

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,**  
**HON'BLE TECHNICAL MEMBER**

**IA (IBC) No. 370/JPR/2023**  
**In CP No. (IB)- 39(PB)/2018**

**IN THE MATTER OF:**

**THE ADMINISTRATOR OF SPECIFIED  
UNDERTAKING OF UNIT TRUST OF  
INDIA & ANR.**

...Financial Creditor/Applicant

**VERSUS**

**MODERN SYNTEX (INDIA) LIMITED**

...Corporate Debtor/Respondent

**MEMO OF PARTIES**

**IA (IBC) No. 370/JPR/2023:**

**MR. NIRAJ RATHORE**

*Erstwhile Director of Modern Syntex (India) Ltd.*  
59, Sardar Patel Marg, C- Scheme,  
Jaipur- 302001 (Rajasthan)

...Applicant

**VERSUS**

**MR. ANKIT GOEL**

*Resolution Professional of Modern Syntex (India) Ltd.*

...Respondent No. 1

**SANJAYBHAI PATEL**

*1st Member of Consortium*  
Patel Faliya, Near Darwaja,  
Jambuva Raman Gamdi, Por,  
Vadodara, Gujarat- 391243

...Respondent No. 2

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**SATISHBHAI V. PATEL**  
D-111, Kanha Bunglows, Near  
Basil School, Maneja, Vadodara,  
Gujarat- 390013

**...Respondent No. 3**

**FOR THE APPLICANT** : Varsha Banerjee, Adv.  
**FOR THE RESPONDENT** : Ankit Goel, RP  
Amar Vivek, Adv. for RP  
Anurag Kalavatiya, Adv. for SRA  
Akshita Koolwal, Adv. for SRA

**Order Pronounced On: 12.03.2024**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. The present application has been filed by *Mr. Niraj Rathore*, Erstwhile director of the Corporate Debtor under Section 60(5) of Insolvency & Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 11 of NCLT Rules, 2016 objecting to the Resolution Plan of the Respondent Nos. 2 & 3 i.e., *Mr. Sanjaybhai Patel* and *Mr. Satishbhai V. Patel*, who are the Resolution Applicants, which was approved by the Committee of Creditors ('CoC') on 13.03.2023 pursuant to the Resolution adopted in the 16<sup>th</sup> meeting of the CoC dated 11.03.2023.
2. The main application numbered as *CP No. (IB)- 39(PB)/2018* was filed by the Financial Creditor, *The Administrator of Specified Undertaking of Unit Trust of India & Anr.* under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and

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the same was admitted by this Adjudicating Authority *vide* Order dated 28.03.2022, wherein *Mr. Partha Sarathy Sarkar* was appointed as Insolvency Resolution Process ('IRP'). During the pendency of this Application, *vide* Order dated 27.09.2023, the Resolution Professional ('RP') was replaced and *Mr. Ankit Goel* was appointed as the new RP in this matter.

3. The Applicant has alleged illegality of the Resolution Plan while providing brief summary of the facts of the case. In the present Application, the Applicant has raised the following objections to the Resolution Plan proposed by the Resolution Applicants i.e. Respondent No. 2 & 3:

3.1. The Applicant submitted that the Resolution Plan in question is not in accordance with the provisions of the Code and the law laid down by the Hon'ble Supreme Court in *Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia Resolution Professional of Jet Airways (India) Ltd. & Ors. Company Appeal (AT) (Insolvency) No. 752 of 2021 dated 21.10.2022* as the Resolution Plan does not provide for complete payment of the admitted dues of the *Employees Provident Fund ('EPF')* as well as *Central Goods and Service Tax and Excise Commissionerate*. The Resolution Plan proposed payment of Rs. 1,00,000/- (Rs. One Lakh Only) against admitted dues amounting to Rs. 1,21,160/- (Rs. One Lakh Twenty- One Thousand One Hundred

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Sixty Only) of *EPF* and a payment of Rs. 17,02,354/- (Rs. Seventeen Lakhs Two Thousand Three Hundred Fifty- Four Only) against admitted dues amounting to Rs. 6,62,39,469/- (Rs. Six Crores Sixty-Two Lakhs Thirty-Nine Thousand Four Hundred Sixty- Nine) of *CGST*.

3.2. Further, the Resolution Applications have completely changed the nature of the business of the Corporate Debtor, leading to death of the instant Corporate Debtor by dissolving the existing business of the Corporate Debtor i.e. business of manufacturing synthetic resins, plastic materials and non-vulcanizable elastomers. The Respondent Nos. 2 & 3 are proposing to acquire the Immovable Property of the Corporate Debtor and thereafter developing a Real Estate Project on the same. This shows the motive of the Resolution Applicants to grab the Immovable Property of the Corporate Debtor at a discounted price and develop Industrial Park Project over the same.

3.3. Additionally, no trustable source of fund has been provided by the Resolution Applicants showcasing ready availability of Rs. 175 Crores as envisaged in the Resolution Plan. In order to show their financial creditworthiness, the Resolution Applicants have relied upon Income Tax Returns of the Individual Resolution Applicants as well as Balance Sheet of the Group Companies of the Resolution Applicants whereas

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the annual income as per the Income Tax Return for the Financial Year 2021-22 for Respondent No. 2 and Respondent No. 3 is Rs. 3.24 Crores and Rs. 59 Lakhs respectively. The Total Net Profits of all Group Companies of Resolution Applicants in the Financial Year 2019-20 is Rs. 8.08 Crores only. Moreover, none of the Group Companies of the Resolution Applicants, except One, have provided any consent letter/comfort letter promising extending the Inter-Corporate Deposits for implementation of the Resolution Plan. Thus, the source of funds are inadequate and not satisfactory.

3.4. Also, the Applicant has protested the delisting of the Corporate Debtor as stated in the Resolution Plan. The Applicant has relied on Rule 19 & 19A of the amendment dated 18.06.2021 in Securities Contracts (Regulations) Rules, 1957, as per which it is mandatory for Resolution Applicant of a listed company undergoing CIRP to maintain public shareholding of at least 5% as a result of implementation of Resolution Plan approved under Section 31 of the Code. Further, the *Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009* provides a comprehensive procedure for de-listing of a listed company. However, the Resolution Applicants have completely bypassed the provisions of the delisting Regulations, thus, contravening the law.

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3.5. The Applicant further contended that the Resolution Plan proposes take over of the Corporate Debtor by *SPV to be formed*, however, the same does not comply with Section 29A of the Code. Further, reliance has been placed on co-ordinate bench of NCLT Ahmedabad in the matter of *India Renewable Energy Development Agency Ltd. (IREDA) vs. Wind World (India) Ltd. & Ors.* wherein it states that it is mandatory for a Resolution Applicant to state the amounts payable to dissenting financial creditors. The Applicant has also tabulated a list of unlawful reliefs and concessions as alleged sought by the Respondent Nos. 2 & 3 which majorly talk about the action of Respondent Nos. 2 & 3 in Delisting the Corporate Debtor.

4. The erstwhile RP of the Corporate Debtor had preferred Written Arguments vide Diary No. 2109/2023 dated 28.08.2023 stating as below:


4.1. It has been contended that the Applicant has no locus standi to challenge the Resolution Plan in accordance with the ruling of Hon'ble NCLAT in *Jaydip Ghosh Vs. Niraj Agarwal, RP of Castal Extrusion Pvt. Ltd., Company Appeal (At) (Ins) No.839/2022*. Thereafter, it was also contended that in compliance with the ruling of *Jet Aircraft (Supra)*, as against the admitted dues of INR 1,21,160/- (Rs. One Lakh Twenty- One Thousand One Hundred Sixty Only) from the total amount of INR 175 Crores for payment of *interalia* gratuity and

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contingencies funds, if the same remains unpaid, it shall be reduced proportionately from the payment to all stakeholders in the plan.

- 4.2. With respect to the objection regarding changing the nature of existing business of the Corporate Debtor, reliance was placed on the judgment of the Hon'ble NCLAT in *Next Orbit Ventures Fund Vs. Print House (India) Pvt. Ltd, Company Appeal (AT) (Insolvency) No. 417 of 2020* to submit that if the Resolution Plan contemplates a change in nature of business of Corporate Debtor to another line when existing business is obsolete or non-viable, it cannot be construed that the Resolution Plan is not feasible or viable.
- 4.3. Moreover, it was submitted that the Hon'ble NCLAT in *State Bank of India Vs. MBL Infrastructures Ltd., Company Appeal (AT) (Insolvency) No. 539 of 2022*, has ruled that viability and feasibility of Resolution Plan is required to be considered at the stage when Plan is to be approved by CoC. In case, the Resolution Applicant fails to pay the amount as stated in the Resolution Plan, the monitoring committee shall be at liberty to move appropriate application in due process of law.
- 4.4. With respect to objection of delisting, it is submitted that the consequences of purported non-compliance to the requirement of minimum shareholding level has been stated in Rule 21 of the Securities Contracts (Regulations) Rules, 1957. Moreover, the CoC in



its commercial wisdom has approved the proposal of Resolution Applicant to delist the Corporate Debtor. In support of the above submission, reliance was placed upon the Judgment of the Hon'ble NCLAT in *Aditi Bezbaruah v. Kamalesh Kumar Singhania, 2022 SCC OnLine NCLAT 2755*, which upheld the findings of NCLT Guwahati Bench stating that it is beyond its scope to grant any concessions/waivers etc. in respect of any dealings/transactions between the different parties, and/or as regards any statutory obligations/liabilities that are visualised or may arise subsequently while giving effect to the plan as the same would be dealt with by the RA. It was also mentioned that in the case, consequences of the purported non-compliance to the requirement of minimum shareholding level have been stated in Rule 21 of Securities Contracts (Regulation) Rules, 1957, as per which it is for the concerned stock exchange to take action on the delisting of the Securities. Besides, the CoC in its commercial wisdom as approved the proposal of the Resolution Applicant to de-list the Company.

4.5. Further, the Hon'ble Supreme Court in *Phoenix A.R.C. Vs. Spade Financial Services (2021) 3 SCC 475* held that IBC recognizes that for the success of an insolvency regime, the real nature of transactions has to be unearthed in order to prevent any person from taking undue benefit of its provisions to the detriment of rights of legitimate

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creditors. Thus, it is the creditors who shall be beneficiary of the reversal of fraud played in terms of PUFÉ transactions and the stripping of assets of the Corporate Debtor. Further, the objection for the amount payable to dissenting Financial Creditors is unsustainable since the Resolution Plan has been approved with 100% majority.

5. The Applicant filed Rejoinder vide Diary No. 2152/2023 dated 01.09.2023, submitting as below:

5.1. The judgment of *Innoventive Industries Ltd. vs. ICICI Bank (2018) 1 SCC 407* does not bar the erstwhile management from filing objection to the Resolution Plan in their individual capacity. The legal position is well settled that the suspended directors have locus to raise objections to the approved Resolution Plan, in case, the same is in violation of law. Further, the Hon'ble Supreme Court in the matter of *Vijay Kumar Jain Vs. Standard Chartered Bank (2019) 20 SCC 455* has held that erstwhile management is one of the stake holders in the CIRP of the Corporate Debtor. The Regulations also make it clear that these persons are vitally interested in the Resolution Plans as it directly affects them. Hence, the Resolution Plan is sent to the participants which includes the members of the erstwhile board of directors as provided under Regulation 39(5) of the CIRP Regulations.

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5.2. The Applicant also relied on Section 82 of the CGST Act, 2017 which provides that if any dues remain outstanding towards CGST, then CGST Department will have first charge over property of the Company. In the present case, the Respondent No. 1 has admitted dues of the CGST to the tune of Rs. 6,62,39,469/- (Rs. Six Crores Sixty-Two Lakhs Thirty- Nine Thousand Four Hundred Sixty-Nine Only), however, an amount of Rs. 17,02,354/- (Rs. Seventeen Lakhs Two Thousand Three Hundred Fifty-Four Only) is being proposed to be paid towards the same.

5.3. The Applicant also contended that the judgment in the case of *Orbit Ventures (Supra)* and *Jaydeep Ghosh (Supra)* are not applicable to the instant case as the nature of business in those cases were not changed but modified in terms of technology which the Corporate Debtor was involved in prior to the CIRP. Moreover, the Applicant submitted that the *SPV to be formed* to overtake the Corporate Debtor is an unknown entity and compliance under Section 29A cannot take place of an unknown entity. The Applicant also raised the point that the assets of the Corporate Debtor have depleted due to theft at the factory however, no stringent action has been taken by the RP to recover the same. Further, PUFEE Applications can only be filed Resolution

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Professional/Liquidator and other individual/entity are barred from pursuing such application.

6. The Respondent Nos. 2 & 3 also filed reply vide Diary No. 2167/2023 dated 05.09.2023 wherein it was contended the following:

6.1. The change of business of Corporate Debtor by SRA is permitted in the Resolution Plan if the existing business is obsolete and non-viable. As there is no possibility of repair/ overhaul/ up gradation of existing plant & machinery, therefore, the Respondents proposed for setting up of Industrial Park for Resolution of the Corporate Debtor. Further, the CoC in its commercial wisdom approved the Resolution Plan unanimously and it has been laid down by judicial pronouncements that commercial wisdom of CoC is of paramount status.

6.2. With respect to objection of de-listing, it is stated that Rule 19 & 19A of Securities Contract (Regulation) Rules, 1957 applies to the Resolution Applicant of Listed Company which will remain listed even after approval of Resolution Plan, however, in the case at hand, the Resolution Plan proposes for delisting the shares of the Corporate Debtor. Also the Respondents have mentioned that after approval of plan by CoC, it incorporated a Special Purpose Company (being a Limited Liability Company incorporated under the provisions of Companies Act, 2013) named as *Vaaso Infrastructure Pvt. Ltd.* on

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01.06.2023, wherein the entire shareholding is held by the answering Respondents.

- 6.3. The plan is a complete plan including all compliances as provided for in the Code. Moreover, the answering respondents have clarified that the payment towards PF dues of Rs. 1,21,160 as admitted by the RP shall be made in full. Also, with respect to dues of CGST, it is mentioned that the answering Respondents have proposed to make payment of such dues on the same percentage as it intends to make payment to other Operational Creditor under the category.
7. The Applicant filed Rejoinder vide Diary No. 2403/2023 dated 04.10.2023 wherein it contended the same points reiterated in its earlier rejoinder. It has also been raised that the Resolution Plan does not fall under the comprehensive procedure for delisting of a listed company in terms of SEBI delisting regulations. Also, it has mentioned that provisions of IBC casts the duty upon the Resolution Professional/ Liquidator only to file and pursue applications for reversal of PUFEE transactions wherein the granting of the rights to Secured Financial Creditors under the garb of Resolution Plan is against the provisions of IBC.
8. The Written Submissions on behalf of the Respondent/ Corporate Debtor and Respondent Nos. 2 & 3 have been filed vide Diary Nos. 3066/2023 dated 22.12.2023 and 104/2024 dated 10.01.2024 elaborating on the points

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mentioned above. Hence, the same are not being reiterated and repeated for the sake of brevity.

9. We have carefully considered the submissions of the Learned Counsel for the parties and perused the averments made in the Application, Reply, Rejoinder and Written Submissions along with the documents annexed therewith.
10. The Applicant has raised multiple objections to the Resolution Plan which was approved by the CoC unanimously in the 16<sup>th</sup> meeting. Thereafter, the Application seeking approval of Resolution Plan was filed vide *IA No. 169/JPR/2023* on 27.03.2023. On the other hand, the present Application has been filed on 04.07.2023 by the erstwhile Director of the Corporate Debtor seeking rejection of the Resolution Plan on grounds of the objections raised but no objection has been raised with regard to the decision of the CoC in approving the said Resolution Plan. It is pertinent to note that the Applicant has objected to the Resolution Plan before this Authority after the CoC had deliberated and approved the Resolution Plan and there appears to be no objections raised before the CoC while the Resolution Plans of all the Prospective Resolution Applicants were considered.
11. Now, we see the CIRP Regulations relevant to the objections raised by the Applicant herein. The relevant regulation is as below:

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*“31. Resolution Plan.*

*A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following: -*

*(a) transfer of all or part of the assets of the corporate debtor to one or more persons;*

*(b) sale of all or part of the assets whether subject to any security interest or not;*

*[(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;]*

*(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;*

***[(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;]***

*(d) satisfaction or modification of any security interest;*

*(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;*

*(f) reduction in the amount payable to the creditors;*

*(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;*

*(h) amendment of the constitutional documents of the corporate debtor;*

*(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;*

*(j) change in portfolio of goods or services produced or rendered by the corporate debtor;*

*(k) change in technology used by the corporate debtor; and*

*(l) obtaining necessary approvals from the Central and State Governments and other authorities.]*

*[(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets]”*

12. The sub-regulation (ca) of Regulation 37 provides that the Resolution Plan shall provide measures for Insolvency Resolution of the Corporate Debtor to maximize the value of its assets, including cancellation or delisting of the

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shares of the Corporate Debtor. In the matter of cancellation or delisting of shares of a Company, we refer to the *Securities And Exchange Board Of India (Delisting Of Equity Shares) Regulations, 2021*, which reads as below:

“ 3. *Scope and applicability:*

- (1) *These regulations shall apply to delisting of equity shares of a company including equity shares having superior voting rights from all or any of the recognised stock exchanges where such shares are listed.*
- (2) *Nothing contained in these regulations shall apply to the delisting of equity shares of a listed company—*
  - (a) *that have been listed and traded on the innovators growth platform of a recognised stock exchange without making a public issue;*
  - (b) ***made pursuant to a resolution plan approved under section 31 of the Insolvency Code, if such plan provides for:***
    - (i) *delisting of such shares; or*
    - (ii) ***an exit opportunity to the existing public shareholders at a specified price:***

*Provided that the existing public shareholders shall be provided the exit opportunity at a price which shall not be less than the price, by whatever name called, at which a promoter or any entity belonging to the promoter group or any other shareholder, directly or indirectly, is provided an exit opportunity:*

*Provided further that the details of delisting of such shares along with the justification for the exit price in respect of the proposed delisting shall be disclosed to the recognized stock exchange(s) where the shares are listed within one day of approval of the resolution plan under section 31 of the Insolvency Code.”*

13. The aforementioned Regulation makes it abundantly clear that these Regulations shall not apply to the act of Delisting of Equity Shares of a Company made pursuant to the approval of a Resolution Plan under Section 31 of the Code. Upon perusal of the Resolution Plan annexed with this Application, it is made out that out of the Paid Up Equity Capital of INR

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113.22 Crores, the Equity Shareholding of the Promoters/ Related Parties/ Promoter Group shall stand fully extinguished and cancelled; and the remaining Paid Up Equity Capital held by the public shall be paid INR 1 Crore and after payment, the Share Capital of the public shall stand extinguished and cancelled. The amount of INR 1 Crore will be transferred to designated account as pointed out by the Monitoring Committee therein.

14. The conjoint reading of Delisting Regulations with the CIRP Regulations demonstrates that the Resolution Plan, for the maximization of the value of the assets of the Corporate Debtor, may provide for cancellation or delisting of the shares of the Corporate Debtor from the Stock Exchange. If the same is the case, then the SEBI Delisting Regulations shall not apply for such delisting of the Company undertaken in the Resolution Plan and duly approved by this Authority under Section 31 of the Code. Hence, the objections raised with respect to the delisting of the Corporate Debtor does not hold round. The delisting of the Corporate Debtor, as proposed in the Resolution Plan and duly approved by the Adjudicating Authority vide Order passed in *IA No. 169/JPR/2023* dated 12.03.2024, is in accordance with the provisions of law.
15. The objection of the Applicant regarding the payment of *EPF* dues stands nullified as the Respondents have mentioned that the payment of *EPF* dues shall be made in full and the Resolution Plan also states that the payment

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towards *EPF* dues shall be made in priority within 30 days from the date of approval of the Resolution Plan. Further, the payment to other Operational Creditors shall be made in the same proportion to total dues as is being paid to Secured Financial Creditors, in accordance with Section 53 of the Code, therefore, the same does not contravene with the provisions of the Code.

16. Additionally, it has been contended by the Respondents that there is no possibility of repair/ overhaul/ up gradation of existing plant & machinery of the Corporate Debtor. It has been laid down in various judgments that change in business of the Corporate Debtor does not *ipso facto* make the Resolution Plan void or inconsiderable. Further, with respect to the funds, the Resolution Plan categorically provides the Source of Funds for the amount payable to the stakeholders of the Corporate Debtor and the Resolution Plan also provides for infusion of INR 73 Crores towards the Working Capital/Operations and Revival of the Corporate Debtor.
17. The Resolution Plan provides that the Corporate Debtor shall be taken over by an *SPV* formed by consortium of *Mr. Sanjaybhai Patel* and *Mr. Satishbhai V. Patel*. The Resolution Applicants have informed that a Special Purpose Company, being a Limited Liability Company has been incorporated under the provisions of the Companies Act, 2013 namely, *M/s Vaaso Infrastructure Pvt. Ltd.* The Company namely, *M/s Vaaso Infrastructure Pvt. Ltd* is appearing in the master data maintained by the

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Ministry of Corporate Affairs and it is shown to be incorporated on 01.06.2023 having *Mr. Sanjaybhai Patel* and *Mr. Satishbhai V. Patel* as Directors. Therefore, the contention of the Applicant stating that the Resolution Applicants are not complying with Section 29A of the Code stands invalidated.

18. A Monitoring Committee shall be constituted to overview the implementation of the Resolution Plan and if any violations take place or directions are sought, the Monitoring Committee comprising of the Resolution Professional, One Representative from the CoC and One Representative from the Resolution Applicant shall be at liberty to approach this Adjudicating Authority seeking necessary reliefs, if any. Therefore, the objections raised by the Applicant in the present Application are untenable.
19. In view of the foregoing, the present Application stands rejected and disposed off.

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**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

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**RAJEEV MEHROTRA,  
TECHNICAL MEMBER**