In the National Company Law Tribunal
Mumbai Bench

MA 849 of 2019 in CP No.1660/I&BC/MB/MAH/2017

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

In the matter of

Vidarbha Iron & Steel Corporation Ltd.
Registered Office : 46 (A&B), MIDC, Industrial Estate, Hingna, Nagpur-440028.

Mr. Sunil G Nanal
…….Applicant/ Resolution Professional

Order delivered on: 23.08.2019

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

For the Applicant : 1. CS Omkar Deosthale a/w Sunil Nanal (Resolution Professional)
2. Advocate Shyam Kapadia & Advocate Priyanka Shah i/b Apex Law Partners, for Resolution Applicant.

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

ORDER

1. An Application has been moved on 04.03.2018 by the Learned Resolution Professional by invoking the Provisions of **Section 30(6)** of the Insolvency & Bankruptcy Code, 2016 read with **Regulation 39(4)** of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) 2016 for **approval of a Resolution Plan.** On receiving this Application along with Resolution Plan an **Order** is hereunder passed as prescribed **U/s 31(1) of The Code.**

2. The Corporate Debtor **Vidarbha Iron & Steel Corporation Limited had filed a Petition by invoking the Provisions of Section 10 of The Code** read with Rule 7 of The Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016 on **27.11.2017**.

3. After considering the merits of the case, the said Petition was **admitted** vide an **Order dated 12.03.2018 (CP No.1660/I&BP/NCLT/MB/2017).** Mr. Sunil G

Nanal was appointed as the Interim Resolution Professional (IRP). The relevant paragraphs of the Order is worth reproduction, reproduced below:-

10. <u>Decision:</u> Before we proceed to take decision on the merits of the case, it is necessary to adjudicate whether the Petitioner can be proceeded under this Code in the capacity of a **"Guarantor"**, **specially being not a "Principal Borrower".**

10.1 To answer this question the definition of **"Claim" as defined u/s 3(6) of the Code** is helpful wherein it is prescribed that 'claims' means **right to remedy for breach of contract** under any law, if such breach gives rise to a right to payment. Hence the "claim" must be an **enforceable right** to be executed due to breach of contract under any law. On account of breach it gives rise a **legal right** to claim for the payment. It can be secured or unsecured but must be either in "existence" or "accrue" in future. Hence a "claim" against a Guarantor is definitely an enforceable legal right.

10.2 The next definition in this sequence is the definition of **"Debt" as defined u/s 3(11)** means a liability in respect of a **claim** which is due from any person and includes a Financial Debt as also an Operational Debt. The term "Claim" is used in the definition of "Debt". As a consequence it must be an **"actionable claim"** as prescribed under The Transfer of Property Act. An actionable claim, therefore, must be definite, actual, constructive and recognisable under the Civil Code. We see no reason to hold otherwise but to declare that the liability owed by a Guarantor is a 'Debt' as defined under the I & B Code.

10.3 This is the Petition filed by the "Corporate Debtor" u/s 10 pertaining to the financial loans obtained by the principal borrower wherein the Petitioner is undisputedly considered as a "Guarantor". As a consequence and next in line worth to examine is the definition of **"Financial Debt"** means any person to whom a financial debt is owed and as per section 5(8)(h) of the Code any counter-indemnity obligation in respect of a guarantee issued to a Bank through an instrument duly acknowledge by the respective parties. Although it appears to be right that in the definition of Operational Debt there is no is specific mention of term Guarantor incorporated but in the Definition of 'Financial Debt' it is very much available. An instrument exercising the terms of guarantee is a reliable and recognizable evidence. A guarantee agreement or tripartite agreement are useful to arrive at a cogent result. Under other related Acts, such as Contract Act, Transfer of Property Act, etc. clearly show that the liability of the Principal Borrower is **co-extensive** with the Guarantor. A Corporate Debtor, while moving a Petition u/s 10 of the Insolvency Code has to place on record such reliable evidences. On the basis of those cogent and reliable evidences the claim of the guarantor as creditor can be adjudicated upon under the Insolvency Code.

11 In the present case undisputedly the evidences on record have thus established that there was a "Debt" and admittedly there was a "Default" in payment of the outstanding Debt. Therefore, one of the requisite condition of Section 10 has been complied with. The Principal Borrower as also the Guarantor both have been declared by the Bank as defaulter vis a vis payment of Debt.

12 The Bench is of the conscientious opinion that by commencement of Insolvency Resolution Process the restructuring of the finances of the Debtor Company is possible. Moreover, once in this case the Insolvency Professional shall take control of the finances then duty bound to ascertain that the interest of all Creditors should be safeguarded.

3.1. In the said Petition filed u/s.10 of The Code it was noted that the Corporate Debtor had filed the said Application based upon a default of payment in the capacity of a **'Guarantor"** to the Banks who were stated to be Financial Creditor of a subsidiary M/s. Facor Steel Limited. The Petitioner i.e. M/s. VISCO acted as a Guarantor in respect of Two Financial Creditors viz. Bank of India and Indian Overseas Bank. A list of Financial Creditors was on record, for ready reference reproduced below.

(A) List of Financial Creditors:

Sr. No	Name of Bank	Date when Debt was incurred	Default on the date of NPA	Remark
1	Bank of India	25th July, 2015	28,62,82,000/-	-
2	Indian Overseas Bank	9th October, 2015	6,69,89,000/-	-
		Total (A)	**35,32,71,000/-**	
3	Invent Asset Securitisation & Reconstruction Pvt. Ltd.			
A	Inv. Trust – CBI 1415 S32	17th August, 2015	17,67,00,000/-	Loan o/s assigned by CBI Vizag in favour of Inv.
B	Inv. Trust – SBBJ 1516 S49	5th October, 2015	1,18,00,000/-	Loan o/s assigned by SBBJ MMBAI in favour of Inv.
C	Inv. Trust – SBI 1516/S48	5th October, 2015	8,70,00,000/-	Loan o/s assigned by SBI Vizag in favour of Inv.
D	Inv. Trust – SYN 1516 S53	2nd November, 2015	6,66,00,000/-	Loan o/s assigned by Syndicate Bank Vizag in favour of Inv.
		Total (B)	**34,21,00,000/-**	
	Financial Debt	**Total (A+B)**	**69,53,71,000/-**	

3.2. In addition to the Financial Creditors, there was a long list of Operational Creditors and the total operational Debt amounted to ₹ 17,93,968/-. The obligation of the Guarantor in respect of Financial Institutions was discussed as under:-

> *"4 In addition to the above background of the debts for the Petitioner as Corporate Debtor responsible and under **obligation as a 'Guarantor'** certain facts and the background is also worth to place on record. 'I'he compilation contains an agreement dated 4th March, 2014 executed between Maharashtra Industrial and Development Corporation (MIDC) as a Lessor. the Petitioner VISCOL as Lessee and Facor Steels Limited (FSL) as the Borrower. In the said agreement Bank Of India is the Party as a "Leader of Consortium of Banks". In the said agreement the Borrower i.e. Facor Steels Limited (ESL) was admitted an Associated Company of the party of the 2nd party i.e VISCOL (Petitioner). It has also been acknowledged that the 'Borrower' got its debt restructured under the Corporate Debt Restructure (CDR) mechanism. Being the Associate Company of the borrower the Lessee (Corporate Applicant) at the request of the borrower had agreed to give an **additional collateral security of the land held by the lessee in favour of the Consortium Bank,** by creating Equitable Mortgage of the leased land. In the event of default of the payment of the loan listed therein totalling Rs. 14,195 - (in lakhs) raised by the borrower from the Consortium of Banks under various facilities such as cash credit, WCTL inclusive of fund based and non-fund based loans, the Bank was empowered to exercise its rights for realisation of loan and the Banks have also right to dispose of the property given as collateral security held by the Lessee (corporate applicant).*

4.1 Another document is a "Consent" on record according to which there is a mention of lease dated 31st January, 2008 and the lessee is VISCOL (Corporate Applicant) and therein the Financial Institutions affirming the loan advance as under:-

Financial Institution/s	
Bank of India, Lead Bank & on behalf of its Consortium Bankers:-	*Rs. 53,03,00,000/-*
Central Bank of India	*Rs.32,36,00,000/-*
Syndicate Bank	*Rs.12,97,00,000/-*
State Bank of India	*Rs.18,99,00,000/-*
Indian Overseas Bank	*Rs.21,22,00,000/-*
State Bank of Bikaner and Jaipur	*Rs.3,38,00,000/-*
	Rs. 1,41,95,00,000/-

"

4. The said IRP was confirmed as the Resolution Professional (RP) in the first CoC meeting dated 12.07.2018.

5. The RP published the invitation for 'Expression of Interest' on 20.12.2018. In response to the same, (i) M/s RC Plasto Tanks & Pipes Pvt. Ltd, Nagpur and (ii) M/s SC Agrawal, Nagpur submitted their expression of interest. The CoC considered both the Resolution Plans and M/s RC Plasto Tanks & Pipes Pvt. Ltd, Nagpur was told to make some modifications in the plan. The Resolution Plan submitted by M/s SC Agrawal, Nagpur was below the Liquidation value of the Corporate debtor and thus the CoC did not consider that plan to be viable.

6. The Revised Resolution Plan was approved by the CoC through e-voting conducted on 01.03.2019 by 90.21% voting in favour of the Resolution Plan. As per the said Resolution Plan, the Resolution Applicant is to pay the Corporate Insolvency and Resolution Process Cost and workmen's dues within a period of 30 days from the approval of the Resolution Plan by this Tribunal.

7. The eligibility of the resolution applicant under section 29A of the I&B Code has been looked into by the R.P. An affidavit in that regard has been submitted by the Resolution Applicant and the same has been placed on record. It is confirmed in the Resolution Plan that the Resolution Applicant is eligible under section 29A to submit a Resolution Plan for the Corporate Debtor.

8. **Summary** of **the Resolution Plan i**s as follows.

   a) The Resolution Applicant is interested in the assets of the Corporate Debtor as well as of FACOR Steels Ltd. (in Liquidation) such as Plant and machinery, buildings, structures, vehicles and other assets, etc. the Resolution Applicant submits that the assets of the FACOR Steels ltd. shall not be acquired if sold under the terms of SARFAESI Act by the secured creditors. Insolvency Resolution Process Cost will be paid in full immediately within 30 days on approval of resolution plan by NCLT. The RA proposes a payment of **₹43.02 Cr to Financial Creditors (comprising of ₹28.02 Cr in Corporate Debtor account and balance payment of ₹ 15 Cr for purchase of assets of Facor Steels Ltd.)** shall constitute full and final settlement of all dues payable to financial creditors of Facor Steels Ltd. Upon completion of the payments proposed under this Plan, the Financial Creditors shall have no claim on Facor Steels Ltd.

b) It is submitted that the Operational Creditors including that of the Government, Workmen (and staff) are for an amount of ₹54,23,222/- and Resolution Applicant has proposed to the operational creditors only to the extent of 10% i.e. to say ₹5 Lakhs proportionately, excluding the workmen compensation.

c) The dues of the workmen as per the Information memorandum amounted to ₹7,15,569/-, which consists of the gratuity and termination compensation which is payable on termination.

9. The composition of the Committee of Creditors has finally constituted was as under:-

"

Sr. No.	*Name of the Financial Creditor*	*Claim Amount*	*Revised Voting Percentage*
1	*Bank of India*	*488,403,649.00*	*41.34%*
2	*Invent Asset Securitization and Reconstruction Private Limited representing:*	*577,278,920.00*	*48.87%*
	INVENT/1415/S32 TRUST		
	INVENT/1516/S48 TRUST		
	INVENT/1516/S49 TRUST		
	INVENT/1516/S53 TRUST		
3	*Indian Overseas Bank*	*115,647,748.00*	*9.79%*

	Grand Total	*1,181,330,317.00*	*100.00%*

"

(i.e. 118,13,30,317/-)

10. As per the records, the Committee of Creditors were satisfied with the revised Resolution Plan submitted by the **Resolution Applicant M/s. RC Plasto Tanks and Pipes Pvt. Ltd. Nagpur approved by 90.21%** through e-voting conducted on 01.03.2019. It is also informed that Indian Overseas Bank having 9.79% voting right abstained from voting. **Learned RP has summarized the financials of the Plan that the total Debt amounted to ₹118 Crores (approx.) as against that the total offer amounted to ₹43 Crore (approx.), divided among Two units i.e. ₹28 Crores (approx.) towards VISCO and ₹15 Crores (approx.) towards FACOR, as against the average Liquidation Value of ₹25.88 Crores.**

11. The Resolution Plan as approved by CoC is discussed hereinbelow :-

"

A. <u>Background of the Resolution Applicant :</u>

*Name : **R C Plasto Tanks & Pipes Pvt. Ltd.***

Date of Incorporation : 18th September 2010.

Address : Plot no. D-2/A, Hingna MIDC Industrial Area, Near Wadi Toll Plaza, Nagpur – 440028, Maharashtra, India.

Phone & Fax No. : 07104-224955 /66

Email & Website : accounts@plasto.in www.plasto.in

i) <u>Information as supplied in the Resolutin Plan :-</u>

<u>" Company Mission, History & Growth:</u>

R C Plasto Tanks & Pipes Pvt. Ltd. is marketing their products under Brand Name "PLASTO" with the motive of Swachh Bharat mission & safe drinking water. The company was established in 2010 with the aim to manufacture best quality plastic product of Water Storage, Pipes & their Fittings. While serving the water storage & plumbing needs of millions of houses, the company adds extra mileage to India's developing real estate fraternity. Our contribution to the industry in the form of being pro-innovative bears the hallmark of unbeaten quality. Company is equipped with production facilities at Nagpur, Maharashtra, India, and sells across the country.

We are one of the leading company in the Water Storage & plumbing industry with a turnover close to Rs. 400 crores; with a network spanning 1,200 dealers & 15,000 sub dealers across India.

Our vision of achieving consumer delight is to achieve consumer trust.

<u>Manufacturing Capabilities :</u>
Led by the highly motivated and experienced leadership team, the Plasto group's capabilities are explored through an innovation driver approach which makes us successful in all the segments where we operate.

<u>Our Merits :</u>

a) Commitment to Quality : We are committed to providing the best quality products to our customers.

b) Respect : We respect & appreciate all individuals and cultural identities. We embrace the differences. We ensure harmonious working environment for all our employees.

c) Constant innovations in Water Storage, Plumbing, Irrigation and Sewerage technologies to meet the nation's constantly increasing water demands.

d) Team work & Professional quality of services provided by a highly motivated team.

e) Courage and Strong technological background.

f) 24/7 availability.

g) Trust & Reputation since 1986 onwards.

h) Transparency: Transparency is the hallmark of all our business dealings. We communicate openly and sincerely. We appreciate feedback.

i) Ethical Standards: We conduct business in an ethical manner and act as a good corporate citizen in all areas in which the organization operates.

<u>Quality Policy :</u>

We at Plasto Group of Companies are committed to maintain a management system with the prime focus on customer satisfaction by meeting their needs & expectations.

We shall strive to achieve this by continual improvement in respect of: -

a) Manufacturing process to achieve zero-defect products.

b) Timely dispatch.

c) Effective communication with customers.

d) Ensuring employees satisfaction at all levels through motivation."

<u>Board Of Directors & Management Team :</u>

***Mr. Neelesh Agrawal** is aged about 49 years and is a commerce graduate. He has 26 years of experience in the plastic manufacturing line.*

***Mr. Vishal Agrawal** is aged about 45 years and is a qualified industrial engineer. He has 21 years of experience in the plastic manufacturing line.*

***Mr. Vaibhav Agrawal** is aged about 39 years and has a Master's degree in Industrial Engineering from USA. He has 16 years' experience in the plastic manufacturing line.*

<u>Company Product Description :</u>

The Company is manufacturing Water Storage Tanks of Capacity 200 Ltrs to 10,000 Ltrs. & Plumbing Pipes & Fittings.

<u>Product Manufactured by Company are as follows :</u>

Plastic Water Storage Tanks	
6 Layer Easy Clean Tanks	*4 Layer Blow & Roto Moulded Tanks*
3 Layer Blow & Roto Moulded Tanks	*2 Layer Blow & Roto Moulded Tanks*
ISI Loft & Underground Tanks	*Underground Tanks*
Plastic Pipes & Fittings	
CPVC Pipes & Fittings	*PVC Pipes & Fittings*
HDPE Pipes & Fittings	*SWR Pipes & Fittings*
UPVC Pipes & Fittings	*Wall Hung Cistern (Flush Tanks)*
Trading Items	
PVC, CPVC, UPVC Solvent	

The customer profile includes Government as well as Private Sectors. The company offers 100% replacement guarantee on all products even if the products fails at customer's end. With Hrithik Roshan as the voice of our products we hope to expand the already flourishing company that has thousands of dealers & sub dealers in India penetrating the market from metro cities to smaller towns. Plasto products are now also available in more than 22 Indian States.

The Group has state of the art machineries imported from Italy, Taiwan, China & Japan and is one of the largest manufacturers of Tanks in India at a single location.

The Company had attained mega Project status by Government of Maharashtra which is generating employment to over 750 people. The Company has started investment of another 300 Crores for New Mega Project which is adjacent to the land of VISCO in MIDC Hingna Area, Nagpur, Maharashtra, India.

<u>Location Advantages :</u>

As Nagpur is centrally located, Hence, all four metros, other cities, and all over areas are easily accessible through Road, Rail, Air and Dry port – ICD Nagpur.

<u>Research & Development :</u>

Company has a full-fledged, research and development division to constantly improve, innovate and to engineer new developments. This division has a fully integrated product development environment that encompasses the development process all the way from conceptual design of products to manufacturing.

Company constantly strives to upgrade processes and materials and to incorporate international developments in the water storage & plumbing industry to benefit their customers. We test our products beyond the requirements for IS and BIS Standards.

Corporate Social Responsibility :

With any company's success, responsibility arises towards its environs, the society in which it operates. Responsibility, which the company itself perceives and which is also expected and sometimes loudly demanded by its fellow citizens. Responsibility, which ultimately becomes a key factor for a truly sustainable prosperity of the company.

Companies often invest significant funds into their corporate responsibility (CSR) projects, but are rarely able to measure their impact. Without a clear strategy and carefully designed processes, the spending on "charity projects" often becomes money sent down the drain. In fact, the company can end up with accusations of corruption in the media, instead of public praise. Plasto Group of Companies has experience with professionalizing each phase of the company's CSR: starting from baseline analysis, through strategy and capacity building, to setting transparent processes for project selection and evaluation.

Environmental Sustainability :

For us, Sustainability is a way one should live his or her life so that future generations don't miss out on their right to live in a greener, better environment. We're a tiny part of this world, but are committed to play our role in reducing our carbon footprint, and help societies prosper.

Companies Code Of Business Ethics :

We live in an era when public trust and confidence in business are among the lowest levels in history. We at the Plasto Group are fortunate, however, to work for one of the most admired businesses in the country - a reputation that has been enhanced and safeguarded over the years by a rich culture of integrity and ethical conduct.

Our business is built on this trust and this reputation. It influences how consumers feel about our products. We have seen plenty of examples in recent years of powerful companies with once stalwart reputations tarnished forever by unethical actions of a few people or even just one person. As truly quoted by Warren Buffett, "it takes years to build a reputation and only a few seconds to ruin it."

Because our success is so closely related to our reputation, it's up to all of us to protect that reputation.

The RA has over more than 32 years of experience in Plastic Tank Manufacturing businesses. The applicant has been dealing PAN India across various Dealers and Consignment Agents and has vast industrial experience.

The RA deals in open market about its products in all over India depending on demands. The applicant also has a strong team with people from financial & industrial background, which will be active in the resolution plan.

The RA has taken loan from Banks and / or financial institution or consortium. The RA and has not been declared as a willful defaulter and has not been debarred from assessing to or trading in securities market.

The RA does not have any transaction with the Corporate Debtor in the preceding two years and is not connected with any persons who are promoters or in the control of the business of the Corporate Debtor.

Financial Performance of Resolution Applicant

(In Rs. Crores)

Financial Year	***Turnover***	***Net Profit***
2016-17	*245.73*	*24.9*
2017-18	*310.52*	*34.65*
2018-2019 ***(upto Dec 31, 2018)***	*275.98*	*Approx. 25.00*

B. Objective And Purpose Of Resolution Plan

1. *The purpose of the resolution Plan as stated in the IBC 2016 is to provide for the efficient rescue and recovery of financially distressed companies in a manner that balances the rights and interests of all relevant stakeholders.*

2. *The objective of resolution plan as set out in IBC 2016, is to develop and implement a plan that revives the Company and promotes entrepreneurship, availability of credit and balances the interests of all stakeholders including alteration in order of payment of Government dues by consolidating and amending the laws relating to reorganization and insolvency resolution of corporate persons in a time bound manner and for maximization*

of value of assets of such persons and matters connected therewith or incidental thereto.

3. This Resolution Plan seeks to rescue the company by implementing the proposal set out herein and provide stakeholders with information so that they may be reasonably assured of the likelihood of obtaining a better outcome under Resolution for all stakeholders, when compared to liquidation.

C. General Provisions

Moratorium :

1. In terms of the IBC 2016, a moratorium on all legal proceedings against the Company starts immediately after the order of Insolvency Commencement Date i.e. 06/06/2018 the moratorium will remain in place until the Completion of Resolution Process.

Key Assumptions and Disclosures :

2. The Resolution Plan being provided by the Resolution Applicant is based on the following assumptions:

3. All information provided by the Resolution professional is true and there is no material change in the information provided by the Resolution Professional to the Resolution Applicant.

4. The Resolution Professional has not withheld any information / document which should have been provided to the Resolution Applicant which may have a material impact on this Resolution Plan.

5. The Resolution Plan is subject to approval of the plan by Committee of Creditors and by Adjudicating Authority as required in terms of Section 31 of IBC, 2016.

6. As the Committee of Creditors of Corporate Debtor is interested in Resolution Applicant who would be interested in assets of Corporate Debtor as well as of FACOR Steels Limited, we are also submitting offer for purchase of assets of FACOR Steels limited (in liquidation) such as Plant and machinery, buildings, structures, vehicles and other assets, etc. situated at plot no. 46 A & B, MIDC Industrial Estate, Hingna Road, Nagpur – 440028, Maharashtra, India as mentioned in ***Annexure-A.***

7. That FACOR Steels limited is under liquidation and there are secured creditors. The secured creditors propose to invoke their security interest to realize their dues. The present CIRP of VISCO is being initiated with this background only. We would like to purchase the above mentioned assets of FACOR Steels Limited (in liquidation) from the secured creditor under the provisions of liquidation under Insolvency Bankruptcy Code 2016, so that we will get all above mentioned assets, above mentioned unencumbered without any duties, taxes, claim, right, charge of third party including government.

8. With regards to the Corporate Debtor, the RA along with other associate propose to have 100 % ownership and control of the Corporate Debtor with infusion of Rs. 28.02 crore (Rs. Twenty-Eight Crore & Two Lakh only) either by way of capital or unsecured loan.

9. The RA clarifies that our Resolution Plan is for Rs. 28.02 crore (Rs. Twenty-Eight Crore & Two Lakh only) for Corporate Debtor and Rs 15.00 crore (Rs. Fifteen Crore only) for FACOR Steels Limited.

10. The RA is interested in the acquisition of assets of FACOR Steels Limited, in the course of LIQUIDATION ONLY. For the sake of re-iteration, it is clarified that, the RA is NOT interested in acquisition of assets of FACOR Steels Limited, if sold under the terms of SARFAESI Act, 2002.

11. ***The Resolution Plan has a combined offer for a total value of Rs. 43.02 Crore (Rs. Forty-Three Crore & Two Lakhs Only).***

12. Though, for the purpose of implementation, a bifurcated offer value for both the entities is given separately.

13. The leasehold land owned by the Corporate Debtor as mentioned in IM and the above mentioned assets of FACOR Steels Limited will be transferred with free and clear title and without any encumbrance.

14. The RA states that a clear and vacant possession of land of VISCO is needed in order to start our operations of Resolution Plan, within 12 months or earlier with effect from the approval of Resolution Plan by Hon. NCLT, since we are acquiring the combined assets of VISCO and FACOR.

15. However, if the bid is considered for VISCO only, the RA is agreeable to pay all the payments under Resolution Plan as mentioned below for VISCO, within 18 months of approval of Resolution Plan by Hon. NCLT, subject to the clear and vacant (i.e. from all the assets of FACOR) possession of VISCO Land is given to RA within those 18 months:

Particulars	***Time Line, w.e.f. NCLT Order Date***	***Rs. in Crores***
***1**. Corporate Insolvency Resolution Cost, as approved the CoC, to be paid within a month from the NCLT ORDER DATE, as explained hereinabove.*	*Within 30 Days*	*Rs. 0.40*
***2**. Workmen Dues to be paid within a month from the NCLT ORDER DATE, as explained here in below.*	*Within 30 Days*	*Rs. 0.07*
***3**. Other liabilities within a month from the NCLT ORDER DATE, as explained by the RP in the IM.*	*Within 30 Days*	*Rs. 0.05*
***4**. Earnest Money Deposit to be paid along with submission of this Resolution Plan to be adjusted as 1st Installment, shall be also be treated as performance security which can be forfeited in case of defaults in payment, on approval of Resolution plan by the Hon'ble NCLT.*	*Mere Adjustment*	*Rs. 5.00*
***5**. 2nd installment to be paid within 2 Months from the NCLT ORDER DATE.*	*Within 2 Months*	*Rs. 2.50*
***6**. 3rd installment to be paid within 5 Months from the NCLT ORDER DATE.*	*Within 5 Months*	*Rs. 5.00*
***7**. 4th installment to be paid within 9 Months from the NCLT ORDER DATE.*	*Within 9 Months*	*Rs. 5.00*
***8**. 5th installment to be paid within 18 Months from the NCLT ORDER DATE or within 15 days from handing over of free and vacant (i.e. from all the assets of FACOR) possession of VISCO Land to the RA, whichever is earlier.*	*Within 18 Months*	*Rs. 10.00*
Total		***Rs. 28.02***

16. The proposed aggregate payment of Rs.43.02 Cr to financial creditors (comprising of Rs.28.02 Cr in Corporate Debtor and additional payment of Rs.15 Cr for purchase of assets of FACOR Steels Ltd) shall constitute full and final settlement of all dues payable to financial Creditors of FACOR Steels Ltd and upon completion of the payments proposed under this Plan, the financial creditors shall have no claim on FACOR Steels Ltd.

The STRIP Of RAILWAY SIDING "Plot C"

17. The Plot 46 A and B, of the existing premises of VISCO, has been divided by a strip of railway siding (now removed, and non-existent now) which is depicted as "Plot C", is being presently under the possession of VISCO and / or FACOR.

18. Since, the both plots are divided by the said strip, and the strip lies totally within the ambit and surrounding by the plot No. 46 A and B, which are allotted to VISCO by MIDC.

19. RA is willing and ready to take the said Plot C in its possession from MIDC.

20. As such, it is pleaded to grant ***FIRST RIGHT OF REFUSAL*** *to take the plot on leasehold rights from MIDC, on payment of appropriate premium and other applicable charges as per existing provisions of allotment of land, in the said Industrial Area as implemented by MIDC.*

D. Details of The Resolution Plan :

Strategy for The Proposed Resolution

1. The resolution applicant further states that in order to provide a successful resolution, we will demolish the entire plant, machinery & structure etc., to the extent not considered useful by us, as they have already lived their life & have become totally obsolete & defunct and outdated. We also propose to efficiently utilize the existing land and other assets by using the same for our existing operations or utilise the same for any other business activities of RA and which may be expanded on the premises of VISCO.

2. The Resolution Applicant proposes to repay the liabilities of the Corporate Debtor as detailed hereinafter, partly from his own internal resources, partly from loans / finances which will be availed from Banks / Financial Institutions.

3. The re-payment of the liabilities of the Corporate Debtor are not contingent upon the future performance of the business of the Corporate debtor, thereby ensuring compliance of the terms of this plan.

Use of Land of VISCO

4. The RA is already holding approx. 13 acres of land parcel adjacent to the land of VISCO. There in the RA will be carrying out manufacturing and allied activity, and the project is under commissioning.

5. The RA desires to use the Land of VISCO, initially as a storage facility for the RA, in order to store its Raw Materials, Finished Goods etc. in relation to it's adjacent unit of manufacturing. This will be effected as soon as the clear possession of the VISCO Land is handed over to RA by the RP / CD.

6. Thereafter, the RA will use the Land of VISCO for its future manufacturing facility or any other business activities of RA, which will be plan in due course of time.

E. Proposed Mobilization of Funds

1. The Resolution Applicant seeks to mobilize an amount of Rs. 28.02 Crore (Rs. Twenty-Eight Crore & Two Lakh only) for the purpose of settlement of the claims of the Creditors of Corporate Debtors as mentioned herein.

2. The Resolution Applicant seeks to mobilize an amount of Rs. 15.00 Crores (Rupees Fifteen Crore Only) for the purpose of settlement of the claims of FACOR as mentioned herein.

F. Conversion of The Corporate Debtor Into A Private Limited Company.

a. The Authorized Share Capital of the Corporate Debtor is Rs. 2.50 Crores (Rupees Two Crore and Fifty Lakh Only) out of which an amount of Rs. 98,73,750/- (Rupees Ninety-Eight Lakh Seventy-Three Thousand Seven Hundred and Fifty Only) is the paid-up share capital. The Corporate Debtor has only one class of Equity having a par value of Rs. 10 per share having one vote per share.

b. As per the Reserve Bank of India Guidelines, the general principle of any restructuring / compromise is that the shareholders bear the first loss rather than the debt holders. In the present case, as the Financial Creditors as well as the Operational Creditors are going to make substantial sacrifice, therefore the first loss ought to be borne by the existing shareholders.

c. The Corporate Debtor as on date is a loss-making entity, and therefore, upon this Resolution Plan becoming effective, the entire shareholding of the Corporate Debtor, including the non-related entities shall be reorganized by writing off the accumulated losses of the Corporate Debtor against the entire share capital of the Corporate Debtor. Further there are *contingent liabilities. The entire equity of all shareholders, including that of the related parties shall be written off and as such all the existing shareholders shall lose all the economic benefits derived from the Corporate Debtor.*

d. The Right of Personal Guarantors (if any) as well as Corporate Guarantors (if any), shall also extinguish, in case their property has been utilized (or not, or is in the process of utilization) for the adjustment of dues to Financial Creditors as per the provisions of SARFAESI Act, 2002. Their right of subrogation (against CD) shall be reduced to nullity, and they will not be allowed to claim any recovery of money (in cash or kind) from the CD what-so-ever.

e. That the Company be converted into a Private Limited Company without any approval of shareholder, creditor, Registrar of Companies or any other person and without any consequential procedure, cost, charges, taxes, dues, stamp duty, regulatory dues towards ROC, whether of government or others. The conversion of the Corporate Debtor as contemplated here-in-above is an integral part of this Resolution Plan, which shall be treated as in accordance with the relevant laws including the Companies Act, 2013, Securities Exchange Board of India Laws, Income Tax Act 1961 and Stamp Acts, MIDC Act.

f. That upon the present Resolution Plan having been approved, the order of the Learned Adjudicating Authority shall be deemed to be an order under the relevant provisions of the Companies Act, 2013 and other laws, as applicable, and accordingly no separate resolution / approval / consent shall be necessary.

g. Upon the Resolution Plan having been approved, the order of the Learned Adjudicating Authority shall be considered as an approval for the conversion of the Corporate Debtor into a Private Limited Company. Any permission which is required to be taken from the existing equity shareholders, authorities shall be deemed to have been taken.

h. Upon the Resolution Plan having been approved, the order of the Learned Adjudicating Authority shall be considered as an approval for the delisting of the Corporate Debtor from the BSE.

i. Upon the Resolution Plan having been approved, the RA may be allowed to change the name of the said converted Private Limited Company, to the best of his choice, however the same may be within the existing applicable procedure of Registrar of Companies, Maharashtra for the same.

j. The Resolution Applicant upon the approval of the Resolution Plan by Hon. NCLT, shall infuse an amount of Rs. 2.50 Crore (Rupees Two Crore & Fifty Lakhs Only), as share capital in the so converted Private Limited Company, more particularly elaborated in the table mentioned below.

k. The Resolution Applicant upon the approval of the Resolution Plan shall be granted full control of the assets and the management of the Corporate Debtor, under the supervision of the Resolution Professional Mr. Sunil Nanal, on agreed fees, the same shall be infused into the Corporate Debtor for the repayment of the existing debts as per the table mentioned below.

G. Change in The Management

The Resolution Professional shall ensure that the existing directors of the Corporate Debtor shall be deemed to have ceased from the Directorship of the Company on the acceptance of the Resolution Plan by the Adjudicating Authority. Pursuant thereto, New Directors shall be appointed as proposed by the RA.

The Resolution Applicant shall also endeavor to recruit a management team having sector expertise to manage the affairs of the Corporate Debtor, as may be deemed necessary by the resolution applicant. Necessary changes shall also be affected to the operational management by appointing qualified and experienced professionals to manage functional departments. The Resolution Applicant shall adhere to all the applicable laws and ensure the highest level of corporate governance and best practices while managing the affairs of the Corporate Debtor.

The existing promoter and management shall provide requisite cooperation to the Resolution Applicant for smooth transition of change of management and provide services of hand holding for period of 12 months i.e. during implementation period of the Plan without any compensation payable to the existing management for the hand-holding services for transition.

H. Financial Assistance

The Resolution Applicant may for the purpose of the present Resolution Plan shall avail financial assistance for an amount of Rs. 10.00/- Crore (Rupees Ten Crore Only) from the Bank / Financial Institutions / Third Parties within a period of 12 months from the acceptance of this Resolution Plan for the payment of the existing liabilities.

I. Use / Sale Of The Assets Of The Corporate Debtor

We propose to use, diversify, and / or dispose the available assets, facilities and infrastructure of the corporate debtor including land.

We propose the sales / transfer of the surplus land, for better utilization of fund in the business of the RA in the manner as we deem fit.

We propose the sales / transfer of building and plant & machinery as belong to corporate debtor, are obsolete, defunct and is worth scrap value in the view of RA.

J. Mobilization of Funds (in case of Joint Proposal for VISCO & FACOR)

1. The Resolution Applicant proposes to mobilize for VISCO a total of Rs. 28.02 Crore (Rs. Twenty-Eight Crore & Two Lakh only), as summarized in the following table, for the purpose of implementing the proposed Resolution Plan.

Means Of Finance	***Time Line, w.e.f. NCLT Order Date***	***Payments To be Consider As***	***Rs. in Cr.***
Funds for Payments regarding CIRP Costs Rs. 0.40 Crores, Workmen Dues Rs. 0.07 Crores, and Other Liability Payable Rs. 0.05 Crores	*Within 30 Days*	*Unsecured Loan*	*0.52*
Amounts from Share Capital Infusion to the extent of Authorized Share Capital	*Within 2 Months*	*Share Capital*	*2.50*
Advance Paid with submission of Resolution Plan	*Mere Adjustment*	*Unsecured Loan*	*5.00*
Further Funds - Own Funds and / or Borrowed Funds (including but not limited to Loan, whether Secured or Unsecured, Whether from Directors, & / or Related Parties)	*Within 12 Months*	*Unsecured Loan*	*20.00*
Total			***28.02***

In order to reflect the true position of the corporate debtor, the value of the assets to be revaluated at present market value as below,

Sr. No.	***Particulars of Assets***	***Revised Market Value (Rs, in Crore)***
1	*Land*	*26.02/-*
2	*Building and Plant & Machinery*	*2.00/-*
Total		***28.02/-***

2. The Resolution Applicant proposes to mobilize for FACOR a total of Rs. 15.00 Crores (Rupees Fifteen Crores only), as summarized in the following table, for the purpose of implementing the proposed Resolution Plan.

MEANS OF FINANCE	***Rs. in Cr.***

Own Funds and / or Borrowed Funds (including but not limited to Loan, whether Secured or Unsecured, Whether from Directors, & / or Related Parties)	*15.00*
Total	***15.00***

Sources of Funds

3. *The RA shall infuse the funds from its own sources, internal accruals, and from the Directors, and they have commitments from the related parties also for the same.*

4. *The RA has also kept the option of funding from the Bank / Financial Institution, as a case of backup plan.*

5. *We have enclosed the Solvency Certificate issued by State Bank of India, Nagpur for an amount of Rs. 73.00 Crores (Seventy-Three Crores), which depicts our capability of taking Financial Assistance from Bank as and when needed.*

K. ***Settlement of Claims:***

I. Costs of The Insolvency Resolution Process.

a. *The Costs of the Insolvency Resolution Process (CIRP), as approved by CoC, shall be paid in priority of all the claims under the present Resolution Plan, as per applicable law. The Resolution Applicant estimates CIRP to be in the range of Rs.40,00,000/- (Rs. Fourty Lakhs Only) as follows:*

S. No.	***Particulars***	***Rs.***
1	*Public Announcement Costs*	*19,992*
2	*Valier's Fee*	*1,68,960*
3	*Advertisements for inviting for Resolution Plan*	*32,000*
4	*Professional Fee for IRP/RP.*	*8,54,000*
5	*Professional Fee for Others*	*6,76,100*
6	*Other Expenses* *(Including Delisting Fees Rs.12,85,446.00 Lakhs)*	*22,48,948*
	Total	***40,00,000***

b. *Some of the amounts for the Insolvency Resolution process have already been paid by the Corporate Debtor. The Corporate Debtor shall be reimbursed by the Resolution Applicant for the payments already made, and verified by the Resolution Professional. In case of further costs that are required to be incurred, the same shall be incurred by the Resolution Applicant.*

c. *The RA is seeking waiver of fees payable to Stock Exchange for Delisting, if any, hence, it is requested to treat this due accordingly in the implementation of Resolution Plan.*

II. Payments to be Made to Financial Creditors and others (in case of Joint Proposal for VISCO & FACOR)

The amount of money will be paid for VISCO under the resolution plan, to it's secure creditors and others in the following manner:

Particulars	***Time Line, w.e.f. NCLT Order Date***	***Rs. in Crores***

***1**. Corporate Insolvency Resolution Cost, as approved the CoC, to be paid within a month from the NCLT ORDER DATE, as explained hereinabove.*	*Within 30 Days*	*Rs. 0.40*
***2**. Workmen Dues to be paid within a month from the NCLT ORDER DATE, as explained here in below.*	*Within 30 Days*	*Rs. 0.07*
***3**. Other liabilities within a month from the NCLT ORDER DATE, as explained by the RP in the IM.*	*Within 30 Days*	*Rs. 0.05*
***4**. Earnest Money Deposit to be paid along with submission of this Resolution Plan to be adjusted as 1st Installment, shall be also be treated as performance security which can be forfeited in case of defaults in payment, on approval of Resolution plan by the Hon'ble NCLT.*	*Mere Adjustment*	*Rs. 5.00*
***5**. 2nd installment to be paid within 2 Months from the NCLT ORDER DATE.*	*Within 2 Months*	*Rs. 2.50*
***6**. 3rd installment to be paid within 5 Months from the NCLT ORDER DATE.*	*Within 5 Months*	*Rs. 5.00*
***7**. 4th installment to be paid within 9 Months from the NCLT ORDER DATE.*	*Within 9 Months*	*Rs. 5.00*
***8**. 5th installment to be paid within 12 Months from the NCLT ORDER.*	*Within 12 Months*	*Rs. 10.00*
Total		***Rs. 28.02***

a. In the above manner the entire payment of Rs. 28.02 Crores (Rs. Twenty-Eight Crore & Two Lakhs only) shall be made within 12 months from the date of approval of Resolution Plan by Hon'ble NCLT.

b. The claims of the unrelated Financial Creditors are for an amount of Rs. 1,18,13,30,317/- (Rupees One Hundred and Eighteen Crore Thirteen Lac Thirty Thousand, Three Hundred and Seventeen Only). Out of this amount, an amount of Rs. 27.50 Crore (Rs. Twenty-Seven Crore & Fifty Lakh only), secured creditors of VISCO, as mentioned in payment schedule hereinabove will be paid to them on pro rata basis. No amount will be paid to any other financial creditor, whether related or unrelated, and whether of VISCO or FACOR.

c. The amount of money will be paid for FACOR assets in the following manner:

Particulars	***Time Line, w.e.f. NCLT Order Date***	***Rs. in Crores***
***1**. First Installment within 1 month of approval of Resolution plan by the Hon'ble NCLT.*	*Within 30 Days*	*Rs. 5.00*

***2**. Second installment to be paid within 3 Months from the 1st Instalment Payment Date.*	*Within 3 Months from 1st Instalment Payment Date*	*Rs. 5.00*
***3**. Third installment to be paid within 3 Months from the 2nd Instalment Payment Date.*	*Within 3 Months from 2nd Instalment Payment Date.*	*Rs. 5.00*
Total		***Rs 15.00***

d. In the above manner the entire payment of Rs. 15.00 Crores (Rs. Fifteen Crore only) shall be made within 7 months from the date of approval of Resolution Plan by Hon'ble NCLT.

III Operational Creditors

a. The claims of the Operational Creditors including that of the Government, workmen (and staff) are for an amount of Rs. 54,23,222/- (Rupees Fifty-Four Lakh Twenty-Three Thousand Two Hundred Twenty-Two only).

Sr. No.	*Particulars*	*Rs.*
1	*Trade Payables*	*16,70,668*
2	*Other Current Liability, Misc.*	*37,85,119*
3	*Short Term Provisions*	*-32,565*
	Total	***54,23,222***

b. Out of this amount, an amount of Rs. 7,15,569/- (Rupees Seven Lakh Fifteen Thousand and Five Hundred Sixty-Nine Only) has been claimed by the workmen and staff, as depicted in IM at Liabilities, and as elaborated below:

Sr. No.	*Particulars*	*Rs.*
1	*Unpaid Wages*	*1,03,739*
2	*Unpaid Salary*	*1,50,607*
3	*Unpaid Bonus*	*2,64,939*
4	*Salary & Wages Payable*	*2,129*
5	*Provision for Gratuity*	*1,94,155*
	Total	***7,15,569***

c. Due to the paucity of available funds, the operational creditors will be paid only to the extent of 10% i.e. to say Rs. 5 Lakhs to be paid proportionately, excluding the workmen compensation as mentioned herein. All the remaining amounts which are due to the operational creditors as mentioned in IM, excluding the workmen (and Staff) as mentioned herein shall stand erased from the books of the Corporate Debtor.

d. These Dues include an amount of Rs. 20.00 Lakhs received as Advance against sale of Property. This is explained by RP as the amount forfeited by the Company and is standing in the name as such. The RA assumes no liability of any sort for the repayment of this advance. However, the RA is not desirous of pursuing the title and / or interest in the said two flats against which this advance is recorded in the books of account.

IV Dues of The Workmen

a. There are no workmen or staff employed in the Corporate Debtor i.e. VISCO.

b. The dues of workmen as per the IM are at amount of Rs. 7,15,569/- (Rupees Seven Lakh Fifteen Thousand and Five Hundred Sixty-Nine Only), as explained hereinabove.

c. This amount consists of the gratuity and termination compensation which is payable on *termination. The said amounts shall be paid immediately within a period of one month from the date of the acceptance of the Resolution Plan by Hon. NCLT, after deducting the payments, if any, made by the Corporate Debtor made in the meantime. The Resolution Applicant seeks complete waiver of any liability that may arise on account of such of these pending litigations*

V. Government Dues

The Resolution Applicant assumes that there are no other government dues pending from the Corporate Debtor. The Resolution Applicant proposes to seek complete waiver of all Government Dues, if any, which are as on date due and payable during the Resolution Plan implementation. No liability or penalty or interest accruing prior to the date of approval of the Resolution Plan shall arise on the Corporate Debtor on this count. The Resolution Applicant seeks complete waiver of any present liability which may arose during the CIRP till the order of Hon. NCLT for closing CIRP, contingent liability or liability that may arise on account of the pending litigations.

L. Management and Control of The Corporate Debtor

All assets (fixed and current), contracts, investments, advance, finished goods, stores, and spares etc., refunds, claims, lease hold right, tenancy right, whether recorded or not shall continue to be owned by the Corporate Debtor and We shall have total ownership, control, and rights on the same.

a. The management and control of the business of the Corporate Debtor shall be in the Control of the Resolution Applicant and the management appointed by the Resolution Applicant.

b. The Resolution Applicant shall not be responsible for any case or dues whether which have been brought to the notice of the Resolution Applicant or not on the date of submitting of the Resolution Plan.

c. All the dues, which are not part of the Resolution Plan and also do not feature in the Information Memorandum shall stand to be written off. No claim whatsoever shall be made by any party on any such claim to the Corporate Debtor or Resolution Applicant.

d. The Corporate Debtor or the Resolution Applicant shall not be responsible for any other litigations which are not part of the Resolution Plan and also does not feature in the Information Memorandum. No claim whatsoever shall be tenable by any party for any such claim / litigation against the Corporate Debtor or Resolution Applicant.

M. Other Reliefs Sought

1. Termination of Lease to FACOR

All agreements, sub leases, third party rights granted by Corporate Debtor including but not limited to sub lease granted by Corporate Debtor to FACOR Steels Limited shall stand cancelled / terminated on approval of this Resolution Plan without any payment of claim or compensation by the Corporate Debtor or Resolution Applicant.

2. Change in Management Perspective

The change in constitution, management, ownership of Corporate Debtor shall have treated as approved / recorded, without any service charges, extension charges, differential premium / transfer charges, stamp duty etc. which may be specified in any Authority or Regulatory body, including but not limited to Maharashtra Industrial Development Corporation Ltd. (MIDC), Bombay Stamp Act, and any other authority etc.

3. Change in Management - Income Tax Perspective

a. Also the change of shareholding pattern in VISCO, by virtue of approval of this Resolution Plan, may not affect the carry forward and / or settlement of losses, including but not limited to business losses, accumulated unabsorbed depreciation, etc. of VISCO, by the new management, i.e. RA.

b. Similarly, the provisions of MAT and carry forward and / or adjustment of MAT pertaining to VISCO, may not be affected adversely by the implementation of this resolution plan.

c. According to Section 41(1) of the Income Tax Act 1961, remission or cessation of any trading liability which has been claimed as a deduction in any previous assessment year is taxable in the year in which such remission or cessation took place. Also, as per Section 28(iv) of the Income Tax Act 1961, value of any benefit or perquisite (whether convertible into money or not) arising from the business or the exercise of a profession shall be chargeable to tax as income from business or profession.

d. The RA seeks complete waiver of applicability of these sections [Sec. 41(1) & Sec 28(iv)] in particular, regarding the write back of amounts of Long Term Loan as well as Operational Creditors.

e. Accordingly, The applicability of these Sections, i.e. 28(iv), 41(1), 79, and 115JB of Income Tax Act, 1961 ***in particular****, and any provision of Income Tax Law which may be relevant in these cases* ***in general****, may be waived in the case of approval of Resolution Plan by Hon. NCLT in the matters of VISCO.*

f. The RA seeks a deduction of Book Profits as available for the amount of profits earned by a sick industrial unit until the company's net worth becomes positive, as the same was allowed in the terms of erstwhile SICA.

g. The RA seeks waiver of applicability of Sec. 56 and 50CA of Income Tax Act, 1961, while issuing the shares to new shareholders of VISCO (share allottees as per the management decision of RA) so that Income Tax is not made applicable on the basis of valuation (difference between fair value and full value of consideration) of those shares being issued, either in the hands of transferor or transferee, as the case may be.

4. Subsidy / Incentive / Any Benefit from Dic / State Government Central Government / Any Implementing Authority of Such Monitory or Other Benefit – Visco Perspective.

a. The RA seeks waiver of any return of already claimed benefit (subsidy / incentive or any monitory benefit), interest to be paid thereon, penalty, late fees, liquidated damages, civil and / or criminal liability on such account of non-compliance, short compliance of terms and conditions of any subsidy / incentive / any monitory or other benefit as may be claimed or claimable by VISCO or FACOR (so far as it pertains to the Leasehold Land of VISCO), whether arising due to this change of management as envisaged in this resolution plan or otherwise, from any authority such as district industrial center / state government / central government or any implementing authority so appointed by them or under any law for the time being in force, including but not limited to Package Scheme of Incentives 2013 as implemented by the Government of Maharashtra (PSI 2013), or similar earlier policies / schemes of the Government of Maharashtra for that matter.

b. The RA shall be eligible to start a new unit at the leasehold premises of VISCO, with a fresh registration and fresh eligibility, for such schemes of subsidy / incentive / any monetory or non-monetory benefit as may be available from the Maharashtra Government or Central Government, as the case may be.

5. Full & Final Settlement of Due for FACOR to Financial Creditors.

The proposed aggregate payment of Rs.43.02 Cr to financial creditors (comprising Rs.27.50 Cr out of infusions of Rs.28.02 Cr in Corporate Debtor and additional payment of Rs.15 Cr for purchase of assets of FACOR Steels Ltd). This shall constitute full and final settlement of all dues payable to financial Creditors of FACOR Steels Ltd and upon completion of the payments proposed under this Plan, the financial creditors shall have no claim on FACOR Steels Ltd.

N. <u>Treatment of Other Liabilities</u>

a. All liabilities arising out of advances, agreements, contracts, taxes, services etc. related to sale / encumbrances of tangible assets of the Corporate Debtor in the past shall be treated as null and void and the same shall be extinguished.

b. All liabilities till the date of acceptance of resolution plan and complete implementation of any person, semi government, government, local bodies, statutory known unknown including all MIDC service charges, extension charges etc. shall be extinguished.

c. All disputes, claims, cases, recoveries known and unknown against corporate debtor shall be treated as ceased / extinguished without any further recourse.

d. All other present, future liabilities against the Corporate Debtor from any person or authority irrespective of whether it is recognized in the books, contingent, quantifiable, not quantifiable, claimed, unclaimed in excess of the settlement amounts as given in the Resolution Plan should be waived.

e. The amounts claimed in respect of other creditors apart from Financial and shall be expressly waived.

<u>Disclaimer for Other Liabilities</u>*:*

f. All liabilities, claims, payables, borrowings, provisions, duties, taxes, cesses, recoveries etc. of whatsoever natures, whether recorded or not and not specifically provided for / considered under the resolution plan shall stand extinguished and nothing shall be payable by the Corporate Debtor or us.

g. All liabilities, claims, payables, borrowings, provisions, duties, taxes, cess, recoveries etc. of whatsoever natures, pertaining to, or arising out of, the property of FACOR, (which is in liquidation), being operating in the same premises, whether recorded or not and NOT specifically provided for / considered under the resolution plan shall stand extinguished and nothing shall be payable by the Corporate Debtor or us.

O. <u>Interest of Stakeholders</u>

The Treatment of all Stakeholders is being depicted in a summary as follows:

Summary for Settlement of Dues

Sr. No.	Particulars of Stakeholders Dues as per IM shared by RP	Dues as per IM shared by RP (In Rs.)	Settlement, proposed at Rs.	Settle-ment in %
0	CIRP Costs	40,00,000/-	40,00,000/-	100.00%
1	Operational Creditors	47,07,652/-	5,00,000/-	10.62%
	A - Trade Payables – Rs. 16,70,668/-			
	B - Other Current Liabilities – Miscellaneous – Rs. 30,69,550/-			
	C - Short-Term Provisions – Rs. (-) 32,565/-			
2	Financial Creditors	1,18,13,30,317/-	A. Rs. 27,50,00,000/- (for VISCO) B. Rs. 15,00,00,000/- (for FACOR) i.e. Rs. 42,50,00,000/- (Total)	23.28% 12.70% 35.98%
	A - Financial Creditors – Bank of India – Rs. 48,84,03,649/-			
	B - Financial Creditor – Invent Asset Securitization and Reconstruction Private Limited – Rs. 57,72,78,920/-			
	C - Financial Creditor – Indian Overseas Bank – Rs. 11,56,47,748/-			
3	Employee Claims	7,15,569/-	7,15,569/-	100%
4	Related Party – FACOR Steels Limited	52,43,427/-	NIL	0%
5	Shareholders of VISCO	98,73,750/-	NIL	0%
6	Service Tax – Appeal NO. 13-ST/Dn-I/05 and Appeal NO. 150/2015	3,43,850/-	NIL	0%
7	Service Tax – Order NO. F.No. IV (16) / 30 - 74 /ST /Adj /2011 /6841 dated 26.07.2018	2,23,78,532/-	NIL	0%

8	*Income Tax, Goods and Service Tax, Maharashtra Value Added Tax, Customs, Import Duty, Central Excise Duty, Service Tax, Incentives as per Industrial Policy, (e.g. Sales Tax Incentive under PSI of State Government / DIC / Subsidy or otherwise) and any other Government Dues, including but not limited to, for Taxes / Duty / Cess / Penalty / Fine / Interest or any other sum payable to Government by whatever name called and to be recovered from VISCO – Pertaining to Past Period and Present Period, regarding period under CIRP of VISCO.*	*0/-*	*NIL*	*0%*
9	*Any Dues, pertaining to Litigation, Arbitration, whether represented by any suite / case / cause or otherwise, pending at any court of law, quasi-judicial authority or otherwise, whether contractual or otherwise, whether civil or otherwise – Pertaining to Past Period and Present Period, regarding period under CIRP of VISCO.*	*0/-*	*NIL*	*0%*
10	*Income Tax Dues as may incur in the course of (or by virtue of) implementation of this Resolution Plan, like, extinction of liabilities, whether Financial or Operational Creditors, Issue of new shares and the valuation thereof as per Income Tax Act, Adjustments of Book Profits as may be allowed to VISCO, Carry Forward of Unabsorbed Losses and Accumulated Unabsorbed Depreciation by VISCO, may be payable by VISCO.*	*0/-*	*NIL*	*0%*

11	*Income Tax, Goods and Service Tax, Maharashtra Value Added Tax, Customs, Import Duty, Central Excise Duty, Service Tax, Incentives as per Industrial Policy, (e.g. Sales Tax Incentive under PSI of State Government / DIC / Subsidy or otherwise) and any other Government Dues, including but not limited to, for Taxes / Duty / Cess / Penalty / Fine / Interest or any other sum payable to Government by whatever name called and now to be recovered from the Buyers of Assets of FACOR – which may be pertaining to FACOR Steel Limited, which is in liquidation.*	*0/-*	*NIL*	*0%*
	Total	***1,22,85,93,097/-***	***43,02,15,569/-***	***35.02%***

P. <u>Term of Resolution Plan</u>

Actionable	***Time Lines***
Completion of Transaction, including mobilization of the Resolution Fund.	*Within a period of 12 Months from the date of acceptance of the Resolution Plan by the Adjudicating Authority.*
Settlement of claims	*As per the timelines as provided.*

Q. <u>Supervision of The Resolution Plan</u>

1. The supervision of the Resolution Plan as finally approved by the Adjudicating Authority is proposed to be done by the Resolution Professional for the entire period of its implementation. The fee for his supervision by the Resolution Professional will be mutually agreed and shall be borne by the Resolution Applicant.

2. In case there is any major violation of the terms of the resolution plan by the Resolution Applicant or the Corporate Debtor, the relevant provisions of the Insolvency Bankruptcy Code, 2016 dealing with such violations shall be invoked.

R. <u>Condition Precedent and Conclusion:</u>

This Resolution Plan and the transaction is subject to the fulfillment of the following terms.

a. The Adjudicating Authority is requested to kindly approve the Resolution Plan by passing appropriate orders / directions along with the following reliefs and concessions.

b. RA is interested in the acquisition of assets of FACOR Steels Limited, in the course of LIQUIDATION ONLY. RA is NOT interested in acquisition of assets of FACOR Steels Limited, if sold under the terms of SARFAESI Act, 2002.

c. The Resolution Plan is subject to approval of the plan by Committee of Creditors and by Adjudicating Authority as required in terms of Section 31 of IBC, 2016.

d. The Learned Adjudicating Authority may kindly pass appropriate orders for giving effect to the reorganization of the

Share Capital of the Corporate Debtor.

e. The Learned Adjudicating Authority may also grant appropriate directions so that the necessary approvals from the relevant statutory authorities can be taken.

f. The Learned Adjudicating Authority may kindly give appropriate directions to various tax authorities including SEBI, ROC, MIDC, CBIC, CBDT, DGFT (which imposes CVD) and CBEC for waiver of any liability, charges, past liabilities, including counter veiling duty (CVD), irrespective whether claimed or unclaimed from any authority (including but not limited to any potential MAT liability, potential liability under section 56 and 50CA of the Income Tax Act), interest / penalty etc. which may be levied by any authority upon implementation of this Resolution Plan.

g. The Learned Adjudicating Authority may kindly give appropriate directions to various tax authorities such as Sales Tax, Professional Tax, Other Local Taxes, Sales Tax Deferral Schemes, etc. for waiver of any present, during CIRP, or past liabilities irrespective whether claimed or unclaimed from any authority and including any penal charges for past non-compliance of filings, forms, other returns and statements, etc. relating thereto.

h. The Learned Adjudicating Authority may kindly pass appropriate directions to the Ministry of Corporate Affairs, State Governments, Government of India, Provident Fund Authorities, MIDC, Service Tax Authorities, GST Authorities, etc. for waiver of any penal charges for past non-compliance of filing/secretarial obligations.

i. The Learned Adjudicating Authority may kindly pass appropriate directions to the BSE Limited, SEBI and other Regulators to revoke the suspension of trading of the shares of the Corporate Debtor and waive any penal charges and other dues for past non-compliance of filing / secretarial obligations, etc.

j. The Learned Adjudicating Authority may kindly pass appropriate directions to the BSE Limited, SEBI and other Regulators to exempt the Resolution Applicant from the operation of SEBI ICDR Regulations, 2009, Takeover Regulations, 2011, LODR Regulations, SCRR Regulations, Delisting Regulations, as well Companies Act, 2013 for conversion into a Private Limited Company.

k. The Learned Adjudicating Authority may kindly give appropriate directions to the tax and duty imposing authorities to waive all the taxes, duties etc. and interest / penalty, if any and the amounts as stated for in the Resolution Plan and also that may arise in respect of past and present transactions till the implementation of Resolution Plan including conversion into a Private Limited Company and also change in ownership, management of the assets and Corporate Debtor.

l. The Resolution Applicant has sufficient internal and other financial resources to cater to the requirement of the resolution plan. The payments which are proposed in the resolution plan are not contingent upon the performance of the Corporate Debtor. This aspect mitigates the risk in the successful implementation of the resolution plan.

m. The Resolution Plan addresses the interests of all the stake holders as detailed here-in-above and provides for a time bound resolution of the corporate debtor in a very short period of time.

n. All the terms of the resolution plan are in conformity with the provisions of the Insolvency and Bankruptcy Code, 2016 and the relevant IBBI Regulations framed therein. The Resolution Plan also confirms to all the applicable laws in force.

S. Declaration and Confidentiality

1. We hereby declare that We have read and understood all the terms and conditions relating to the formulation of resolution plan and here by express our interest in the submission of resolution plan for the said Company.

2. We also hereby declare that any confidential information of the Corporate Debtor that has come to our knowledge or might come to our knowledge during the insolvency resolution process shall not be divulged by us.

Compliance of New Regulations of IBBI

3. As our commitment towards implementation of Resolution Plan, we hereby undertake that, in case we are approved as Resolution Applicant by the order by Hon. NCLT, Mumbai Bench, Mumbai, we will fulfil the commitments made in financial terms and other terms as ordered by the Hon. NCLT in its order. In case, we are unable to complete the same, then we will abide all the orders of Hon. NCLT, Mumbai Bench, Mumbai in this matters of VISCO.

4. For the sake of compliance of Reg. 38(1B) of IBBI (IRPCP) Regulations, 2016, as amended till 24.01.2019, It is stated that the resolution applicant or any of its related parties have not failed to implement or have not contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.

5. For the sake of compliance of Reg. 36(B) of IBBI (IRPCP) Regulations, 2016, as amended till 24.01.2019, it is agreeable to the RA to offer the amount of Rs. 5.00 Crores, (Rupees Five Crores only) deposited as initial deposit along with our Expression of Interest, while submitting Resolution Plan, to be adjusted as a Performance Security, which may be forfeited in case of non-compliance in Implementation of Resolution Plan in the matters of VISCO / FACOR. However, in case of delay in payment of instalment up to 60 days (maximum) from the respective due date as mentioned in para I (Point no. 15) & Q (II), the same shall be allow subject to payment of penal interest at the rate of 15% p.a.."

6. It may kindly be noted that the aforementioned Resolution Plan is strictly confidential and the same may be disclosed only to the Committee of Creditors of the Corporate Debtor, Resolution Professional or their advisors. "

12. OBSERVATION / SATISFACTION :-

It has been brought to our notice that one of the justifications for approval of the Resolution Plan is that the Liquidation Value is less i.e. ₹25.88 Crores, comparing the proposals made in the Resolution Plan of total ₹43.02 Crores.

13. The Procedure as prescribed under The Code is that a Resolution Plan is required to be submitted by a **Resolution Application U/s 30 of The Code**. On approval by CoC, the Resolution Professional is to submit U/s 30(6) the said Resolution Plan, as approved without modification or change, to the AA. Thereafter, u/s 31 of I&B the Adjudicating Authority is to examine the contents of the Resolution Plan, as it has been done by reproducing the contents of the Plan *supra*, The mandate of this section is that if the AA is **"satisfied"** that the Resolution Plan as approved by the Committee of Creditors meets the requirement as referred to in section 30(2), shall by an Order, approve the Resolution Plan. So the prerequisite is that recording of **"satisfaction"** by AA is a condition precedent. A "satisfaction" is to be recorded in writing in the Judgment approving the Resolution Plan. "Satisfaction" is required to be based upon a conscious decision on examination of the terms of the Resolution Plan. In our humble opinion a thorough study of a Resolution Plan is required before recording a **"satisfaction"** in writing by AA. The **'satisfaction'** as mandated in the statute can either 'objective' or 'subjective' or both, but it is a condition precedent. Naturally 'satisfaction' is to be recorded in writing with reasons after proper application of mind. The **pros and cons** of the scheme is required to be studied before recording subjective satisfaction. If the CoC has submitted the

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

13.1. On careful reading of the connected provisions of the Insolvency Code it is noticed by this Bench that Three vital terminologies have been used while drafting the sections of The Code pertaining to the Resolution Plan and its approval. As per Section 30(4) the Insolvency Code has provided that the Committee of Creditors (CoC) may approve a Resolution Plan after considering its "**feasibility**" and "**viability**". Further, one more important terminology is prescribed for the purpose of recording of satisfaction by Adjudicating Authority while approving a Resolution Plan in Section 31(1) 1st Proviso which says that "the Adjudicating Authority shall before passing an Order for approval of Resolution Plan satisfy that the Resolution Plan has provisions for its "**effective implementation**". Therefore, these Three terminologies are the guiding factors to arrive at a judicious satisfaction, as discussed in foregoing paragraphs.

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

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

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

15. To conclude, the approval of a Resolution Plan by the CoC is to be accepted in toto by the Adjudicating authority if by a 75% (66% as amended) voting approved the said plan. Because of the latest decision (supra), the scope of any suggestion or alteration in the impugned resolution plan is very limited. As far as the procedure is concerned, in this case, the same has been followed as per the provisions of the Insolvency Code, therefore, the Resolution Plan has to be approved. The Resolution Applicant has submitted an affidavit as required U/s 30(1) of the Code stating that he is eligible U/s 29A of the Code.

16. Regarding the exemptions sought, Government liabilities and statutory dues, it is worth to observe that the same should be restricted to those **Government liabilities which are ascertained and crystallised** as on the date when the CIRP commenced. Further, on commencement of CIRP, due to pronouncement of 'moratorium' if any tax is levied, the same can be considered for waiver as held in the decision of NCLT, Chandigarh Bench, in the case of **"State Bank of India V. MOR Farms Pvt. Ltd."** dated 15.06.2018 in CA Nos. 71/2018 & 171/2018 in CP(IB)-51/Chd/Hry/2017 wherein waiver is granted in respect of tax dues.

16.1. Although, the question of waiver has been dealt with in this order by the respected Coordinate Bench, NCLT, Chandigarh, however, **an important aspect is**

to be kept in mind that the petitioner in this case has moved U/s 10 of the Insolvency Code to declare "itself" insolvent. In other words, the Petitioner, if seeks a waiver in respect of the statutory taxes & liabilities for the period during which the said ex-management was at the helm of the affairs thus liable for statutory compliances, whether judicially entitled for waiver? The important point which requires due consideration is that the Resolution Plan is also now submitted by the Resolution Applicant who is also the Promoter/ Director/ related party of the Debtor Company. Therefore, while placing reliance on the decision of respected Co-ordinate Bench, this aspect requires due consideration. This Bench is of the opinion that IBBI in consultation with MCA can re-look into a question that whether an Applicant/Petitioner is entitled to declare itself Insolvent by applying U/s 10 I&BC a Petition and thereupon seeking for the waiver of Tax dues, as well as, heavy hair-cut in Financial/Operational dues, while itself submitting a Resolution Plan using the provisions as a tool to evade/ avoid tax and financial liability ? A thought could be behind this Legislation, although not in 'Notes and Clauses' , that the scheme is to provide an opportunity to a debt ridden entity to re-structure its stressed finances to run the business thereafter efficiently, but at present it appears that these PROVISONS are being used as a tool to avoid liabilities either of Taxes or Financial or Trade . Nonetheless, this cycle or 'Samaya Chakra' keeps on rotating always, undisputedly repeated cyclically. Hereafter, finances of a business entity may require to be arranged and re-arranged time and again in future. It is a universal truth that Business and Economic results do not have a static graph, thus graphic-lines bound to happen ups & downs in a business graph. As far as the present case is concerned the same is hereby decided within the parameters and ambits of the Code; as also the law laid down in the precedents.

Side by side, the overall circumstances and the manner in which the proceedings were conducted in this case are compelling this Bench to ponder upon the question framed above. Nonetheless, what are the circumstances and why a Court may enter into an area outside the domain instead of writing a judgment within the four boundaries of a Statute ? First is that the jurisprudence of Insolvency Laws is developing therefore instead of venturing into a polemic judgement , better to pass an order within the prescribed law but with an *obiter-dictum* which can be used in a modification/ amendment , if required. Facts have revealed that the total Financial liability of Banks and other Financial Institutions were to the tune of ₹ 118,13,30,317/-. The Liquidation value assessed by the Valuer were stated to be ₹25.88 Crore. How much these figures to be appreciated is a question mark ?. The law in this regard is evolving in such direction not to tinker but to simply rely upon the decision of the CoC. Strangely the settlement is only for a sum of Rs.43.02 Crores, that too, an offer of the ex-Promoter-Director. The advantage seems to be revival of a Debt ridden Company but by whom ? What is the guarantee/ security that, that very management shall be successful this time and shall not default in timely repayment of Debt either financial or operational in future? With this backdrop, rather milieu, these questions are framed as an *obiter-dictum supra*.

17. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the “Moratorium” imposed under section 14 shall cease to have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

18. A "waiver" is demanded that the incoming Management shall not be personally responsible for any act, omission, commission and/or offence committed by the erstwhile Management of the Corporate Debtor till commencement of CIRP. In the present case, this Bench has reservation in granting such "waiver" because the Board constituting the Debtor Company is none other than the "related party" of the Board constituting the Resolution Applicant Company. From the facts, this fact has

emerged clearly that the Agarwal group and the Saraf group are common in Vidarbha Iron & Steel (Corporate Debtor) and R C Plasto Tanks & Pipes (Resolutoin Applicant) . Waiver is hereby granted to the ex-Promoter/ Director to the extent if allowable and not inconsistent with any other law applicable on the Corporate Debtor.

19. That liberty is hereby granted that if deem fit and legally permissible, can move Miscellaneous Application if required in connection with the implementation of this Resolution Plan.

20. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Mumbai.

21. The directions embodied and period of implementation provided hereinabove shall be effective from the date of receipt of this Order.

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

Date : 23.08.2019

Js