

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CP-1236/2016**

**CA-622/2019,  
CA-376/2020.**

**IN THE MATTER OF:**

**MR. NITIN KHANDELWAL**

**..... Operational Creditor**

**VERSUS**

**MAINI CONSTRUCTION EQUIPMENTS PRIVATE LIMITED**

**..... Corporate Debtor**

**AND**

**MR. HARMEET SINGH**

**..... Objector**

**IN THE MATTER OF CA-622/2019**

*Under Section 30(6) of IBC, 2016 r/w Regulation 39(4) of IBBI (CIRP Regulations), 2016*

**MR. DEBASHIS NANDA**

Resolution Professional of Maini Construction Equipments Private Limited

**..... Applicant/Resolution Professional**

**IN THE MATTER OF CA-376/2020**

*For the early hearing of the Resolution Plan of the Corporate Debtor*

**MR. NITIN KHANDELWAL**

**..... Operational Creditor**

**VERSUS**

**MAINI CONSTRUCTION EQUIPMENTS PRIVATE LIMITED**

**..... Corporate Debtor**

**Pronounced On: 27.02.2023**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

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**CORAM:**

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR  
HON'BLE PRESIDENT**

**SH. AVINASH KUMAR SRIVASTAVA  
HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :  
For the RP : Mr. Sumant Batra, Mr. Ankit Sibbal, Adv.  
with Mr. D. Nanda, RP  
Ms. Aishwarya, Ms. Sarvapriya Roy, Adv.  
For the Global Auto : Mr. Rohit Gandhi, Mr. Dhruve Saxena, Mr.  
Tech Ltd. Aprajit Swarup, Mr. Hargun Singh Kalra,  
Adv.  
For CoC/SBI : Mr. Bheem Sain Jain, Adv.

**ORDER**

**PER: CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR (PRESIDENT)**

**1. Preliminary**

1.1. The present application bearing **CA-622(PB)/2019** was moved by *MR. DEBASHIS NANDA* Resolution Professional ("**RP**") of *MAINI CONSTRUCTION EQUIPMENTS PRIVATE LIMITED ("**MCEPL**")* on 01.04.2019 under the provisions of Sections 30(6) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as "**the Code**" or "**IBC**"] read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") for approval of the Resolution Plan in respect of *MAINI CONSTRUCTION EQUIPMENTS PRIVATE LIMITED ("**Corporate Debtor**")* for seeking the following reliefs: -

- a) *“Allow the present application*
- b) *To order for approval of the Resolution Plan approved by the Committee of Creditors.*

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

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*c) Issue such orders/directions, in the matter, as mat deemed fit”.*

1.2. **CA-376/2020** is an application filed by the *MR. DEBASHIS NANDA* RP on 06.08.2020 for resumption of hearing on approval of the resolution plan of the Corporate Debtor which has been long pending before this Hon'ble Tribunal, for seeking the following reliefs: -

- a) “fix a date for hearing the arguments on the resolution plan and/or any objections thereupon virtually or otherwise as the case may be;*
- b) expedite the hearing of the present matter of consideration of the resolution plan; and/or*
- c) may pass such other and further order(s) as this Hon’ble Tribunal may deem fit and proper facts and circumstances of the case.”*

1.3. The Corporate Debtor (**“CD”**) was incorporated on 26.06.1997, as a Company Limited by Share (Non- govt. Company) having CIN: U29246DL1997PTC286637, under the Companies Act, 1956. The CD is a registered MSME (Micro Small and Medium Enterprises) under the category of small enterprises. The UAM (Udyog Aadhaar Memorandum) No. of the CD is UDYAM-DL-08-0014017<sup>1</sup> and the date of Udyam Registration is 28.05.2021. The Authorised Share Capital of the CD is Rs.2,00,00,000/- (*Rupees Two Crores only*) and the Paid-up Share Capital of the CD is Rs.1,32,62,350/- (*Rupees One Crore Thirty Two lakh Sixty Two Thousand Three Hundred Fifty Only*). On the date of application, the CD is engaged in the Manufacture of special purpose machinery. The Registered Office Address of the CD is B-1/A- 21, GROUND FLOOR MOHAN CO-OPERATIVE INDUSTRIAL ESTATE, MATHURA ROAD, NEW DELHI, DELHI-110044. Therefore, this Bench has jurisdiction to deal with this application.

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<sup>1</sup> **The Applicant/RP has submitted the MSME Registration Certificate before this Adjudicating Authority on 20.02.2023**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

---

1.4. The underlying Company Petition **CP-1236/2016** was originally filed before Hon'ble Delhi High Court under Section 433(e), 434 and 439(b) of the Companies Act, 1956 for winding up. On the constitution of the NCLT and in pursuance of notification D.L.33004/99 dated 07.12.2016 issued by the Ministry of Corporate Affairs, the Hon'ble Delhi High Court transferred and listed the matter before this Tribunal. The petition was admitted by this Adjudicating Authority *vide* its order dated 01.06.2017 (**"Admission Order"**). Further, *MR. DEBASHIS NANDA* (IBBI/IPA-003/IP-NOOO40/2017-18/10316) was recommended by the Insolvency and Bankruptcy Board of India *vide* letter dated 23.06.2017 and appointed as IRP *vide* order dated 13.07.2017 passed by this Adjudicating Authority, who was later confirmed as RP in the First CoC meeting held on 19.08.2017.

**2. Collation of claims by RP**

2.1. The Applicant/RP has submitted that the public announcement was published in two newspapers i.e. Business Standard (English) and Business Standard (Hindi) Delhi Edition on July 25, 2017 to invite the stakeholders for submission of their claims. A copy of the public announcement published on July 25, 2017 is annexed and marked as **ANNEXURE-2 of the Application.**

2.2. In response to the public announcement made, the resolution professional received claim of only one financial creditor namely the State Bank of India, and constituted the committee of creditors (**"CoC"**) comprising of one member.

2.3. The resolution professional scheduled the first meeting of the CoC on August 19, 2017 wherein the interim resolution professional was confirmed as resolution professional by the CoC. Copy of the Minutes of the First meeting of the CoC held on August 19, 2017 is annexed herewith and marked as **ANNEXURE-3 of the Application.**

2.4. The resolution professional engaged two valuers namely Peritus

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

---

Advisory and Jayant Consultants as on July 27, 2019, they submitted their valuation reports to the resolution professional and **the average value of the assets of the Corporate Debtor was assessed at Rs. 9.63 Crores as fair value and Rs. 8.45 Crore as liquidation value.** However, **at present, the liquidation value of corporate debtor is approximately 6.5 Crores** as some of the debts of corporate debtor have been realized during the CIRP period and also, the CIRP period is exceptionally long i.e., of about 1.5 years resulting in erosion of the value of inventory due to cancellation of orders.

- 2.5. The resolution professional engaged Anil Shalini and Associates, Chartered Accountants for conducting transactional review audit. However, **no avoidable transaction as specified in the Code has been reported by the transaction review auditor.**
- 2.6. During the course of CIRP, the banker of the corporate debtor, the financial creditor SBI itself has adjusted the amount from the account which will be treated as recovery, and seized the operations of the bank account on 28.11.2017 which affected the CIRP of the company.
- 2.7. The resolution professional sought legal remedy for the reversal of the action taken by the financial creditor, which caused the loss of substantial period during the CIRP.
- 2.8. The resolution professional filed an application for exclusion and extension of the CIRP period in addition to 90 days extension as per the provisions of the Code.
- 2.9. This Tribunal vide its order dated 02.08.2018 has granted exclusion and extension of CIRP period.
- 2.10. The RP submits that a total of 15 (Fifteen) CoC meetings have been held during CIRP period as follows:

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

---

S.NO.	Sequence of Meeting of CoC	Date of Meeting	CoC Member Present	Voting Share
1	First Meeting of CoC	19.08.2017	State Bank of India	100%
2	Second Meeting of CoC	08.09.2017	State Bank of India	100%
3	Third Meeting of CoC	21.10.2017	State Bank of India	100%
4	Fourth Meeting of CoC	20.12.2017	State Bank of India	100%
5	Fifth Meeting of CoC	23.03.2018	State Bank of India	100%
6	Sixth Meeting of CoC	20.04.2018	State Bank of India	100%
7	Seventh Meeting of CoC	10.09.2018	State Bank of India	100%
8	Eighth Meeting of CoC	24.09.2018	State Bank of India	100%
9	Ninth Meeting of CoC	02.11.2018	State Bank of India	100%
10	Tenth Meeting of CoC	06.02.2019	State Bank of India	100%
11	Eleventh Meeting of CoC	08.03.2019	State Bank of India	100%
12	Twelfth Meeting of CoC	30.03.2019	State Bank of India	100%
13	Thirteenth Meeting of CoC	24.05.2019	State Bank of India	100%
14	Fourteenth Meeting of CoC	19.11.2019	State Bank of India	100%
15	Fifteenth Meeting of CoC	09.11.2022	State Bank of India	100%

**3. Evaluation and voting**

3.1 The resolution professional proposed publication of an advertisement for inviting Expression of Interest (**“EoI”**) for submission of resolution plan for the revival of the corporate debtor, which was duly approved by the CoC in the ninth meeting held on 02.11.2018. Pursuant to the approval by the CoC, the invitation for EoI/resolution plan was published in the newspapers namely Financial Express and Jansatta on 14.11.2018 and in ‘Form-G’ on the website of IBBI. Copy of invitation for EoI along with **Form-G** published on the website is annexed herewith and marked as **ANNEXURE-4 of the Application.**

3.2 That in response to the aforesaid invitation Mr. Ajay Maini, the member

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

---

of the suspended Board of Directors of the corporate debtor and prospective resolution applicant, submitted his EoI for the resolution plan. It is submitted that he is eligible to be resolution applicant in terms of section 29A of the Code.

- 3.3 The resolution applicant submitted its resolution plan to the resolution professional, which was presented before the CoC for further deliberations in the eleventh meeting of the committee of creditors held on March 8, 2019. Copy of the Minutes of Eleventh meeting of CoC held on March 8, 2019 is annexed herewith and marked as **ANNEXURE-5 of the Application.**
- 3.4 The matter was deliberated upon by CoC comprising sole member i.e., the State Bank of India, wherein the member desired some changes in the proposed resolution plan and asked the Resolution Applicant to modify and present the revised resolution plan within the time frame. The sole member informed that he needs time to consult his higher authorities before grant of approval and requested to convene the next meeting.
- 3.5 The resolution applicant submitted revised resolution plan to the resolution professional which provides for payment of unpaid expenses (unmet) incurred during the CIRP period including the rent for 9 Months due to Global Autotech Limited during CIRP period amounting to rupees 65 lakhs apart from other CIRP expenses of approx. 24 lakhs (totalling approx. 89 Lakhs as envisaged in the resolution plan) which was presented before the CoC for further deliberations in the twelfth meeting of the CoC held on March 30, 2019, wherein the resolution applicant informed that the plan has been modified as desired by the CoC and it proposed to settle dues of operational creditors at 50%<sup>2</sup> of the claims of operational creditors along with other conditions as

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<sup>2</sup> Reduced to 10% as per Amended Resolution Plan dated 14.11.2022

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

---

desired by the CoC.

- 3.6 The resolution applicant also informed that the resolution plan envisages that if Mr. Harmeet Singh, a guarantor, does not continue his guarantee for the purpose of securing loan, the financial creditor may decide to invoke his guarantee and adjust towards the sacrifice (haircut) and remaining unadjusted amount may be kept in Fixed Deposit with the bank during the tenure of the Resolution Plan implementation period.
- 3.7 In the twelfth meeting of the CoC held on March 30, 2019, the sole member of the CoC approved the resolution plan by passing the resolution, which is reproduced below:

***"RESOLVED THAT** the resolution plan submitted by Maini Construction Equipments Pvt. Ltd<sup>3</sup>, the Corporate Debtor itself through its promoter be and is hereby approved.*

***FURTHER RESOLVED THAT** the Resolution Professional is authorized to submit the Resolution Plan before Hon'ble NCLT, Principal Bench, New Delhi, for approval and other necessary action required in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016."*

#### **4. Details of Resolution Plan/Payment Schedule**

- 4.1 The Resolution Applicant has to the extent possible, taken into account the interests of all stakeholders of the Corporate Debtor in the following manner:
- a. The Resolution Plan envisages total outlay of INR 1147 Lakhs, which is detailed below:

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<sup>3</sup> The CD is a registered MSME (Micro Small and Medium Enterprises) under the category of small enterprises. The UAM (Udyog Aadhaar Memorandum) No. of the CD is UDYAM-DL-08-0014017 and the date of Udyam Registration is 28.05.2021.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

**A. SUMMARY TABLE**

(Amount in Rupees Crores)

S. No.	Particulars	Claim Amount	Admitted Amount	Settled Amount	Upfront Payment	Balance Payment	Remarks
1	CIRP Expenses (with GST)	1.18	1.18	1.18	1.18	NIL	Rent of Premises settled as per MOU dated 03.09.2022
2	Financial Creditors						CC of Rs. 5.00 Crores is to be continued WCTL Rs. 3.58 Crores will be repayable over a period of 5 years in quarterly instalments with 6 months initial moratorium.
	Claim Amount	9.83	9.83	9.83	1.25	CC 5.00 WCTL 3.58	
	Interest	2.5	2.5	NIL			
	Legal Expenses	0.27	0.27	NIL			
3	Operational Creditor	5.59	4.60	0.46	0.046	0.414	Balance payable over a period of 5 years in quarterly instalments with 6 months initial moratorium.
	<b>Total</b>	<b>19.37</b>	<b>18.38</b>	<b>11.47</b>	<b>2.476</b>	<b>8.994</b>	

**Note 1:** Figures indicated as per the Amended resolution plan dated 14.11.2022 along with all necessary annexures.

**Note 2:** C.C. means Cash Credit and W.C.T.L. means Working Capital Term Loan.

**B. OTHER CONDITIONS**

1. The Resolution Plan also envisages to recompense the Bank for applicable haircut in the event of the company coming out of insolvency position.
2. After 5 years of payment to the financial creditor, the financial creditor will have the liberty to hold back 3% of the billed amount towards redemption of Cash Credit liability.

**C. SPECIAL CONDITIONS**

1. The Resolution Plan shall not have any conditions precedent and shall be binding on Resolution Applicant even if all the exemptions and reliefs sought by the Resolution Applicant are not granted by the Hon'ble NCLT Bench.
2. The resolution plan envisages repayment of dues of the financial creditor namely State Bank of India in the following manner:
  - Upfront Payment INR 125 Lakhs
  - Converted into WCTL INR 358.11 Lakhs
  - Cash Credit of INR 500 Lakhs to be continued
  - Total Principal outstanding INR 858 Lakhs
3. The resolution applicant considering the period required to stabilize the business operations after being shut down on account of various issues that arose during the CIRP period, proposed a moratorium of 6 months. However, interest during the moratorium period will be paid monthly.
4. **Payment towards CIRP costs including dues of creditors during the CIRP period**

The resolution applicant based on the MOU with the landlord of leasehold premises settled the CIRP prior at Rs. 1 Crore plus applicable GST. Further, the dues incurred by the Resolution Professional (on behalf of CD) during the CIRP period, towards the operational creditors shall be paid in terms of agreements with such operational creditors during the ongoing operations of the corporate debtor or after approval of the plan.

5. **Operational creditors settlement amount**

The claim received by Resolution Professional is INR 460 Lakhs. The Plan envisages a haircut of 90% on admitted claims and proposes for payment of INR 46 Lakhs with a haircut of INR 414 Lakhs and the said haircut will be applied proportionately to all the claimants whose claim has been received by Resolution Professional. Upfront payment of 4.6 lakhs shall be made as per Regulation 38 and the balance amount of

41.4 lakhs shall be made in Quarterly Instalments with 6months moratorium.

**6. Payment of liquidation value to dissenting financial creditors**

The Resolution Applicant understands that the State Bank of India is the sole financial creditor in this case and if it dissents, the resolution plan shall not be approved. So, for the purpose of this financial proposal, **we note that there is no dissenting financial creditor whether secured or unsecured.**

**7. Upfront payment towards outstanding employee and workman dues**

The Resolution Plan envisages payment of all the dues towards workmen and employees in pari-passu with the dues of the financial creditors. However, as on date there are no dues to workmen and employees.

**8. TREATMENT OF VARIOUS STAKEHOLDERS**

The Resolution Applicant has, to the extent possible, taken into account the interests of all Stakeholders of the Corporate Debtor.

**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.

**Financial Creditors**

The resolution plan envisages paying the financial creditor the amounts stated above as INR 125 Lakhs upfront.

**Operational Creditors (other than Workmen, Employees)**

The liquidation value of the Corporate Debtor has not been provided by the Resolution Professional. Based on the data available from the IM and other documents, and based on its experience, the Resolution Applicant has developed its own Valuation.

On the basis of above, it has been assumed that Liquidation Value does not even hardly cover the outstanding debt of Financial Creditors.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

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Hence, the Liquidation Value of Operational Creditors (other than Workman & Employee) has been considered as NIL and accordingly, no payment under Regulation 38(1)(a) of the CIRP Regulations is required to be contemplated under this Plan.

However, to address the interest of all Stakeholders of the Corporate Debtor, the resolution plan envisaged to repay the Operational Creditors in the manner as set forth in this plan at 10% of their admitted claims.

**Workmen and Employees**

The Resolution Plan envisages continued employment of all workmen/employees of CD in the normal course of business without any retrenchment/retirement (except in the normal course of their service conditions) and all the dues of workmen and employees stand paid.

- 4.2 The Applicant/RP has provided the details of Section 66 or avoidance application filed/pending:

<b>S.No.</b>	<b>Type of Transaction</b>	<b>Date of filing</b>	<b>Date of Order</b>	<b>Brief of the Order</b>
<b>1.</b>	Preferential Transactions under Section 43	N.A.	N.A.	N.A.
<b>2.</b>	Undervalued Transactions under Section 45	N.A.	N.A.	N.A.
<b>3.</b>	Extortionate Credit Transactions under Section 50	N.A.	N.A.	N.A.
<b>4.</b>	Fraudulent Transactions under Section 66	N.A.	N.A.	N.A.

- 4.3 The CoC has approved the resolution plan providing for contribution under Regulation 39B as under:

- a. Estimated liquidation cost: N.A.
- b. Estimated liquid assets available: N.A.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

c. Contributions required to be made: N.A.

d. Financial Creditor wise contribution is as under: N.A.

4.4 The amounts provided for the stakeholders under the Resolution Plan are as under:

(Amount in Rs. Crore)

S. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the plan	Amount Provided to the Amount Claimed
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of Section 21	N.A.	N.A.	N.A.	N.A.
		(b) Other than (a) above:				
		(i) Who did not vote in favour of the Resolution Plan.	N.A.	N.A.	N.A.	N.A.
		(ii) Who voted in favour of the Resolution Plan.	12.60	9.83	9.83	78%
		<b>Total [(a) + (b)]</b>	<b>12.60</b>	<b>9.83</b>	<b>9.83</b>	<b>78%</b>
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of Section 21	N.A.	N.A.	N.A.	N.A.
		(b) Other than (a) above:				
		(i) Who did not vote in favour of the Resolution Plan.	N.A.	N.A.	N.A.	N.A.
		(ii) Who voted in favour of the	N.A.	N.A.	N.A.	N.A.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

		Resolution Plan.				
		<b>Total [(a) + (b)]</b>	<b>N.A.</b>	<b>N.A.</b>	<b>N.A.</b>	<b>N.A.</b>
<b>3.</b>	Operational Creditors	(a) Related Party of Corporate Debtor	N.A.	N.A.	N.A.	N.A.
		(b) Other than (a) above: Operational Creditors	5.32	4.33	0.43	0.08%
		Government – Income Tax Department	0.27	0.27	0.03	0.10%
		Workmen	N.A.	N.A.	N.A.	N.A.
		Employees	N.A.	N.A.	N.A.	N.A.
		<b>Total [(a) + (b)]</b>	<b>5.59</b>	<b>4.60</b>	<b>0.46</b>	<b>0.18%</b>
		<b>4.</b>	Other debts and dues	N.A.	N.A.	N.A.
<b>Grand Total</b>			<b>18.19</b>	<b>17.20</b>	<b>10.29</b>	<b>78.18%</b>

**Note 1:** Figures indicated as per the Amended Form-H dated 05.12.2022.

4.5 The Resolution Plan size is Rs.10,29,00,000/- (Rupees Ten Crores Twenty Nine Lakhs Only). The Resolution Plan defines **“Effective Date”** as the date on which the approval to the Resolution Plan is granted by this Adjudicating Authority.

**5. Compliance of the successful Resolution Plan with various provisions:**

5.1. Statement in Compliance with **Regulation 38(3)** of CIRP Regulations, 2016:

**i. Cause of default**

The major cause of default is the cancellation of contract after procurement of raw materials and other business failures.

**ii. Feasibility and Viability**

The resolution applicant has undertaken all the required checks and measures for implementation and provided for payment to all

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

creditors. The Resolution Plan is completely feasible and viable based on market research and study.

**iii. Provisions for its effective implementation**

The resolution plan has provided for the constitution of the monitoring committee to be chaired by the resolution professional and consisting of representations of CoC and of resolution applicant as members.

**iv. Provisions for approvals required and the timeline for the same**

The resolution applicant does not require any approval.

**v. Resolution applicant has the capability to implement the resolution plan**

The resolution applicant has past experience and was running the company successfully for several years. The Resolution Applicant will strategize the business of the corporate debtor by implementing the measure provided in this resolution plan and the plant of the Corporate Debtor is running at reasonable capacity utilisation.

5.2. The compliance of the Resolution Plan is as under:

<b>Section of the Code/ Regulation No</b>	<b>Requirement with respect to Resolution Plan</b>	<b>Clause of Resolution Plan</b>	<b>Compliance (Yes/ No)</b>
<b>Section 25(2)(h)</b>	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		Yes
<b>Section 29A</b>	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?		Yes
<b>Section 30(1)</b>	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		Yes

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

<b>Section 30(2)</b>	Whether the Resolution Plan- a.) Provides for the payment of insolvency resolution process costs?	Clause (a) of Chapter IV of the Resolution Plan	Yes
	b.) Provides for the payment to the operational creditors?	Clause (b) of Chapter IV of the Resolution Plan	Yes
	c.) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Clause (c) of Chapter IV of the Resolution Plan	Yes
	d.) Provides for the management of the affairs of the corporate debtor?	Clause (c) of Chapter VII of the Resolution Plan	Yes
	e.) Provides for the implementation and supervision of the resolution plan?	Chapter X of the Resolution Plan	Yes
	f.) Contravenes any of the provisions of the law for the time being in force?		No
<b>Section 30(4)</b>	Whether the Resolution Plan a.) Is feasible and viable, according to the CoC?	Copy of minutes of the 15 <sup>th</sup> meeting	Yes
	b.) has been approved by the CoC with 66 % voting share?	Copy of Voting Results	Yes
<b>Section 31(1)</b>	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Chapter VII of the Resolution Plan	Yes
<b>Regulation 35A</b>	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 of the Board?	NA	NA
<b>Regulation 38(1)</b>	Whether the amount due to the operational creditors under the resolution plan has been given priority	Clause d of Chapter VII of the Resolution plan	Yes

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

	in payment over financial creditors?		
<b>Regulation 38(1A)</b>	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Chapter VIII of the Resolution Plan	Yes
<b>Regulation 38(1B)</b>	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.	NA	No
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	NA	No
<b>Regulation 38(2)</b>	Whether the Resolution Plan provides: a.) The term of the plan and its implementation schedule?	Chapter VIII of the Resolution Plan	Yes
	b.) For the management and control of the business of the corporate debtor during its term?	Chapter VIII of the Resolution Plan	
	c.) Adequate means for supervising its implementation?	Chapter VIII of the Resolution Plan	Yes
<b>Regulation 38(3)</b>	Whether the resolution plan demonstrates that – a.) It addresses the cause of default?	Clause 1 of chapter IX of the said resolution plan	Yes
	b.) It is feasible and viable?	Clause ii of chapter IX of the said resolution plan	Yes
	c.) It has provisions for its effective implementation?	Clause iii of chapter IX of the said resolution plan	Yes
	d.) It has provisions for approvals required and the timeline for the same?	Clause iv of chapter IX of the said resolution plan	Yes
	e.) The resolution applicant has the capability to implement the resolution plan?	Clause v of chapter IX of the said resolution plan	Yes
<b>Regulation 39(2)</b>	Whether the RP has filed applications in respect of transactions observed,	NA	No

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

	found or determined by him?		
<b>Regulation 39(4)</b>	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	NA	NA

5.3. The Applicant/RP submits that the successful resolution applicant<sup>4</sup> is eligible under section 29A of the Code to submit the resolution plan, as required by Regulation 39(1)(a) of the CIRP Regulations. An undertaking has also been submitted by the successful Resolution Applicant, as mandated in terms of regulation 39(1)(c) of the CIRP Regulations. The Applicant/RP has filed a Compliance Certificate in the prescribed Form, i.e., Amended **Form-H** as per the amended resolution plan dated 05.12.2022 in compliance with Regulation 39(4) of the CIRP Regulations.

**6. Details of Resolution Plan/ Payment Schedule**

- 6.1. The Resolution plan envisages sale of all such of plants and machinery which have become obsolete on account of non-maintenance for long period of time.
- 6.2. The Resolution plan envisages that there is no change in the shareholding pattern of the company
- 6.3. The Resolution Plan envisages making payment to all creditors, as set forth above, however considering the future operations of the unit if any betterment than projected is experienced, the Financial Creditor shall have "Right to Recompense" on such excess profits.
- 6.4. The Resolution Plan envisages payment towards Financial Creditor at an interest rate of 10% on Cash Credit and 10.5% on WCTL.
- 6.5. The Resolution Plan envisages introducing new products from the

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<sup>4</sup> **There is no PUF (Preferential Undervalued Fraudulent Extortionate) transactions pending against the SRA and SRA is a relevant eligible party under Section 29A of the Code, as there is no bar for the promoter to file Resolution Application, as the CD is not an undischarged insolvent or willful defaulter.**

similar line in an effort to expand the business in due course of time.

- 6.6. The Resolution Plan considering the cross border market opportunities in the similar line industry envisages exploring the opportunities in foreign markets and intends to invest substantial funds for development and marketing.
- 6.7. The company was fully operational before the commencement of CIRP and does not need to obtain any new license.

**7. Details on Management/Implementation and Reliefs as per the Resolution Plan**

**7.1. Tenure of the Resolution Plan**

The Resolution Plan envisages a duration of 66 Months for payment to all creditors of the corporate debtor including financial, operational and infusion of funds towards working capital and others. In the above background, tenure of the Resolution Plan is considered as 66 Months from the month in which the Resolution Plan is approved by the Adjudicating Authority.

**7.2. Implementation Schedule and monitoring**

*a. Constitution of Committee for monitoring and supervision of resolution plan:*

It is envisaged in the Resolution Plan to constitute a monitoring committee comprises of representative of the CoC, representative of the Resolution Applicant and resolution professional Debashis Nanda as chairperson of the committee constituted for supervision and monitoring of the implementation of the Resolution Plan for the term of the Resolution Plan. The monitoring committee/entity, constituted, shall have inter alia the following responsibilities:

- i.** To supervise the implementation of the Resolution Plan and ensure that the Resolution Plan is implemented as approved without any deviations;
- ii.** To ensure timely disbursement of funds to the financial and

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

---

operational creditors, as per the payment terms set out above;

**iii.** To ensure that approvals, to the extent required for the implementation of the Resolution Plan, are applied for and obtained in a timely manner.

**iv.** To bring to the notice of NCLT, any deviations/violations, of the Resolution Plan, by any person;

**v.** To provide regular updates to the NCLT, as and when required.

***b. Remuneration to the members of the monitoring committee***

The resolution plan envisages payment of fee to the chairperson of Rs. 35,000/- per month + applicable taxes (if any). All incidental/out of pocket expenses shall be paid and will be reimbursed as per actuals. No other fee shall be borne by the Resolution applicant.

***c. Management and Control during the term***

The Board of Directors of MCEPL shall resume management of Company on approval of the Resolution Plan by the Adjudicating Authority and the Resolution Professional shall be discharged from his duties.

The Board of Directors shall comprise as under:

1. Mr. Ajay Kumar Maini
2. Mr. Rakshak Maini

***d. Repayment of priority dues***

The resolution plan envisages repaying all priority dues within 30 days from approval of the resolution plan by Adjudicating Authority; the following amounts shall be paid:

- i.** IRP Cost in accordance with the provisions of the Code is Rs. 1.18 crores (Rs 1 crore plus 18% GST, Any additional cost on this account will be borne by Resolution Applicant)
- ii.** Payment to operational creditors to the extent of INR 46 Lakhs
- iii.** Payment of upfront money to the sole financial creditor SBI to the extent of INR 125 Lakhs.

## **8 Objections**

- 8.1 The objector namely **MR. HARMEET SINGH** in **CA-622/2019**, a guarantor is assailing the Resolution Plan submitted by the Resolution Applicant, Mr. Ajay Maini (Original Promoter of the Corporate Debtor, MCEPL).
- 8.2 The Resolution Plan, insofar as it names the Applicant as a Personal Guarantor of the loan taken by the Corporate Debtor from the State Bank of India (formerly, State Bank of Bikaner and Jodhpur), Faridabad Branch [hereinafter called, "the Bank"] and seeks to bind the Applicant without his knowledge or consent, is unfair, illegal and mala fide. The Applicant is not a Guarantor to the credit facility extended by the Bank to the Corporate Debtor. He was fraudulently Implicated in the said transaction by the Resolution Applicant who took advantage of his 35 years old friendship and familial relations with the Applicant. On coming to know of the fraud, the Applicant filed a civil suit bearing CS. No. 1190/2019 before the Ld. Civil Judge, Faridabad District Court, categorically denying the execution of any agreement, much less a 'contract of guarantee by the Applicant on behalf of the Corporate Debtor and seeking the relief of declaration, permanent and mandatory injunctions and other consequential reliefs against the Bank and the Resolution Applicant.
- 8.3 The Applicant, on coming to know of the fraud perpetrated upon him, immediately addressed a letter dated 28.04.2017 to the Bank thereby withdrawing his (alleged) guarantee and informing the Bank of the grave and serious acts of fraud played upon the Applicant. It is settled law that a guarantor cannot be made liable for the dues arising or accruing after the date of withdrawal of the guarantee. In the instant case, the Resolution Plan envisages satisfaction of the entire claim of the Bank amounting of Rs. 9.83 Crores and gives the Bank the right to proceed against the guarantor only in respect of the remaining interest liability amounting to Rs. 2.5 Crores. It is submitted that this

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

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interest liability does not pertain to the period prior to 28.04.2017 and hence, even assuming that the Applicant was indeed a Guarantor as alleged, he cannot be made liable for the dues pertaining to the period post the withdrawal of guarantee.

- 8.4 In light of the aforesaid, the present Objections/ Reply is being filed against the Resolution Plan approved by the CoC. The Applicant submits that he is in compliance with all applicable laws.
- 8.5 On 20.07.2022 this Adjudicating Authority passed the following order in CA-622/2019, which is extracted as below:

**ORDER**

**CA-622/2019**

This application is pending for further consideration of the Resolution Plan.

Mr. Abhishek Anand appearing for the Personal Guarantor namely Mr. Harmeet Singh stated that the State Bank of India is represented by Ld. Counsel Mr. Bheem Sain. He further states that the matter has been resolved and State Bank of India will be issuing the 'No Due Certificate' which would be handed over, by the end of the day.

We may record the stand of State Bank of India as well as the Ld. Counsel for Personal Guarantor that they have no objection to the Repayment plan consequent to release to the Personal Guarantor.

For further consideration of the plan, list the matter again on 24.08.2022

- 8.6 On 12.10.2022 this Adjudicating Authority passed the following order, which is extracted as below:

**ORDER**

Ld. Counsel Mr. Ankit Sibal for the RP appeared and states that objections to the Resolution Plan have been now resolved and the CoC approval is awaited. He will place it before this Adjudicating Authority on the next date of hearing.

## 9 Analysis & Findings

- 9.1 With the objections out of the way, we now proceed to examine the application filed by RP for approval of the Resolution Plan. We find that the CIRP was initiated on 01.06.2017 against the CD on the application of Operational Creditor and the moratorium was applicable since then. But on 28.11.2017, the Bank seized the operations of the bank account of the CD and declared the account of the CD as NPA. Consequently, the RP filed **CA No. 20/2018** which was allowed by this Adjudicating Authority on 25.01.2018, directing the Financial Creditor to immediately de-freeze the account of the Corporate Debtor and to roll back all debit entries adjusted in the account of the Corporate Debtor after 01.06.2017 and to restore the account in the same state as it was on 01.06.2017. Order dated 25.01.2018 passed by this Adjudicating Authority in CA-20(PB)/2018 is extracted below:

***“Keeping aforesaid facts in view the application filed by the Resolution Professional is allowed. The non-applicant – State Bank of India / Financial Creditor is directed to roll back all debit entries adjusted in the account of the Corporate Debtor after 01.06.2017 and accordingly restore the account in the same state as it was on 01.06.2017. The needful be done without any delay but not later than 7 days. Likewise, it has to roll back the amount of bank guarantee encashed on or after 01.06.2017.”***

Thus original promoter of the Corporate Debtor has submitted this resolution plan, giving an undertaking that he is eligible under Section 29A of the Code (also refer para 5.3 *ibid*).

- 9.2 On hearing the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC. As per the CoC, the Plan meets the requirement of being a viable and feasible revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
**IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

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9.3 At this juncture, we rely upon the Judgement passed by Hon'ble Supreme Court in the matter of **“Vallal RCK versus M/s Siva Industries and Holdings Limited and Others, Civil Appeal Nos. 1811-1812 of 2022”**

whereby the Hon'ble Apex Court has answered the question as to whether ***‘the adjudicating authority (NCLT) or the appellate authority (NCLAT) can sit in an appeal over the commercial wisdom of the Committee of Creditors (hereinafter referred to as the “CoC”) or not’***. We rely upon the following paragraphs:

***“21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring the completion of the stated processes within the timelines prescribed by the IBC. It has been held that 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.”***

A reference in this respect could be made to the judgments of this Court in the cases of ***“K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.***

*27. This Court has, time and again, emphasized the need or minimal judicial interference by the NCLAT and NCLT in the*

IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
**IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

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*framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another**<sup>5</sup>:*

.....

***“95. However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC”***

- 9.4 In light of the above-quoted judgements, it is clear that the “Commercial wisdom of CoC” is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC.
- 9.5 The Resolution Plan of the *MAINI CONSTRUCTION EQUIPMENTS PRIVATE LIMITED* has been upvoted by CoC unanimously in the twelfth CoC meeting and this Adjudicating Authority cannot interfere in the same.

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<sup>5</sup> Civil Appeal No. 9664 of 2019, Dated 15.03.2021

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

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- 9.6 On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 9.7 The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly as per law.
- 9.8 As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
- 9.9 In case of non-compliance of this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD amount, if any already paid by the Resolution Applicant as well as the Performance Bank Security, if any.

**10 Orders**

- 10.1 The **CA-622/2019** which is for approval of the Resolution Plan is **allowed** and the Resolution Plan of Rs.10,29,00,000/- (Rupees Ten Crores Twenty Nine Lakhs Only) is hereby **approved. The Resolution Plan shall form part of this Order.**
- 10.2 The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Corporate Debtor Company shall come into force with immediate effect.
- 10.3 The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 10.4 The RP shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

---

their record.

- 10.5 Accordingly, **CA-376/2020** stands disposed of as becomes infructuous.
- 10.6 The main Company Petition, i.e., **CP-1236/2016** stands **disposed of** accordingly.
- 10.7 Liberty is hereby granted for moving appropriate application(s) if required in connection with the implementation of this Resolution Plan.
- 10.8 A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.
- 10.9 The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- 10.10 The Resolution Professional is further directed to hand over all records, premises/factories/documents available with it to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalise the further course of action required for starting of operations of the Corporate Debtor.
- 10.11 The Registry is hereby directed to send copies of the order forthwith to the IBBI, all the parties and their Ld. Counsel for information and for taking necessary steps.
- 10.12 Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CA-622/2019 & CA-376/2020 IN CP-1236/2016  
IN RE: RESOLUTION PLAN APPROVAL OF MAINI CONSTRUCTION EQUIPMENTS  
PRIVATE LIMITED**

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10.13 File be consigned to the record.

**-sd-**

**(RAMALINGAM SUDHAKAR)  
PRESIDENT**

**-sd-**

**(AVINASH K. SRIVASTAVA)  
MEMBER (TECHNICAL)**