

**In the National Company Law Tribunal**

**Mumbai Bench**

**MA 1509/2019 & MA 2104/2019 & MA 662/2019 in CP No.1368/I&BC/MB/MAH/2017**

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

Bankruptcy Code 2016

In the matter of

**The Karad Urban Co-operative Bank Ltd.**

**.....Financial Creditor**

**V.**

**Khandoba Prasanna Sakhar Karkhana Ltd.**

**..... Corporate Debtor**

(Registered Office : 52/788 Lokmanya Nagar near Jogging Park, Pune.)

Mr. Jitendra Palande

**.....(Applicant MA 662/2019)/ Resolution Professional**

Order delivered on: 01.08.2019

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

For the Applicant : 1. Advocate Aman Dutta, for Resolution Professional  
2. Advocate Amrita Kharkar, for Operational Creditor in MA 1509 of 2019  
3. Mr. Jitendra Palande, Resolution Professional present in person

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

**ORDER**

**A. Miscellaneous Application No. 1509/2019**

1. This is an Application filed by an Operational Creditor with respect to rejection of its claim by the Ld. RP is to be discussed before taking any decision on the Resolution Plan . This Application was filed on 22.04.2019 by Sarvadnya Industries Pvt. Ltd. ( alleged to be an Operational Creditor), who had entered into a Rent Agreement dated 13.11.2015 with the Corporate Debtor. The Applicant had installed ethanol plant & machinery in the factory premises of the Corporate Debtor. It is alleged that the Corporate Debtor has **defaulted in payment of rent** of aforesaid **machinery**.
2. At the outset, the RP states that the Applicant has filed the claim in the capacity of a Financial Creditor, however, the rental dues fall under the category of 'Operational Debt'. The Applicant was given ample opportunity to file its claim in the correct form,

but it failed to do so, and therefore no such claim pertaining to outstanding rentals persists as on date.

3. Regardless of other contentions of the Operational Creditor, the RP's submissions are that one of the Directors of the Operational Creditor i.e. Mr. Anand Narayan Kadam was a General Manager of the Corporate Debtor at the relevant time, and thus falling under the head "**key managerial personnel**" of the Corporate Debtor as stated in section 5(24)(b) of the I&B Code defining the primary term "**Related Party**". Section 5(24)(b) of the I&B Code says that "related party" in relation to a corporate debtor means:

“(a) .....  
(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor”.

4. To this contention of RP, it is stated by the Applicant/Operational Creditor that the Board of directors of the Corporate Debtor had not designated the Director of the Applicant as a "key managerial personnel" of the Corporate Debtor and hence, is not a "Related Party" as defined in the Code.
5. The RP also submits that the Corporate Debtor is not in operation for over 2 years. The electricity supply to the premises of the Corporate Debtor was disconnected much before the CIRP in respect of the Corporate Debtor commenced. Hence, no activity was carried out in the premises of the Corporate Debtor with such Plant & Machinery, and therefore, this outstanding rent cannot be included in the CIRP Cost. The RP has also submitted that this application has been filed belatedly after the application for approval of Resolution plan has already been filed before this Tribunal. This application at such belated stage cannot be entertained and is merely an attempt to stall the CIRP of the Corporate Debtor. **Hence, in the light of RP's submissions and considering the fact that the Operational Creditor has not filed its claim before the RP, as also under the totality of the facts and circumstances, MA 1509 of 2019 is rejected.**

**B. Miscellaneous Application No. 2104/2019**

6. This application also require an adjudication prior to the decision on the Resolution Plan , submitted for due consideration of this Bench. This application is filed on 11.06.2019 by Swwapnil Bhingardevay (Applicant), the Promoter of the Corporate Debtor seeking

permission to submit a Resolution plan. It is stated that Applicant had submitted a letter to the RP conveying that he is interested in submitting a Resolution plan for the Corporate Debtor. The Applicant states that the Corporate Debtor is classified as Micro, Small and Medium Enterprises (MSME) and the Applicant being its Promoter, is qualified to submit his resolution plan. An affidavit under section 29A of I&B Code, 2016 is submitted by the Applicant. The applicant also states that he has paid ₹2.5 Lakhs as a Non-refundable participation deposit. Thereafter, at the time of filing the Resolution plan, the applicant was unable to file the same, due to the demise of the Applicant's grandfather and ill-health of his father. Hence, this application to allow submission of a Resolution Plan.

7. In view of the decision of Hon'ble NCLAT in the matter of Mr. Sharad Sanghi V. Ms. Vandana Garg & Ors. [Company Appeal (AT) (Insolvency) No. 461 of 2018], wherein the Hon'ble Appellate Court had held that CoC once voted in favour of the Resolution plan, cannot change its views later. Respectfully following the *ratio-decidenti*, I am of the view that the Resolution Plan of the Corporate Debtor cannot be entertained by the coC at such belated stage. Time is the essence of the Code. The main object of the code is revival of sick companies in a time-bound manner and hence, by allowing this application I am conscientiously not inclined to set a wrong precedent for the implementation of the provisions of the Code. The timelines prescribed in the Code have to be adhered to in order to achieve the object of the Code. The Applicant cannot be allowed to file the Resolution plan after the completion of 270 days, that too after the application for approval of Resolution plan has already been filed before this Bench, as well as, when there is no CoC in existence. The CoC has already taken a decision in its commercial wisdom, which cannot be changed or altered. Hence, **MA 2104/2019 is hereby rejected.**

**C. Miscellaneous Application No. 662/2019**

8. An Application has been moved on 15.02.2019 by the Learned Resolution Professional by invoking the Provisions of Section 30(6) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) 2016 for **approval of a**

**Resolution Plan.** On receiving this Application along with Resolution Plan an **Order** is hereunder passed as prescribed **U/s 31(1) of The Code.**

9. The 'Financial Creditor' Karad Urban Co-operative Bank Ltd. had filed a Petition by invoking the Provisions of Section 7 of The Code against the 'Corporate Debtor' **Khandoba Prasanna Sakhar Karkhana Limited [KPSKL]** read with Rule 4 of The Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016 on **07.09.2017 in respect of Financial Debt of Rs. 17,86,84,138/- and for a default of Rs. 28,46,86,768/- .**
10. After considering the merits of the case, the said Petition was **admitted** vide an **Order dated 01.01.2018 (CP No.1368/I&BP/NCLT/MB/2017).** Initially Mr. Kiran Kunte was appointed as IRP. The said IRP published the commencement of CIRP in newspapers on 11.11.2018.
11. The Financial Creditor is holding 98% voting share in the CoC of the Corporate Debtor. Remaining 2% voting share is held by Jankalyan Nagari SahPata Sanstha. A Resolution was passed by the Committee of Creditors for substitution of the IRP, as a consequence, this Bench appointed the Applicant as the Resolution Professional on 06.03.2018. The Applicant published the invitation for 'Expression of Interest' on 31.03.2018 in two newspapers viz. Indian Express and Loksatta in Pune, Satara, Karad & Kolhapur. Exclusion of CIRP period by 73 days was also granted on an application by the RP. This period of 73 days was excluded due to an order passed by the Hon'ble Bombay High Court on a Writ petition ( no. 4746 of 2018 ) filed and stay was granted vide order 18/04/2018, which was later on vacated vide order dated 23.08.2018 ( no. 4746 / 2018 along with Civil Application 1229 of 2018 ) and the said Writ Petition was dismissed. . An extension of 90 days was also granted on 20.12.2018 under section 12 of the I&B Code.
12. In the CoC meeting dated 09.02.2019, the **Resolution Plan** dated 07.02.2019 submitted by the Resolution Applicants M/s Sai Agro (India) Chemicals (Through Partners), a Partnership firm registered under the (Indian) Companies Act, 1956, and existing under the Indian Partnership Act, 1932, having its principal office at Gat No. 892, Near Ingavale Mala Alate, Hatkanangale, Kolhapur, Maharashtra, 416109, was **approved.**

13. As per the Resolution Plan, the Resolution Applicants undertook to induct funds, either by way of additional equity or by way of debt, to implement the Resolution Plan. In compliance of Section 29A of the I&B Code and Regulation 38(2) of the IBBI (Insolvency Resolution process for Corporate persons) Regulations, 2016, a declaration has been submitted that the Resolution Applicants do not suffer from any of the disqualifications contemplated under section 29A and further under Regulation 38(2), they have submitted a term of the plan as well as an implementation schedule thereof.
14. The RP states that Bharat Co-operative Bank (Mumbai) Ltd. has issued a Letter dated 06.02.2019 bearing reference no. BCB/DHK/412/2019 in favour of the Resolution Applicant for granting an in-principle sanction for a term loan and cash credit for the amount of INR 20,00,00,000/- and INR 11,00,00,000/- respectively. The Balance Sheet and Profit & Loss Statements of the Resolution Applicant as on 31.12.2018 have been duly perused by the RP. The Certificates of Net Worth of the Resolution Applicants Mr. Vijay Nade and Mr. Satish Dandanaik have been duly produced on record.
15. It is stated that there are no dissenting financial creditors as per the minutes of the meeting dated 09.02.2019. The **Resolution Plan submitted by the Sai Agro Chemicals (the Resolution Applicants) has been approved unanimously.** Hence, this Application is filed by the RP under section 31(1) of the I&B Code, 2016 for the approval of the said Resolution plan. The Resolution plan has been discussed in this order in detail.
16. Coming on to the Resolution Plan, the relevant portions are reproduced below:

“ **RESOLUTION PLAN** :-

**1. Dues of Financial Creditors on the Corporate Debtor**

Dues to Financial Creditors of the company as at 1<sup>st</sup> January 2018

No	Name of Financial Creditor	Claim (Rs. Cr.)	Security
1	Karad urban Co-op Bank Limited	30.27	First pari-passu charge on the entire fixed and movable assets. Registered Mortgage of land, building, P&M and Personal Guarantees
2	Janakalyan Nagari Sah.	0.62	Second Pari-passu charge

No	Name of Financial Creditor	Claim (Rs. Cr.)	Security
	Patasanstha		
	<b>TOTAL CLAIMS</b>	<b>30.89</b>	

## 2. Dues of operational and other creditors of the Corporate Debtor

Dues to operational and other creditors of the company as at 1<sup>st</sup> January 2018 (as per books of accounts)

No.	Type of Operational Creditor	Claim (Rs. Cr.)
1	Trade Payables	1.50
2	Statutory Dues	0.24
3	Dues payable to workers & employees	0.70
4.	Dues payable to other creditors	24.16
	<b>TOTAL CLAIMS</b>	<b>26.6</b>

Claims received without complete records and supporting documents will be written off upto the tune of Rs. 9.78 lacs

No claim was received from Sales Tax within ninety (90) days from CIRP commencement as per the provisions of the code. The claim from sales tax was received after 365 day after CIRP commencement date. Claim of Rs. 1.5 Cr. was received conversely corporate debtor has claimed refund of similar amount. The net payable will be paid within 6 months from effective date.

Claims not received but acknowledged in the Company's Balance sheet as on 31 March 2018 are approximately Rs. 3.34 Cr. These be extinguished in full.

## 3. OVERVIEW OF RESOLUTION APPLICANTS

Sai Agro (India) Chemicals is Ethanol manufacturing firm, incorporated as on 31<sup>st</sup> October, 2003. Company mainly manufactures Ethanol and supplies it to the outside parties. Company has one of the best market goodwill for manufacturing and supplying Ethanol. Sai Agro (India) Chemicals chaired by Mr. Vijay Prakash Nade and Mr. Satish Satyanarayan Dandnaik.

**Some brief about Partners –**

1) Mr. Vijay Prakash Nade –

Mr Nade, having age 41, currently hold position of Chairman and Managing Director of DDN SFA Ltd. DDN SFA has a 1000 TCD Jaggery production plant in Osmanabad, Maharashtra. He has more than 15 years of experience in the Sugar Industry Business. Mr. Nade has also vast experience in agro products. Mr. Nade associates with many firms and company like –

- M/s. DDN SFA Ltd.

Mr. Nade has also best experience in turning around business. Recently DDN SFA Ltd took over Sri Shambhu Mahadev Shakari Sakhar Karkhana Tal. Kalmb, Dist. Osmanabad, which was closed for last 2 years. The said plant now merged into DDN SFA Ltd.

2) Mr. Satish Satyanarayan Dandnaik –

Mr. Dandnaik, having age of 46, currently hold position of Chairperson of Yashwant Multistate Bank. He serves as the Director of Osmanabad DCC Bank and also he held position of President of Osmanabad District Urban and Credit Society federation. He comes from the finance background and has terrific knowledge in financials.

Mr. Nade and Mr. Dandnaik collectively took over Sai Agro Plant. The said plant was improved and had 50,000 per liter per day capacity. Mr. Nade and Mr. Dandnaik have increased capacity of plant to 65,000 per liter per day. Mr. Nade and Mr. Dandnaik have successfully turn around plant in recent times.

#### **4. RESOLUTION PLAN**

##### **a. Takeover of the Company**

The Resolution Applicants propose to acquire 100% equity shareholding of the company. And replace the existing suspended Board of Directors after the resolution plan approved by the CoC is finally approved by NCLT by way of an order.

The Company has currently Authorised Capital of Rs. 14 Cr. and Paid up Capital of Rs. 9.82 Cr. The accumulated losses of the company are more than the existing paid up share capital of the Rs. 9.82 Cr. As per provision of section 66 of companies act 2013, it is proposed to adjust (reduce) the entire paid up capital of the company against the accumulated losses of the Company.

With this proposal the shares of the Company in the name of exiting shareholders will be NIL

This proposal will facilitate to infuse the fresh share capital amounting to Rs. 14 Cr. in the company by the resolution applicant.

The ownership of existing shareholders of the company after the proposed transfer would be NIL.

**b. The terms of offer**

The terms of offer given below and the other terms specified in Chapter 9 together form “The Terms of the Proposed Offer” as proposed by the Resolution Applicants. They are as given below:

**c. Transfer of ownership**

The Company has currently issued 98,29,810 equity shares at a face value of Rs. 10 each. The entire equity capital shall be transferred to the Resolution Applicants.

**d. Issue of additional fresh equity**

The accumulated losses of the company are more than the existing paid up share capital of Rs. 9.82 Cr. as per provision of section 66 of companies act 2013, it is proposed to adjust (reduce) the entire paid up capital of the company against the accumulated losses of the Company. This proposal will facilitate to infuse the fresh shares capital amounting to Rs. 14 Cr. in the company by the resolution applicant.

The revised capital structure of the company shall be as given below

<b>Name of the Shareholder</b>	<b>Number of Shares</b>	<b>Face Value</b>	<b>Share Capital</b>	<b>Shareholding %</b>
Mr. Vijay Prakash Nade	70,00,000	10	7,00,00,000	50 %
Mr. Satish Satyanarayan Dandnaik.	70,00,000	10	7,00,00,000	50 %
<b>TOTAL</b>	<b>1,40,00,000</b>	<b>10</b>	<b>14,00,00,000</b>	<b>100</b>

The necessary changes to the memorandum and articles of the company shall be made appropriately, if required.

**e. Raising fresh debt in the Company**

The Company shall avail fresh working capital limit of Rs. 10 Cr. In the event of infusion of debt, such debt shall be arranged without any obligation on members of CoC to provide such funds. Summary of the proposed funds infusion;

<b>Source of Funds</b>	<b>First 30 -180 days</b>
Equity	14,00,00,000
Debt	21,00,00,000

Source of Funds	First 30 -180 days
Working Capital Limits	10,00,00,000
<b>Total Sources of Funds</b>	<b>45,00,00,000</b>

It is understood that in order to raise working capital limits of Rs. 10 Cr. as indicated above, the existing lenders shall be required to release all charges/ liens/ securities of assets of the company. The secured creditors shall release such charge only for the purpose and subject to raising such funds. In case the amount of Rs. 18.53 Cr. is not paid to banks within timelines indicated under this plan, the lenders shall regain the charges so released. In that case, the earnest money shall be forfeited and default shall be penalised.

Fixed deposit Of Rs. 15 Lakhs is secured against the Bank guarantee for Corporate Debtor, Karad Urban Co-op Bank Ltd will take the deposit back and nullifies the transaction against Bank guarantee.

The conditional NOC will be required from Karad Urban Co Bank Ltd to the Resolution applicant for limits and releasing the charges.

**f. Summary of Payment schedule**

<b>Khandoba Liability Payment Schedule</b>			
<b>Particulars</b>	<b>0 months to 6</b>	<b>6 months to 24</b>	<b>Total</b>
	<b>months</b>	<b>months</b>	
Secured Financial Creditors	18.53	-	18.53
Employee Dues	0.70	-	0.70
Government Dues	0.24	-	0.24
Operational Creditors	0.60	-	0.60
Other Creditors		9.67	9.67
<b>Total</b>	<b>20.07</b>	<b>9.67</b>	<b>29.74</b>

The funds required are inclusive of CIRP Cost. Any change in the actual CIRP Cost will not affect the total pay-out of Rs. 18.53 Cr. as provided in the Resolution Plan. The CIRP Costs shall include (but not be limited to) the professional fees for services rendered by RP, his support team, legal advisors, valuers and all the incidental expenses incurred by the RP and his team till the receipt of NCLT final order of approving resolution plan.

**g. Treatment of CIRP Cost**

The Code and the Proposed Plan provides for payment of CIRP Costs in priority over payments to any other Creditors. Each holder of such priority claim shall be unimpaired under the plan and would be paid in full within 30 days from the amount of initial commitment by the Resolution Applicants from the Effective Date from NCLT order. The CIRP Costs shall include (but not be limited to) the professional fees for services rendered by RP, his support team, legal advisors, valuers and all the incidental expenses incurred by the RP and his team till the receipt of NCLT final order of approving resolution plan.

**h. Payment to Secured financial creditors**

The total payment to secured creditors is Rs. 18.53 Cr. inclusive of CIRP cost. It will be paid within 180 days from the effective date.

**i. Payment to Unsecured financial creditors**

As per the Books of Accounts of the Company, claim submitted to Resolution professional and statistics contained in Information Memorandum there are no unsecured financial creditors.

**j. Payment of dues to related parties**

Debts from related parties amount to Rs. 2. Cr as per the last audited balance sheet. Any related party payables shall not be paid and shall be extinguished in full.

**k. Summary of proposed recovery to the financial creditor**

<b>Particulars</b>	<b>Claims (Rs. Cr.)</b>	<b>Total Recovery (Rs. Cr.)</b>	<b>% Recovery (Approx)</b>
Karad urban Co-op Bank Limited	30.27	18.16	60
Janakalyan Nagari Sah. Patasanstha	0.62	0.37	60
<b>Total</b>	<b>30.89</b>	<b>18.53</b>	<b>60</b>

**l. Treatment of claims of various stakeholders and operational creditors**

As per Regulation 38(1) of Insolvency and Bankruptcy Regulations 2016, the amount due to the operational creditors shall be paid in priority to the financial creditors which shall in any event be made before expiry of 30 days after the approval of a resolution plan by the Adjudicating Authority. In the

current case, the liquidation value payable to the operational creditors (except Workmen's dues of 24 months preceding liquidation) is **NIL**.

The Resolution Applicants propose to settle various creditors including operational creditors in the following manner;

▪ **Insolvency Resolution Process Costs**

Insolvency Resolution Process Costs will be paid in priority over payments to all Creditors. The Insolvency Resolution Process Costs, to the extent that it remains outstanding, shall be first duly paid by the Corporate Debtor from its accruals and distributable cash. The CIRP Costs shall include (but not be limited to) the professional fees for services rendered by RP, his support team, legal advisors, valuers and all the incidental expenses incurred by the RP and his team till the receipt of NCLT final order of approving resolution plan.

▪ **Workers and Employees**

The Resolution Applicant proposes to pay all employee and workers related payments in full. However, such payments shall be made over a period of 180 days from Effective Date.

▪ **Financial Creditors**

The Resolution Applicant is proposing to pay the Financial Creditors the amounts stated above, which is higher than the recoveries that the Financial Creditors are likely to make in case of liquidation.

▪ **Statutory Dues**

Resolution Applicants propose that the amounts due towards statutory dues including sales tax/VAT shall be paid in full within six months from effective date. No claim has been received from statutory authorities such as Income Tax, PF, VAT, Sales Tax, and Excise. Statutory dues which are admitted in the books of corporate debtor shall be considered as statutory liability payable under this proposed plan.

**The proposed payment towards statutory dues under the plan is 100% as against NIL payment in liquidation scenario.**

▪ **Trade Payables (Raw material, consumables)**

Resolution Applicants propose that the claims trade payables (creditors) shall be subject to 60% waiver. The remaining 40% of these claims shall be paid within 180 days from effective date.

**The proposed payment towards trade payables dues under the plan is 40% as against NIL payment in liquidation scenario.**

▪ **Other Creditors**

The Resolution Applicant is proposing to pay claims of Other Creditors the amounts stated above which is higher than the recoveries that they are likely to make in case of liquidation.

**The proposed payment towards trade payables dues under the plan is 40% as against NIL payment in liquidation scenario.**

**Currency of Payment** – All payments proposed to be made pursuant to this Proposed Plan will be in Indian Rupees (Rs.).

**m. Balancing the interest of all stakeholders**

The proposed plan balances the interests of all the stakeholders of the company as explained above.

Although, as per the provisions of the code, no liquidation value is payable to any creditor other than secured creditors and workers, the Resolution Applicants propose to pay all other creditors in a manner explained above. Additionally, all workers and employees will continue to be employed with the company. This makes this proposed plan balanced.

**n. Claims after approval of the Proposed Plan**

The Code and the CIRP Regulations entitle all creditors of a corporate debtor to submit their claims to the RP on or prior to the date on which the resolution plan gets approved by the adjudicating authority. As a result, in the event any Creditor of the Company does not submit claims to the RP prior to the Effective Date, the said Creditor will not be entitled to receive any payments under the Proposed Plan. The unclaimed amounts shall stand extinguished and become NIL.

**o. Payments of contingent liabilities**

Any claims not received under CIRP shall be extinguished and will not be payable and shall stand to be extinguished and NIL. All contingent liabilities including statutory liabilities till the approval of resolution plan by the adjudicating authority shall stand extinguished.

**p. Treatment of Security**

Secured creditors may be in possession of collaterals securities and personal guarantees of the existing promoters. Resolution Applicants leaves the matter to the discretion of secured lenders as far as release of the personal guarantees and collaterals if, any. All securities / margin money / fixed deposit with lien provided by the Company, shall be deemed to be released by respective charge holders immediately upon the payment of 18.53 cr. to the secured creditors in the favour of Resolution Applicants. The financial creditors shall return the same to the Company. The approval of the NCLT shall be deemed to be an approval of the Creditors and consequently, all respective financial creditors shall execute the relevant documents for release of such security interest within 30 days from the receipt of dues (secured

creditors) under this plan. The Resolution Applicants shall not provide any personal/corporate guarantees/any other security in any form to the existing secured lenders of the corporate debtor.

As per the provisions of the Code, having notwithstanding effect it is implied that after the approval of this proposed by the NCLT, all the existing/present loan documents executed with the CoC shall be dormant and this resolution plan shall prevail and will have binding effect on all the stakeholders of the company.

No interest on any claim (both financial and operational) as on January 1, 2018 shall be paid under the Proposed Plan. No financial creditor shall be entitled to any charges, penal interest or any other claim other than those provided for under this resolution plan.

## 5. PAYMENT TERMS

No	Claim Type	Claim (Rs. Cr.)	Recovery (Rs. Cr.) & %	Terms of Payment	Liquidation Value (Rs. Cr.)
1	Employees and workers	0.70	0.70 Cr. (100%)	To be paid Within 180 Days from the effective date	NIL
2	Statutory Dues	0.24	0.24Cr. (100%)	To be paid Within 180 Days from the effective date	NIL
3.	Secured financial creditor	30.89	18.53 Cr. (60%)	Payment to secured financial creditors of Rs. 18.53 Cr. Shall be made within 180 days from the Effective date.	Gross amount Rs. 13.53 (43.8%)
4.	Trade Payable	1.50	0.60Cr. (40%)	To be paid within 180 days from the effective date	NIL
5.	Other Creditors	24.16	9.67Cr. (40%)	To be paid within 24 months from the effective date	NIL
	<b>Total</b>	<b>57.49</b>	<b>30</b>		<b>13.53</b>

The CIRP cost including all taxes shall be paid in full and shall have priority over all other payments.

This cost shall be paid in priority within 30 days from the effective date. Any change in the actual CIRP Cost will not affect the total pay-out of Rs. 18.53 Cr. as provided in the Resolution Plan. The CIRP Costs shall include (but not be limited to) the professional fees for services rendered by RP, his support team, legal advisors, valuers and all the incidental expenses incurred by the RP and his team.

The Resolution Applicant proposes to pay 100% towards dues of workers/employees and statutory authorities in full.

The proposed payment under the plan would be 100% as against NIL in a liquidation scenario.

## 6. TIMELINE

No	Activity	Proposed Timeline (Days)
<b>PHASE I – APPROVAL OF PROPOSED PLAN BY Committee of Creditors</b>		
1	Presentation and approval of Proposed Plan to the CoC	<b>X</b>
3	Application to NCLT	<b>X+5</b>
4.	Receipt of certified copy of the NCLT’s order of approving resolution plan	<b>E</b>
5.	Public Announcement (if required)	<b>E+30</b>
6.	Intimation to the CoC, IBBI, RBI, Tax authorities and various other statutory authorities (as applicable)	
7.	Intimation to all Creditors, existing shareholders and other stakeholders of the Company	
<b>PHASE II – SETTLEMENT OF CREDITORS</b>		
1.	Payment of CIRP Cost	<b>E+30</b>
2.	Payment to workers/employees, secured financial creditors and operational creditors	<b>E+180</b>
3.	Payment of liquidation value to dissenting secured financial creditors. It is NIL in case of unsecured financial creditors.	<b>N/A</b>
4.	Payment to Statutory Authorities	<b>E+ 180</b>
5.	Payment to other creditors	<b>E+24(months)</b>
<b>PHASE III – IMPLEMENTATION OF THE PROPOSED PLAN</b>		
1.	Execution of material agreements giving effect to the Proposed Plan	<b>E+90</b>
2.	Transfer of shares to RA’s and infusion of funds towards equity	

No	Activity	Proposed Timeline (Days)
3.	Change in Memorandum and Articles of Association and other documentation	
4.	i. Formation of a professionally managed Board; ii. Appointment of statutory auditors	
5.	Raising of further debt by the company	<b>E + 180</b>
6.	Additional capex	

## NOTE

The Resolution Applicant seeks a time period of 180 days to obtain all the necessary approvals from various authorities required for implementation of the Proposed Plan. During this period, the operations of the Company would be monitored by the monitoring agency appointed under the Proposed Plan under the supervision of the Resolution Applicants. 180 days is only an estimate and the actual time of completion of approvals from authorities and regulators may be different. The implementation timelines indicated above may accordingly change and this Proposed Plan will be implemented in accordance with such approvals and changed timelines.

## 7. MANAGEMENT OF THE COMPANY

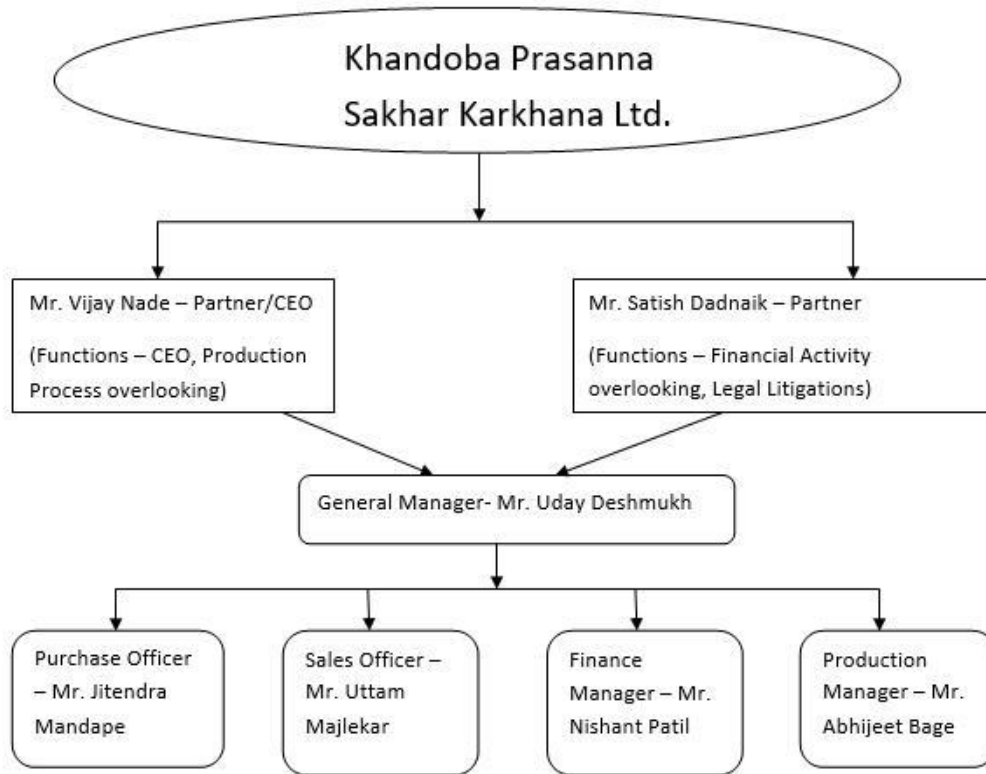
The Company shall continue as a going concern and operate in its normal course of business upon implementation of the Proposed Plan. The management of affairs of the Company after approval of the plan would be done as follows.

### a. Formation of New Board

It is proposed that the Company shall be a Board managed company upon approval of the Proposed Plan. A Board would be formed within 90 days from the effective date and would be accountable for the day to day operations of the Company and shall be bound as per applicable law to protect and preserve the value in the Company.

### b. Operations of the Company

The resolution applicant and its management shall have following roles and responsibilities;



**c. Appointment of Statutory Auditors**

The resolution applicants will appoint M/s Sushant Phadnis & Co. as new statutory auditors and existing auditors will vacate their office after approval of resolution plan and handover all the requisite documents including soft copies of books of accounts of corporate debtor.

**d. Continued Corporate Existence**

The Company shall continue its operations in the normal course of business. While the implementation of the Proposed Plan and settlement of the Creditors happen in parallel, the newly appointed Board shall take up the responsibilities of the day to day affairs of the Company and manage it in its regular course.

**e. Corporate Actions**

The Company shall take appropriate corporate actions necessary for implementation of the all the provisions of the Proposed Plan, which includes (i) filing of appropriate documents or forms with, inter alia, RoC, MCA and RBI and obtaining relevant consents / approvals from such regulatory authorities, (ii) intimation to existing shareholders, (iii) execution of share transfer deed as provided in the plan and (iv) regular compliance as per the governing laws

**f. Books of Accounts**

The Company shall reinstate its books of accounts upon implementation of the Proposed Plan. The Auditor shall confirm on reinstatement and regular maintenance of books of accounts as per the Proposed Plan.

**g. Release of Resolution Professional and Dissolution of the CoC**

The RP was appointed by the NCLT and the CoC was formed by the RP pursuant to the CIRP. It is proposed that the RP shall be released of his duties and responsibilities and the CoC shall be dissolved with effect from the Effective Date.

**h. Retention of the Existing Employees**

The Company shall continue with the existing manpower. Employee head count can be increased or reduced based on the operational performance and growth of the Company. Key members of the current management, if any (excluding promoters/erstwhile directors) shall be retained for a period of at least 6–12 months to ensure smooth transition of management and stabilization of operations.

**8. SUPERVISION OF THE PLAN**

The newly appointed Board shall have the responsibility of effective implementation of the Proposed Plan. The actions necessary for independent supervision of plan are as follows:

**Agency to monitor implementation of the Plan**

The Resolution Applicants have appointed M/s 7Circles Business Advisors LLP as the Monitoring Agency, whose role will start immediately after effective date and shall have the following responsibilities:

- i. To ensure implementation of resolution plan as approved by NCLT, by the new management of the Company;
- ii. To provide regular updates to the consortium formed by the lenders;
- iii. To provide updates to Insolvency and Bankruptcy Board of India (IBBI) as and when required;
- iv. To ensure disbursement of dues to financial and operational creditors as per the approved plan;

The Resolution Applicants agree pay fees to monitoring agency based on mutual consent. The Monitoring Agency shall be allowed to use legal counsel of their choice for any legal advice that it may need. Legal fees shall be paid over and above the monitoring agency fee.

The resolution applicant shall pay fees of the monitoring agency in priority to all other liabilities. It is clarified that in the event the Company is liquidated, the fees of the Monitoring Agency shall form part of the liquidation process costs and shall have priority in terms of the payment under the waterfall mechanism stipulated under the Code, The tenure of the monitoring agency shall continue till the payment of dues of the secured creditors is complete.

## **9. OTHER TERMS & CONDITIONS**

### **a. Amendment in constitutional documents of the Company**

The Company shall make required changes in the constitutional documents viz. Memorandum of Association and Articles of Association of the Company as required under the proposed plan within 180 days of the Effective date. The Company, its stakeholders, the proposed Resolution Applicants and the proposed new management of the Company shall be bound by such revised constitutional documents.

### **b. Execution of the material agreements by the Resolution Applicant**

The Resolution Applicant shall execute material agreements as required under the plan, initiate approvals and process to subscribe to equity shares of the Company and infuse funds as required under the Proposed Plan within 180 days from the Effective Date.

### **c. Binding Effect**

This Proposed Plan once approved by the CoC and then the NCLT shall be binding on the Company, all holders of claims, Creditors, members, statutory authorities, promoters and all other parties in interest and each of their respective successors and assigns.

### **d. Pending Litigations**

#### **Pending and ongoing litigations / legal proceedings against or by the Company:**

It is hereby clarified and agreed that all the legal suits and proceedings that have been initiated against **the Company** in relation to recovery of any debt or enforcement of any existing security interest from **Company** shall be deemed withdrawn by the relevant parties within 180 days from the Effective Date. Subsequent to approval of resolution plan, in case of any liability arising out of pending disputes consequent to any judicial pronouncement, the same shall be settled in accordance with recovery provided for the respective category of creditor under this plan.

**e. Governing Law**

The Company and the new management shall be governed by the laws of India giving effect to NCLT order approving the Proposed Plan and any agreements, documents and instruments executed in connection with the Proposed Plan.

**f. Severability and right to modify**

In the event it is determined that any provisions of the Proposed Plan is unenforceable either on its face or as applied to any claims or transaction and/or in the event any provision of the Proposed Plan becomes invalid for reasons other than by breach of any party, the Resolution Applicants may apply to the NCLT for appropriate modification of such provisions of the Proposed Plan, in satisfaction of the NCLT, and such invalidity and/or unenforceability of the provision of the Proposed Plan shall not render the whole Proposal Plan ineffective, unless otherwise directed by the NCLT by order.

In case any such modification is required in the Proposed Plan after the receipt of NCLT approval, to comply with any laws currently in force or to apply for certain approvals as required under the Proposed Plan or for any other requirements, not jeopardising the rights of the Creditors under the current plan, the Resolution Applicants can do so only after approval of National Company Law Tribunal (NCLT).

**g. No Interest Clause**

No interest on dues as on January 1, 2018 – No interest shall be paid on the claims (financial, other creditors and operational) as on January 1, 2018 under the Proposed Plan.

**h. Assignment of Interest**

If any of the Creditors assigns its dues either partially or fully to any other Person/ entity any time after approval of COC, then this term sheet and the Proposed Plan shall be binding on the assignee.

**i. Validity of Proposed Plan**

Unless approved by CoC, this term sheet and the Proposed Plan is valid only up to February 16, 2019. If approved by the CoC, then notwithstanding anything mentioned in this term sheet it shall expire and not be implementable following the Long Stop Date.

**j. Failure of Resolution Plan**

Upon non achievement of following, the financial creditors and or the Resolution Applicants shall have option to declare resolution plan as a failure consequent to which the Company shall go into liquidation, however condonation of delay on timelines can be allowed by the financial creditors at their discretion.

- 1) Non-payment of CIRP cost within 30 days from the effective date
- 2) Non-payment of employees/workers and statutory dues within 180 days respectively from effective date
- 3) Non-payment of Rs. 18.53 Cr. within 180 days of effective date
- 4) Failure to release security by the CoC within the prescribed time limit
- 5) Litigations / appeals filed against the resolution plan by any stakeholder if upheld by the relevant adjudicating authority

**k. Consequences of Revocation**

In the event the Proposed Plan is revoked and/or fails, the existing facilities of the Creditors (as mentioned hereof), the rights and remedies of the Creditors under their respective existing financing documents would continue as if they had not been waived, amended, modified, superseded or replaced by the Proposed Plan and the Creditors shall be entitled to enforce such rights and remedies under the existing financing documents, as if the same had not been waived and/or modified pursuant to this Proposed Plan and the other relevant documents executed thereof.

**l. Payment of Stamp Duty**

In the event any material agreements are executed / proposed to be executed to give effect to any provision in the Proposed Plan, such material agreement shall be stamped as per the schedule of stamp laws applicable in the State in which it is executed

**m. Term Sheet, Resolution Plan and Business Plan**

The binding term sheet shall be read along with this resolution plan and terms included in term sheet but not included in this resolution plan shall also be applicable. Treatment of claims of unsecured financial creditors and the operational creditors and their payment terms shall be as per the resolution plan.

Business Plan is annexed hereunder as **Annexure - A**

**10. Compliance with laws in force**

Resolution Applicant hereby confirms that the terms provided in the resolution plan are in compliance with Applicable Law including any prospective change of such terms pursuant to discussions with CoC.

The Resolution Applicants and the proposed plan agree to comply with all applicable laws under the proposed resolution plan, whether or not specifically provided in the plan.

We understand that the members of the CoC have further right to renegotiate the terms of this Resolution Plan and the decision of the CoC in selection of the Successful Resolution Applicant shall be final and binding on us.

### 11. Mandatory contents and compliances of the resolution plan

Section of the Code / Regulation	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 complexity and scale of operations of business of CD?	Clause 4	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Clause 4	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Annexure	Yes
Section 30(2)	Whether the Resolution Plan:		Yes
	a. Provides for the payment of insolvency resolution process costs?	5.07	Yes
	b. Provides for the payment of the debts of operational creditors?	5.13	Yes
	c. Provides for the management of the affairs of the corporate debtor?	Clause 8	Yes
	d. Provides for the implementation and supervision of the resolution plan?	Clause 9	Yes
	e. contravenes any of the provisions of the law for the time being in force	Clause 11	No
Section 30(4)	Whether the Resolution Plan		Yes
	a. is feasible and viable, according to the CoC?	Annexure – A	Yes
	b. has been approved by the CoC with 66% voting		Yes

Section of the Code / Regulation	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
	share?		
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause 9	Yes
Regulation 35A	Where the resolution professional 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?		No
Regulation 38(1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the -	Annexure and 5.13	Yes
	a. Insolvency resolution process costs?		Yes
	b. Liquidation value due to operational creditors?		Yes
	c. Liquidation value due to dissenting financial creditors?		Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	5.14	Yes
Regulation 38(2)	Whether the Resolution Plan provides:	Clause 9	Yes
	a. the term of the plan and its implementation schedule?		Yes
	b. for the management and control of the business of the corporate debtor during its term?		Yes
	c. adequate means for supervising its implementation?		Yes
38(3)	Whether the resolution plan demonstrates that		Yes
	a. it addresses the cause of default?		Yes
	b. it is feasible and viable?	Annexure A	Yes

Section of the Code / Regulation	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
	c. it has provisions for its effective implementation?	9	Yes
	d. it has provisions for approvals required and the timeline for the same?	Clause 7	Yes
	e. the resolution applicant has the capability to implement the resolution plan?	Clause 4	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		No

**DECLARATION OF SOURCE OF FUNDS AS PER THE APPLICANT REPRODUCED**

**BELOW:**

“As part of your documentary requirements to submit a resolution plan under Insolvency and Bankruptcy Code, 2016, I/we understand that I/we am/are required to declare the source of the funds that I/we will be depositing into the special account/s including future escrow account which needs to be opened after approval of resolution plan by COC to deposit Rs. 4.75 Cr. whether in cash, cheque, EFT, RTGS, SWIFT or any other method.

Accordingly, I/we wish to declare as follows:

That I/We: Mr. Vijay Nade, and Mr. Satish Dandnaik, hereinafter known as Resolution Applicants for/on behalf of Sai Agro (India) Chemicals;

Do hereby declare that the source of the funds that I/we shall be depositing into new account is/are partly owned funds and partly borrowed funds from Bharat Co-Op. Bank (Mumbai) Limited as we have requisite surplus to pay the resolution amount mentioned under the Resolution plan submitted by us. (Net-worth certificates and in principal Approval letter is attached)

I/we further confirm that these funds are derived from legitimate sources as stated above and that I/we will also provide the required evidence of the source of funds if required to do so in future. I/we declare the foregoing details to be true.

Mr. Vijay Nade

Resolution Applicant

Mr. Satish Dandnaik (Resolution Applicant)”

**SELF-DECLARATION CERTIFICATE OF RESOLUTION APPLICANT'S AS PER  
REGULATION 38 OF IBBI CIRP REGULATIONS**

*This is a self-declaration certificate address to the Committee of Creditors (CoC) and Resolution Professional (RP) in addition to the Resolution Plan and other disclosures submitted by us, to enable the COC and RP to assess our credibility to take a prudent decision while considering the resolution plan for its approval.*

<i>Sr No.</i>	<i>Creditability Contents</i>	<i>Declaration</i>
<i>(a)</i>	<i>Identity;</i>	<i>PAN and Aadhar Card are provided.</i>
<i>(b)</i>	<i>Conviction for any offence, if any, during the preceding five years;</i>	<i>NO</i>
<i>(c)</i>	<i>Criminal proceedings pending, if any;</i>	<i>NO</i>
<i>(d)</i>	<i>disqualification, if any, under Companies Act, 2013, to act as a director;</i>	<i>NO</i>
<i>(e)</i>	<i>identification as a willful defaulter, if any, by any bank or financial institution or consortium thereof in accordance with the guidelines of the Reserve Bank of India;</i>	<i>NO</i>
<i>(f)</i>	<i>debarment, if any, from accessing to, or trading in, securities markets under any order or directions of the Securities and Exchange Board of India,; and</i>	<i>NO</i>
<i>(g)</i>	<i>transactions, if any, with the corporate debtor in the preceding two years</i>	<i>NO</i>

*We, Mr. Vijay Nade and Mr. Satish Dandnaik hereby declare, agree and confirm that the above information is true and fair to best of our knowledge.*

*Yours faithfully.*

*Name: Vijay Nade*

*Date: 09th February 2019*

*Name: Satish Dandnaik*

*Date: 09th February 2019*

***Resolution Applicants***

**DECISION –**

17. In the light of the detailed reproduction of the important portions of the Resolution Plan, it has been brought to our notice that one of the justifications for approval of the Resolution Plan is that the Liquidation Value is less comparing the proposals made in the Resolution Plan. The records of the case have revealed that the valuers have valued the **'liquidated value' at ₹13.53 Crores and the 'Fair Value' at Rs. 21.70 Cr.** The Resolution Applicant is bringing in a sum of ₹29.74 Crores to satisfy Financial Debt . It is noticed that Karad Bank had raised a claim of Rs. 30.27 crore. however only 60% i.e. Rs. 18.16 Cr. And Janklayan Patsanstha had a claim of Rs. 62 lakhs , against that proposed 60% i.e. Rs. 37 lakhs.
18. Regulation 35 of IBBI (CIRP) Regulations, 2016 prescribes that two registered valuers be appointed to give the RP an estimate of the fair value and the liquidation value, respectively assessed at Rs. 21.70 Cr and 13.53 Cr.
19. Further, case records were perused and noticed that the compliances of the insolvency Code have been fulfilled. The Procedure as prescribed under The Code is that a Resolution Plan is required to be submitted by a Resolution Application U/s 30 of The Code. On approval, the Resolution Professional is to submit U/s 30(6) the Resolution Plan, as approved by the Committee of Creditors, to the AA. Thereafter, u/s 31, as reproduced *supra*, AA is to examine the contents of the Resolution Plan. The mandate of this section is that if the AA is "satisfied" that the Resolution Plan as approved by the Committee of Creditors meets the requirement as referred to in section 30(2), shall by an Order, approve the Resolution Plan. So the prerequisite is that recording of "satisfaction" by AA is a condition precedent. A "satisfaction" is to be recorded in writing in the Judgment approving the Resolution Plan. "Satisfaction" is required to be based upon a conscious decision on examination of the terms of the Resolution Plan. In our humble opinion a thorough study of a Resolution Plan is required before recording a "satisfaction" in writing by AA. The 'satisfaction' as mandated in the statute can either objective or subjective or

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

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

or not. Therefore, the commercial wisdom is not allowed to be interfered with. The relevant portion of the said judgement is reproduced herein below:

*“As aforesaid, upon receipt of a “rejected” resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC muchless to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the Corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable”.*

21. To conclude, the approval of a Resolution Plan can be accepted U/s 31 (1) IBC by Adjudicating Authority after considering feasibility and viability recorded by COC ( refer Sec. 30(4) IBC ) with a 75%/66% voting share consenting for the said plan. Although because of the latest decision (supra), the scope of any suggestion or alteration in the impugned resolution plan is limited, however, it's effective implementation is to be ascertained ( refer Proviso to Sec 31(1) IBC ) before recording satisfaction. As far as the procedure is concerned, in this case, the same has been followed as per the provisions of the Insolvency Code, therefore, the Resolution Plan deserves to be approved. The Resolution Applicant has submitted an affidavit as required U/s 30(1) of the Code affirming eligibility U/s 29A of the Code.

22. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the “Moratorium” imposed under section 14 shall cease to have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their information and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
23. That liberty is hereby granted that if deem fit and legally permissible, can move Miscellaneous Application if required in connection with any further direction towards implementation of this Resolution Plan.
24. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Mumbai.
25. The directions embodied and period of implementation provided hereinabove shall be effective from the date of receipt of this Order.

**SD/-**  
**M.K. SHRAWAT**  
**Member (Judicial)**

**Date : 01.08.2019**

Js