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BEFORE THE AJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD



IA 224 /2019 in IA 160/2019 in IA 340/2018 in/with  
C.P. (I.B) No. 118/NCLT/AHM/2018

Coram: Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
Hon'ble Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 22.10.2019

Name of the Company: Mangesh Vitthal Kekre  
V/s.  
Maruti Koatsu Cylinders Limited and Ors.


Section of the Companies Act: Section 30 of the Insolvency and Bankruptcy  
Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Ragu Kumar	Adv.	Resp 6 Kotak	
2.	Kalish M. Patel	Adv.	Resp. NO 3,5,7	
3.	Ajay R. Sheth Krina R. Pareek	Adv. Solicitor Adv.	R-4	} KRP


ORDER

The parties are represented through learned counsels.

The order is pronounced in the open court vide separate sheet.

  
CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL

Dated this the 22nd day of October, 2019

  
MANORAMA KUMARI  
MEMBER JUDICIAL

**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**

I.A. No. 224 of 2019  
in  
I.A. No. 160 of 2019  
In  
I.A. No. 340 of 2018  
in  
CP(IB) No. 118 of 2018

**In the matter of:**

**Mangesh Vitthal Kekre,**  
Resolution Professional,  
Maruti Koatsu Cylinders Limited,  
Having office at:  
607, Chetak Centre,  
RNT Marg, Near Hotel Shreemaya,  
Indore  
MP – 452 001

.....Applicant

**Versus**

1. Maruti Koatsu Cylinders Limited,  
VIP's APTS, 2<sup>nd</sup> Floor,  
NR Atmajyoti Ashram,  
Vadodara  
Gujarat 390 023
2. Binil Traders  
A-272, Mathuranagari Society,  
Behind Aims Oxygen,  
Nand Society, Old Padra Road,  
Vadodara – 390 020
3. Axis Bank Limited  
Vice President of Stressed Asset Management Group  
7<sup>th</sup> Floor, Stree Management Group  
Lower Parel,  
Mumbai
4. Asset Reconstruction Company India Limited (ARCIL),  
(Chief Manager),  
The Ruby, 10<sup>th</sup> Floor,  
Dadar
5. IDBI Bank Limited  
(The Assistant General Manager, NPA Management Group),  
IDBI Tower, 7<sup>th</sup> Floor,  
WTC Complex,  
Cuff Parade,  
Mumbai

*Shankar Singh*

*Chatur*

6. Kotak Mahindra Bank Limited  
(The Chief Manager, Stressed Asset Management Group),  
R-ARD, Samsung Building  
Kalina
  7. Bank of Maharashtra,  
(The Assistant General Manager)  
Asset Recovery Branch,  
Janmangal,  
Fort,  
Mumbai
  8. Mr. Pankaj Nanalal Sanghrajka,  
(Resolution Applicant)  
Director, Safire Technologies Pvt. Ltd.,  
32, Suvarnapuri Society,  
4<sup>th</sup> Floor, 8, Bhumitanand Flats,  
Chikuwadi,  
Racecou RSE,  
Vadodara 390 007
- ...Respondents

**I.A. No. 160 of 2019**

Mangesh Vitthal Kekre,  
Resolution Professional,  
Maruti Koatsu Cylinders Limited,  
Having office at:  
607, Chetak Centre,  
RNT Marg, Near Hotel Shreemaya,  
Indore  
MP - 452 001

.....Applicant

**Versus**

1. Maruti Koatsu Cylinders Limited,  
VIP's APTS, 2<sup>nd</sup> Floor,  
NR Atmajyoti Ashram,  
Vadodara  
Gujarat 390 023
2. Binil Traders  
A-272, Mathuranagari Society,  
Behind Aims Oxygen,  
Nand Society, Old Padra Road,  
Vadodara - 390 020
3. Axis Bank Limited  
Vice President of Stressed Asset Management Group  
7<sup>th</sup> Floor, Stree Management Group  
Lower Parel,  
Mumbai

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4. Asset Reconstruction Company India Limited (ARCIL),  
(Chief Manager),  
The Ruby, 10<sup>th</sup> Floor,  
Dadar
5. IDBI Bank Limited  
(The Assistant General Manager, NPA Management Group),  
IDBI Tower, 7<sup>th</sup> Floor,  
WTC Complex,  
Cuff Parade,  
Mumbai
6. Kotak Mahindra Bank Limited  
(The Chief Manager, Stressed Asset Management Group),  
R-ARD, Samsung Building  
Kalina
7. Bank of Maharashtra,  
(The Assistant General Manager)  
Asset Recovery Branch,  
Janmangal,  
Fort,  
Mumbai
8. Mr. Pankaj Nanalal Sanghrajka,  
(Resolution Applicant)  
Director, Safire Technologies Pvt. Ltd.,  
32, Suvarnapuri Society,  
4<sup>th</sup> Floor, 8, Bhumitanand Flats,  
Chikuwadi,  
Racecou RSE,  
Vadodara 390 007

...Respondents

**I.A. No. 402 of 2019**

1. Asset Reconstruction Company (India) Limited,  
Having its address at:  
The Ruby,  
10<sup>th</sup> Floor,  
29, Senapati Bapat Marg,  
Dadar (West)  
Mumbai  
Maharashtra 400 028

.....Applicant

**Versus**

1. Mangesh Vitthal Kekre,  
Resolution Professional,  
Maruti Koatsu Cylinders Limited,  
Having office at:  
607, Chetak Centre,  
RNT Marg, Near Hotel Shreemaya,  
Indore

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MP – 452 001

2. Maruti Koatsu Cylinders Limited,  
VIP's APTS, 2<sup>nd</sup> Floor,  
NR Atmajyoti Ashram,  
Vadodara  
Gujarat 390 023
3. Binil Traders  
A-272, Mathuranagari Society,  
Behind Aims Oxygen,  
Nand Society, Old Padra Road,  
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Vice President of Stressed Asset Management Group  
7<sup>th</sup> Floor, Stree Management Group  
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5. IDBI Bank Limited  
(The Assistant General Manager, NPA Management Group),  
IDBI Tower, 7<sup>th</sup> Floor,  
WTC Complex,  
Cuff Parade,  
Mumbai
6. Kotak Mahindra Bank Limited  
(The Chief Manager, Stressed Asset Management Group),  
R-ARD, Samsung Building  
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7. Bank of Maharashtra,  
(The Assistant General Manager)  
Asset Recovery Branch,  
Janmangal,  
Fort,  
Mumbai
8. Mr. Pankaj Nanalal Sanghrajka,  
(Resolution Applicant)  
Director, Safire Technologies Pvt. Ltd.,  
32, Suvarnapuri Society,  
4<sup>th</sup> Floor, 8, Bhumitanand Flats,  
Chikuwadi,  
Racecou RSE,  
Vadodara 390 007

**Order delivered on 22<sup>nd</sup> October, 2019**

*Shoaka Singh*

*Shoaka*

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)**  
**Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

**Appearance:**

**I.A. No. 224 of 2019**

Advocate and Solicitor Mr. Ajun Sheth and ms. Vidhi Thakkar for ARCIL, Advocate Mr. Raju Kothari for Respondent No. 6 Kotak Mahindra, Advocate Mr. Lalit M Patel for Respondents No. 3,5 and 7, Advocate Mr. Jatin Sehgal, PCS Mr. Rajesh Lohia for the RP, Mr. Mangesh Vitthal kekre, RP himself, Mr. Nitin J. Thakkar on behalf of Maruti Koatsu Cylinders Limited, the Corporate Debtor and Mr. Pankaj N Sanghrajka, Director, Safire Technologies Pvt. Ltd., the Resolution Applicant.

**I.A. No. 160 of 2019**

PCS Mr. Rajesh Lohia for the RP, Mr. Mangesh Vitthal Kekre, RP himself and Advocate Mr. Lalit M. Parekh for the Respondent No. 3,5 and 7.

**I.A. No. 402 of 2019**

Advocate and Solicitor Mr. Arjun Sheth, Advocates ms. Vidhi Thakkar, Ms. Krina R. Parikh and Anuja Saraiya for ARCIL, PCS Mr. Rajesh Lohia for the RP, Mr. Mangesh Vitthal kekre, RP himself.

**ORDER**

**[Per se: Ms. Manorama Kumari, Member (J)]**

1. The instant application (IA) No. 224 of 2019 in IA 160 of 219 in IA 340 of 2018 in CP(IB)No. 1188/2018, is filed by the applicant, the Resolution Professional of Corporate Debtor Maruti Koatsu Cylinders Limited (hereinafter referred as Corporate Debtor), under Section 30 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as IB Code), for submission and approval of the Resolution Plan received from Safire Technologies Private Limited (hereinafter referred as Resolution Applicant) in respect of the Corporate Debtor with the prayer to condone the delay in adoption of the Resolution Plan by the Committee of Creditors (hereinafter referred as CoC) and approval of the Resolution Plan.
2. For the sake of brevity, it is mentioned herein that:

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**I.A. No. 160 of 2019**

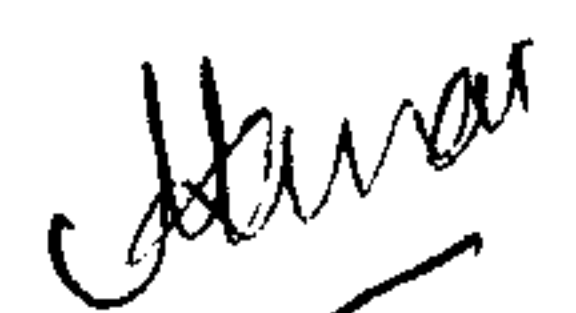
- 2.1 I.A. No. 160 of 2019 is filed by the RP with the prayer to allow the exclusion of the period between 31.08.2018 to 22.10.2018 (being the date on which the application filed seeking guidance of this Adjudicating Authority on the matter of stalemate in the CoC and the date on which, the certain prayers of the said application were withdrawn) from the total period of CIRP.
- 2.2 It is stated that CIRP Process was initiated against the Corporate Debtor by this Adjudicating Authority vide its order dated 26.04.2018 and the CIRP period was further extended by another 90 days on 23.10.2018. The extended CIRP period has also expired on 22.01.2019 (270 days from the commencement of the date of CIRP). hence this application for exclusion of the period between 31.08.2018 to 22.10.2018.

**I.A. No. 402 of 2019**

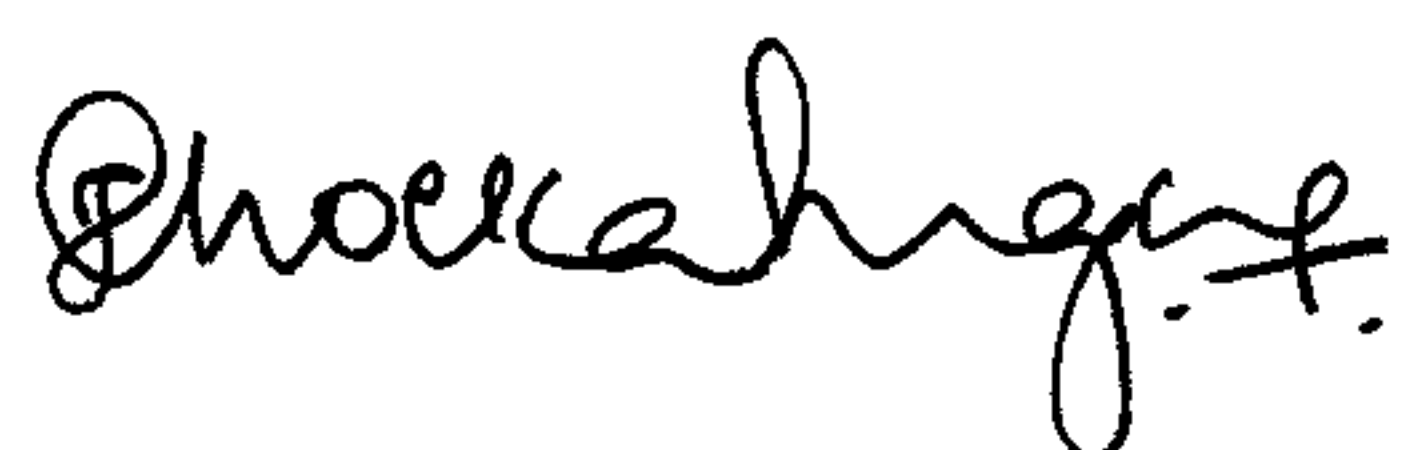
- 2.3 I.A. No. 402 of 2019 is filed by the Secured Financial Creditor (ARCIL) of the Corporate Debtor, who is the original Respondent No. 4 in I.A. 160 of 2019 and I.A. No. 224 of 2019 having its claim admitted by the RP to the tune of Rs. 6.05 crores and a member of the CoC of the Corporate Debtor having voting right to the tune of approx. 7%.
- 2.4 The Applicant, the Secured Financial Creditor of the Corporate Debtor is having security of hypothecation charge over the machinery of the Corporate Debtor and mortgage charge on land and building of the guarantors.
- 2.5 It is stated that in the 14<sup>th</sup> meeting of CoC, payout to the Applicant Secured Financial Creditor was reduced as if the claim of the Applicant was not Rs. 6.05 crores but only Rs. 0.79 crores whilst stating in the Resolution Plan that the outstanding amount of the loans granted against the assets of the Corporate Debtor was only 0.79 crores, was approved by 90.09% voting.

**I. A. No. 224 of 2019**



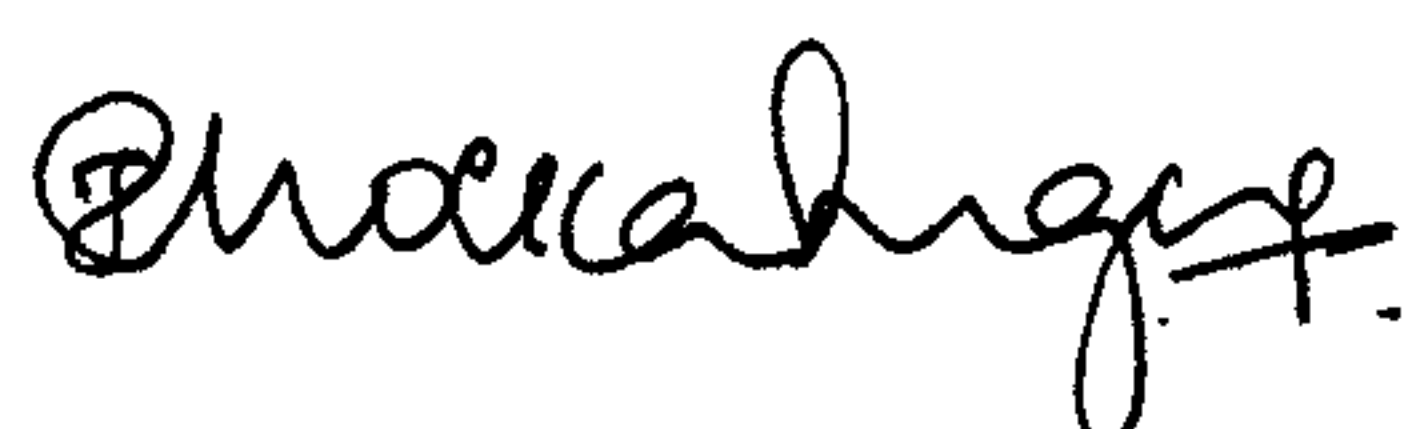


- 2.6 CP(IB)No. 118/2018 was filed by Binil Traders, the Operational (Original Applicant) under section 9 of the Code read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor Maruti Koatsu Cylinders Limited (having its registered office at VIP's APTS, IInd Floor, Nr. Atmajyoti Ashram, Vadodara, Gujarat State).
- 2.7 The said CP(IB) No. 118/2018 was admitted on 26.04.2018 by this Adjudicating Authority and proposed appointment of Shri Mangesh Vitthal Kekre, as "Interim Resolution Professional" (hereinafter referred to as "IRP"). The IRP was appointed as Resolution Professional (hereinafter referred as RP) on 25.05.2018 by the CoC.
- 2.8 It is stated that Corporate Insolvency Resolution Process (hereinafter referred as CIRP) of 180 days, expired on 22.10.2018 and this Adjudicating Authority vide its order dated 23.10.2018 extended CIRP for a further period of 90 days beyond 180 days. The extended CIRP also expired on 22.01.2019.
- 2.9 The RP caused publication of Expression of Interest (hereinafter referred as EoI) on 4.11.2018.
- 2.10 It is stated that RP received a Resolution Plan from M/s Safire Technologies Pvt. Ltd. BF-4, Mohan Complex, H-Block Market, Ashok Vihar, Phase - I, Delhi 110052 with PAN No. AAJCS3768F (hereinafter referred to as Resolution Applicant) on 14.12.2018 which was negotiated and enhanced upward with modified terms on 10.01.2019 and finally on 01.03.2019 final Resolution Plan with enhanced offer and modified terms along with the addendums of undertaking etc was received.
- 2.11 It is stated that Resolution Applicant was established in the year 2005 and are dealing in i) Fire Safety & Security Systems which includes Fire Protection, Fire Suppression and Fire Detection and ii) Industrial Cylinders & CNG Cylinders; having a vast experience of 14 years in the field.





- 2.12 It is stated by the RP that final Resolution Plan was considered by the CoC in its 13<sup>th</sup> meeting held on 04.04.2019 and through EVM on 05.04.2019 CoC approved the Resolution Plan with 90.09% of voting. Copy of the Minutes of 13<sup>th</sup> CoC meeting dated 04.04.2019 along with E-Voting summary report and interpretation are jointly attached with the IA as **Anneuxre-6**.
- 2.13 It is stated by the RP that approval of the Resolution Plan was delayed on account of following prominent reasons:
- Strong negotiations by the CoC for upward revision in the Resolution amount from INR 12 Crores to INR 14.21 Crores.
  - Attempts to persuade the Resolution Applicant to modify specific terms and structure of the Resolution Plan to suit larger interests of the stakeholders.
- 2.14 It is submitted that initially the Resolution Plan was received within the prescribed time and that the circumstantial events caused delay in the approval of the Resolution Plan.
3. Before doing deliberations upon the I.A. No. 224 of 2019 whereby the RP has submitted the Resolution Plan, this Adjudicating Authority would like to discuss the two I.A. No. 160 of 2019 and I.A. No. 462 of 2019.
- 3.1 As discussed above in Para 2.1, I.A. No. 160 of 2019 was filed by the RP with a prayer to exclude the period consumed i.e. 31.08.2018 to 22.10.2018 while disposing the I.A. No. 340 of 2018 from the CIRP process.
- It is a settled law that if any period is consumed while disposing any application during the period of CIRP, can be exempted in view of the observations made by the NCLT/NCLAT in ArceMittal. Accordingly, the total period of 53 days is exempted from the CIRP period. In view of the aforesaid exemption, the I.A. No. 160 of 2019 is disposed of.
- 3.2 As discussed above in Para 2.3, I.A. No. 402 is filed by the Secured Financial Creditor (ARCIL) whose claim is reduced from Rs. 6.05 crores to only Rs. 0.79 crores.





3.3 This Adjudicating Authority would like to refer its order dated 16.08.2019. during the hearing on 16.08.2019, the ld. lawyer appearing on behalf of the ARCIL fairly submitted that though he has filed an IA bearing No. I.A. No. 402 of 2019 having certain reservations over the Resolution Plan so filed by the RP and since RP has clarified their position, they have no further reservation, if the Resolution Plan will be approved by this Adjudicating Authority so filed by the CoC.

3.4 Accordingly, in view of the statement of the Ld. Lawyer appearing on behalf of the Secured Financial Creditor viz. ARCIL, the I.A. No. 402 of 2019 stands disposed of.

4. It is stated that RP has examined the Resolution Plan and confirm that it meets the criteria as prescribed under Section 30(2) of the IB Code, annexed with the IA as **Annexure-4** and submitted the Compliance Certificate as prescribed in Form H under the Regulations (Copy of Form H annexed with the IA as **Annexure-5**. It is also stated that an affidavit that Resolution Applicant is eligible u/s 29A of IB Code has also been received.

5. The RP has submitted detailed Table showing the compliances of the Resolution Plan with the mandatory requirements under the Code and CIR Regulations. The Table showing the compliances is given hereunder:

No.	Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
1.	25(2)(h)	Whether the Resolution Applicant meets the criteria approved by CoC having regard to the complexity and scale of operations of business of the CD?	Clause No. 7 Resolution Applicant's Profile	Yes

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2.	Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, If any of the Adjudicating Authority	Clause No. 5 declaration	Yes
3.	Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible		Yes
4.	Section 30(2)	Whether the Resolution Plan:		
		(a) Provides for the payment of the IRP costs?	Clause 12.1(Pp 20)	Yes
		(b) Provides for the payment of the debts of Operational Creditor?	Clause 12.7(pg 27)	Yes
		(c) Provides for management of the affairs of the Corporate Debtor?	Clause 14 (pg 36)	Yes
		(d) Provides for the implementation and supervision of the Resolution Plan?	Pg 45	Yes
		(e) contravenes any of the provisions of the law for the time being in force?	- No	
5.	Section 30(4)	Whether the Resolution Plan a. is feasible and viable, according to the CoC? b. has been approved by the CoC with 66% voting share?	Yes Yes, E-Voting Sheet annexed	Yes Yes
6.	Section 31(1)	Whether the Resolution Plan has provisions for its effective	Please refer Pg 45	Yes

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		implementation plan, according to the CoC?		
7.	Regulation 35A	Where the Resolution Professional made a determination if the Corporate Debtor has been subject to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	No such transaction reported by the auditors	Yes
8.	Reg. 38(1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the (a) Insolvency process costs? (b) liquidation value due to operational creditors? © liquidation value due to dissenting financial creditors	Please refer the addendum to the Resolution Plan attached to the main body of the report [Attached as Addendum to the Resolution Plan]	Yes
9.	Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 15 Financial Assistance Page 36	Yes
10.	Regulation 38(1B)	Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of the implementation of the Resolution Plan	No such finding	NA

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		approved under the Court. If so whether the Resolution Applicant has submitted the statement giving details of such non-implementation.		
11.	Regulation 38(2)	Whether the Resolution Plan provides: a. the term of the Plan and its implementation schedule? b. for the management and control of the business of the Corporate Debtor during its terms? c. adequate means for supervising its implementation?	Plz refer Page 52 Clause 20 Page 52 Clause 21 Page 53	Yes
12.	Regulation 38(3)	Whether the Resolution Plan demonstrate that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? € the Resolution Applicant has the capability to implement the Resolution Plan?	Clause 16A Pg 41-42 Plz refer Page 44 Plz refer Page 45 Plz refer Page 46 Plz refer Page 46	Yes Yes Yes Yes
13.	Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by	No transactions reported	Not Applicable

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		him?		
14.	Regulation 39(4)	Provide details of the Performance Security received as referred to in sub regulations 4(a) to reg 36B	The Resolution Applicant has already deposited INR 50 Lacs along with the Resolution Plan. Further a sum of INR 100 lacs is to be deposited within 15 days of CoC's approval for the Resolution Plan. In accordance with the terms specified in the Evaluation Matrix and subsequent undertaking given by the Resolution Applicant, the said amount of INR 150 lacs shall be forfeited in case the applicant fails to comply with the plan after the approval of NCLT [Copy of FDR attached]	

6. On perusal of the Resolution Plan, it is found:

**Compliance of Section 30(2)(b) r.w. Regulation 38(1)(b) of IBBI (Insolvency Resolution Process for Corporate Persons), 2016**

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As per the assessment of the Resolution Applicant, it is presumed that the value of assets in case of liquidation will not be sufficient to cover the amounts owed to even Secured Financial Creditors of the Company in full as such value of assets in case of liquidation of the Operational Creditors would be NIL.

**7. Payment to Financial Creditors who are members of CoC other than the related party of the Corporate Debtor:**

The amount of claim submitted by the Financial Creditors as on the Insolvency Commencement Date as stated in the Information Memorandum as on 25.07.2018 and subsequent information shared by the RP is detailed in the table below:

<b>Name</b>	<b>Claim Received</b>	<b>Amount Admitted (Provisional)</b>	<b>Voting Share (out of total financial creditors)</b>
Secured Creditors Claim	86,69,56,000	86,69,56,000	100.00%
<b>Total</b>	<b>86,69,56,000</b>	<b>86,69,56,000</b>	<b>100.00%</b>

The Resolution Applicant proposes to pay Rs. 14,21,00,000/- (Rs. Fourteen Crores twenty one lacs only) as a compensation towards the amount claimed by the Secured Financial Creditors and admitted by the Resolution Professional.

Out of the total amount payable to Secured Financial Creditors, shall be paid as under:

<b>Installment</b>	<b>Payment</b>	<b>Time Period</b>	<b>Amount</b>
1st	3.52% of total consideration to secured FC, Demand Drafts along with Plan Submission	Upront	Rs.50,00,000/- (Rs. Fifty Lacs)
IIInd	7.04% of total consideration to Secured FC	#Within 15 days on Receipt of LOI/Approval from the committee of	Rs. 1,00,00,000/- (Rs. One Crore)

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		creditors	
IIIrd	7.04% of total consideration to Secured FC	#Within 15 days on Receipt of Order from the Adjudicating Authority	Rs. 1,00,00,000/- (Rs. One Crore)
IIIrd	Balance 82.40% of total consideration to secured FC	Within 90 days from the communication of the effective date	Rs. 11,71,00,000/- Rs. Eleven Crores & Seventy One lacs)
IVth	CIRP Cost	As and When payable	40,00,000/-
<b>Total:</b>			<b>Rs. 14,21,00,000/- (Rs. Fourteen Crores &amp; Twenty One Lacs only)</b>

The Secured Financial Creditors include Axis Bank, IDBI Bank, Bank of Maharashtra and Arcil. The proposed distribution of Resolution Amount is as under:

Sr. No.	Particulars	Bank of Maharashtra	Axis Bank	IDBI Bank	ARCIL	Kotak Bank
1.	Charge over company assets	YES	YES	YES	YES	NO
2.	Claim admitted	18.36	27.37	32.37	6.05	2.52
3.	O/s amount of the loans granted against the assets of CD	18.36	27.37	32.37	0.79	NIL
4.	Sharing proposed	18.36	27.37	32.37	0.79	NIL
5.	Sharing Ratio	0.23	0.35	0.41	0.01	NIL
6.	Resolution quote Distribution (Rs. 14.21 crores)	3.27	4.97	5.83	0.14	

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It is stated that Resolution Amount will be parked in Escrow Account and to be utilized only on approval by the Adjudicating Authority.

It is stated that entire debt due to the Financial Creditors by the Corporate Debtor shall stand satisfied, settled and extinguished, and no claims whatsoever of any nature, either towards the dues, interest or penalty shall subsist against the Corporate Debtor post payment of amount proposed above. Thus, the total amount of consideration shall stand paid within a period as agreed above from the effective date. Lenders will be free to proceed against the guarantors and enforce third party securities for realization of balance dues.

It is further stated that any claim from any person claiming to be secured financial creditor of the Corporate Debtor, that has not been filed with the RP or if filed, has not been verified by the RP, or if verified, but has not been informed to the Resolution Applicant before submission of this Resolution Plan, shall stand extinguished and shall not longer be payable.

**8. Payment to Unsecured Financial Creditors:**

There are no Unsecured Financial Creditors of the Corporate Debtor as per Information Memorandum as on 26.07.2018.

**9. Dues of Financial Creditors who are Related Parties and not part of CoC:**

According to Information Memorandum as on 26.07.2018 shared by the RP, an amount of Rs. 38,36,000/- is due towards related parties to the Corporate Debtor. Since the said outstanding dues pertain to Promoters group and Directors of the Company, who are related parties and considering that the resources available under the Resolution Plan are not even sufficient to make payment to secured creditors, the Resolution Applicant proposes to make no payment to the Promoter Group, Directors and related parties against their such outstanding dues in the proposed Resolution Plan.

10. Operational Creditors (Trade Creditors/Trade Payable) as per the Information Memorandum provided by the Resolution Professional as on 25<sup>th</sup> July, 2018:

<b>Operational Creditors</b>		
<b>Name</b>	<b>Claim Received</b>	<b>Amount Admitted (Provisionally)</b>
Zhangjagang Tube China Co. Ltd	1,86,73,000	1,86,73,000
Patel Traders	80,000	80,000
A.K. Automatics	8,70,000	8,70,000
Drona & Jigar Ent. Pvt. Ltd.	7,59,000	7,59,000
Vishnu Sales Corporation	2,69,000	2,69,000
Halol (GIDC) Industries Asso.	22,03,000	22,03,000
Batra Associates Ltd.	13,11,000	13,11,000
The Commissioner of Customs	19,33,88,031	NIL
<b>Total</b>	<b>21,75,53,031</b>	<b>2,41,65,000</b>

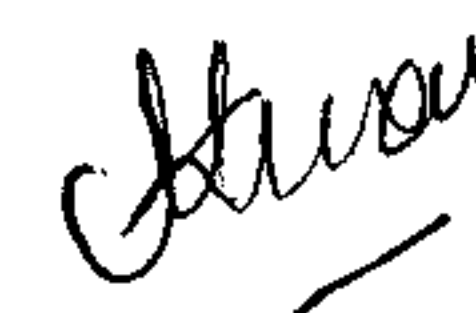
According to the provisions of Section 30(2)(b) of the Code, the Operational Creditors are entitled to such value as they would have received in the event of the liquidation of the Company under Section 53, which amount is to be paid within 30 days from the approval of the Resolution Plan.

As per the assessment of the Resolution Applicant, it is presumed that the value of assets in case of liquidation will not be sufficient to cover the amounts owed to even Secured Financial Creditors of the Company in full as such value of assets in case of liquidation of the Operational Creditors would be NIL.

The entire debt due to the Operational Creditors by the Corporate Debtor shall stand satisfied, settled and extinguished, and no claims whatsoever, of any nature, either towards the dues, interest or penalty shall subsist against the Corporate Debtor.

11. **Employees and Workmen:**





It is stated that as per the Information Memorandum as on 26.07.2018 provided by the RP , the outstanding debts of the Corporate Debtor towards the Employees and Workmen are as under:

<b>Name</b>	<b>Claim Received</b>	<b>Amount Admitted (Provisional)</b>
Employees Provident Fund Organisation	72,64,000	72,64,000
ESIC	1,94,36,000	1,94,36,000
Akhil Gujarat MajdoorSangh	5,04,32,000	5,04,32,000
<b>Total</b>	<b>7,71,32,000</b>	<b>7,71,32,000</b>

According to the provisions of Section 30(2)(b) of the Code, the Employees and Workmen are entitled to such value as they would have received in the event of the liquidation of the Company under Section 53, which amount is to be paid within 30 days from the approval of the Resolution Plan.

However, out of the total claims due to workmen, the Resolution Applicant agree to pay them Rs. 28.25 lacs in full settlement (being four months' salary due of FY 2016-17 with a right of continued service in lieu of the payment dues.

12. **Statutory and Government Dues:**

It is stated that as per the Information Memorandum as on 25.07.2018 provided by the RP, the outstanding Statutory Dues of the Corporate Debtor towards are as under:

<b>Particulars</b>	<b>Amount Claimed (Rs.)</b>	<b>Amount Admitted (Rs.)</b>
Central Goods & Service Tax	18,11,000	18,11,000
<b>Total</b>	<b>18,11,000</b>	<b>18,11,000</b>

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According to the provisions of Section 30(2)(b) of the Code, the Employees and Workmen are entitled to such value as they would have received in the event of the liquidation of the Company under Section 53, which amount is to be paid within 30 days from the approval of the Resolution Plan.

It is further clarified in the Resolution Plan that all dues and any amount payable under the Companies Act 2013/1956, Income Tax Act, VAT etc. including taxes, duties, additional fees, penalties, interest, fines, cases, unpaid taxes, unpaid Tax Deducted at Source/tax collected at Source, which is not admitted or contingent, whether part of the above claim or not, pertaining to any period prior to the CIRP commencement date whether part of due diligence finding or not or assisted or unassisted, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed, present or future shall stand extinguished by virtue of the order of this Adjudicating Authority.

As such, all statutory dues outstanding as on date and that on the date of approval of the Resolution Plan shall stand extinguished. No amount is proposed under the Resolution Plan towards the Statutory Dues.

**13. Financial Summary of the Resolution Plan:**

<b>S No.</b>	<b>Particulars</b>	<b>Amount Due</b>	<b>Payment Proposed</b>	<b>Waiver</b>
1.	CIRP Cost (As informed)	40,00,000	40,00,000	NIL
2.	Operational Creditors (Trade Goods/Services)*	2,41,65,000	NIL	2,41,65,000
3.	Employees and Workmen Dues##	7,71,32,000	28,25,000	7,43,07,000
4.	Statutory Dues	18,11,000	NIL	18,11,000
5.	Secured Financial Creditors	86,69,56,000	14,21,00,000	72,48,56,000
6.	Unsecured Financial Creditors	NIL	NIL	NIL
7.	Financial Creditors who related Parties and not part of	38,36,000	NIL	38,36,000

*Shankar Singh*

*Chatur*

	CoC			
	<b>Total:</b>	<b>97,79,00,000</b>	<b>14,89,25,000</b>	<b>82,89,75,000</b>

- **Includes Rs. 19,33,88,031/- payable to the Commissioner of Customs**

**## Payment proposed to Employees and Workmen confirmed by the RP vide his affidavit dated 26<sup>th</sup> September, 2019**

14. **Section 53(1)** provides: Notwithstanding anything to the contrary contained in any law enacted by the parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely: -

- i. The insolvency resolution process costs and the liquidation costs paid in full;
- ii. The following debts which shall rank equally between and among the following: -
  - (i) Workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
  - (ii) Debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
- iii. Wages and any unpaid dues owned to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- iv. Financial debts owed to unsecured creditors;
- v. The following dues shall rank equally between and among the following: -
  - (i) Any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
  - (ii) Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- vi. Any remaining debts and dues;

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*Shachin Singh*

- vii. Preference shareholders, if any; and
- viii. Equity shareholders or partners, as the case may be.

(2) Any contractual arrangement between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipients shall be distributed after such deduction.

Explanation – For the purpose of this section –

- (a) It is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and
- (b) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

15. Thus, Section 53 of the Code lists the priorities to be given to the beneficiaries of liquidation value of the assets of the Corporate Debtor. The provisions of Section 53 make it amply clear that Operational Creditors are at the end of the list of beneficiaries as the Secured Financial Creditors have edge over the others.

16. **The objective of the ‘I&B Code’**

***“The objective of the Insolvency and Bankruptcy Code, 2016 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in time bound manner for maximization of the value of assets of such persons, to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders including alteration in the priority of the payments of the government dues,***



***to establish an Insolvency and Bankruptcy Fund and matters connected therewith or incidental thereto.***

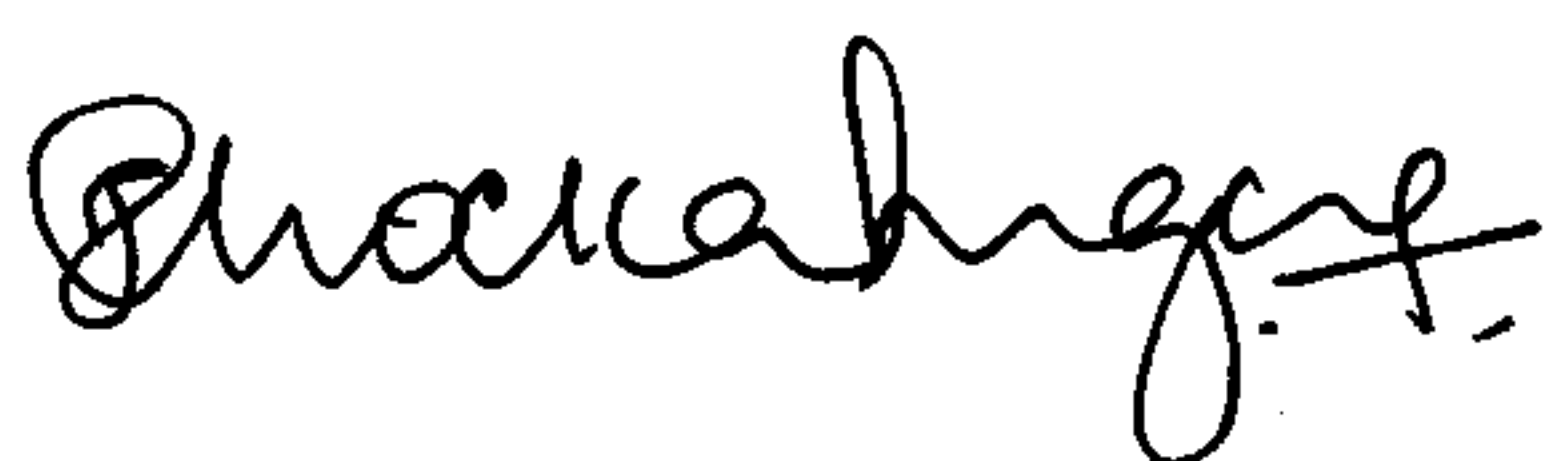
Thus, the preamble of the I&B Code aims to promote resolution over liquidation.

The purpose of resolution is for maximization of value of assets of the 'Corporate Debtor' and thereby for all creditors. It is not maximization of value for a 'stakeholder' or 'assets of a stakeholder' such as creditors and to promote entrepreneurship, availability of credit and balance the interests. The first objective is 'resolution'. The second objective is 'maximization of the value of assets of the 'Corporate Debtor' and third objective is 'promoting entrepreneurship, availability of credit and balancing the interests'. This objective of the I&B Code is sacrosanct.

The said objective of the I&B Code is also affirmed by Hon'ble Supreme Court in Arcelor Mittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors wherein the Hon'ble Supreme Court observed that "the Corporate Debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the CIRP. If there is resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible.

In the backdrop of the object of the IBC, it is amply clear that the **"Resolution is Rule and the Liquidation is an Exception"**. Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. 'The IB Code', therefore, does not allow liquidation of a corporate debtor' directly. It allows liquidation only on failure of corporate insolvency resolution process'. It rather facilitates and encourages resolution in several ways.

Keeping in view such object behind the enactment of the Code, intention of the Legislature is, that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and



liquidation of a company can be only as a last resort, wherein, all efforts for bringing Resolution Plan were failed or it cannot be found workable in the larger public interest.

17. On perusal of the records, it is found that the Resolution Plan confirms to the criteria as provided under clauses (a) to (f) in section 30(2) of the Code and the CoC approved the Resolution Plan by 99.09 per cent majority of voting share. The Resolution Plan also confirms to such other requirements as may be specified by the Board.

On perusal of the Resolution Plan, it is found that it meets the requirements of Section 31 r/w Section 30(2) of the Code. Therefore, the present application IA 224 of 2019 in IA 160 of 2019 in IA 340 Of 2018 in CP(IB) No. 118 of 2018 is allowed subject to certain observations.

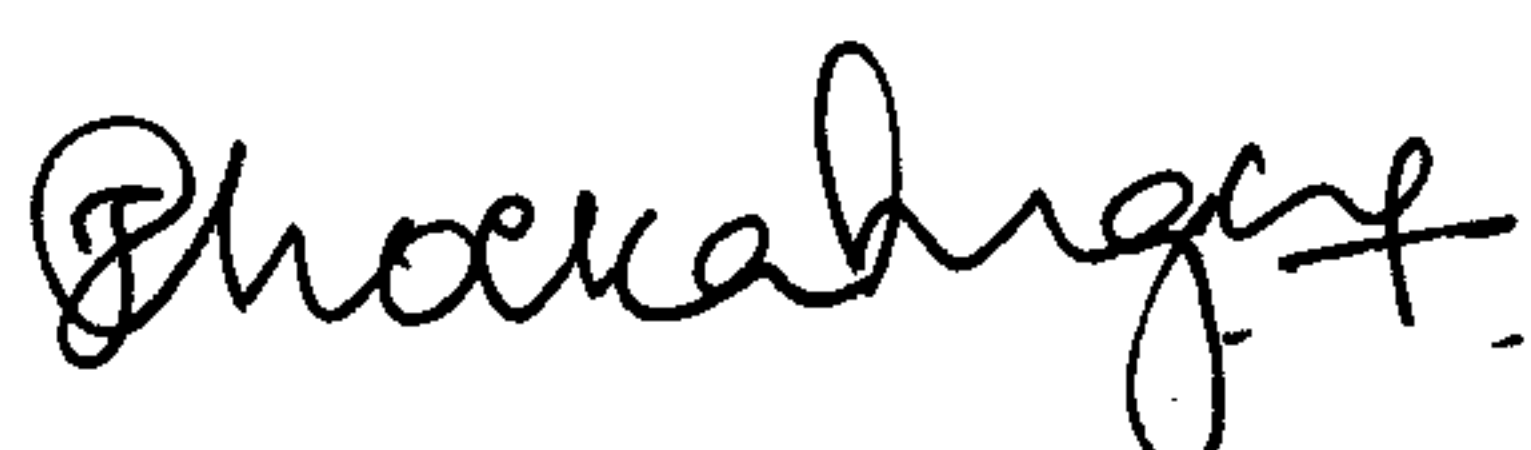
To make the provisions clearer, Section 30 of the IBC is reproduced hereunder:

**Section 30: Submission of resolution plan:**

“30. (1) A resolution applicant may submit a resolution plan *1[along with an affidavit stating that he is eligible under section 29A]* to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

- (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the *2[payment]* of other debts of the corporate debtor;
- (b) provides for the *3[payment]* of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;
- (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- (d) the implementation and supervision of the resolution plan;
- (e) does not contravene any of the provisions of the law for the time being in force;





(f) conforms to such other requirements as may be specified by the Board.

*4[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]*

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

*5["(4) The committee of creditors may approve a resolution plan by a vote of not less than 6[sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:*

**Provided** that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

**Provided further** that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

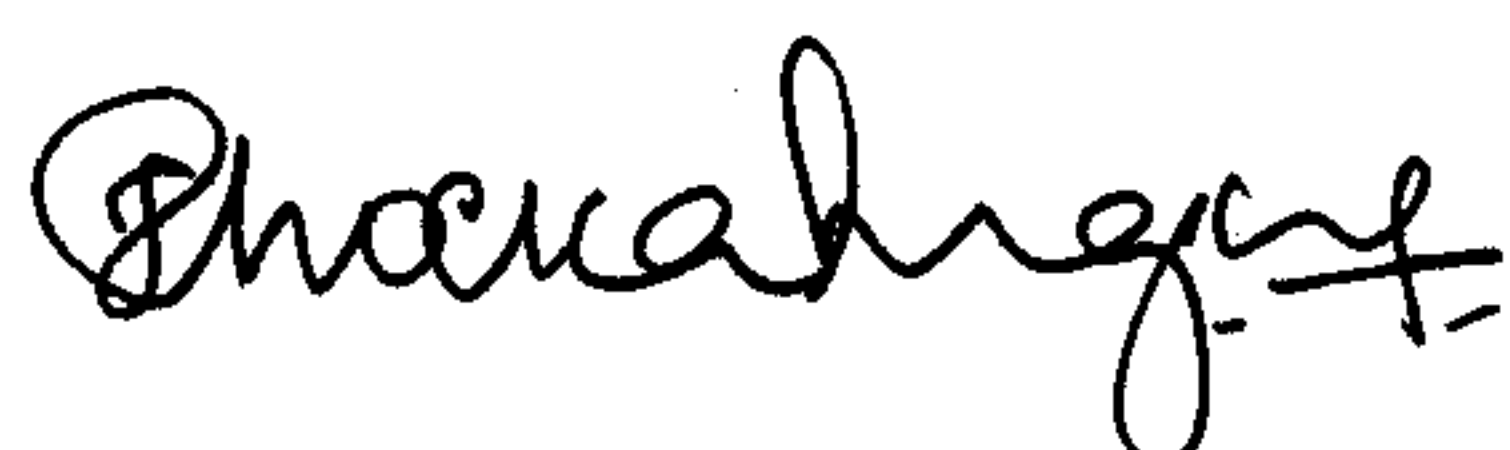
**Provided also** that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of **section 12**, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.”.]

*7[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]span>*

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

**Provided** that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.”





18. However, Chapter 18 Other Reliefs Sought - of the Resolution Plan for immunity from proceedings for actions occurring on or before the date of approval of the Resolution Plan by this Adjudicating Authority cannot be allowed as these are the subject matter of the various Competent Authorities having their own jurisdiction.
19. This Adjudicating Authority would like to make it clear to the public at large that approval of the Resolution Plan by NCLT does not mean automatic waiver or abetment of any legal proceedings which are pending by or against the Company/Corporate Debtor as those are the subject matter of the concerned Competent Authorities having their proper/own jurisdiction to pass any appropriate order as the case may be. The Resolution Applicant on approval of the Plan may approach those Competent Authorities/Courts/Legal Forums/Offices – Govt. or Semi Govt. / State or Central Govt. for appropriate relief(s) sought for in Chapter 18 Other Reliefs Sought - of the Resolution Plan execution of proceedings against the Corporate Debtor Company for actions occurring on or before the date of approval of the Resolution Plan by this Adjudicating Authority.
20. It is further directed that:
- i. The approved Resolution Plan shall come into force with immediate effect.
  - ii. The Resolution Plan shall be subject to the various existing laws in force and shall also conform to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.
  - iii. The Resolution Applicant(s) shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws for the time being in force within a period of one year from the date of approval of the Resolution Plan by this Adjudicating Authority under section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.





- iv. The RP shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.
21. We, the Adjudicating Authority, are of the considered opinion and also being satisfied that the Resolution Plan as approved by the Committee of Creditors (CoC) meets the requirements as referred to under section 30(2) of the Code, accordingly IA 224 of 2019 in IA 160 of 2019 in IA 340 of 2018 in CP(IB) No. 118 of 2018 is allowed with the above said observations and directions.
22. Any other IA(s), if pending, also stand(s) infructuous and disposed of in view of the above order.

  
**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member (Technical)**

  
**Ms. Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**

LCT