2019. It was further resolved that RP is to file an application for exclusion of a period of 101 days due to non-cooperation by the erstwhile management and for extension of CIRP period by 90 days. Accordingly, application for extension of time was filed by the RP on 20.05.2019 which was allowed on 06.06.2019.

10. In the seventh CoC meeting held on 01.07.2019, the CoC members directed RP to mention in the reply that the ex-director was not attending the CoC meetings and always asking for postponement of meetings which is not correct. In the eight meeting, it was resolved that extension is granted till 31.07.2019 to submit EOI.

11. In the ninth meeting of the CoC held on 14.10.2019, it was resolved that Mr. Vijay Lulla is to be appointed as the Liquidator and an application is to be filed for the same. Accordingly, MA 3569 of 2019 was filed on 06.11.2019 before this Tribunal. In the meanwhile, the RP received an email from Prospective Resolution Applicant to consider their Resolution Plan on 30.11.2019. Since 330 days were already lapsed and Liquidation application was filed, the RP could not accept the said plan. Thereafter, the Prospective Resolution Applicant filed an application before this

Tribunal along with the Resolution Plan for its approval on 09.12.2019. this Tribunal directed the CoC to consider the Resolution Plan during the hearing on 12.12.2019 and if found acceptable to file application to approve the Resolution Plan and withdrawal of the liquidation application.

12. In the tenth meeting of CoC dated 24.12.2019, the CoC in compliance with the order of this Tribunal in order dated 12.12.2019, had to either decide to accept the Resolution Plan submitted by the Resolution Applicant or go ahead with the Liquidation application. In this meeting, the RP discussed with the members of CoC and with the representative of the Resolution Applicant: Mr. Porus Adi Doctor and Mr. Pankaj Singh, the contents of the Resolution Plan. The RP informed the COC members that the proposal made by the Resolution Applicant is of Rs. 13 crores out of which Rs. 12.75 crores will be paid to the Bank towards its principal and interest amount and Rs. 5 lacs will be towards salary and towards outstanding electricity and sundry expense incurred during CIRP and Rs. 20 lacs will be towards CIRP costs.

13. The RP then informed the CoC members of the request made by the Resolution Applicant which was towards renewal of licenses. The Resolution Applicant requested the CoC if the RP could make an application for the renewal of licenses during the CIRP itself. The CoC then asked for the copies of the licenses which requires renewal to be given to Porus Adi Doctor. RP informed that as far as he is aware the erstwhile management has already applied for renewal. The Bank requested Porus Adi Doctor to check with local offices if application is pending and if so RP to issue letter for expediting renewal. The RP further informed that alternatively a letter be made to the License Authority directly asking them for copies of licenses. The Bank also asked PRA to increase the amount and also made payment of monies earlier. The PRA agreed to look into the same. The CoC also had certain other reservation on release of Personal Guarantee of Mr. Narayan Mandrekar. After discussion, the RP asked the applicant to amend the Resolution Plan for that portion, pertaining to the Condition Precedent in the Resolution

Plan, and regarding Bank right to enforce Personal Guarantee and recover monies from other Guarantors and Principal Borrower.

14. The COC members after discussion stated that the applicant has made the entire payment by 31.03.2020 and unless the entire payment is released, possession cannot be given to the Applicant. The Resolution Applicant stated that they would need possession earlier as some licenses required the hotel to be Financial and they can consider large payment and a small portion outstanding till renewals of licenses takes place.

15. The PRA further requested that the Bank pay the dues of the electricity charges outstanding at the earliest, so that the same does not get disconnected to which the COC agreed and stated that it will still form part of the Resolution Plan even though the CoC has made its payment. The COC members informed that since the approval of Resolution Plan is deferred to the next COC meeting, then the approval of the withdrawal of the application should be deferred to next COC meeting, as this will be subject to the approval of Resolution Plan.

16. The Resolution Plan proposed by the Resolution Applicant was approved by the CoC in the 11$^{th}$ meeting held on 17.01.2020. The RP has annexed the minutes of this meeting as Annexure-18 of the application.

17. The RP stated that the Resolution Applicant is eligible under IB Code to be a Resolution Applicant and had submitted an Expression of Interest which is within the time limits provided under the Code. He further submitted that the Resolution Applicant had delayed in submitting the Resolution Plan and the RP has informed that already the CIRP period (330 days after extension and exclusion) of the Corporate Debtor got over. The Resolution Applicant had filed an application with the Adjudicating Authority for directing the RP/CoC to consider his Resolution Plan. The said application is Misc. Application No. 3991 of 2019 and is pending before this Hon'ble Bench and accordingly to the directions of the Adjudicating Authority, the RP convened the CoC meeting on 24.12.2019 to approve the Resolution plan and on that date the COC deliberated on

the resolution plan and requested for certain changes therein. The Resolution Applicant thereafter made changes and gave a revised resolution plan and the same was approved in 11th CoC meeting held on 17.01.2020.

18. The CoC approved the Resolution Plan with 100% voting jointly submitted by Mr. Porus Doctor and Mr. Satyam Bose because the Resolution Applicant proposes to pay almost all the dues of the COC member including part of the interest during the CIRP period. Therefore, considering all the aspects for the effective Resolution, the Resolution plan given by Mr. Porus Doctor and Mr. Satyam Bose was approved and they were declared to be the successful Resolution Applicants with having to make a total payment of Rs. 13.00 Crores to the Creditors of the Corporate Debtor (Including CIRP Cost). The Resolution applicant had given an EMD of Rs. 1.00 crore with the Resolution Plan and has given the cheque for balance performance guarantee of an amount of Rs. 30 lakhs and acceptance of LOI via letter dated 20.01.2020 which is provided at Annexure-20 of this present application.

19. The Applicant submitted that the compliance of the Resolution Plan as under Section 30(2) of the Code and regulation 38(3A) of the CIRP Regulations. He has also provided a compliance checklist Form H (Annexure-21), at the time of seeking approval of the Resolution Plan from this Tribunal. In accordance with the same. Annexed and marked hereto as is Form H under the Code.

20. This resolution plan annexed at Annexure 19 of the copy of the application has been carefully perused by us and following is the chart explaining the payments:

| **Particulars** | **Up-front cash** | **Payment Within 15 days of NCLT Approval** | **Payment Within 45 days of NCLT Approval** | **Payment Within 60 days of NCLT Approval** (subject to successful | **Total Payment** |
|---|---|---|---|---|---|

| | | | | | |
|---|---|---|---|---|---|
| | | | | renewal of licences) | |
| CIRP Cost | 20,00,000 | - | | - | 20,00,000 |
| Shareholders | - | - | - | - | NIL |
| Other Creditors (Employees/ electricity) | 5,00,000 | - | | - | 5,00,000 |
| Financial Creditor (The Greater co-operative Bank Limited) | 1,50,00,000 | 5,25,00,000 | 3,00,00,000 | 3,00,00,000 | 12,75,000.00 |
| **Total** | 1,75,00,000 | 5,25,00,000 | 3,00,00,000 | 3,00,00,000 | 1,30,000,000 |

21. However, for the sake of clarity and to have better understanding of the entire plan and to avoid any ambiguity, the plan as submitted by the Resolution Applicant and as approved by the CoC is hereby reproduced:

**RESOLUTION PLAN**

**RESOLUTION APPLICANT IN THE MATTER OF PAROLE HOTELS PVT. LTD**

**AS PER SECTION 30 OF INSOLVENCY AND BANKRUPTCY CODE, 2O16 READ WITH REGULATION 37 OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATION, 2016**

**1. BACKGROUND**

Pursuant to the advertisement published by the Resolution Professional inviting Resolution Plans from Prospective Resolution Applicants, the Resolution Applicant, Mr. Porous Adi Doctor and other consortium member being Mr. Satyam Bose, are jointly submitting the Proposed Resolution Plan in the Insolvency Resolution Process of Parole Hotels Pvt. Ltd. ('the 'Corporate Debtor'), which has been prepared in terms of the provisions of the Insolvency & Bankruptcy Code, 2016 and relevant regulations. The Resolution Plan has been prepared on the basis of information contained in the Information Memorandum and information regarding the Corporate Debtor as available in the public domain.

The Corporate Debtor i.e. Parole Hotels Pvt. Ltd is undergoing the Corporate Insolvency Resolution Process as per the provisions of the Insolvency and Bankruptcy Code, 2016, pursuant to an order of Hon'b1e NCLT, Mumbai Bench dated 04.12.2018.

**2. BRIEF BACKGROUND OF THE RESOLUTION APPLICANT**

The Resolution Applicant is running a real estate website and Company under the name and style of "Life Style Home Goa" since the year 2000 in Goa and his Balance sheets and Income Tax returns and also schedule of Assets and Liabilities has been submitted to the RP.

**3. ABOUT THE CORPORATE DEBTOR**

**a. Brief Background of the Corporate Debtor**

Parole Hotels Private Limited ("the Company") is a company incorporated under the Companies Act, 1956, on November 3rd, 1999 with its registered office at House No. 153/1, 153/2, Zaor Vaddo, Anjuna, Bardez, Goa. The Company is a Hotelier and is running a hotel with bar and restaurant in the name and style "Lotus Inn". The hotel has 31 rooms. The Resort is very well known in near vicinity and foreigners are frequent visitors of this resort. The Resort is very well constructed which is surrounded by beautiful garden and also has one of the largest swimming pools in the area.

The Company had given the hotel on leave and license basis to Matrubhoomi Inn Ltd. vide agreement dated 30th August 2013 on the terms and conditions contained therein for a period of 3 years from 1st Sept 2013 on a yearly license fee of Rs. 25,00,000/-. The said agreement expired on 31st August 2016 and since then the hotel is being run by the Company. The said Matrubhoomi Inn Ltd. took a mortgage loan of Rs. 10 crores from The Greater Bombay Co-operative Bank Ltd. against the security of the hotel property being Lotus Inn owned by Parole Hotels Pvt. Ltd. vide sanction letter dated 20-04-2016 and the Company created a charge on the property and deposited the original title deeds with the Bank vide equitable mortgage dated 20th April 2016. The said loan was interalia secured by personal guarantees of the directors of Matrubhoomi Inn Ltd. viz. Mr. Pradeep Ravindra Garg, Mr. Sanjay Hemant Biswas and Mr. Milind Anant Jadhav. The loan was also secured by the personal guarantee of the director of Parole Hotels Pvt. Ltd. Mr. Narayan Ladu Mandrekar. The said loan has become an NPA and therefore the Greater Bombay Co-operative Bank Ltd. has initiated the Corporate Insolvency Resolution Process against the Company being the guarantor of the loan and which has mortgaged the property and the Company has been admitted to CIRP vide the order of Hon'ble NCLT Mumbai Bench dated 4th December 2018.

**Details of Promoters and Directors**

i) Mr. Narayan Ladu Mandrekar - Promoter, Director
ii) Mrs. Petra Koller - Promoter, Director
iii) Mr. Vijaykumar Kashinath Fadke - Director

**b. Shareholding Pattern**

The Authorized Share Capital of the Company, as per audited Balance Sheet dated 31.03.2013 and as per provisional financial statement from the period 01.04.2012 to 31.03.2013 .The break up is as follows:

| Authorized Share Capital |
| --- |

| | |
|---|---|
| Rs. 800,000 equity shares of Rs. 10 each | Rs. 80,00,000 |
| **Total** | **Rs. 80,00,000** |

| **Issued, subscribed and paid up capital Paid up Capital** | |
|---|---|
| 775,000 equity shares of Rs. 100 each | Rs.77,50,000 |
| **Total** | Rs.**77,50,000** |

**List of Shareholders of Parole Hotels Pvt. Ltd along with their stake**

| **Particulars** | **Number of Shares** | **Amount in Rs.** |
|---|---|---|
| Petra Gerhad Koller | 37,500 | 37,50,000/- |
| Narayan Mandrekar | 37,500 | 37,50,000/- |
| Alexander Frank Baver | 2,500 | 2,50,000/- |
| **Total** | **775,000** | **77,50,000** |

**Note :**

In the meantime on 10th October 2018, one Mr. Vijaykumar Kashinath Fadke was appointed as an additional Director in the Company. During the correspondence with him for the information regarding the Company, he has informed the RP that he is holding

99% of the shareholding of the Company but despite repeated requests by the RP, he has not given any concrete documentary proof for his shareholding. Hence it cannot be ascertained whose shareholding he has bought and what is the current shareholding of the Company. It is also unclear as to what was the consideration for the transfer of the shareholding.

**c. Past Performance of the Corporate Debtor:**

The abstract of the financial statement of the Corporate Debtor for **FY 2012-13** have been provided below:

**Financials for the Year Ended 31ST MARCH, 2013**

| **Statement of Profit and loss** | **Audited Balance Sheet 31/03/2013 (RS.)** | **Audited Balance Sheet 31/03/2012 (RS.)** | **Unaudited Balance Sheet 31/03/2014 (RS.)** | **Unaudited Balance Sheet 31/03/2015 (RS.)** | **Audited Balance Sheet 31/03/2016 (RS.)** |
|---|---|---|---|---|---|
| Sales(Net of Returns/Gross Receipt of Business | 20,06,139.00 | 12,94,625.00 | 600,775.33 | - | - |
| Lease Rent | - | - | 2,500,000.00 | 2,224,990.00 | 2,224,990.00 |
| Miscellaneous Income | - | - | 21,820.26 | 12.00 | 1,333.00 |
| Closing Material (Buiding Material) | 1,53,750.00 | 3,70,500.00 | - | - | - |
| **Total Rs.** | **21,59,889.00** | **26,02,125.00** | **3,122,595.59** | **2,225,002.00** | **2,226,323.00** |
| Opening stock | 3,07,500.00 | 3,07,500.00 | 153,750.00 | - | - |
| Purchases | - | - | 1,051,288.00 | - | 70,000 |

| | | | | | |
|---|---|---|---|---|---|
| Salaries, Wages & Bonus | 2,21,687.00 | 2,13,313.00 | 328,777.00 | 1,620,200.00 | 1,687,765 |
| Vehicles Insurance | - | 24,564.00 | 26,400.00 | - | - |
| Vehicle Expenses | | | | 4,500.00 | - |
| License Renewal Fees | | | | 8,000 | 8,000.00 |
| Travelling Expenses | 53,520.00 | - | 34,300.00 | - | 35,500 |
| Interest Loan | 1,95,941.00 | 2,25,396.00 | 142,694.50 | 86,753 | 39505 |
| Interest Expenses | | | 15,409.00 | 23,800.00 | 12.332.00 |
| Company Secretary Fees | | | 15,000.00 | | |
| Service Tax Paid | | | 114,284.00 | | |
| Interest on OD | 43,641.00 | 38,801.00 | - | - | - |
| Interest on ST Paid | | | 12,182.00 | - | - |
| Discount Others | | | 309,000.00 | - | - |
| Luxary Tax | - | 9,555.00 | - | - | - |
| Luxary tax Renewal Fees | - | 1,000.00 | - | - | - |
| PF | 22,440.00 | 28,096.00 | 19,227.00 | 49,516.00 | |
| Compensation | | | | | 1,202,760.00 |
| PF Employers Share | | | | 50,421 | 65,504 |
| Other Fund: GLWB | - | - | | | 670.00 |

| | | | | | |
|---|---|---|---|---|---|
| Employees Share | | | | | |
| ESI Paid | 7,547.00 | 7,790.00 | 6,886.00 | 2,006 | 23034 |
| ESI Employers Share | | | | 17,592.00 | 23,034.00 |
| Dr. Balance W/OFF | | | | 11,637 | |
| Bank Charges | | | | 26,081.00 | 32,454.00 |
| Accountant Remuneration | | | | 10,000.00 | |
| ESIC | - | - | 2,616.00 | - | - |
| Audit Fees | 28,090.00 | 28,090.00 | 28,090.00 | 28,750.00 | - |
| Telephone Expenses/Fax/ Courier Exp. | - | 51,305.00 | | - | - |
| Other/Miscellaneous expenses | 9,33,468.59 | 4,21,874.31 | 175,473 | 4,045.00 | - |
| Depreciation | 12,65,543.00 | 12,07,134.50 | 1,294,974 | 1,083,370 | 961,303 |
| **Total Rs.** | **30,79,377.59** | **25,64.418.81** | **3,760,400.49** | **3,026,671.00** | **4,138,827.00** |
| Profit before Tax (A-B) | **(9,19,488.59)** | **37,706.19** | **(637,805.35)** | **(801,669.00)** | **(1,912,504)** |
| Income Tax Provision | **-** | **8,040.00** | | | |
| Fringe Benefit Tax | **-** | **-** | | | |
| Profit after Tax | **(9,19,488.59)** | **29,666.19** | **(637,805.35)** | **(801,669.00)** | **(1,912,504)** |

**Balance Sheet ACCOUNT 31ST MARCH, 2013**

| **Particulars** | **31/03/2013** | **31/03/2012** |
|---|---|---|
| **1) Source of funds** | | |
| a) Shareholders Fund | | |
| i) Capital | 77,50,000.00 | 77,50,000.00 |
| ii) Reserve & Surplus | - | - |
| **b) Loan Funds** | | |
| i) Secured Loans | 16,76,148.56 | 17,78,385.56 |
| ii) Unsecured Loans | 2,94,06,843.32 | 2,90,79,863.32 |
| **Total** | **3,88,32,991.88** | **3,86,08,248.88** |
| **2. APPLICATION OF FUNDS** | | |
| A) Fixed assets | | |
| i) Gross Assets | 4,81,21,662.50 | 4,71,29,427.50 |
| ii) Depreciation | 1,17,40,840.53 | 1,04,75,297.53 |
| iii) Capital work in progress | | |
| **b) Investment** | Nil | Nil |
| **c) Current Assets, Loans& Advances** | | |
| i) Inventories | 1,53,750.00 | 3,07,500.00 |
| ii) Sundry Debtors | Nil | Nil |
| iii) Cash & bank Balances | 1,44,771.77 | 1,42,897.10 |
| iv) Loans & Advances | - | - |
| | **2,98,521.77** | **4,50,397.10** |
| **d) Current Liabilities & Provisions**<br>i) Current Liabilities | 5,22,014.26 | 2,27,767.00 |

| | | |
|---|---|---|
| ii) Provisions | 34,564.00 | 59,249.00 |
| **e) Net Current Assets** | **(2,58,056.49)** | **1,63.381.10** |
| i) Miscellanous expenditure to the extent not written off or adjusted<br>ii) Profit & Loss Account | 27,10,226.40 | 17,90,737.81 |
| Notes to account<br>Total | **3,88,32,991.88** | **17,90.737.81** |

The erstwhile management has provided unaudited profit and loss and also the unaudited provisional balance sheet of the Company for the years ended 31.03.2014, 31.03.2015, 31.03.2016 to the Resolution Professional somewhere in August 2019. Since they are unaudited figures they have not been shown here.

**<u>Details of liabilities</u>**

Based on the information provided in the Information Memorandum and the information available in the public domain, the debt profile of the Corporate Debtor is as provided below:

**i. <u>Financial Creditors:</u>**

The Corporate Debtor has only one Secured Financial Creditor, t**he Greater Bombay Cooperative Bank Limited**, which is also the only member of the Committee of Creditors. The dues outstanding as on the insolvency commencement date towards Financial Creditor mentioned above; based on the amount of claim raised by Greater Bank and thereafter admitted by the Resolution Professional; are as follows:

| Name and Address of Creditor | Amt Claimed & Admitted (Rs.) | Nature of Debt | Date of Receipt |
|---|---|---|---|
| The Greater Bombay Cooperative Bank Limited<br>(Schedule Bank)<br>Stress Accounts Department:<br>GBCB House,<br>89, 1st Floor,<br>Bhuleshwar, Mumbai-400002 | 11,84,12,906 | Financial creditor | December 10th, 2018<br>Updated claim received on<br>December 21st, 2018 |

**ii. Operational Creditors**

Based on the information provided in the information memorandum, there are **no operational creditors** that have filed their claims under Corporate Insolvency Resolution Process. However, as per the information provided by Resolution Professional, there are outstanding **Electricity Charges of lumpsum Rs. 3.00 Lakhs** pending to be paid. Also, as per the communication with Resolution Professional, Employee's salaries and other Creditors would amount to about **Rs. 2.00 Lakhs** for the period from **1st April, 2019** onwards. Hence, the dues outstanding towards Employees and Operational Creditors would sum up to **5 Lakhs approx**. during the CIRP period.

**iii. Contingent Liabilities**

According to provisional financial statements of the Corporate

Debtor, the contingent liabilities are INR Rs. NIL, and further, as per the details provided in Information memorandum, there are no other litigations pending against the corporate debtor except the CIR Process as on Insolvency Commencement date as per list given in **Annexure F** of the Information Memorandum.

iv. **Distribution of Liquidation Value**

As per the provisions of the IBC, 2016, the 'liquidation value' of the Company; as determined by the Resolution Professional with respect to the relevant provisions of the IBC, 2016; (the "Liquidation Value") has not been shared with the Resolution Applicant.

The Resolution Applicant understands that:

(a) The Liquidation Value may or may not be sufficient to cover even the amounts owed to Secured Financial Creditors of the Company in full as on date;
(b) Therefore, the Liquidation Value attributable to the operational creditors or any other creditors or stakeholders of the Company (including claims of employees, workmen Statutory dues, taxes, etc. and other creditors and stakeholders) is likely to be nil and accordingly they will not be entitled to receive any payment if the Company were to be liquidated. Further we are informed that there are no operational creditors who have submitted claims and so there is no amount due to them.

4. **FINANCIAL PROPOSAL FOR THE CREDITORS OF THE CORPORATE DEBTOR:**

The details of the proposed treatment to each stakeholder under the Resolution Plan are discussed below:

## 4.1 CIRP Costs

As per Information Memorandum, there is no information available with respect to the Insolvency Resolution Process Costs (CIRP Costs), however as per the information provided by the Resolution Professional, the CIRP costs remaining as unpaid are **INR 20 Lakhs approx.** Thus, the Resolution Applicant proposes that, such amount shall be paid in priority to all other creditors by the amount brought in upfront. However, in case there is any enhancement in the amount of the CIRP Costs as remaining unpaid as on Effective Date, the same shall be paid in full in priority to any other creditor. Moreover, the said enhanced amount shall be deducted from the amount proposed to the Secured Financial Creditor in the further clauses of this resolution plan. The Resolution Applicant has further provided INR 5 Lakhs approx. to be paid to the employees for outstanding salary from 1st April 2019 and the outstanding electricity and other charges during the CIRP period.

## 4.2 Proposal for Financial Creditors

i. According to List of Creditors of the Company as provided in the Information Memorandum ("**List of Creditors**"), total claim filed by the 'financial creditor' (The Greater Bombay Cooperative Bank Limited) of the Company (the "**Financial Creditor**') amounts to INR 11.84 Crores; as on the CIRP commencement date which has been verified and admitted for the purposes of CIRP by the Resolution Professional ("**Admitted Financial Debt**").

ii. The Admitted Financial Debt owing to the Secured Financial Creditor will be dealt with in the following manner:

a. The Resolution Applicant proposes an amount of **Rs. 12.75 crores** to be paid to the Secured Financial Creditor in full and final settlement of its claim which will be payment of their entire claim with interest till the effective date.

b. The said payment shall be made as follows:

- An amount of **Rs 1 crore** shall be deposited by Resolution Applicant as the **Earnest Money Deposit (EMD**) along with the Resolution Plan.
- Rs. 30 lacs as a part of Security Deposit/Performance Guarantee (total 1.30 crores) on approval of Resolution Plan by COC.

c. Further, in compliance with the provisions of Section 30(2) (a) and Regulation 38(1), such payments shall be made, post making payments of unpaid CIRP costs and to the Operational Creditors, in the manner as contained in this Resolution Plan.

iii. Accordingly, post payment of the amount proposed to the Secured Financial Creditor, all the assets of the Corporate Debtor or any other properties as mortgaged to Secured Financial Creditor for the financial debt availed by the company, regardless of whether the charge related to them is registered with the respective authority or not; and notwithstanding the fact that whether the same was listed in Information memorandum as provided by the Resolution Professional or not; shall be released in favour of their respective owners without any encumbrance or other liability imposed upon them. The resolution applicant or the company shall not be responsible for any such liability in respect of the same under any circumstances. It is further clarified that the possession of the said properties shall be handed over to the respective owners peacefully along with the property ownership documents including but not limited to sale deed, conveyance deed etc. The secured financial creditor shall not be given any other payment for the release of such properties as mortgaged to it apart from the payment as proposed vide this Resolution Plan.

iv. Further, all other claims relating to bank guarantees or letters of credit as may have been issued by the Financial Creditors, whether or not such bank guarantees or letters of credit form part of the Admitted Financial Debt, including all liabilities or claims arising there-from whether admitted or not, due or contingent, asserted or unasserted, crystallized or un-crystallized, known or unknown, disputed or undisputed, present or future (and whether or not the originals of such bank guarantees or letters of credit are returned to the Financial Creditor which had issued it}, in relation to any period prior to the NCLT Approval Date or arising on account of the acquisition of the Company contemplated in this Resolution Plan or on account of the measures contemplated under this Resolution Plan, shall stand extinguished and will not hold any enforceability by virtue of Regulation 37 and the order of the Adjudicating Authority approving this Resolution Plan. Any similar liability arising in relation to the secured financial creditor shall stand extinguished in entirety and will not exercisable by the said Secured Financial Creditor.

v. For avoidance of any doubt, all accrued or unpaid interest, including penal interest, fees, commission and any other charges of whatsoever nature in relation to the Secured Financial Debt of the Company, arising on or after commencement of the CIRP in respect of the Company and until the NCLT Approval Date, will by virtue of the order of the Adjudicating Authority approving this Resolution Plan be:

I. Written off in full and shall, in accordance with Regulation 37 of the CIRP Regulations, be deemed to be permanently extinguished;

II. Deemed to have stopped accruing on and from insolvency commencement date. Therefore, the Company, and the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

vi. Other than as specified in clauses above, any and all other dues including claims or demands made by, or liabilities or obligations owed or payable to (including any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated damages, notional or crystallized mark to market losses on derivatives and other charges already accrued/ accruing or in connection with any third party claims) any actual or potential Financial Creditors of the Company or any other person in favour of whom the Company has granted any guarantee or security or in connection with any debt of the Company (including those arising out of any counter guarantees, other corporate guarantees or indemnities issued by the Company, and any transactions in derivatives), whether admitted or not, due or contingent, asserted or unasserted, crystallized or un-crystallized, known or unknown, disputed or undisputed, present or future, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the List of Creditors in the Information Memorandum, in relation to any period prior to the NCLT Approval Date or arising on account of the acquisition of control of the Company pursuant to Resolution Plan or on account of the measures contemplated under this Resolution Plan, shall, in accordance with Regulation 37 of the CIRP Regulations and by virtue of the order of the Adjudicating Authority approving this Resolution Plan, be deemed to be permanently extinguished and the Company and the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

vii. Any and all claims, rights and entitlements of any actual or potential Financial Creditors of the Company, including any contracts entered into by the Company with such creditors, not addressed in this Resolution Plan, whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the NCLT Approval Date or arising on account of acquisition of control of the Company pursuant to this Resolution Plan, or on account of the measures contemplated under this Resolution Plan shall, in accordance with Regulation 37 of the CIRP Regulations and by virtue of order of Hon'ble NCLT approving this Resolution Plan, be deemed to be permanently extinguished, and all the contracts entered into by the Company with such creditors will be deemed to be terminated without any liabilities, claims or obligations whatsoever arising out of, or in relation to such contracts and the Company, the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.

viii. Any invocation or appropriation or other enforcement action already undertaken in respect of any security, guarantee, pledge, charge, encumbrance or collateral granted or created by the Company or in respect of any assets of the Company in connection with any Financial Debt or Operational Debt or any other debt or obligation of the Company, at any time prior to the NCLT Approval Date, shall stand dismissed and abated and all liabilities and obligations in relation to such security, guarantee, pledge, charge, encumbrance or collateral granted or created by the Company shall be terminated and stand extinguished permanently with immediate effect on the date of approval of this resolution plan by Hon'ble NCLT.

**4.3 Proposal for Operational Creditors (other than Workmen/ employees and Statutory Authorities)**

i. As per the List of Creditors available in the Information Memorandum, Total claims filed by Operational Creditors (excluding workmen/ employees and statutory authorities aggregated to Rs. NIL which have been verified and admitted for the purposes of CIRP by the Resolution Professional.

ii. Any and all rights and entitlements of any actual or potential creditor of the Corporate Debtor, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the NCLT Approval Date / Effective Date or arising on account of the acquisition of control by the Resolution Applicant over the Company pursuant to this Resolution Plan or on account of the measures contemplated under this Resolution Plan, shall, in accordance with Regulation 37 of the CIRP Regulations, be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company, the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.

**4.4 Employees /Workmen**

i. None of the employees have filed any claim and accordingly the Liquidation Value owing to employees and workmen of the Company is likely to be nil as already explained in section "Distribution of Liquidation Value".

ii. Any and all claims or demands made by, or liabilities or obligations owed or payable to, (including any demand for any losses or damages, or interest, back wages, compensation, penal interest, liquidated damages already accrued/ accruing or in connection with any claims) any present or past, direct or indirect, permanent or temporary employee and/or workman of the Company, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the List of Creditors, in relation to any period to the NCLT Approval Date or arising on account of the acquisition of control of the Company pursuant to this Resolution Plan or on account of the measures contemplated under this Resolution Plan, other than the unpaid gratuity dues mentioned in the Information Memorandum, will be written off in full and shall, in accordance with Regulation 37 of the CIRP Regulations, be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company, the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

iii. Upon approval of this Resolution Plan by Adjudicating Authority arid implementation of the Resolution Plan in accordance with the provisions of this Resolution Plan, the employee and workmen policies of the Corporate Debtor shall come to an end and modified policies of the Resolution Applicant in relation to the employee and workmen shall come into effect and shall stand applicable upon new employment contract signed with the new management. With respect to the number of workmen and employees employed with the Corporate Debtor; the Resolution Applicant shall review the same as per the needs of the business and discuss the same with the Relevant Authority and the resultant outcome shall be applicable. Such change in the terms and conditions of the employee and workmen policies shall not be considered as terms less than favourable to the workmen and employees and no retrenchment compensation shall be payable under the Industrial Disputes Act, 1947 or any other law or contract.

iv. It is assumed that there is no additional liability has accrued towards payment of dues to the workmen from the Insolvency Commencement Date until the NCLT Approval

Date and all such liabilities that have arisen during this period have been settled by the erstwhile management and/or the Resolution Professional in managing the affairs of the Company on a going concern basis.

**4.5 Statutory Dues**

i. As per Information Memorandum, there are no claims filed by the Statutory Authorities. However, there are following dues outstanding as per Balance Sheet as at 31.03.2013:

| Particulars | Amount (in Rs.) |
|---|---|
| Statutory Dues | |
| Luxury Tax Payable | 11645.26 |
| Income Tax Provision | NIL |
| ESI Payable | NIL |
| PF Payable | NIL |
| Labour Welfare Fund | 290.00 |
| **Total** | **11935.26** |

Moreover, **there are no litigations against the Corporate Debtor except the CIR Process** filed by The Greater Bombay Co-operative Society against the Corporate Debtor mentioned in the Information Memorandum. As set out in earlier clauses of this Resolution Plan, there is no Liquidation Value owing in respect of outstanding government dues, taxes, and other liabilities of the Company (which are in the nature of debt owed to Operational Creditors of the Company). Thus, no payment has been proposed under the Resolution Plan towards payment of any outstanding government dues, taxes, and any other liabilities of the Company as part of the Resolution Plan.

i. Accordingly, all claims or demands made by, or liabilities or obligations owed or payable to, whether assessed or not, by, the Central government, the State governments, any regulatory or local authority or body or any agency or instrumentality thereof, in relation to any dues, all dues under the provisions of any indirect tax laws, including but not limited to, the Central Excise Act, 1944, The Income Tax Act, 1961, the Finance Act, 1994 (Service Tax), the Customs Act, 1962, Value Added Tax Act, 2005, the CENVAT Credit Rules, 2004, the Electricity Act, 2003, the Goods and Services Tax Act, 2017(each as amended from time to time and including the rules made there under) including entry taxes, electricity duty, cross subsidy on electricity duty, sales tax deferral liabilities, duties, penalties, interest, fines, cess, charges, unpaid tax deducted at source or tax collected at source, Octroi tax, stamp duty, local body tax, municipal taxes, or other fiscal incentives duties (including stamp duties), electricity dues and duties, water resource department related dues, enterprise social commitment fund in relation to environment, penalties, fees, interest, fines, levies, cesses, royalties, assessments or additions or any other charges or payments whatsoever (including without limitation, the direct and indirect tax liabilities set out in Information Memorandum and any liabilities in relation to any consent, permission, privilege, entitlement, exemption, benefit, license of approval granted to the Company or in relation to the Company, whether or not such consent, permission, privilege, entitlement, exemption, benefit, license or approval is subsisting, lapsed or expired, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the

List of Creditors, in relation to any period prior to the NCLT Approval Date or arising on account of the acquisition of control by the Resolution Applicant over the Company pursuant to this Resolution Plan or on account of the measures contemplated under this Resolution Plan, shall be written off in full and shall, in accordance with Regulation 37 of the CIRP Regulations, be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company as well as the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. All notices, assessments, appellate or other proceedings pending or threatened in relation to the Company, in relation to any period prior to the NCLT Approval Date or arising on account of the acquisition of control by Resolution Applicant over the Company pursuant to this Resolution Plan, or on account of the measures contemplated under this Resolution Plan shall stand terminated and withdrawn and all consequential liabilities, if any, shall, in accordance with Regulation 37 of the CIRP Regulations, stand extinguished and be considered as not payable by the Company by virtue of the order of the Adjudicating Authority approving this Resolution Plan and any re-assessment, revision or other proceedings under the provisions of an indirect tax law would be deemed to be barred in relation to any period prior to the NCLT Approval Date, by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company as well as the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

ii. Without prejudice to **paragraphs (ii) of this clause**, all liabilities (including without limitation, for any penalty, interest, fines or fees) or obligations of the Company, in relation to

A. any non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permits including any requirements of the Companies Act, 2013;

B. change of control, transfer charges, unearned increase, compensation, or any other such liability whatsoever under any contract, agreement, lease, license, approval, consent or permission to which the Company or its subsidiaries, joint ventures or associates (if any) are entitled;

C. any leasehold rights or freehold rights to movable or immovable properties in the possession of the Company; and

D. any contracts, agreements or commitments made by the Company, in each of the foregoing cases whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the List of Creditors, in relation to any period prior to the NCLT Approval Date or on account of the measures contemplated under this Resolution Plan or arising on account of the acquisition of control by Resolution Applicant over the Company pursuant to this Resolution Plan, will be written off in full and shall, in accordance with Regulation 37 of the CIRP Regulations, be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and all such investigations, inquiries or show-cause, whether civil or criminal in relation to the foregoing shall be disposed of, and subsequently the Company and the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

E. waiver in respect of penalties and filings in respect of all filings to be done with ROC (for annual returns, balance sheets, etc.) which have not been complied with till date of approval of Resolution Plan by the erstwhile Company or its Directors shall be granted alongwith the approval of this Resolution Plan.

**4.6 Proposal for other stakeholders (including other creditors}**

i. In relation to any other person (including creditors and /or stakeholders (who is entitled to receive any amounts under Section 53 of the IBC) whose claims have not been covered under **Clauses 4.1 to 4.5** above or who makes any claims in the future, there will be no funds available for payment to them as the Liquidation Value is insufficient. Therefore, **nil payment** has been proposed under the Resolution Plan towards

ii. Any and all claims or demands in connection with or against the Company and all liabilities or obligations of the Company (including any demand for any losses or damages or in connection with any third party claims or any investigations by any governmental bodies or authorities both present and future by or to any other stakeholder (who is entitled to receive any amounts under Section 53 of the IBC) including those under Section 53(1)(b) of the IBC or any other actual or potential creditor, any counter- party, any subsidiary, joint venture or associate company of the Company or a shareholder of the Company or the holder of any other securities of the Company prior to the NCLT Approval Date) whether under law, equity or contract, whether admitted or not, due or contingent, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the List of Creditors, and all inquiries, investigations or proceedings in relation to the foregoing, whether civil or criminal, in relation to any period prior to the NCLT Approval Date or arising on account of the acquisition of control by Resolution Applicant/ Strategic partners over the Company pursuant to this Resolution Plan or on account of the measures contemplated under this Resolution Plan, will be written off in full and shall, in accordance with Regulation 37 of the CIRP Regulations, be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and all the investigations, inquiries or show-cause, whether civil or criminal in relation to the foregoing shall stand disposed off and the Company as well as the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

iii. All liabilities, claims, obligations or rights in relation to any letters of credit, letters of undertaking, guarantees, counter guarantees, corporate guarantees, bank guarantees, performance guarantees or other contingent or future claims, liabilities and/or commitments of any nature whatsoever, including without limitation, those specifically set out in Information Memorandum} issued by, or on behalf of, or at the behest of, the Company, or incurred or undertaken by the Company (as the case may be), in relation to any period prior to the NCLT Approval Date or arising on account of the acquisition of control by Resolution Applicant over the Company pursuant to this Resolution Plan, whether asserted or unasserted, whether admitted or not, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Company or the profit and loss account statements of the Company or List of Creditors, will be written off in full and shall, in accordance with Regulation 37 of the CIRP Regulations, be deemed to be permanently extinguished, by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company and the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

iv. It is clarified that the beneficiary of any guarantees issued on behalf of the Company and the guarantor thereof will do all acts and execute all agreements/documents as may be necessary to give effect to the extinguishment of the subrogation rights of such guarantor of the Company.

v. payment to such creditors and/or stakeholders management.

**4.7 Proposal for existing shareholders**

i. The existing share capital will be reduced to Zero. Further, Share Application Money and Unsecured Financial Creditors shall not be paid any amount and/or no shares would be issued to them.

ii. All present and future, claims, dues, liabilities, amounts, arrears, dividends or obligations owed or payable by the Company to any person who holds securities of the Company prior to the NCLT Approval Date, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the List of Creditors, shall, in accordance with Regulation 37 of the CIRP Regulations, be deemed to be written off in full and stand permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company and the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

iii. Upon approval of this Resolution Plan by Adjudicating

Authority, the rights of any Person (whether exercisable now or in the future), either directly or indirectly, and whether contingent or not, to call for the allotment, issue, sale or transfer of shares of the Company or whether through any exchange or otherwise, shall stand unconditionally and irrevocably extinguished. All employee stock options and sweat equity shares, whether granted, vested or otherwise, shall stand irrevocably and unconditionally cancelled and extinguished without further deed or action and for no consideration.

iv. No person who holds any shares (whether equity, preference or any instrument convertible into equity shares) of the Company (including the Existing Preference Shareholders) till (and including) prior to the NCLT Approval Date shall have any rights relating to such shares (including voting rights in relation to the affairs of the Company or any pre-emption rights) which rights shall be deemed to be suspended by virtue of approval of this Resolution Plan by the Adjudicating Authority. On and from the NCLT Approval Date, the rights relating to all shares (where equity, preference or any instrument convertible into equity shares) of the Company shall come into effect without any further deed, action or thing to be done, which rights shall be exercisable in accordance with the terms of such shares (where equity, preference or any instrument convertible into equity shares) and applicable law.

v. Upon approval of this Resolution Plan by Adjudicating Authority, any agreement executed between the Company and its shareholders shall stand terminated without any further action or deed and all liabilities and obligations of the Company under such agreements executed between the Company and its shareholders and their respective successors assigns, transferees shall stand extinguished and cancelled for no consideration.

vi. All present and future, claims, dues, liabilities, amounts, arrears, dividends or obligations owed or payable by the Company to the Existing Promoters or any subsidiary, associate company, related party, joint ventures, affiliate of the Company or any such entity or person controlled by the Existing Promoters (or any lenders or financial creditors of such persons) or any holder of any securities (whether convertible into equity shares or not) of the Company prior to the NCLT Approval Date whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the List of Creditors, shall, in accordance with Regulation 37 of the CIRP Regulations, be deemed to be written off in full and be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company (including its subsidiaries, associates, joint ventures or affiliates) and the Resolution Applicant, shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

## 5 STATEMENT IN RELATION TO DEALING WITH ALL STAKEHOLDERS

As set out above in **Section 4.1 to 4.7** of this Resolution Plan, this Resolution Plan for the Company has dealt with the interests of all the stakeholders in the Company, including the Financial Creditors (whether secured or unsecured, assenting or dissenting), Operational Creditors and all other stakeholders of the Company.

## 6 PROPOSED COST OF RESOLUTION & MEANS OF FINANCE

### 6.1 Total cost of the Resolution Plan is as under:

| **Particulars** | **Up-front cash** | **Payment Within 15 days of NCLT Approval** | **Payment Within 60 days of NCLT Approval** | **Total Payment** |
|---|---|---|---|---|
| CIRP Cost | 20,00,000 | - | - | 20,00,000 |
| Shareholders | - | - | - | NIL |
| Other Creditors (Employees/ electricity) | 5,00,000 | - | - | 5,00,000 |
| Financial Creditor (The Greater co-operative Bank Limited) | 1,50,00,000 | 5,25,00,000 | 600,00 000 | 12,75,000.00 |
| **Total** | 1,75,00,000 | 5,25,00,000 | 6,00,00 000 | 1,30,000,000 |

| **Sr. No.** | **Cost of Plan** | **Amount** |
|---|---|---|
| 1 | Insolvency Resolution Process Cost | 20,00,000 |
| 2 | Payment to Financial Creditor The Greater Bombay Cooperative Bank Limited | 12,75,00,000 |
| 3 | Payment to Other Creditors (Operational/Workmen/Employees) | 5,00,000 |
| | **Total** | ****13,00,00,000** |

** In addition to the above, the Resolution Applicant further proposes to bring an amount of Rs. **1.00 crore** within a period of 120 days to meet the working capital requirements and to restart the operations of the Company.

6.2 **Means of Finance**

*Infusion of Funds by Resolution Applicant:-*

The Resolution Plan proposes that the Resolution Applicant shall infuse an amount of Rs. 300.00 Lakh in the form of fresh equity and the balance of 1000.00 lakhs as debt- secured or unsecured, as the case may be, and further funds of Rs. 100.00 Lakh in the form of Fresh equity issued to the Resolution Applicant or Unsecured Loan, as the case may be. All such funds shall be sourced through own funds/ personal net worth of the Resolution Applicant as well as from the funds of the Relatives and Friends in form of unsecured loans.

## 7. RESTRUCTURING OF SHARE CAPITAL

The Resolution Plan envisages to reduce the nominal face value of existing shares to shares by completely writing down the value of equity shares and therefore no shares of the company are proposed to be issued.

The Resolution Applicant, for the resolution of the company and payment of the secured financial creditor and other creditors of the Corporate Debtor, shall infuse the required funds into the company as per the provisions of this Resolution Plan. The said funds may be issued as fresh equity to the Resolution Applicant and/ or shall be infused in form of unsecured loans from the Resolution Applicant as the case may be. In such case, the Resolution Applicant shall duly comply with the requirements of the Companies Act 2013 in relation to enhancement of authorized capital of the company along with any other applicable provisions with regard to issue of shares of the Companies Act 2013.

**8. OPERATIONAL RESTRUCTURING**

As per information memorandum, the Corporate Debtor is not in operations. The Resolution Applicant proposes to reorganize the operations of the Corporate Debtor. The Resolution Applicant proposes to operate the hotel of CORPORATE DEBTOR by appointing new professionals and managerial persons having a good experience to run the operations of the CORPORATE DEBTOR and who could utilize the assets of the Corporate Debtor, so as to be able to restart the operations of the Corporate Debtor within a period of **four to six months** after approval of the Resolution Plan by the Hon'ble NCLT. The Resolution Applicant shall infuse a capital fund of **Rs. 1 Crore** at such time as mentioned below. Such funds shall be arranged by the Resolution Applicant by way of fresh issue of Equity Share Capital to the Resolution Applicant or in form of Long term Unsecured Loans from the relatives or friends of the Resolution Applicant, as the case may be.

**9. OTHER TERMS**

**9.1 Management of Affairs of Parole Hotels Private Limited after approval of Resolution Plan**

Post approval of the Resolution Plan by the Hon'ble NCLT, the Resolution Applicant shall be handed over the management and control of the Corporate Debtor who shall then be responsible for the management of the affairs of the Corporate Debtor. The Resolution Applicant shall himself be a director of the Corporate Debtor to utilize his expertise in revival and further growth of the Corporate Debtor. Further, to support the implementation of the resolution plan, the Resolution Applicant shall appoint following directors to the Board of the Corporate Debtor:

**Name: Mr. Porous Adi Doctor**

**Name: Mr. Satyam Bose**

**Name: Mrs. Priyanka Bose**

**9.2 Restructure of Financial Statements, post approval of Resolutions Plans**

Post-acquisition of the Corporate Debtor by the Resolution Applicant, after approval of this resolution plan by Hon'ble NCLT, the liabilities of the Corporate Debtor shall be reduced to those which are specifically agreed to be paid (i.e. Rs. 12.75 Cr) to The Greater Co-operative Bank limited, to the extent the same remaining unpaid) and all other liabilities (financial, operational, statutory, contingent, disputed or of any other nature) shall stand extinguished.

**9.3 Provision for Implementation and Supervision of the Resolution Plan**

For the period of post approval of the plan by NCLT and till such time and till the terms of payment as envisaged in the resolution plan, it is proposed to constitute a Supervisory and monitoring committee comprising the existing Resolution Professional or any other Independent Insolvency Professional as per the approval of Committee of Creditor (in consultation with the Resolution Applicant), one representative of COC member. The Resolution Professional or Independent Insolvency Professional as the case may be shall be paid the professional fees as may be decided mutually (amongst the said Insolvency Professional, Resolution Applicant and CoC). This committee shall supervise the implementation of the Resolution Plan; which shall be undertaken by the Board of Directors of the Corporate Debtor as appointed by The Resolution Applicant till its completion. Thereafter, it shall issue a Certificate to the Resolution Applicant in respect of completion of all the activities in execution of the Resolution Plan. Post issue of such certificate to the Resolution Applicant, it shall get dissolved.

### 9.4 Reliefs and Concessions

- Any claim from any person claiming to be secured financial creditor or operational creditor or workmen / employee of the Company, that has not been filed with the Resolution Professional, or if filed, has not been verified by the Resolution Professional, or if verified, but has not been informed to the Resolution Applicant before submission of this Resolution Plan, shall stand extinguished and shall no longer be payable.
- On receipt of the payment of their dues as per this plan, the bank shall release their charge over the assets of the Corporate Debtor which have been provided as security against the facilities availed from the financial lenders and the corporate guarantees or any other guarantees held by them shall also be released and no amount of any nature shall be payable either by the Resolution Applicant or the Corporate Debtor or the Personal Guarantors.
- All the assets of the Corporate Debtor shall be handed over to the Resolution Applicant, free from any encumbrances (except that of the secured financial creditor till the currency of their debt), of any sort by any statutory authority or any Government body/ agency or by virtue of any direction of any other court of law.
- To withdraw any suits/ applications filed against Parole House Private Limited pending in any court of law.
- The Resolution Professional to handover possession of the Hotel of the Corporate Debtor on receipt of Rs. 6.75 Crore to enable the Resolution Applicant to start renovation work at the hotel. However, the hotel operations will start only on receipt of full money by the Resolution Professional/ Financial Creditor
- The Resolution Applicant will have the option to pre pay the dues of the Financial Creditors, without any additional levies;
- CBDT to consider the following:

a. exempting the Corporate Debtor from Section 79 of the Income

Tax Act, 1961 post the opportunity of being heard afforded to the Jurisdictional Commissioner of Income Tax by the Adjudicating Authority;

b. To waive all demands/ interest and penalty charged against the dues of the income tax authority till date;

c. To allow the company to carry forward its unabsorbed business losses/ Capital Loss beyond statutory time limit of 8 assessment years under Section 72 of IT Act 1961 and set off in subsequent years; in as much as in calculation of the period of limitation of 8 years under section 72{3) of income Tax Act for carry forward of losses, the years during which the net worth remained negative, be excluded.

- On approval of the Resolution Plan by the Hon'ble NCLT, all the present or future litigations, proceedings of whatever nature, including those relating to direct or indirect taxation, or of any other nature, in respect of the issues, claims, etc., pertaining to the period prior to the date of approval of the Resolution Plan, shall stand closed immediately and the Corporate Debtor, Resolution Applicant or the Resolution Professional shall not be liable for any civil Or any other consequence including penalty arising therefrom.
- It is further clarified that the clauses of this resolution plan which relate to the extinguishment/ cancellation / termination / waiver of various charges, interests, penalties, taxes/ dues/ any other liabilities of whatsoever nature including but not limited to sub clauses (iv), (v) and (vi) of Clause 4.2, sub clauses (i) and (ii) of clause 4.3, sub clauses (ii) and (iv) of clause 4.4, sub clauses (ii) and (iii) of clause 4.5, sub clauses {ii) and (iii) of clause 4.6 and sub clauses (ii) to (vi) of clause 4.7 shall be construed as part of this clause as request for relief and concession from the Resolution Applicant.
- Waiver in respect of penalties and filings in respect of all

filings to be done with ROC (for annual returns, balance sheets, etc.) which have not been complied with till date of approval of Resolution Plan by the erstwhile Company or its officers.

- Briefly, there are no authorities from whom the reliefs are sought through the approval of this resolution plan.

However, following are the statutory dues as per Balance Sheet as on 31.03.2013 wrt. which the Resolution Applicant is requesting the waiver:

| **Particulars** | **Amount in Rs.** |
|---|---|
| Statutory Dues | NIL |
| Luxury Tax Payable | 11645.26 |
| Income Tax Provision | NIL |
| ESI Payable | NIL |
| PF Payable | NIL |
| Labour Welfare Fund | 290.00 |
| **Total** | **11935.26** |

The Resolution Applicant further undertakes and confirms that, on and from the approval of this Resolution Plan by the COC, and subject only to:

i. obtaining required approvals from the Hon'ble NCLT in accordance with Applicable Law, and

ii. applicable directions of the Hon'ble NCLAT and /or Hon'ble High Court and/or Hon'b1e Supreme Court, if any, all obligations and commitments, financial or otherwise, undertaken by it under this Resolution Plan towards the Secured Financial Creditor, and any other stakeholders, shall be binding on him, and shall subsist and be in full force and effect irrespective of whether any reliefs, waivers or concessions sought by the Resolution Applicant in this section are granted by the Hon'b1e NCLT, the Hon'ble NCLAT, the Hon'ble High Court, the Hon'ble Supreme Court or any other judicial, quasi-judicial, regulatory or administrative entity, department or authority.

**10. COMPLIANCE WITH REGULATION 37 OF INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016**

As per the context of the said regulation, "*a resolution plan shall provide for the measures, as may be necessary, for the insolvency resolution of the Corporate Debtor for maximization of value of assets, including but not limited to the following:* ....................................." Here the Resolution Applicant submits that the resolution plan has provided for the measures which are required in the format of the plan. There may be certain provisions listed under this regulation which might not be provided as these are not required under the structure of this resolution plan.

**10(A). COMPLIANCE WITH REGULATIONS 38(1B) OF INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016**

As per Regulation 38(1B] of IBBI (Insolvency Resolution Process for Corporate Persons ) Regulations, 2016; "A resolution plan shall include a Statement giving details if the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plans approved by the Adjudicating Authority at any time in the past"; thus the Resolution Applicant hereby submits neither Resolution Applicant or any of its related have not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.

11. **COMPLIANCE WITH REGULATION 38(1) OF INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016**

As mentioned above also, it is assumed that the liquidation value of the assets of the Corporate Debtor shall not be sufficient to settle the dues of Financial Creditors in full; hence no amount is proposed to operational creditors. Moreover, if any amount arises to be paid to operational creditors in respect of their liquidation value, the said amount shall be paid out of the funds as brought in by the Resolution Applicant for the settlement of Secured Financial Creditor and for the sake of brevity, it is clarified the said payment shall be made in priority to any payment made to the secured financial creditor as per Regulation 38(1) of the CIRP Regulation.

12. **COMPLIANCE WITH REGULATION 38(2) OF INSOLVENCY AND BANKRUPTCY BOARD OP INDIA INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS REGULATIONS, 2016**

The present proposal contains the term of plan, its implementation, management, control and adequate means for supervising its implementation.

13. **COMPLIANCE WITH REGULATION 38(3) OF INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

i. *The Resolution Plan addresses* the *cause of default:*

a. Since no information with respect to default was available under the Information memorandum circulated by the RP, after review of the annual results of the Corporate Debtor, it is assumed that due to non-performance of factory unit the required revenue could not be generated which led to delay and default in repayment of dues of financial creditor.

b. The Resolution Applicant proposes to revive the company by the appointment of an expert team for the operations of the factory along with the introduction of necessary working capital into the operations. The cash flow projections are hereby annexed with this plan.

ii. *It is feasible* and *viable:*

a. The present proposal envisages repaying the debt of the Secured Financial Creditor within 12 months from the Effective Date and the Resolution Applicant hereby makes sure that the proposed installments are paid within their respective due dates. The resolution plan is prepared by taking care of interest of the stakeholders of the company and in strict compliance with the provisions of the Code and relevant. The Resolution Applicant, apart from paying/settling the creditors of the company including the Secured Financial Creditor, Resolution Applicant would further bring in additional working capital to effectively utilize the production and service capacity of the Corporate Debtor to ensure not only a successful revival but also the continuous growth of the Corporate Debtor. Hence this resolution plan is feasible and viable as it is expected to generate reasonable cash flows in future and earn profits to be able to meet the liabilities which shall arise in the regular course of business.

iii. *It has provisions for its effective Implementation*:

a. The effective implementation is proposed by the way of reconstitution of Board of Directors by introducing new Directors to the Company who shall be responsible for implementation of this Resolution Plan as per the provisions contained herein. The effective implementation of the Resolution plan is further assured by the constitution of Monitoring Committee who shall monitor the effective implementation of the resolution plan undertaken by the reconstituted Board of Directors of the Corporate Debtor.

iv. *It has provisions for approvals required and the timeline for the same:*

a. The present proposal contains the approval from the appropriate authorities along with timeline.

v. *Capability of Resolution Applicant to implement the resolution plan*:

a. The proposed Resolution Applicant has ample experience in the industry and was also an ex-promoter in the management of the Corporate Debtor and has adequate expertise for operating the business of the Corporate Debtor and implementing the terms proposed under the Resolution Plan. Further, the Resolution Applicant has proposed the entire payment to the Secured Financial Creditor within 12 months from the Effective Date with the defined timelines for the payments of the instalments. Thus, it is evident that the Resolution Applicant is capable of implementing the Resolution Plan as per the provisions contained herein.

**vi. VALIDITY OF PLAN**

This Resolution plan is valid upto 6 months from the date of submission of the same to the members of the CoC in accordance with the terms of RFRP as issued by the Resolution Professional.

**vii. <u>CONCLUSION</u>**

The Resolution Plan proposed herein has been made considering all the relevant provisions of the Insolvency & Bankruptcy Code, 2016.

We further request the Resolution Professional to feel free to ask for any additional information required with respect to the plan proposed herein.

Thanking you,

Yours Sincerely,

Mr. Porus Adi Doctor & Mr. Satyam Bose.
Resolution Applicant
In CIRP of Parole Hotels Private Limited

**FINDINGS**

1. We have gone through the resolution plan which is as shown above. We have also heard all the parties concerned in detail and taken all their submissions into account and accordingly following are the observations.

2. The RP has enclosed a compliance certificate as prescribed under Regulation 39(4) of CIRP Regulations, at page 258 of the application stating that, the resolution plan of the resolution applicant provides for and is in compliance with the provisions of the Code and Regulations.

3. The Hon'ble Supreme Court in the case of "K. Sashidhar vs. Indian Overseas Bank" (2019 SCC OnLine SC 257) at para 49 of the Judgement held as below:

   *i. "49. The argument, though attractive at the first blush, but if accepted, would require us to re-write the provisions of the I&B Code. It would also result in doing violence to the legislative intent of having consciously not stipulated that as a ground - to challenge the commercial wisdom of the* *minority (dissenting) financial creditors. Concededly, the process of resolution plan is necessitated in respect of corporate debtors in whom their financial creditors have lost hope of recovery and who have turned into non-performer or a chronic defaulter. The fact that the concerned corporate debtor was still able to carry on its business activities does not obligate the financial creditors to postpone the recovery of the debt due or to prolong their losses indefinitely. Be that as it may, the scope of enquiry and the grounds on which the decision of "approval" of the resolution plan by the CoC can be interfered with by the adjudicating authority (NCLT), has been set out in Section 31(1) read with Section 30(2) and by the appellate tribunal (NCLAT) under Section 32 read with Section 61(3) of the I&B Code. No corresponding provision has been envisaged by the legislature to empower the resolution professional, the adjudicating authority (NCLT) or for that matter the appellate authority (NCLAT), to reverse the "commercial decision" of the CoC much less of the dissenting financial creditors for not supporting the proposed resolution plan. Whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority."*

4. We are of the opinion that by virtue of mandatory contents of resolution plan, the same is in accordance with Section 30 and 31 of the Code, and also complies with the requirement of the Regulations 38 and 39 of CIRP Regulations.

5. Therefore, when the provision of law and the law laid down by the Hon'ble Supreme Court is applied to the case on hand, it becomes clear that this resolution plan approved by the COC with the required majority, satisfies all the criteria required for approval of Resolution Plan and accordingly the resolution plan is approved.

6. The resolution applicant in its resolution plan, has dealt with interests of all stakeholders of the corporate debtor, including the Financial Creditors, the Operational Creditors and the CIRP cost.

7. Any relief sought for in the resolution plan, where the contract/agreement/understanding/proceedings/actions/notice etc. is not specifically identified or is for future and contingent liability, is at this moment rejected.

8. The resolution applicant, on taking control of the corporate debtor, shall ensure compliance under all applicable law for the time being in force. The resolution applicant shall obtain the necessary approval required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.

9. We shall clarify here that any resolution applicant shall take over the corporate debtor with all its assets and liabilities as per terms of the approved resolution plan. If any relief concerning any identified liability of the corporate debtor is required, then that needs to be specifically mentioned and sought for in the resolution plan. This bench cannot allow any general power to any resolution applicant absolving him of liability of the corporate debtor company without knowing about the liability against which such exemption is sought. In other words, reliefs/exemptions from only existing liabilities which are specifically identified can be sought and allowed in the resolution plan.

10. On perusal of the resolution plan, we find that the resolution plan has necessary provisions for its effective implementation and it has been approved by 100% majority of the CoC.

11. Given the above observations, we approve the resolution plan with modifications, as mentioned above, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the resolution plan.

12. The resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database. The RP is hereby discharged of his duties after handing over the documents to the Resolution Applicant and he taking charge.

13. It is seen that the Resolution Plan seeks several Dispensations, concessions and waivers. Approval of Resolution Plan does not mean automatic Waivers. The Resolution Applicant on approval of the Plan may approach those competent authorities/courts/legal forms/office(s) Government or Semi-Government/State or Central Government for appropriate relief'(s) sought in the plan.

14. The M.A. bearing number 3991 of 2019 filed before this Tribunal by the Resolution Applicant praying for considering his Resolution Plan is pending before us. As the Resolution Plan is approved by this order, this MA bearing No. 3991 of 2019 becomes infructuous and is hereby disposed of. Also, MA NO. 3596 of 2019 was filed for liquidation of the Corporate Debtor. With the approval of this application approving Resolution Plan, MA. 3596 of 2019 for liquidation also becomes infructuous and is hereby disposed of.

15. The Resolution Plan is at this moment approved, subject to the submission of additional affidavit for accepetence of the modifications in the Resolution Plan and other informations as per directions above, under section 31(1) of IBC with observations above. The MA 367/2020 is accordingly allowed and disposed of.

**Sd/-**

**SHYAM BABU GAUTAM**
Member (Technical)

**Sd/-**

**VENKATA SUBBA RAO HARI**
Member (Judicial)

Date: 06.10.2020

/Sneha/