

Before the National Company Law Tribunal,  
Chandigarh Bench  
Corporate Bhawan, Plot No.4B, Sector 27-B, Madhya Marg,  
Chandigarh.

No: NCLT/CHD/Reg/cc/385

Date: 10-10-19

CA No. 483/2019

In

CP (IB) NO.271/Chd/Pb/2018

In the matter of:

JFC Finance (India) Limited

Vs

Mohak Carpets Private Limited

**And In the matter of:**

Mr. H S Kohli

...Financial Creditor

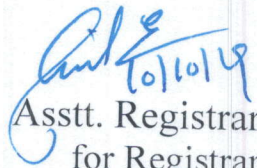
...Corporate Debtor

...Applicant/RP

To

Mr. H S Kohli, RP  
N-2, Ground Floor,  
Green Park Extension,  
New Delhi-110016

Please find enclosed herewith a certified copy of order dated 10.10.2019,  
for your information and necessary action.

  
Asstt. Registrar  
for Registrar  
NCLT, Chandigarh Bench

IN THE NATIONAL COMPANY LAW TRIBUNAL  
"CHANDIGARH BENCH, CHANDIGARH"

CA No.483/2019  
IN  
CP (IB) No.271/Chd/Pb/2018

Under Section 30(6) of the  
Insolvency and Bankruptcy Code, 2016.

**In the matter of:**

JFC Finance (India) Limited  
Vs.  
Mohak Carpets Pvt. Ltd.

... Non-Petitioner/Financial Creditor.

... Non-Respondent/Corporate Debtor

**CA No.483/2019**

**And in the matter of:**

Harvinder Singh Kohli,  
N-2 (G.F.), Green Park Extension,  
New Delhi-110016

... Applicant/Resolution Professional.

Order delivered on: 10.10.2019

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member(Judicial).  
Hon'ble Mr. Pradeep R. Sethi, Member(Technical).**

For the Resolution Professional: 1. Mr. Nahush Jain, Advocate  
2. Mr. Harvinder Singh Kohli, RP, in person.

For the Resolution Applicant: 1. Mr. Manish Jain, Advocate.  
2. Ms. Divya Sharma, Advocate.

For the Financial Creditor:  
(Central Bank of India) 1. Mr. Rajesh Kumar Gupta, AGM  
2. Mr. Rajeev Kumar Garg, Senior Manager/Law

**Per: Pradeep R. Sethi, Member(Technical)**



CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018

**ORDER**

CA No.483/2019 is filed by the Resolution Professional (**RP**) under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **Code**) read with Regulations 37 to 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the **Regulations**) seeking sanction of resolution plan as approved in the tenth meeting of the Committee of Creditors (**CoC**) held on 03.07.2019 and through e-voting concluded on 06.07.2019.

2. It has been submitted that the insolvency petition was filed by the financial creditor i.e. JFC Finance (India) Limited under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Mohak Carpets Pvt. Ltd. (hereinafter referred to as **Corporate Debtor**) and the same was admitted vide order 08.10.2018 and the CIRP of the corporate debtor was initiated. It is submitted that vide order dated 12.10.2018, Mr. Anil Kumar was appointed as Interim Resolution Professional (**IRP**), moratorium was declared and vide order dated 30.11.2018, Mr. Anil Kumar was replaced and Mr. Harvinder Singh Kohli was appointed as RP. The IRP is stated to have issued a public announcement as per Regulation 6 of the Regulations read with Section 15 of the Code in Form A in newspapers of both regions i.e. Jansatta (Hindi Edition) in Delhi/NCR, Financial Express (English Edition), Delhi/NCR and Times of India (English Edition) in Chandigarh Region on 14.10.2018 and in Jagbani, Amritsar Bani (Punjabi Edition) in Amritsar Region on 15.10.2018 thereby inviting claims from the creditors of the corporate debtor as envisaged in the Code. A copy of



CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018

13-11-2019

the public announcement in Form A was sent to Insolvency & Bankruptcy Board of India (IBBI) by email dated 16.10.2018.

3. It is submitted that in pursuance of the public announcement, two claims in Form-C were received i.e. one on 26.10.2018 from Central Bank of India (secured financial creditor) and other on 29.10.2018 from JFC Finance (India) Ltd, unsecured financial creditor and after verification of the claims, the IRP constituted the CoC on 02.11.2018 as per the provisions of Section 21 of the Code consisting of Central Bank of India and JFC Finance (India) Ltd. with voting share of 99.83% and 0.17% respectively.

4. It is submitted that the IRP also appointed two registered valuers to determine the liquidation value of the corporate debtor in accordance with Regulation 35 of the Regulations and the liquidation value as assessed on the basis of these two reports is as under:-

Sr. No.	Name of Valuer	Fair Value(₹)	Liquidation Value(₹)
1	LSI Engg. & Consultants Ltd.	14,05,14,246/-	9,71,23,977/-
2	Rajesh Shankar & Associates	17,25,58,078/-	8,98,04,607/-
	Total of 1 and 2	31,30,72,324/-	18,69,28,584/-
	Average Value	15,65,36,162/-	9,34,64,292/-

Copies of Valuation Reports are annexed as Annexure-22 (colly).

5. It is stated that in the third meeting of CoC held on 19.12.2018, the CoC resolved and approved 'Eligibility Criteria' for resolution applicants and publication of invitation for expression of interest and that as per Section 25(2)(h) in order to submit a resolution plan, resolution applicant shall meet following criteria: -

CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018



*[Handwritten signature]*

- i) Resolution Applicant/its promoter company/group companies shall at least have net worth of ₹2.00 crore; and
- (ii) Resolution Applicant shall have track record of 2 years in manufacturing or business sector; and
- iii) Resolution applicant shall deposit refundable security of ₹5.00 lakh.

6. It is stated that the RP made a Public Announcement for invitation of resolution plan in Form G prescribed in Regulation 36A of CIRP Regulations, 2016 in Financial Express, English Edition (Delhi & Chandigarh) on 24.12.2018, Jansatta, Hindi Edition (Delhi & Chandigarh) on 24.12.2018 and Desh Sewak, Punjabi Edition(Punjab) on 24.12.2018. Copy of the Form-G has also been forwarded through email to IBBI on 24.12.2018. Copies of publication of Form-G in newspapers and the email sent to IBBI are annexed as Annexure-9 (colly).

7. In the fourth meeting of the CoC on 16.01.2019, the RP apprised the CoC that the information memorandum has been prepared and the same was circulated in electronic form to both the members of CoC who had already submitted the Confidentiality Undertaking to the RP to maintain the confidentiality of the information as provided in the information memorandum.

8. It is submitted that after publication of Form G on 24.12.2018, the RP received EOI from three prospective resolution applicants namely, (a) Shiva Consultants Pvt. Ltd., (b) JFC Finance (India) Ltd. and (c) Mr. Kabir Bajaj & Mrs. Minal Bajaj (suspended Directors) but for wider participation, the Form G was again published in Financial Express (English), Jansatta (Hindi) in Delhi, Chandigarh editions, Desh Sewak, (Punjabi) edition in Chandigarh & Punjab and Amar Ujala (Hindi) edition in Chandigarh all Haryana with NCR, with revised date



CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018

*[Handwritten signature]*

of 23.01.2019. Copy of Form G was forwarded to IBBI on 23.01.2019. Copies of newspaper publications in Form G is attached as Annexure -14 colly.

9. It is stated that in response to the Form G dated 23.01.2019, apart from the aforesaid three prospective Resolution Applicants, EOI was received from one more prospective resolution applicant namely Alchemist Asset Reconstruction Company Ltd. Further, it is submitted that the EOI received from Mr. Kabir Bajaj & Mrs. Mrinal Bajaj (suspended Directors) was found ineligible. The evaluation matrix was approved by the CoC in its sixth meeting.

10. CA No.250 of 2019 was filed by the RP under Section 12(2) of the IBC, 2016 for extension of the CIRP time period by a further period of 90 days and the same was allowed vide order dated 12.04.2019. A copy of the order is at Annexure-16 of the paper book.

11. It is stated that Form G was again published in the same newspapers with revised date 14.03.2019 in continuation of earlier publication of Form G dated 24.12.2017 & 23.01.2019 and the RP received EOI from one more prospective resolution applicant i.e. Obeetee Textiles Pvt. Ltd. bringing the total numbers of prospective resolution applicants to five, out of which only four were eligible applicants. Further, out of these 4 applicants, Resolution plan was received from only two resolution applicants namely Shiva Consultants Pvt. Ltd. and Alchemist Asset Reconstruction Company Limited on the last date of 31.05.2019. The CoC after discussion gave further time to the resolution applicants to submit detailed and revised plan enhancing the amount under the resolution plan. The two resolution applicants submitted their respective revised resolution plan to the CoC for consideration. The CoC in its tenth meeting held on 03.07.2019, after detailed discussion declared the resolution plan dated 31.05.2019 with amendment dated



CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018

*[Handwritten signature]*

21.06.2019 and further amendment dated 28.06.2019 (revised Resolution Plan) with all further clarifications submitted by Alchemist Asset Reconstruction Company Limited as H-1 approved by 100% voting.

12. It is prayed to pass an order for approval of resolution plan submitted by resolution applicant – Alchemist Asset Reconstruction Company Limited as approved with 100% voting under Section 30(4) of the Code in the tenth meeting of CoC of the corporate debtor held on 03.07.2019.

13. When the matter was listed on 23.08.2019, the Central Bank of India was directed to file detailed affidavit to explain constitution of the monitoring committee; and release of bank guarantee/ personal guarantee and security received. The RP was also directed to file detailed Form H.

14. In compliance of the order dated 23.08.2019, Shri Rajesh Kumar Gupta, Assistant General Manager and Constituted Attorney of Central Bank of India filed affidavit dated 11.09.2019 (Diary No.4722 dated 12.09.2019) stating therein that the total amount of ₹1416 lacs as per the resolution plan offered by the Resolution Applicant to Central Bank of India is fully secured by all the mortgaged assets of the Corporate Debtor and the personal guarantees of its erstwhile promoters/directors till the entire amount of it is paid in full including redemption of the security receipts within binding timeline of 4 years as envisaged in the resolution plan. Further, it is stated that the Monitoring Committee comprises of Shri Manish Nihalani, authorised representative of the Resolution Applicant; Shri Rajesh Kumar Gupta, authorised representative of the Central Bank of India and Shri H.S. Kohli, Insolvency Professional who shall monitor the implementation of the plan from effective date till assignment date (execution and signing of Assignment Agreement) and this will be Phase I. It is stated that on



CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018

*Handwritten signature*

completion of Phase I, the Board of Directors (newly constituted) of the corporate debtor shall take over the supervision of implementation.

15. It is further submitted that affidavit of the resolution applicant regarding their eligibility under Section 29A, read with Regulation 38 of IBC, 2016 is at Annexure-2 (Diary No. 4721 dated 12.09.2019). Also the RP has filed compliance certificate in detailed Form H (Diary No.4721 dated 12.09.2019).

16. It is submitted that the CoC while accepting the resolution plan submitted by Alchemist Asset Reconstruction Company Limited had taken care of all the provisions of the Code and the Regulations and the plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability. It is prayed that the application may be allowed and the resolution plan as approved by the CoC in the CIRP of the corporate debtor be approved.

17. During the course of hearing on 16.09.2019, the Senior Officer of Central Bank was directed to file an affidavit with regard to the modalities related to execution and assignment agreement and transfer of charges to the resolution applicant in Phase-I. Also the Resolution Professional was directed to furnish the details of effect of amendment in Section 30(2) of the Code.

18. Shri Manoj Kumar, Senior Regional Manager and Attorney of Central Bank of India filed compliance affidavit dated 19.09.2019 (Diary No.4946 dated 20.09.2019) stating therein that the Security Receipts holders are secured by the asset being held in the trust formed by the ARCs acting as trustee. Therefore, the security receipts in nature are always secured by the underlining asset which continues to be with the trust and there is no parting of any security interests by



CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018

*Handwritten signature/initials*



banks till the time the amounts under the security receipts are realised in entirety. This averment was confirmed by the learned counsel for the resolution applicant during the course of the hearing on 23.09.2019 (refer order dated 23.09.2019). Further, it is stated that there is a change in the constitution of Monitoring Committee and Mr. H.S Kohli has been replaced by Shri Tajinder Pal Singh as one of the member of the monitoring committee. Copy of the consent letter is at Annexure-3.

19. In compliance of the order dated 16.09.2019, the Resolution Professional filed affidavit dated 19.09.2019 (diary No.4947 dated 20.09.2019) stating therein that Resolution plan is in compliance with the amended provisions of Section 30(2) of the Insolvency and Bankruptcy Code, 2016 (amendment dated 16.08.2019). It is further submitted that the resolution plan envisages payment to the operational creditors which is higher than the amount as realised by the operational creditors in the event of liquidation of the corporate debtor and that there is no dissenting financial creditor as per the plan.

20. We have carefully considered the submissions of the learned counsel for the RP and the learned Senior Counsel for the resolution applicant and have also perused the record.

21. The corporate debtor was incorporated on 11.06.2009 and as discussed above, the CIRP proceedings were initiated by order dated 08.10.2018. It is stated by Central Bank of India (Diary No.4722 dated 12.09.2019) that the corporate debtor availed various credit limits and lastly on 19.02.2013 for an aggregate amount of ₹34.87 crore from Central Bank of India (sole banker) and due to low turnover, the corporate debtor's account remained continuously out of order, defaulted in its repayment obligations and was classified as NPA on

CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018



30.06.2014. The present application is filed for approval of the resolution plan submitted by Alchemist Asset Reconstruction Company Limited. The approval has been sought under the provisions of Section 31 (1) of the Code.

22. We may first of all state that after receipt, verification and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of Section 21 of the Code. The details of the financial creditor, the distribution of voting share among them and the position of voting for the resolution plan is as under (para no.5 of Form H (Diary No.4721 dated 12.09.2019).

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Central Bank of India	99.83%	Voted for approval of resolution plan.
2	JFC Finance (India) Ltd.	00.17%	Voted for approval of resolution plan.
	Total	100.00%	Voted for approval of resolution plan.

23. The details of stakeholders under the resolution plan given in para 7 of Form H (supra) is as follows:-

(Amount in Rs. Crs)					
Sl. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Dissenting Secured Financial Creditors	NIL	NIL	NIL	NIL
2	Other Secured Financial Creditors	6280.00 166.00	6280.00 166.00	1416.00	21.97%



CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018

	(1.66.00 Lakh subject to order under WRIT PETITION pending)				
3	Dissenting Unsecured Financial Creditors	NIL	NIL	NIL	NIL
4	Other Unsecured Financial Creditors	10.69	10.69	2.00	18.71%
5	Operational Creditors. (Claims withdrawn)	167.89	Claims withdrew	10.00	Provisions made
	Government (No claim form filed)	NIL		10.00	Provisions made
	Workmen & Employees	NIL		10.00	Provisions made
	CIRP Cost			35.00	
6	Other Debts and Dues: Claims filed by Related Parties	773.68	708.68	NIL	
7	Capex & Working Capital			245.00	
<b>Total</b>				<b>1728.00</b>	

24. The compliance of the resolution plan has been given in para No.9 of Form H (supra) as follows:-

Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the		YES

CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018



	<p><u>complexity and scale of operations of business of the CD?</u></p> <p>Reply: In the 3<sup>rd</sup> meeting of CoC, held on 19.12.2018 (Vol.I. page 135), the CoC approved 'Eligibility Criteria' for Resolution Applicants' and publication of invitation for Expression of Interest'. That as per section 25(2)(h) in order to submit a resolution plan, resolution applicant shall meet following criteria:</p> <p>i) Resolution Applicant/its Promoter company/Group companies shall at least have net worth of Rs.2.00 Crore; and</p> <p>ii) Resolution Applicant shall have track record of 2 years in manufacturing or business sector; and</p> <p>iii) Resolution Applicant shall deposit refundable security of Rs.5.00 lakh".</p> <p>Vol.I/Page 14, Para 10 of the Application: (Minutes of 3<sup>rd</sup> CoC at Vol.I/page 135 of the Application).</p> <p>Vol.I/page 26, para 32 of Application – Performance Security of Rs.10.00 Lakh. In the 7<sup>th</sup> Meeting of CoC held on 29.04.2019, value of Performance security of Rs.10.00 Lakh was approved. (Minutes of 7<sup>th</sup> CoC at Vol.II/pages 338-339 of Application)</p> <p>Net Worth of RA as per EOI is Rs.131.84 Crore as on 31.03.2018. RA engaged in the business of acquisition and resolution of stressed assets over a decade. (Vol.IV/Page 640 of Application).</p> <p>Performance security of Rs.10.00 Lakh provided.</p>	<p>EOI of RA – Vol.IV/Page 638-640 of Application.</p> <p>Balance Sheet of RA for FY 2017-18 at Vol.IV/Page 653.</p> <p>Profile of RA at Vol.VI/page 1052 - 1056.</p> <p>Performance Security of Rs.10.00 Lakh, details attached herewith.</p>	
Section 29A	<p><u>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?</u></p> <p>Reply: The RA undertook and confirmed eligibility under section 29A of the IB Code, 2016. EOI of RA dated 04.02.2019 at Vol.IV/Page 638</p> <p>Clause 6.6 of Resolution Plan at Vol.VI/Page 1064</p> <p>Due Diligence of RA and Resolution Plan was carried out by the Resolution Professional.</p>	<p>Clause 6.6 of Resolution Plan at Vol.VI/Page</p>	YES



CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018

	(Vol.II/page 32, para 41) and also (Vol.IV/pages 734-735).	1064 of Application.	
Section 30(1)	<p><u>Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?</u></p> <p>Reply: Affidavit duly supported by Resolution also.</p>	Affidavit stating that RA is eligible is attached herewith.	YES
Section 30(2)	<p><u>Whether the Resolution Plan:</u></p> <p><u>(a) provides for the payment of insolvency resolution process costs?</u></p> <p>Reply: Chapter VII, Clause 7.1 of Resolution Plan at Vol.VI/Page 1067 of the Application also at Chapter VIII, Clause 8.2 of Resolution Plan at Vol.VI/Page 1071 of the Application provide for upfront payment of CIRP Costs.</p> <p>The issue of restricting CIRP costs to Rs.30.00 Lakh was discussed in the 10<sup>th</sup> meeting of CoC held on 03.07.2019. Vol.VI/page 1125, last para of the Application.</p> <p>Subsequently by email dated 03.07.2019, Vol.VI/page 1034, last para of the Application, the RA consented for payment of CIRP costs to Rs.35.00 Lakh.</p> <p><u>(b) provides for the payment of the debts of operational creditors?</u></p> <p>Reply: 1. Operational Creditors (Workers &amp; Employees) No claim was filed/received by the Resolution Professional from any Worker or Employee of the CD.</p> <p>As per the provisional Balance Sheet as on 12.10.2018 (CIRP Commencement date), Salary payable were shown Rs.19.61 Lakh (Vol.II/page 268). However, Resolution Plan provides for payment upto Rs.10.00 Lakh, under Chapter VII (Vol.VI/page 1068) and also (Chapter VIII, Clause 8.4 Vol.VI/page 1074).</p> <p>2. Operational Creditors (Statutory Dues). No Claim was filed/received by the Resolution Professional from any of the Statutory Authority.</p> <p>As per the provisional Balance Sheet as on 12.10.2018, under Head: Current Liabilities, shown 'Duties &amp; Taxes' of Rs.9.42 Lakh (Vol.II/page 268)</p>	<p>Chapter VII Clause 7.1(a), Vol.VI/page 1067.</p> <p>Chapter VIII Clause 8.2. Vol.VI/Page 1071, Page 1125.</p> <p>Vol.VI/Page Page 1034.</p> <p>Chapter VII (Vol.VI/page 1068). ChapterVIII, Clause 8.4Vol.VI/page 1074</p>	<p>(a) YES</p> <p>(b) YES</p>



CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018

<p>DGFT Claim Status: No claim received from DGFT. Duly informed in the 5<sup>th</sup> meeting of CoC, (Minutes at Vol.II/page 300, 2<sup>nd</sup> para).</p> <p>However, Resolution Plan provides for payment upto Rs.10.00 Lakh, under Chapter VII (Vol.VI/page 1068) and also<sup>8</sup> (Chapter VIII, Clause 8.5 Vol.VI/page 1074).</p> <p>3. (Operational Creditors – others) In the 4<sup>th</sup> CoC meeting held on 16.01.2019 (Vol.II/page 144), Two Claims of Rs.167.89 Lakh were admitted. Updated Claims admitted were informed to the Resolution Applicants by email dated 06.05.2019 (Vol.II/pages 362-363).</p> <p>Present status of withdrawal of claims by these Operational Creditors are mentioned in Vol.II/page 52. Affidavits and Settlement Agreements are as 'Annexure -28' at Vol.VI/pages 1135 to 1163.</p> <p>However, Resolution Plan provides for payment upto Rs.10.00 Lakh, under Chapter VII (Vol.VI/page 1068) and also (Chapter VIII, Clause 8.6 Vol.VI/page 1076).</p>	<p>Chapter VII (Vol.VI/page 1068). Chapter VIII, Clause 8.5 Vol.VI/page 1074</p> <p>Chapter VII (Vol.VI/page 1068) and also Chapter VIII, Clause 8.6 Vol.VI/ page 1076).</p>	
<p><u>(c) provides for the management of the affairs of the Corporate debtor?</u></p> <p>Reply: The RA together with its nominee(s), promoters shall hold 100% shareholding in the restructured share capital of the CD. By email dated 29.06.2019, the RA confirmed and undertake that the nominee(s) shall be compliant with Section 29A, IBC. (Vol.VI/page 1031, point No.3).</p> <p>It is provided that the RA shall appoint new board of directors and business shall be carried out by new management. RA has identified Core Management and Technical Team to manage the operations of the CD. (Chapter XI, Vol.VI/page 1085-1087).</p> <p>Also provided that the RA and the Core Technical Team have estimated that such overhauling would take around 6-9 months to bring the machineries back to working condition. (Vol.VI/page 1086-87).</p> <p><u>(d) provides for the implementation and supervision of the resolution plan?</u></p>	<p>Chapter XI Vol.VI/page 1085-1087</p>	<p>(c) YES</p> <p>(d) YES</p>



	<p>Reply: The RA proposes to provide for it in two phases. Phase I: Starting from Effective Date till Assignment Deed is signed (30 days period) the Monitoring Committee (consisting of 3 persons) shall be supervising the implementation of this Phase I. During this phase, up-front payment of CIRP Costs, Financial Creditors, Operational creditors, Other Creditors, if any, as proposed in the Resolution Plan shall be paid.</p> <p>Phase II. Upon completion of activities of Phase I, the new Board of Directors of the CD as appointed by RA shall take over the supervision of the implementation. The term of the Resolution Plan is 4 years from the effective date within which the payments shall be completed to all the creditors as per Resolution Plan. (Chapter X, Vol.VI/pages 1083-1084).</p> <p><u>(e) contravenes any of the provisions of the law for the time being in force?</u></p> <p>Reply: The RA made declaration that the Plan is not in contravention of provisions of any applicable Laws. (Chapter VI, clause 6.7. Vol.VI/page 1065).</p>	<p>Chapter X Vol.VI/page 1083-1084</p> <p>Chapter VI, clause 6.7. Vol.VI/page 1065.</p>	<p>(e) NO</p>
<p>Section 30(4)</p>	<p><u>Whether the Resolution Plan (a) is feasible and viable, according to the CoC?</u></p> <p>Reply: In 10<sup>th</sup> CoC meeting held on 03.07.2019, resolution plans were deliberated in detail. (Vol.VI/pages 1124 to 1130). Feasibility and viability duly considered by CoC. (Vol.VI/pages 1126 &amp; 1128).</p> <p>Due Diligence of Resolution Plan of RA was carried out by the Resolution Professional (Vol.I/pages 32 para 41) and also (Vol.IV/pages 734-735). Evaluation Matrix of Resolution Plan (Vol.IV/pages 736-737).</p> <p><u>(b) has been approved by the CoC with 66% voting share?</u></p> <p>Reply: In 10<sup>th</sup> CoC meeting held on 03.07.2019 and E-voting concluded on 06.07.2019, Revised Resolution plan of Alchemist Asset Reconstruction Company Ltd. (Resolution Applicant) was approved with majority of 100% Voting.</p>	<p>Vol.VI/pages 1124 to 1130)</p> <p>Vol.IV/pages 734-735. Vol.IV/pages 736-737.</p> <p>(Vol.VI/pages 1131 to 1133, Item No.B2)</p>	<p>(a) YES</p> <p>(b) YES</p>



	E-voting Report ((Vol.VI/pages 1111 to 1119) Final Minutes of 10 <sup>th</sup> CoC (After E-Voting). (Vol.VI/pages 1131 to 1133, Item No.B2)		
Section 31(1)	<p><u>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</u></p> <p>Reply:</p> <p>In 8<sup>th</sup> CoC meeting held on 19.06.2019 (Vol.V/pages 819 to 823, Item No.A8), 9<sup>th</sup> CoC meeting held on 28.06.2019 (Vol.V/pages 921 to 923, Item No.A8) and 10<sup>th</sup> CoC meeting held on 03.07.2019, resolution plans were deliberated in detail. (Vol.VI/pages 1124 to 1130). For effective implementation plan, it duly considered (Vol.VI/pages 1126 &amp; 1128).</p> <p>Due Diligence of Resolution Plan of RA was carried out by the Resolution Professional (Vol.I/page 32 para 41) and also (Vol.IV/pages 734-735). Evaluation Matrix of Resolution Plan (Vol.IV/pages 736-737).</p>	(Vol.VI/pages 1124 to 1130)  Vol.IV/pages 734-735. Vol.IV/pages 736-737.	YES
Regulation 35A	<p><u>Where the resolution profesional made a determination if the corporate debtor has been subjected 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?</u></p> <p>Reply:</p> <p>It is submitted that in 4<sup>th</sup> CoC meeting held on 16.01.2019, the Resolution Professional informed about fraudulent transactions (Vol.I/page17, para 14.).</p> <p>Engagement of Transaction/Forensic Auditor was made on 18.01.2019. Forensic Auditor informed by email dated 28.01.2019 that audit requires inspection of books from the date of availing credit facilities by CD for the prior period of 2016. The Resolution Professional informed vide email dated 29.01.2019 to the Forensic Auditor to carry out audit prior to the year 2016 to cover, inter-alia, fraudulent transactions. Correspondences exchanged with the Forensic Auditor. (Vol.I/page 17, para 15.). and (Vol.I/pages 157-163). In this manner, the Resolution Professional made determination on 29.01.2019 (Vol.I/page 161) i.e.</p>	Vol.I/pages 164-166.  For determination by RP (Vol.I/page161)	YES





	<p>on 109<sup>th</sup> day from CIRP commencement date (12.10.2018).</p> <p>In para 16 (Vol.I/page 18-19) of the Application that intimation has been made to IBBI by email dated 10.02.2019 in terms of Regulation 35A read with Regulation 40A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Copy of Intimation dated 10.02.2019 to IBBI is at Vol.I/pages 164-166 of the Application.</p>	Intimation to IBBI, Vol.I/pages 164-166.	
Regulation 38 (1)	<p><u>Whether the Resolution Plan identifies specific sources of funds that will be used to pay the -</u></p> <p>(a) <u>insolvency resolution process costs?</u></p> <p>Reply: RA having sufficient means. For CIRP costs, up-front payment will be made by the RA from its own sources within 25-30 days of the effective date. The details of Financial Indicators of RA as on 31.03.2019 including Net Worth Rs.149.69 Crore as on 31.03.2019 are provided at Chapter III Clause 3.4. (Vol.VI page 1056).</p> <p>(b) <u>liquidation value due to operational creditors?</u></p> <p>Reply: Liquidation value attributable to such creditors are likely to be 'NIL'. As average liquidation value of CD is Rs.9.35 Crore, (Vol.I/page 31 of Application) which is quite insufficient to pay the claim of secured Financial Creditor, Central Bank of India i.e. Rs.64.46 Crore (Vol.I/pages 53-54 of Application).</p> <p>(i) No claim was filed/received from Workmen and Employees. However, the RA proposes to pay upto a maximum of Rs.10.00 Lakh, in case payment to Workmen and Employees arises before the effective date; (ii) No claim was filed/received from Statutory Authorities. However, the RA proposes to pay upto a maximum of Rs.10.00 Lakh, in case payment to Statutory Authority arises before the effective date; (iii) Whatever claims received from the other operational creditors stood withdrawn.(Vol.I/page 52. Affidavits and Settlement Agreements are at Vol.VI/pages 1135-1163). However, the RA proposes to pay upto a maximum of Rs.10.00 Lakh, in case payment to other operational creditors arises before the effective date.</p> <p>(c) <u>liquidation value due to dissenting financial creditors?</u></p>	<p>Chapter III clause 3.4. (Vol.VI page 1056).</p> <p>Chapter VIII, clause 8.4-8.6., pages 1074-1076.</p>	(a) YES



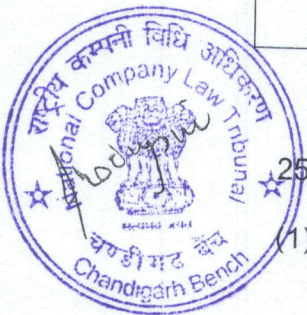
	<p>Reply: NIL. No dissenting Financial Creditor.</p> <p>In 10<sup>th</sup> CoC meeting held on 03.07.2019 and E-voting concluded on 06.07.2019, Revised Resolution plan of Alchemist Asset Reconstruction Company Ltd. (Resolution Applicant) was approved with majority of 100% Voting. E-voting Report (Vol.VI/pages 1111 to 1119)</p> <p>Final Minutes of 10<sup>th</sup> CoC (After E-Voting). (Vol.VI/pages 1131 to 1133, Item No.B2)</p>	Vol.VI/pages 1111 to 1119	
Regulation 38(1A)	<p><u>Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?</u></p> <p>Reply: Yes Statement at Chapter VI, clause 6.3. Vol.VI/page 1063.</p> <p>Funding Plan &amp; Sources of Funds at Chapter VII, Vol.VI/page 1067-1069.</p> <p>Financial Details at Chapter VIII. Vol.VI/page 1070-1080.</p>	<p>Chapter VI, clause 6.3. Vol.VI/page 1063.</p> <p>Chapter VII, Vol.VI/page 1067-1069</p> <p>Chapter VIII. Vol.VI/page 1070-1080</p>	YES
Regulation 38(2)	<p><u>Whether the Resolution Plan provides:</u></p> <p>(a) <u>the term of the plan and its implementation schedule?</u></p> <p>Reply: The term of the Resolution Plan is 4 years from the effective date within which the payments shall be completed to all the creditors as per Resolution Plan. (Chapter X, Vol.VI/pages 1083-1084).</p> <p>Indicative Time-line for re-start operation of the CD is provided in Chapter XII, Vol.VI/page 1088.</p> <p>(b) <u>for the management and control of the business of the corporate debtor during its term?</u></p> <p>Reply: The RA together with its nominee(s), promoters shall hold 100% shareholding in the restructured share capital of the CD. By email dated 29.06.2019, the RA confirmed and undertake that the nominee(s) shall be compliant with Section 29A, IBC. (Vol.VI/page 1031, point No.3).</p> <p>It is provided that the RA shall appoint new board</p>	<p>Chapter X, Vol.VI/pages, 1083-1084</p> <p>Chapter XII,</p>	<p>(a) YES</p> <p>(b) YES</p>



	<p>of directors and business shall be carried out by new management. RA has identified Core Management and Technical Team to manage the operations of the CD. (Chapter XI, Vol.VI/page 1085-1087).</p> <p>Also provided that the RA and the Core Technical Team have estimated that such overhauling would take around 6-9 months to bring the machineries back to working condition. (Vol.VI/page 1086-87).</p> <p><u>(c) adequate means for supervising its implementation?</u></p> <p>Reply: RA is having sufficient means for it. The RA provides for Funding of Capital Expenditure (Capex) and Working Capital (WC) to bring the CD to working/operational condition. The amount proposes to infuse Rs.245.00 Lakh. (Vol.VI/page 1068 last para).</p> <p>Management of CD after effective date provided at Chapter XI, Vol.VI/pages 1085-1087.</p> <p>The details of Financial Indicators of RA as on 31.03.2019 including Net Worth Rs.149.69 Crore as on 31.03.2019 are provided at Chapter III, clause 3.4. Vol.VI/page 1056.</p> <p>Balance Sheet for FY 2017-18 of RA is at Vol.IV/page 653-654 of the Application.</p>	<p>Vol.VI/page 1085-1087.</p> <p>Chapter XI, VOL.VI/page 1085-1087</p> <p>Chapter III, clause 3.4. Vol.VI/page 1056</p>	(c) YES
38(3)	<p><u>Whether the resolution plan demonstrates that –</u></p> <p><u>(a) it addresses the cause of default?</u></p> <p>Reply: RA understood that significant cause of default was major fire accident in CD factory in 2015. Chapter V, clause 5.1. Vol.VI/page 1061</p> <p><u>(b) it is feasible and viable?</u></p> <p>Reply: RA being an Asset Reconstruction Company has experience in addressing distressed companies. Have Technical and management team to re-start and take care of operations of the CD. Chapter V, clause 5.2. Vol.VI/page 1061</p> <p><u>(c) it has provisions for its effective implementation?</u></p> <p>Reply:</p>	<p>Chapter V, clause 5.1. Vol.VI/Page 1061</p> <p>Chapter V, clause 5.2. Vol.VI/page 1061</p>	(a) YES  (b) YES  (c) YES



	<p>Resolution Plan provides for implementation and supervision in Chapter X, Vol.VI/pages 1083-1084.</p> <p>Management of CD after effective date in Chapter XI, Vol.VI/pages 1085-1088.</p> <p><u>(d) it has provisions for approvals required and the timeline for the same?</u></p> <p>Reply: Chapter XII provides for Indicative Timeline for Implementation Schedule. (Chapter XII, Vol.VI/page 1088.</p> <p>Management and re-start of operations provided in Chapter XI, Vol.VI/pages 1085-1087.</p> <p><u>(e) the resolution applicant has the capability to implement the resolution plan?</u></p> <p>Reply: Chapter III of the Resolution Plan provides for directorship of RA, shareholding pattern and Financial Indicators of RA as on 31.03.2019 including Net Worth Rs.149.69 Crore as on 31.03.2019 are provided at Chapter III, Vol.VI/page 1056.</p> <p>Balance Sheet for FY 2017-18 of RA is at Vol.IV/page 653-654 of the Application.</p>	<p>Chapter X, Vol.VI/pages 1083-1084</p> <p>Chapter XI, Vol.VI/pages 1085-1088.</p> <p>Chapter XII, Vol.VI/page 1088</p> <p>Chapter XI, Vol.VI/pages 1085-1087</p> <p>Chapter III, Vol.VI/page 1056.</p>	<p>(d) YES</p> <p>(e) YES</p>
39(2)	<p><u>Whether the RP has filed applications in respect of transactions observed, found or determined by him?</u></p> <p>Reply: Resolution Professional has filed an Application dated 15.03.2019 under section 66 of Insolvency and Bankruptcy Code, 2016 to report fraudulent transactions etc. and for seeking appropriate relief(s). The Application bearing CA No. 297/2019. (Para No.17 of the Application. Vol.I/page 19)</p>	<p>Para No.17 of the Application. Vol.I/page 19</p>	<p>YES</p>



25.

The approval of the resolution plan has been sought under Section 31 (1) of the Code, reading as follows:-

CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018

"(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and 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, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."

26. The conditions provided for in Section 31(1) of the Code for approval of resolution plan are therefore: -

- (a) The Resolution Plan is approved by the CoC under Section 30(4) of the Code;
- (b) The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;
- (c) The Resolution Plan has provisions for its effective implementation.

The satisfaction of the conditions is discussed below.

27. It is submitted by the RP that the resolution plan has been approved by a vote of 100% of voting share of the financial creditor and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

28. The provisions of Section 30(2) of the Code are as follows: -

30 (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 (payment) of other debts of the corporate debtor;



12/2/2019

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

- (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
- (ii) the amount that would have been paid to such creditors; if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

*Explanation 1.*—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

*Explanation 2.*—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

- (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;
- (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or



(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

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

*Explanation – For the purpose 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.*

29. The compliance of Section 30(2) of the Code is given in para No.9 of Form H (*supra*). The same is being further examined as under:-

**Section 30(2)(a):** The resolution plan (page 1067 of the application) states that payment of insolvency resolution process cost amounting to ₹30 lakh shall be the upfront payment but subsequently vide email dated 03.07.2019 (page No. 1034), the resolution applicant consented to increase of the CIRP to ₹35 lakh (page 14, Diary No.4721 dated 12.09.2019).

**Section 30(2)(b):** It is stated in Form H that the average liquidation value is ₹9,34,64,292/-. In view of the debts of the two financial creditors being ₹6280 + ₹166 lacs (subject to order under Writ Petition pending) and ₹10.69 lacs respectively, the liquidation value available for the operational creditors would be



NIL. Moreover, it is stated in para 7 of Form H supra that the operational creditors have withdrawn their claims. With respect to statutory dues, no claim is stated to be received from any statutory authority. However, the resolution plan makes provision for payment of ₹10 lakh each for the claims of operational creditors, statutory dues and labour dues. As regards the amendment in Section 30(2)(b) made by Act No.26 of 2019 w.e.f. 06.08.2019, it has been submitted that there are no dissenting financial creditors and therefore, the provision would not be applicable in this case and that as regards operational creditors, the provisions made of ₹10 lacs each for the claims of operational creditors, statutory dues and labour dues are more than the amounts payable to them under Section 30(2)(b)(i) and (ii) of the Code.

**Section 30(2)(c) & (d):** At page 1085 of the application, it is stated in the resolution plan that Resolution Applicant with its nominees, promoters shall hold 100% shareholding in the restructured share capital of the corporate debtor and the resolution applicant propose to appoint new Board of Directors after approval of the Plan by the Adjudicating Authority. The erstwhile Board is suspended due to initiation of CIRP, the Resolution Plan proposes that the previous board members would resign and the Resolution Applicant would appoint such number of new Board members as it would decide. It is stated in the plan that the resolution applicant has identified a Core Management and Technical Team to manage the operations of the corporate debtor and restart its operations in the current sector of manufacture and export of carpets and textile fabrics. It is further stated that it shall take 6-9 months of estimated time to bring back the machineries to working condition.





30. Further, the Resolution Applicant proposes to provide for the implementation and supervision of the plan in two phases. During phase I, upfront payment of CIRP costs, Financial, Operational and other creditors, as proposed in the plan shall be paid and during phase II, the new Board of Directors of the Corporate Debtor as appointed by the Resolution Applicant will take over the supervision of the implementation of the plan. It is also stated that the payments shall be completed to all the creditors within the term of the plan i.e. 4 years as per the Resolution Plan.

31. The resolution applicant has also undertaken in the resolution plan that on approval of the Resolution Plan by the Adjudicating Authority, the Resolution Applicant proposes to appoint a Monitoring and Supervising Committee consisting of representative of the Resolution Applicant, representative of the COC and a qualified Insolvency Resolution Professional (who may or may not be RP) as would be decided by the CoC in consultation with the resolution applicant.

Vide Diary No.4722 dated 12.09.2019 and Diary No.4946 dated 20.09.2019, the Central Bank of India stated that the Monitoring Committee comprises of Shri Manish Nihalani, authorised representative of the Resolution Applicant; Shri Rajesh Kumar Gupta, authorised representative of the Central Bank of India and Shri H.S. Kohli, Insolvency Professional who shall monitor the implementation of the plan from effective date till assignment date (execution and signing of Assignment Agreement) and this will be Phase I. It is stated that on completion of Phase I, the Board of Directors (newly constituted) of the corporate debtor shall take over the supervision of implementation. Further, it is stated that there is a change in the constitution of Monitoring Committee and Mr. H.S Kohli has been

CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018



replaced by Shri Tajinder Pal Singh as one of the member of the monitoring committee.

**Section 30(2) (e):** In Form H (*supra*) (para No.4), the RP has certified that the resolution plan complies with the provisions of the Code and Regulations and does not contravene any of the provisions of law for the time being in force.

32. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. We find that in Chapter III of the resolution plan, the details of the resolution applicant have been given. The resolution applicant is stated to be registered with the Reserve Bank of India as a securitization company and reconstruction company under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 having its registered office at A-270, 1<sup>st</sup> & 2<sup>nd</sup> Floor, Defence Colony, New Delhi- 110024 and engaged in activities of acquiring Financial Assets from Banks, Financial Institutions and NBFC for their resolution and recovery of dues. The details of the Board of Directors of the resolution applicant along with a short write up of five Directors is given at page 1054 of the application. The financial indicators of the resolution applicant as given at page 1056 of the application is as under: -

(Figures in INR Crore as on 31.03.2019)

Particulars	FY 16-17	FY 17-18	FY 18-19
Revenue	15	26.8	37.39
Net Worth	120.07	131.84	149.69
EBITDA	10.7	20.26	30.13
PAT	6.5	11.77	17.84
Assets under Management			

It is stated in the resolution plan (page 1069) of the application) that as on 31.03.2018, the resolution applicant has tangible net worth of ₹131=84 crore

CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018



and besides this, the promoters have sufficient resources to induct more funds in the corporate debtor to meet the proposed investment as envisaged in the resolution plan.

34. With reference to compliance of Section 30(2) (c) and (d) of the Code, we have discussed that the resolution plan states that the resolution applicant undertakes that on approval of the resolution plan by the Adjudicating Authority, the resolution applicant proposes to appoint a Monitoring and Supervising Committee to provide for implementation and supervision of the plan in Phase I. The constitution of the committee is also discussed above. The terms of the plan and its implementation schedule is stated to be four years from the approval of the plan by the Adjudicating Authority.

35. It is submitted that in 7<sup>th</sup> meeting of CoC held on 29.04.2019, approval was given for obtaining performance security from the resolution applicant of ₹10 lacs in the nature of fixed deposit with Central Bank of India in the name as given therein. Vide details at page 27 of Diary No.4721 dated 12.09.2019, the RP has filed details of performance security of ₹10 lacs received through fixed deposit receipt of Andhra Bank. The RP should ensure that the performance security is received as per the decision of the CoC.

36. As per the detailed Form<sup>H</sup> *supra*, the secured financial creditor Central Bank of India is to get 21.97% of the amount admitted and the other secured financial creditor JFC Finance (India) Ltd. is to get 18.71% of the amount admitted. We have already discussed above that almost the complete amount (99.93%) of the financial debt of the corporate debtor is due to Central Bank of India. We have noted that the resolution plan (page 1073 of the application) provides that the resolution applicant shall be secured lender of the corporate



CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018

*Handwritten signature*

debtor and all underlying securities, rights, privileges, interests, obligations, guarantees (both corporate and personal) shall be assigned in favour of the resolution applicant and the Central Bank of India shall facilitate the assignment by filing all necessary documents with regard to modification of charge in ROC etc. To explain the matter, Central Bank of India has filed an affidavit vide Diary No.4722 dated 12.09.2019. It has been submitted in para 13 (vii) (b) that the proposition in the resolution plan with regard to assignment of debt to the resolution applicant along with all underlying securities including guarantee given by the guarantors was acceptable to Central Bank of India. It is further stated in para 13(vii) (c & d) that the resolution applicant assured and committed that during the pendency of payment to Central Bank of India, there is no possibility of selling the corporate debtor by the resolution applicant and the resolution applicant assured and committed that irrespective of whether the corporate debtor commences the operations or not, all the Security Receipts will be redeemed as per the payment time line/schedule of the resolution plan. It was further confirmed in affidavit filed vide Diary No.4946 dated 20.09.2019 that it is evident that the Security Receipts in nature are always secured by the underlining asset which continues to be with the trust formed by the resolution applicant and there is no parting of any security interest by bank till the time the amounts under the security receipts are realised in entirety.

37. As recorded in the order dated 23.09.2019, the learned counsel appearing for the resolution applicant confirmed the above averment made on behalf of Central Bank of India in the affidavit filed vide Diary No.4946 dated 20.09.2019.



38. In part 15 of Form H supra, it is stated that application dated 16.03.2019 has been filed on 20.03.2019 with the NCLT regarding fraudulent transaction under Section 66 of the Code. The relevant CA No.297/2019 is presently under hearing by the Tribunal.

39. It is stated by Central Bank of India in the affidavit filed vide Diary No.4722 dated 12.09.2019 that keeping in view that the account of the corporate debtor was classified as NPA on 30.06.2014, pending litigation in DRT and DRAT, closure of entire factory since 16.07.2016, no other collateral security available and that the bank would get ₹1416 lacs against the average liquidation value of ₹934.64 lacs, Central Bank of India though it prudent to accept the mode of assignment of debts by executing assignment agreement by the resolution applicant with Central Bank of India with regard to assignment of debts along with all underlying securities including guarantees given by the guarantors. In the affidavit filed vide Diary No.4946 dated 20.09.2019, it is stated that the resolution plan submitted by the resolution applicant offering a total amount of ₹1416 lacs to CBI has been approved by the bank after following the detailed process whereby all required sanctions and approval of requisite authorities of the concerned bank and personnel have been taken at the appropriate levels and after examining in detail the feasibility and viability of the resolution plan submitted by the resolution applicant, reasoned decision has been taken by applying the commercial wisdom for the purposes of resolution in the case of the corporate debtor. It has been held in para 42 of **K. Sashidhar Vs. Indian Overseas Bank & Ors. (Civil Appeal No.10673 of 2018 dated 05.02.2019)** by the Hon'ble Supreme Court *inter alia* that no corresponding provision has been envisaged by the legislature to empower the resolution professional., the Adjudicating Authority (NCLT) or for that matter the

CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018



*Signature*

appellate authority (NCLAT), to reverse the "commercial decision" of the CoC. It was also held that whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority. In view of the above discussion, the decision taken by the financial creditor i.e. Central Bank of India falls within the ambit of its commercial and banking wisdom and is therefore, not being interfered with.

40. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para No.4 of Form H (*supra*) the RP has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The RP has also certified that the resolution applicant namely **Alchemist Asset Reconstruction Company Limited** has submitted affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The RP has submitted that the resolution plan has been approved by the CoC with 100% voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations.

41. In view of the above discussion, the resolution plan submitted by **Alchemist Asset Reconstruction Company Limited** as approved by the CoC under Section 30 (4) of the Code is approved subject to comments in para No 35 regarding performance security. The resolution plan so approved shall be binding on the corporate debtor and its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt



CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018

17-08-2019

in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

42. Under the provisions of Section 31 (3) of the Code, we also direct as under:-

- a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 12.10.2018 shall cease to have effect; and
- b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

43. CA No.483/2019 is disposed of.

—sd—

(Ajay Kumar Vatsavayi)  
Member (Judicial)

October 10, 2019  
arora

—sd—

(Pradeep R. Sethi)  
Member (Technical)

*Provenanced in  
open court*

*Pradyumn*

10.10.2019



FREE OF COST COPY

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

No. \_\_\_\_\_  
Date of Presentation As per NCLT Rule 150  
of application for Copy of 2016  
No of Pages 30  
Copying Fee NIL  
Registration & Postage Fee NIL  
Total ₹ NIL  
Date of Receipt &  
Date of Preparation of Copy 10-10-19  
Date of Delivery of Copy 10/10/19

CA No. 483/2019IN  
CP (IB) No.271/Chd/Pb/2018

*Pradyumn*  
DD/DR/AR / Court Officer  
National Company Law Tribunal  
Chandigarh Bench, Chandigarh