

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-III**

**I. A. No. 592 of 2021  
In  
C.P. No. 99/IB/2019**

In the matter of an Application under Section 30(6), Section 31 and Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

In the matter of  
Buzz Events

... Operational Creditor

V/s.

Varron Aluminumm Private Limited

... Corporate Debtor

**I.A. No. 592/2021**

Mr. Avil Jerome Menezes

...Applicant/Resolution

Professional

**Order delivered on: 19.01.2022**

**Coram:**

Hon'ble Shri H. V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

**Appearance:** For the Applicant/RP: Mr. Chetan Kapaida, Advocate a/w  
Mr. Aniruth Puroshothaman, Advocate  
For the Resolution Applicant: Mr. Shyam Kapadia, Advocate

*Per: Shri H. V. Subba Rao, Member (Judicial)*

**ORDER**

1. This is an Application under Section 30(6), Section 31 and Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (the Code) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant, which is approved by 100% of

the voting share of the members of the Committee of Creditors (hereinafter referred to as 'CoC').

2. The facts leading to the Application are as under:

- i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 06.11.2019 under section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as 'the Code') (Admission Order) and Ms. Tanuja Jalan was appointed as Interim Resolution Professional. The IRP published a public announcement on 03.12.2019 in "Free Press Journal" (Mumbai Edition - English Language) and "Nav Shakti" (Mumbai Edition - Marathi Language) inviting claims from the creditors of the Corporate Debtor.
- ii. The CoC in its 1<sup>st</sup> meeting held on 27.01.2020 decided to replace the IRP with Mr. Avil Jerome Menezes (hereinafter referred to as 'Applicant') as the Resolution Professional (RP). This Tribunal by order dated 02.03.2020 confirmed the appointment of the Applicant as the RP.
- iii. The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

3. The Applicant states that in the 2<sup>nd</sup> CoC meeting held on 20.02.2020, valuers and transaction auditor were appointed Ms. Rajshree Padia and Mr. Vishnu Upadhyaya for valuation of financial assets; Mr. Kedar Arvind Chikodi and Mr. Karan Mody for valuation of Plant & Machinery; Mr. Kedar Chikodi and Mr. Dinesh Warade for valuation of Land & Building and M/s. Amit Ray and Company as the Transaction Auditors of the Corporate Debtor. The Applicant states that the liquidation value and fair value as per the valuation reports submitted by the valuers is as under:

<b>INR in Crores</b>	<b>Valuer 1</b>	<b>Valuer 2</b>	<b>Valuer 3</b>

	<b>Fair Value</b>	<b>Liquidated Value</b>	<b>Fair Value</b>	<b>Liquidated Value</b>	<b>Fair Value</b>	<b>Liquidated Value</b>
Land	3.36	3.23	4.56	3.19	3.96	3.21
Building	28.34	14.47	25.17	15.07	26.73	14.77
Plant & Machinery	13.08	7.62	14.71	7.35	13.90	7.49
Financial Assets	1.1	1.03	1.36	0.83	1.23	0.93
<b>Total</b>	<b>45.88</b>	<b>26.35</b>	<b>45.75</b>	<b>26.44</b>	<b>45.82</b>	<b>26.40</b>

4. Average Liquidation Value of the Corporate Debtor is Rs. 26.40 Crore and the average Fair Value is Rs. 45.82 Crore.
  
5. During the period of CIRP the RP issued Form-G on 26.03.2020, 26.04.2020 and 03.06.2020 inviting expressions of interest (EOI) in “Free Press Journal” (Mumbai Edition – English Language) and “Nav Shakti” (Mumbai Edition – Marathi Language) for prospective resolution applicants (PRAs). The last date for receiving the expression of interest was 25.04.2020, 02.06.2020 and 30.06.2020 respectively. The Applicant received EOIs from 2 Prospective Resolution Applicants (PRAs) within the stipulated time period but however a formal EOI and supporting documents as per the detailed EOI was only received from only one PRA. The Applicant issued a Request of Resolution Plan (hereinafter referred to as ‘RFRP’) along with the Evaluation Matrix on 15.07.2020 and the last date for submission of binding Resolution Plan by PRA was 14.08.2020 but, with the consent of the CoC the last date for submission of resolution plan was extended till 31.08.2020. The Applicant received resolution plans from the Cian Agro Industries and Infrastructure Limited (hereinafter referred to as ‘CIAN’) (the prospective resolution applicant).
  
6. The Applicant stated that on 25.08.2020, the Applicant received resolution plan form CIAN (Resolution Applicant) and further informed the members that the Resolution Plan submitted is not in compliance of the IBC 2016 and that

it has not submitted the Earnest Money Deposit (hereinafter referred to as 'EMD') of Rs. 50 Lakhs. Accordingly, the resolution applicant submitted its resolution plan and submitted the revised plan on 25.01.2021. Accordingly, the Applicant/ RP at the 17<sup>th</sup> meeting of the CoC held on 27.01.2021 placed revised plan before the CoC members, in which detailed deliberations and discussions were carried out on the resolution plan of Cian Agro Industries and Infrastructure Limited.

7. The RP submits that after due verification of the eligibility of the successful Resolution Applicant in terms of Section 29(A) of the Code, the CoC in its 17<sup>th</sup> meeting held on 27.01.2021 considered the revised and final Resolution Plan of Cian Agro Industries and Infrastructure Limited and approved the Plan with the voting share of 100%. Accordingly, compliance certificate was in Form "H" was issued by the Resolution Professional.

8. **The salient features of the Resolution Plan are as under:**

A. The Resolution Applicant is engaged in the business of processing of Soybean / other seeds, marketing of edible oils in domestic marketing and De-oiled cakes in domestic and international markets. CIAN is dealing in manufacturing and packaging of edible Vegetable Oils and trading of Indian Rice, Sugar, Bio Fertilizers, FMCG products like various Spices and other Edible Oil. They also deal in erection & commissioning of industrial units in different horizon. The Resolution Applicant confirmed that it is eligible to submit Resolution plan as per Section 29A of Insolvency and Bankruptcy Code.

B. As the Corporate Debtor is engaged in manufacturing and supply of Aluminium alloy, Casting Extrusion, Steel Forging, High Pressure Die Casting, Hot Steel Forging/ Machining and Aluminium the Resolution Applicant under this Resolution Plan has proposed that as they already have a Manufacturing unit for aluminium based products/ components, in order to expand

existing business, they have shown interest in the Corporate Debtor.

C. The Resolution Applicant has proposed to takeover the management and ownership control of the Corporate Debtor by acquiring up to 100% shareholding of the Company, the details of the proposal are as follows:

D. The Resolution Plan proposes a total financial proposal of Rs. 30.21 Crores as per the following breakup:

SR. NO.	PARTICULARS	AMOUNT PROPOSED (in Rs.)	REMARKS
1.	Cash consideration to be infused and distributed within 105 days from the effective date.	28,50,00,000/-	
2.	Sacrifice of receivables from Corporate Debtor.	80,58,753/-	The RA proposed to forego the balance amount payable by the CD to the group companies of the Resolution Applicant.
3.	Balance outstanding of subsidy amount to be passed on to the Financial Creditors	90,55,351/-	Subsidy granted by the Directorate of Industries to the CD.
<b>TOTAL</b>		<b>30,21,14,014</b>	

E. The Resolution Applicant proposes to infuse Rs. 5,00,00,000/- (Rupees Five Crores Only) as working capital over & above the total cash consideration of Rs. 28.5 Crores within 6 months of approval.

F. Timeline of infusion of funds by Cian Agro shall be in the following manner:

Number of Days	Amount to be infused (in Rs.)	Source
30 days	2,50,00,000	Equity
105 days	7,50,00,000	Equity/Inter Corporate Deposit
	18,50,00,000	Bank Debt/Inter Corporate Deposit/Equity/Equity Linked Instrument
<b>Total Cash Infusion</b>	<b>28,50,00,000</b>	

G. It is pertinent to mention that an amount of Rs. 30,21,14,014/- (Rupees Thirty Crore Twenty-One Lakhs Fourteen Thousand Fourteen Only) will be paid as full and final settlement of all the liabilities of the Corporate Debtor, out of which estimated insolvency resolution process costs which will be payable at actuals (based on estimation up to 31.03.2021) is 3,36,00,000/- (Rupees Three Crores Thirty-Six Lakh Only) and to the Financial Creditors – Rs. 25,14,00,000/- (Rupees Twenty-Five Crores Fourteen Lakhs only). Therefore, Total Pay-Outs under the Resolution Plan is Rs. 28,50,00,000/-.

9. The details of the proposed payments are as follows:

**A) PAYMENT OF INSOLVENCY RESOLUTION PLAN**

- (i) The actual Insolvency Resolution Process Cost (hereinafter referred to as 'IRPC') will be intimated to the RA in the course of the acceptance of the Resolution Plan by the NCLT and hence made a provision of Rs. 3,36,00,000/- in total towards CIRP costs.
- (ii) The IRPC remaining unpaid as on the Effective Date shall be paid in full in priority to all the creditors in terms of Section 30(2) of the Code.
- (iii) The IRPC shall be paid at actuals by the Resolution Professional within 30 days from the Effective Date.

**B) PAYMENT OF OPERATIONAL CREDITORS (EXCLUDING STATUTORY AUTHORITIES AND WORKMEN AND EMPLOYEES)**

The Applicant has submitted the total claim of Rs. 1,72,69,172/- towards the claim of Operational Creditors (Excluding Statutory Authorities and Workmen and Employees) and has further admitted the claims. However in the Resolution Plan proposed to pay NIL amount to the Operational Creditors (Excluding Statutory Authorities and Workmen and Employees).

**C) PAYMENT TO FINANCIAL CREDITORS**

Financial Creditors are proposed to be paid a total amount of Rs. 26,85,14,014/-. The said amount includes the sacrifice of receivables by Cian Agro of Rs. 80,53,753/- and the subsidy amount to be passed on to the Financial Creditors as and when received of Rs. 90,55,351/- within 105 days from the effective date. There are no dissenting Financial Creditors.

**D) PAYMENT TO EMPLOYEES AND WORKMEN AND CONTRACTORS OF THE CORPORATE DEBTOR**

No claim was filed or admitted of the Workmen and Employees of the Corporate Debtor. Therefore, the Resolution Plan has NIL payment to be made to the Workmen and Employees.

**E) PAYMENT TO STATUTORY AUTHORITIES**

It is submitted that the Applicant till receipt of Final Resolution Plan dated 25.01.2021 has admitted Statutory claim of Rs. 13,47,670/-. The Liquidation Value due to such Operational Creditors in NIL and hence Cian Agro has proposed to pay NIL amount to the Statutory Authorities.

**F) DISBURSEMENT OF AMOUNT SHALL BE CARRIED OUT IN ACCORDANCE WITH AND IN THE ORDER OF PRIORITY SET OUT IN THE TABLE BELOW:**

Sr. No.	Particulars	Category	Amount Admitted	Proposed Distribution	Upfront Payment made (as a % of Admitted Claims)	Remarks
1.	CIRP Cost		3,36,00,000	3,36,00,000	100%	The unpaid CIRP cost as estimated by Resolution Professional is Rs. 3.36 Crores. However, the same at actuals will be paid as certified by RP.
2.	Operational Creditors	Workmen and Employees	NIL	NIL	NIL	
		Statutory Authorities	13,47,617	0	0%	
		Other Operational Creditors	3,77,29,543	0	0%	
3.	Financial Creditors*		18,85,38,28,470	25,94,58,753	1.37%	Any amount available for

						distribution after the payment of Unpaid CIRP Cost and Operational Creditors as stated above shall be distributed to Financial Creditors.
	Total		18,92,65,05,630	29,30,58,753		

\* The amount proposed above is excluding the subsidy amount of Rs. 90,55,351 to be passed on the Financial Creditors as and when received. The total consideration to Financial Creditors will be Rs. 26,85,14,014.

10. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor in terms of Section 30(2)(c). The Plan also provides for implementation of provision of the Resolution Plan as stated above as per Section 30(2)(d). The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:

- a) Payment of CIRP cost will be made in priority over Financial Creditor (Regulation 38(1)(a)).
- b) Since the plan has been approved by 100% voting share of the CoC. This is in compliance of Regulation 38(1)(b) of the Regulations.

- c) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A)).
- d) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan.

11. It is beneficial to refer to the observation of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.*: (2019) SCC OnLine SC 1478 as under:

“67. ....

*A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove.”*

12. In view of the above ruling of the Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. As already indicated the Resolution Plan has been approved by the CoC in its meeting held on 27.01.2021 with 100% votes.

13. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to

submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

14. In **CoC of Essar Steel** (*supra*) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

*"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (*supra*)."*

15. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. There are no workers claims. Adequate provision is provided for future claims of Operational Creditors if any the by Resolution Applicant. Resolution Applicant agreed to pay the full CIRP cost and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Applicant is making full

payments to Financial Creditors. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

16. We are of the considered opinion that the distribution of the payments to the Creditors, Financial or Operational, as the case may be, shall be subject to orders to be passed in the respective Miscellaneous Application within the ambit of the Code. We are thus inclined to dispose of this Application in the following terms. Hence ordered.

**ORDER**

- i. The Interlocutory Application No. 592 of 2021 is allowed. The Resolution Plan submitted by **Cian Agro Industries and Infrastructure Limited** is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- ii. We shall clarify here that the Resolution Applicant shall take over the corporate debtor with all its assets and liabilities as per terms of approved resolution plan. If any relief concerning any identified liability of the corporate debtor is required then that needs to be specifically mentioned and sought for in the resolution plan. This bench cannot allow any general power to any resolution applicant absolving him of liability of the corporate debtor company, without knowing about the liability against which such exemption is sought. in other words, relief/ exemptions from only existing liabilities which are specifically identified can be sought and allowed in the resolution plan.
- iii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by

the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.

- iv. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- v. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- vi. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- vii. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- viii. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.

Sd/-

**CHANDRA BHAN SINGH**  
**MEMBER (TECHNICAL)**

Sd/-

**H. V. SUBBA RAO**  
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**I.A. 493/2021**

Under Section 66 & 67 read with section (60(5) of Insolvency &  
Bankruptcy Code, 2016

**Filed by**

Avil Menezes,  
Resolution Professional of Varron Aluminium Private Limited,  
Registered office at: 416 Crystal Paradise Co-Operative Soc. Ltd.  
Dattaji Salvi Marg, Above Pizza Express, Off Veera Desai Rd, Andheri  
West, Mumbai 400053

**...Applicant**

**Vs.**

1. Sanjiv Visvambhar Pophale,  
Director of Varron Aluminium Pvt. Ltd.  
Govt colony, Vishrambag, Sangli- 416415

**...Respondent No. 1**

2. Mukund Sadashiv Kulkarni  
Director of Varron Aluminium Pvt. Ltd.  
B-2/6, Saranga Terraces, Sinhagad Road, Near Prathamesh nigari,  
Anandnagar, Pune- 411051

**...Respondent No. 2**

3. Sunil Mahadeo Dehane,  
Director of Varron Aluminium Pvt. Ltd.  
Flat No. 49, Apurva Residency, Sinhgad Road, Vitthal wadi,  
Opp. Nityanand Hall, Hingane Khurd, Pune- 411051

**...Respondent No.3**

4. Santosh Bhiku Agre,  
Erstwhile Director of Varron Aluminium Pvt. Ltd.  
S-2, Laukik Apartment, Markandi, Tal: Chiplun, Ratnagiri- 415605

**...Respondent No.4**

5. (Late) Mr. Shrikant Sawaikar,  
Erstwhile Promotor of Varron Aluminium Pvt. Ltd.  
5/19, Vasantdada Industrial Estate, Sangli- 416416

**...Respondent No.5**

**In the matter of**  
**C.P. No. 99/I&BP/MB/2019**

Buzz Events,  
Basilio Soares Complex Building-B, 3<sup>rd</sup> floor, Office No. T5  
St. Inex, Gao- 403001

**...Operational Creditor**

**Versus**

Varron Aluminum Private Limited  
403, Floor-4, Shree Krishna Building, Sant Gadge Baba Marg, Off  
Dadasaheb Phalke Road, Dadar (E),  
Mumbai- 411026

**...Corporate Debtor**

**Order delivered on: 19.01.2022**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)  
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

**Appearance:**

For the Resolution Professional: Mr. Chetan Kapadia a/w Mr.  
Aniruth Puroshothaman,

***Per: Shri Chandra Bhan Singh, Member(T)***

**ORDER**

1. The above I.A. 493/2021 has been filed by Mr. Avil Jerome Menezes, Resolution Professional under Section 66 & 67 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking necessary order against the Respondent(s) for entering into fraudulent and wrongful trading transaction causing a potential loss to the Corporate Debtor.
2. In this regard, the Bench notes that in the past no one has appeared for the Respondent(s). The Bench also notes that

sufficient service of notice has been given to the Respondent(s) side for filing their reply and be present for the hearing. However, the Respondent(s) choose not to do so. In view of this, the Respondent(s) were set ex-parte vide order dated 02.09.2021 by this Bench. Thereafter, this matter was finally heard on 06.12.2021 and reserved for order.

3. As per the Resolution Professional/Applicant, the details of the Respondent(s) are as under:

- |      |  |   |
|------|--|---|
| i.   | Sanjiv Visvambhar Pophale (R <sub>1</sub> )    | } Directors of the<br>Corporate Debtor          |
| ii.  | Mukund Sadashiv Kulkarni (R <sub>2</sub> )     |   |
| iii. | Sunil Mahadeo Dehane (R <sub>3</sub> )         |   |
| iv.  | Santosh Bhiku Agre (R <sub>4</sub> )           | } Erstwhile Director of the<br>Corporate Debtor |
| v.   | (Late) Mr. Shrikant Sawaikar (R <sub>5</sub> ) |   |

4. The Bench notes that on the instruction of the Committee of Creditor in its meeting held on 20.02.2020, Mr. Amit Ray & Company were appointed as the Transaction Auditors for the purpose of carrying out Transaction Review Audit of the Corporate Debtor for the period 01.04.2017 to 06.11.2019.
5. The Transaction Audit Report was prepared by Amit Ray & Company and was submitted to Committee of Creditor. Based on the Transaction Audit Report, the present I.A. has been filed on 23.03.2021 by the Resolution Professional under Section 66 and 67 of the Insolvency and Bankruptcy Code, 2016. A copy of the

Transaction Audit Report has also been attached to the Application.

6. The Bench notes that there are broadly nine transactions which have been identified as a fraudulent/wrongful trading transaction by the forensic auditor. The pointwise discussion and findings of all these nine transactions are as under:

**6.1. No receipt in the Corporate Debtor's account from sales made to group companies, thus amounts to fraudulent and wrongful trading and transaction:**

6.1.1. The Corporate Debtor in the financial year 2017-18 made sales to its group company- Varron Industries Pvt. Ltd. of total value of Rs. 6,14,32,663/- out of which only 5,91,57,076/- was realised by the Corporate Debtor.

6.1.2. The Bench notes that again during the financial year 2018-19 the Corporate Debtor made sales amount of Rs. 4,75,16,085/- to the group company, Varron Industries Pvt. Ltd. however, only Rs. 1,03,97,000/- was realised. Similarly, during the financial year 2019-20, the Corporate Debtor made sales to the same group company of Rs. 49,76,390/- out of which only 13,25,000/- was realised. A summary of these transactions are as under:

**Summary of Transaction with Corporate Debtor:**

Rupees in Crores

<b>Particulars</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>
Sales	6.14	4.75	0.50
(-) Receipt	(5.91)	(1.04)	(0.13)
<b>Closing Bal</b>	<b>0.23</b>	<b>3.71</b>	<b>0.37</b>

- 6.1.3. The Bench notes that the Varron Industries Pvt. Ltd. is a related party of the Corporate Debtor as per Section 5(24)

of the Code as it has common directors/common control/common promoter between the group companies and the Corporate Debtor. The Bench also notes that the realisation in Financial Years 2017-18, 2018-19 and 2019-20 has been 96.29%, 21.88% and 26.62% respectively. The Bench notes that as per the submissions made by the RP, the total sales made to group companies constitute about 19.25% of the sales made by the Corporate Debtor.

6.1.4. It is also clear to this Bench that there were huge non-recovery of sales realisation, however, the Corporate Debtor was still continuously making sales transaction with the group companies i.e. Varron Industries Pvt. Ltd. which resulted in negative financial impact to the tune of Rs. 4,30,46,063/- to the Corporate Debtor. The Bench therefore, has no doubt that these transactions were carried out with the malafide intent to defraud the company and cause financial loss to the creditors of the Corporate Debtor.

**6.2. Opening balances of Debtors/Creditors etc. are written off against Reserves and Surplus amounting to fraudulent and wrongful trading and transactions:**

6.2.1. The Bench notes that the Resolution Professional has mentioned that opening balances of the liabilities of the Corporate Debtor amounts to Rs. 1,40,82,531/- which have been adjusted against Reserves and Surplus thereby leading to wrongful reduction in the liabilities of the Corporate Debtor for which no actual payment has been made. The Bench notes that such wrongful reduction in liabilities is misleading to the users of the financial

statements and as it depicts that the liabilities of the Corporate Debtor have been reduced when in fact no actual payment has been made against such liabilities. Similarly, opening balances of the Corporate Debtor amount to Rs. 3,27,39,783/- and have been adjusted against Reserves and Surplus thereby leading to wrongful reduction in the value of the assets of the Corporate Debtor.

6.2.2. The Bench notes that the directors of the Corporate Debtor with the malafide intention had entered into a wrongful trading by making net adjustment entries of Rs. 1,86,57,251/-. The Bench notes that such transaction were not carried out in ordinary course of business of the Corporate Debtor but with an intention for defrauding the creditors of the Corporate Debtor.

**6.3. Advance given to Group Company and other Creditors with no recoveries and not even any attempt to recovery were ever made:**

6.3.1. The Resolution Professional mentions that certain advances payments were made during the Financial Year 2017-18, 2018-19 and 2019-20 purportedly to trade creditors of the Corporate Debtor including the group company, Varron Autokast Limited. The Bench notes that no recoveries were made of these advances nor any goods/services were received for the same by the Corporate Debtor during the review period. The closing outstanding balances of such advances without any recoveries either by way of goods received or payments made at the end of 2019-20 stood at Rs. 4,57,68,136/-. This act of the directors clearly shows that they completely lacked any due

diligence to minimise the potential loss caused to the creditors of the Corporate Debtor. Keeping in view that this has been made to the related parties therefore, prima facie these advances amount to fraudulent transaction with a wrongful intent for defrauding the creditors of the Corporate Debtor.

**6.4. Purchases made from group company at a price higher than average purchase price from non-related entities:**

6.4.1. As submitted by the Resolution Professional, the Bench notes that the Corporate Debtor had entered into purchase transaction with a group company, Varron Industries Pvt. Ltd. which is a related party of the Corporate Debtor as it has common directorship/common control/common promoters. These purchases, during the financial year 2017-18, 2018-19 and 2019-20, of Aluminium Alloy ingots LM6, and Aluminium alloy ingots ADV-12 were to the tune of Rs. 23,03,20,099.78/- which constituted about 58.15% of the total purchase of Corporate Debtor made during these years. The Resolution Professional mentions that in case Aluminium alloy ingots LM6 the Corporate Debtor had made purchase from group company at the rate of Rs.147.69 per kg. Whereas from the average purchase price from non-related party was only Rs. 134.14 per kg. Keeping in view that a total of 6,00,418 Kgs of Aluminium alloy ingots was purchased from related party group company, a total of Rs. 8135663.90/- was paid in excess to take group company over and above the average purchase price.

6.4.2. Similarly, in case Aluminium alloy ingots ADC-12 the purchase from the related party were made at Rs. 131.95 per kg as against average price paid to non-related party of Rs. 121.70 per kg. The bench notes that about 313565 Kgs were purchased from the group companies and hence an excess payment of Rs. 3204634.30/- was made to the related party/group companies over and above the average purchase price of the non-related parties.

6.4.3. The Resolution Professional mentions that as a result of such transaction, the Corporate Debtor has incurred a loss of Rs. 1,13,40,298.20/- by way of making excess payment to the group company which is not in ordinary course of business.

6.4.4. The Bench is of the view that the intention of the directors of the Corporate Debtor in purchasing goods at a higher price from a related party compared to a low existing price paid to the non-related parties was with an intent to defraud the Corporate Debtor Company and its creditors.

**6.5. Fraudulent and wrongful transaction- Temporary loan given to a group company:**

6.5.1. The Forensic Audit bring out the fact that the ex-promoters/directors provided an interest free temporary loan of an amount of Rs.1,03,91,585/- to the group company Varron Autokast Limited which is related party to the Corporate Debtor as per section 5(24) of the Code. This amount remained outstanding against which no amount has been realised. The Bench notes the contention of the Resolution Professional based on the Audit Report that a wrongful adjustment entry of Rs. 33,58,456/-had been

made to reduce this amount receivable from the group company, Varron Autokast Ltd.

6.5.2. The Bench notes that non-recovery of the amount by the ex-promoters/directors of the Corporate Debtor shows the fraudulent intent of diversion of funds of the Corporate Debtor to the related party and therefore it squarely covered under Section 66 of the Code as a fraudulent transaction.

**6.6. Fraudulent and wrongful transaction- Long aged debtors having huge receivable balances, but no recovery is made:**

6.6.1. As submitted by Resolution Professional, the Bench notes that the Corporate Debtor has a long-aged amount receivable of Rs. 9,51,88,42,700/- from various debtors for which no efforts have at time been made by the directors of the Corporate Debtor. A summary of such high value accounts receivables of the Corporate Debtor is as under:

Rupees in Crores

<b>Particulars</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>
Radhika Enterprises	332.27	332.27	332.27
Ratna Metal Mart	266.83	266.83	266.83
Hind Auto Enterprises	253.91	253.91	235.91
Varron Auto Comp Pvt. Ltd.	45.72	45.71	45.71
Shweta Trading Co.	42.93	42.93	42.93

Varron Industries Pvt. Ltd.	31.18	29.48	28.24
<b>Total</b>	<b>954.84</b>	<b>953.13</b>	<b>951.88</b>

6.6.2. The Bench notes that on verification of such entries by the transaction auditor, no records existed whatsoever such as non-availability of valid GST Registrations, Provident Funds and/or website, under its trade names. This confirms that these are fictitious, not genuine transaction and non-existence of the above-mentioned parties. The Bench also notes that some of such receivable are from related parties of the Corporate Debtor and also that no efforts of recovery in form of any letter, correspondence to these debtors for such receivable were ever made by the Ex-promoters/directors of the Corporate Debtor. All these shows that the transactions were fictitious. Absence of any records also are to be a bogus transaction with an intention to defraud the Corporate Debtor Company.

**6.7. Fraudulent and wrongful transactions- In spite of purchase of sales during the review period, the stock in trade remains same:**

6.7.1. The Resolution Professional submits that several purchase and sales during the review period were made, however, the stock in trade remained at the same level of Rs. 1,20,92,17,616/-.

6.7.2. The Resolution Professional further mentions that he has received data regarding the inventory of Corporate Debtor for December 2019 where the closing balance of inventory

stood at Rs. 57,02,476/- but the records from Tally ERP software stood at Rs. 1,20,92,17,616/-.

6.7.3. The Bench therefore concludes that the ex-promoters/directors have over valued the inventory at Rs. 1,20,35,15,149/- as on December 2019 thereby making it clear that the ex/Director/ Promoters have not exercised due diligence in reflecting the true position of stock records and books of accounts.

**6.8. Purchases from group company which reflects fraudulent and wrongful trading/transactions:**

6.8.1. The Bench notes that the Corporate Debtor had made purchase from group company, Varron Industries Pvt. Ltd. to the tune of Rs. 23,03,20,099/- for which a payment of only Rs. 14,23,81,593/- was made and the closing balance was Rs. 8,79,38,506/-. The Bench notes this was adjusted against the balance receivable from Varron Industries Pvt. Ltd.

6.8.2. The Auditor Report arrives at conclusion that the books of accounts/tally records provided by suspended directors/promoters of the Corporate Debtor are not reliable and hence the above amount of Rs. 8,79,38,506/- has been adjusted against the wrongful balance receivable by the Corporate Debtor.

6.8.3. The Bench therefore feels that this was with the malafide intention to cause substantial loss to the creditors of the Corporate Debtor and the such transaction has led to a distressed situation of the Corporate Debtor leading to default in making payments to the Financial Creditors.

**6.9. Transaction with related party amounting to diversion of funds:**

6.9.1. Based on the Forensic Audit Report, the Bench notes that the majority of the purchases and sales transaction were carried out with related parties of the Corporate Debtor during the Review Period. Based on the submissions of the Resolution Professional, the Bench notes that total inflows from the related party during the review period stood at Rs. 8,10,91,076/- against which payment to the related party was made to the tune of Rs. 19,40,49,217/- during the review period. Thus, there is net outflow of Rs. 11,29,58,141/-. A summary of such transaction carried out between the related parties as per the Forensic Audit Report is as under:

(INR in Crores)

<b>Particulars</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>	<b>Total</b>
Receipt	6.66	1.05	0.39	8.11
Payments	(10.92)	(7.94)	(0.55)	(19.40)
<b>Net outflow</b>	<b>(4.25)</b>	<b>(6.88)</b>	<b>(0.16)</b>	<b>(11.29)</b>

6.9.2. As brought out by the Forensic Auditor, these transactions appears to be suspicious and was carried out with the mala fide intent to cause loss to the creditors and therefore such money has to revert back to the account of the Corporate Debtor.

7. In view of the above, it is very clear to this Bench that the above transactions are highly suspicious as brought out in the Forensic Audit Report and falls squarely within the ambit of Section 66 of the Code. The Bench therefore has no doubt in

its mind that these transactions appear to be carried out with an intention of defraud the creditors of the Corporate Debtor's Company and needs to be reversed back to the Corporate Debtor Company.

8. The Bench is in conclusion declares that the transactions mentioned above are fraudulent and wrongful trading transaction under Section 66 of the Insolvency and Bankruptcy Code, 2016 and the Respondent Nos. 1,2,3,4 and legal heirs of Respondent No.5 who constitute ex/directors/promoters' company to compensate the Corporate Debtor Company by way of reversing these transaction and pay back the above amount, which comes to about Rs. 11,05,51,60,296/- as per details below:
- i. Rs. 4,30,46,063/- as detailed at para 6.1.4,
  - ii. Rs. 1,86,57,251/- as detailed at para 6.2.2
  - iii. Rs.4,57,68,136/- as detailed at para 6.3.1
  - iv. Rs.1,13,40,298.20/- as detailed at para 6.4.3
  - v. Rs.1,03,91,585/- as detailed at para 6.5.1
  - vi. Rs.9,51,88,42,700/- as detailed at para 6.6.1
  - vii. Rs.1,20,35,15,149/- as detailed at para 6.7.1
  - viii. Rs. 8,79,38,506/- as detailed at para 6.8.2.
  - ix. Rs. 11,29,58,141/- as detailed at para 6.9.1
9. The Bench further directs the Respondents to make the payment within 2 weeks from the pronouncement of the order into the bank account of Corporate Debtor bearing Account No. 30988934160 having IFSC- SBIN0010182 held with State Bank of India, Ratnagiri Branch.

10. With the above direction, the I.A. 493/2021 is 'Allowed'  
and disposed of accordingly.

**Sd/-**  
**CHANDRA BHAN SINGH**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**