

**BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

IA 73 of 2019 in C.P. (I.B) No.166/NCLT/AHM/2017

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 17.10.2019**

Name of the Company: George Samuel RP of A & I Hospitality
Pvt Ltd
V/s
COC & Ors

Section of the Companies Act : Section 30(6) r.w. 31 of the Insolvency and
Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	JAIMIN R. DAVE	ADVOCATE	APPLICANT	<i>Jrd</i>
2.				

ORDER

The Applicant is represented through learned counsel.

The Order is pronounced in the open court, vide separate sheet.

Chockalingam
CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 17th day of October, 2019

Manorama
MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

I.A. No. 73 of 2018
in
CP(IB) No. 166 of 2017

In the matter of:

Resolution Professional,
A & I Hospitality Private Limited,
B-9, Vardan Tower,
Nr. Vimal House,
Lakhudi Circle,
Navrangpura,
Ahmedabad-380014

.....Applicant

Versus

1. Small Industries Development Bank of India,
1st Floor, Plot No. 345,
Ward- 12-B,
Gandhidham-370201
(Committee of Creditors)
2. Ramesh Naran Sorathia,
Haridarshan,
Plot No. 122, Sector 1-A,
Gandhidham-370210,
(Suspended Management)
3. Harshad Dhirajlal Gandhi,
Room No. 11, 12, 13,
First Floor, Dhiraj Chambers,
Plot No. 36, Sector-9/A,
Gandhidham-370201
(Suspended Management)
4. Naresh Hansraj Buchandani,
Ashirwad Complex,
Plot No. 334, ward 12-B,
Gandhidham-370201
(Suspended Management)
5. Ramchand Kotumal Issrani,
Ashirwad Complex,
Plot No. 334, Ward -12B,
Gandhidam-370201.
(Suspended Management)

...Respondents

Phakarabgye

Channar

Order delivered on 17th October, 2019

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance : Mr. Navin Pahwa, Sr. Advocate with Mr. Ravi Pahwa, Advocate for the Suspended Management. Mr. George Samuel, RP present himself. Mr. Jaimin R. Dave, Mr. Priyank S Dave, Advocate and Mr. Shivam D Parikh, Advocates for the Applicant. Mr. Naresh Bulchandani, present himself on behalf of Suspended Management. Ms. Sudha Padmanabhan, DGM (SIDBI)

ORDER

[Per se: Ms. Manorama Kumari, Member (Judicial)]

1. The instant application (IA) No. 73 of 2018 in CP(IB)No. 166/2017, is filed by the applicant, the Resolution Professional of Corporate Debtor M/s. A & I Hospitality Private, under Section 30(6) read with 31 of the Insolvency and Bankruptcy Code, 2016 (as amended up to date), read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (as amended), for submission and approval of the Resolution Plan submitted by Respondents No. 2 to 5 in respect of the Corporate Debtor with the following prayers:

- (a) allow the present application.
- (b) approve the Resolution Plan dated 15.10.2018 along with addendum dated 30.11.2018 to the Plan with or without such modifications as this Tribunal may deem fit
- (c) Pass such other order/orders as it may deem fit and proper in the facts and circumstances of the case.

2. For the sake of convenience, it is mentioned herein that:

2.1 CP(IB)No. 166/2017 was filed by Deep Constructions Company, the Operational Creditor (Applicant) under section 9 of the Code read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authorities) Rules, 2016 seeking initiation of Corporate Insolvency

Shankar Singh

Chockalingam

Resolution Process against A& I Hospitality (hereinafter referred to as "Corporate Debtor") having registered office at "Ashirwad" Complex, Plot No. 334, Ward 12B, Gandhidham – 370 201.

- 2.2 The said CP(IB) No. 166/2017 was admitted on 18.01.2018 by this Adjudicating Authority and proposed appointment of Mrs. Hema Manoj Shah, as "Interim Resolution Professional" (hereinafter referred to as "IRP"). This Tribunal also directed listing of the said matter on 22.01.2018 for the purpose of filing of declaration and Disclosure Statement. Since Mrs. Hema Manoj Shah did not take up the assignment as "Interim Resolution Professional", this Adjudicating Authority appointed the Applicant as "Interim Resolution Professional vide its order dated 24.01.2018
- 2.3 The Interim Resolution Professional, so appointed, made public announcement as per the provisions of section 15 of the Code in "Times of India", English Newspaper (Rajkot Split Edition) and "Kutch Mitra – Bhuj" having wide circulation at the location of the registered office of the Corporate Debtor on 26.01.2018 and invited claims from creditors till 06.02.2018.
- 2.4 The Interim Resolution Professional, so appointed, appointed two registered valuers in accordance with Regulation 35 to determine the fair value and liquidation value of the Assets of the Corporate Debtor.
- 2.5 The Interim Resolution Professional thereafter constituted the Committee of Creditors (hereinafter referred to 'CoC') on 16.02.2018 and prepared Interim Information Memorandum (IM) on the basis of information collected in relation to the financial position and operations of the Corporate Debtor and provided to the CoC.
3. It is stated that IRP was confirmed as RP in the first meeting of CoC dated 19.02.2018. The second meeting of CoC was convened on 12.03.2018 and it was decided to invite Expression of Interest (In short EoI) through Paper Advertisement in Form G and as per the minimum criteria and evaluation matrix as approved by the CoC on 12.03.2018.

Phalakar

Sharma

The said details were also uploaded on the website of Sun Resolution Professionals Private Limited. As per the publication dated 15.03.2018 and corrigendum published thereto published on 17.03.2018, the last date for submission of Resolution Plan was fixed as 17.04.2018.

4. It is stated that in response to invitation for EoIs, two EoIs were received one from Mr. Ramesh Sorathia jointly with Mrs. Jayshree Sorathia and second joint application from Mr. Ram Issrani, Harshad D Gandhi and Haresh Bulchandani. However, before the last date of submission of Resolution Plan i.e. 17.04.2018, only one Resolution Plan was received.
- 4.1 The Resolution Professional convened the third meeting of CoC on 23.04.2018 to discuss the Resolution Plan received as mentioned in Para 4. However, on examination of the Resolution Plan, it was found that though the Resolution Applicant qualified as per minimum criteria so approved by the CoC in its second meeting, the Resolution Plan required several improvements in order to ensure that the Resolution Plan is acceptable to all its stakeholders of the Corporate Debtor. Accordingly, the Resolution Applicant undertook to make the requisite changes and submit the revised Resolution Plan within 10 days. However, the revised Resolution Plan received on 30.04.2018 also suffered from defects that were required to be rectified. The Resolution Applicant was addressed letter dated 01.05.2018 and the revised Resolution Plan received on 12.05.2018 still contained defects.
- 4.2 In the meantime, the Resolution Professional submitted a Status Report dated 07.05.2018 on CIRP to this Adjudicating Authority. In the said Status Report, the RP stated that he has received many claims even after the last date of receipt of the claims and accordingly, Information Memorandum (IM) is updated with the latest claim position. Since there were material changes in the list of claims, the said list of claims was submitted before this Adjudicating Authority as annexure to Status Report on CIRP.
- 4.3 It is stated by the RP that with respect to the claim of the Operational Creditor i.e. Deep Constructions Co., who initiated the CIRP of the

Chakar

Sharma

Corporate Debtor submitted the claim in Form B dated 08.02.2018 for an amount of Rs. 5,82,37,579/- and for interest at 18% per annum amounting to Rs. 2,04,51,432/- and against that claimed amount, the audited accounts of the Corporate Debtor as at 31.03.2018 showed the amount payable as Rs. 2,55,84,059/-.

- 4.4 It is stated by the RP that another Resolution Plan was received after the last date of submission had passed from Mr. Ram Issrani, Harshad D Gandhi and Haresh Bulchandani, and the same was not considered since it did not meet the criteria as to the last date of submission of the Resolution Plan.
- 4.5 The fourth meeting of CoC was held on 16.05.2018 to consider the Resolution Plan submitted by Mr. Ramesh Sorathia jointly with Mrs. Jayshree Sorathia. However, it was observed that in spite of two opportunities given, the Resolution Plan submitted by Mr. Ramesh Sorathia jointly with Mrs. Jayshree Sorathia contained several defects. Being unable to recommend any Resolution Plan received from Mr. Ramesh Sorathia jointly with Mrs. Jayshree Sorathia and the other from Mr. Ram Issrani, Harshad D Gandhi and Haresh Bulchandani, for consideration before the CoC, the CoC resolved to issue fresh invitation to call EoIs.
- 4.6 It is stated that as per the decision of the CoC in its fourth meeting held on 16.05.2018, public advertisements in Times of India, Kutch Mitra and Gujarat Samachar were made in Form G and was also uploaded on the designated website of IBBI and the website of Insolvency Professional Entity viz. www.sunresolution.in. In response to that invitation, two EOIs and thereafter two Resolution Plans were received before the last date fixed for submission of Resolution Plans i.e. 5 PM 18.06.2018 from (a) Mr. Naresh H Bulchandani jointly with Mr. Harshad D Gandhi and Ms. Sapna Ram Issrani named as Plan -1 and (b) Mr. Ramesh Sorathia jointly with Ms. Jayshree Sorathia named as Plan - 2. Thus, second process of calling EoIs was commenced.

Shrover Singh

Chaman

- 4.7 It is stated that being aggrieved for their Resolution Plan not being considered by the CoC in the first process of calling EoIs, Mr. Ramesh Sorathia jointly with Mrs. Jayshree Sorathia filed an Interlocutory Application No. 233 of 2018. However, the same was dismissed by this Adjudicating Authority on 12.10.2018 as withdrawn.
- 4.8 The fifth meeting of CoC was held on 26.06.2018 when Resolution Plan – I and the Resolution Plan – 2 received in the second process of calling EoIs were discussed. It was observed by the CoC that Resolution Plan -2 submitted by Mr. Ramesh Sorathia jointly with Ms. Jayshree Sorathia was better than the Resolution Plan – I submitted by Mr. Naresh H Bulchandani jointly with Mr. Harshad D Gandhi and Ms. Sapna Ram Issrani. The Resolution Applicant of Resolution Plan – I was conveyed by CoC that certain changes will have to be incorporated by them by way of supplying an addendum by 27.06.2018. The Resolution Applicant of Resolution Plan – I sought permission to file a revised Resolution Plan but the same was rejected by the CoC. The next and the sixth meeting of CoC was scheduled to be held on 29.06.2018.
- 4.9 The sixth meeting of CoC was held on 29.06.2018 to approve the Revised Resolution Plan - 2 with Addendum received on 27.06.2018. Accordingly, the Resolution Plan – 2 with Addendum was resolved and approved by the CoC. It is stated by the RP that before the start of the sixth CoC meeting, the RP was handed over a letter dated 29.06.2018 by one of the Resolution Applicants Mr. Naresh H Bulchandani and another Resolution Applicant Ms. Sapna R Issrani proposing improvement in the Resolution Plan submitted by them. However, these letters were replied by the RP vide his letter dated 02.07.2018.
5. The Resolution Professional, accordingly, submitted application under Section 30(6) read with Section 31 and other relevant provisions of the IBC, 2016 and regulations framed thereunder seeking approval of the Resolution Plan – 2 dated 18.06.2018 along with Addendum dated 29.06.2018 submitted by Mr. Ramesh Sorathia jointly with Ms. Jayshree Sorathia. The said application was numbered as IA 297 of 2018 and listed for hearing on 16.08.2018. On the said date of hearing i.e. on

Shankar Singh

Chhanna

16.08.2018, this Adjudicating Authority directed the RP to issue a fresh notice to the Suspended Management of the Corporate Debtor and the matter was posted for next hearing on 30.08.2018. However, the matter was further adjourned to 12.10.2018 as the Respondent No. 4 and 5 through their lawyer prayed for some more time. The matter was further adjourned to 15.10.2018. On 15.10.2018, the IA No. 233 of 2018 filed by the Resolution Applicants in the first process of calling EoIs was sought to be withdrawn and a Revised Resolution Plan submitted by all the directors of the Suspended Management was sought for consideration by them by CoC. The matter stood further posted/adjourned to 24.10.2018, 02.11.2018 and finally on 19.11.2018, this Adjudicating Authority directed the RP to place the modified Resolution Plan submitted by the directors of the Suspended Management before CoC for consideration. Accordingly, IA 297 of 2018 stood disposed of.

6. The seventh meeting of CoC was held on 30.11.2018 to consider the Resolution Plan dated 15.10.2018 submitted jointly by all the directors of the Suspended Management. Since the said Resolution Plan contained some technical defects, the Resolution Applicants assured the CoC of the rectifications and the eighth meeting of CoC was held on 10.12.2018 to consider and approve the Resolution Plan dated 15.10.2018 along with an Addendum dated 30.11.2018 to the Resolution Plan dated 15.10.2018. The said Resolution Plan along with Addendum was approved by the CoC with 100 per cent voting and in view of the aforesaid facts and circumstances of the case, the RP, the applicant preferred this application IA 73 of 2018 before this Adjudicating Authority seeking approval of the Resolution Plan dated 15.10.2018 along with an Addendum dated 30.11.2018 submitted by all the directors of the Suspended Management of the Corporate Debtor, as approved by the CoC in its meeting held on 10.12.2018.
7. The Resolution Professional has submitted detailed Table showing the compliances of the Resolution Plan with the mandatory requirements under the Code and CIR Regulations. The Table showing the compliances is given hereunder:

Phakarhage

Chunna

No.	Section/ Regulation	Number	Criteria	Criteria is met
1.	Section 30	(1)	A Resolution Applicant may submit a Resolution Plan to the Resolution Professional prepared on the basis of the Information Memorandum	Prepared on the basis of information provided into the Information Memorandum
		(2)	The RP shall examine each Resolution Plan received by him to confirm that each Resolution Plan:	
		a.	Provides for the payment of the IRP costs in the manner specified by the Board in priority to the repayment of other debts of the Corporate Debtor	CIRP cost of Rs. 25.00 lakhs along with sources of funds have been provided into the Resolution Plan under part B on Page No. 11
		b.	Provides for repayment of debts of Operational Creditor in such manner as specified by the Board which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under section 53	Liquidation Value is not known to the Resolution Applicants. However, on the basis of estimation Rs. 231.54 Lakhs has been taken into account as Liquidation Value due to Operational Creditors. Sources of payment is also provided into the Plan under Part on

Pharalngor

Chuman

				page no. 14-16.
		c.	Provides for management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Resolution Applicant has provided the detail of management of the affairs of the Corporate Debtor after approval of Resolution Plan under Part M on page no. 26
		d.	The implementation and supervision of the Resolution Plan	Resolution Applicant has provided for the measure for implementation and supervision of the Resolution Plan under Part N on Page No. 26
		e.	Does not contravene any of the provisions of the law for the time being in force	The Resolution Applicants submit that the Resolution Plan does not contravene any of the provisions of the law time being in force.
		f.	Confirms to such other requirements as may be specified by the Board	NA
2.	Reg. 38	(1)	A Resolution Plan shall identify specific sources of funds that will be used to pay the	
		a.	Insolvency Resolution Process Costs and provide that the Insolvency Resolution Process Costs will be	

Phouahngay

Chuma

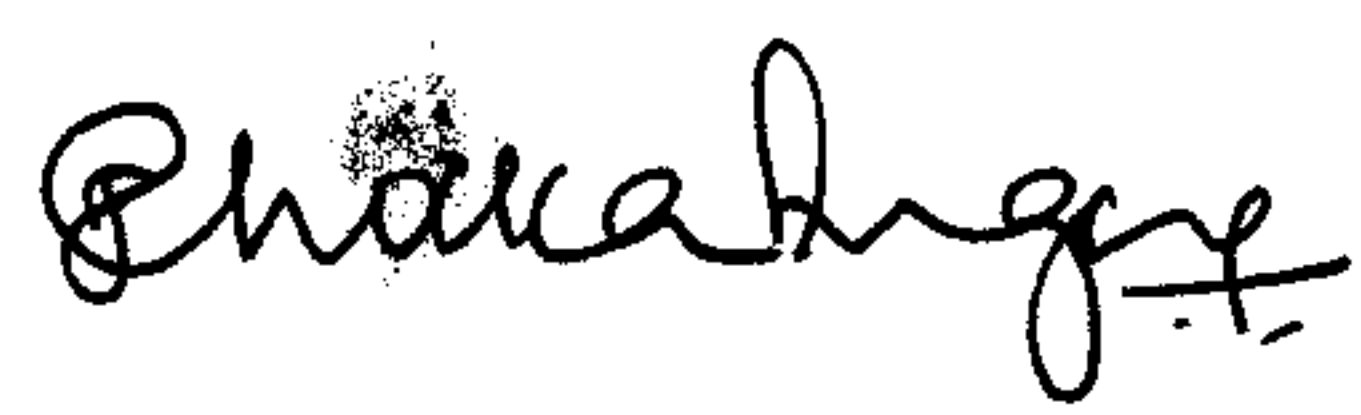
			paid in priority to any other creditor	
		b.	Liquidation Value due to Operational Creditors and provide for such payment in priority to any Financial Creditor which shall in any event be made before the expiry of thirty days after the approval of a Resolution Plan by the AA	
		c.	Liquidation Value due to dissenting Financial Creditors and provide that such payment is made before any recoveries are made by the Financial Creditors who voted in favor of the Resolution Plan	As there is only one Financial Creditor in the Committee of Creditors, this clause will not be applicable.
		1A amended on 05.10.2017	A Resolution Plan shall include a statement as to how it has dealt with the interests of all the stakeholders, including Financial Creditors and Operational Creditors, of the Corporate Debtor	A statement regarding how it has dealt with the interest of all the stake holders have been provided along with Resolution Plan.
		(2)	A Resolution Plan shall provide:	
		a.	The term of the Plan and its implementation Schedule	Term of the Plan and its implementation Schedule is provided in the Plan.
		b.	The management and control of the business	Same has been provided into the

Chacka Rega

Johnson

			of the Corporate Debtor during its term	Plan.
		c.	Adequate means for supervising its implementation	Same has been provided into the Plan.
		3 [3 rd Amendment 07.11.2017]	A Resolution Plan shall contain details of the Resolution Applicant and other connected persons to enable the Committee to assess the credibility of such applicant and other connected persons to take a prudent decision while considering the Resolution Plan for its approval. Explanation: for the purposes of this sub-regulation – (i) ‘details’ shall include the following in respect of the resolution applicant and other connected person, namely: - The word connected person is also defined there.	Details of Resolution Applicants and other connected persons are included in the Resolution Plan.

8. The Resolution Professional has annexed with the IA, number of documents to substantiate that Resolution Plan submitted for approval by this Adjudicating Authority complies with all the mandatory requirements of Insolvency and Bankruptcy Code and CIR regulations and the said Plan has also been approved by the CoC in their seventh





meeting having 100.00 per cent of voting in favor of the Resolution Plan.
The documents annexed with the IA are as under:

- 1) The Resolution Plan dated 15.10.2018 and the Addendum dated 30.11.2018
- 2) Minutes of the meeting of the CoC held on 10.12.2018 approving the Resolution Plan dated 15.10.2018 and the Addendum dated 30.11.2018.
- 3) Affidavit under section 29A of the Code by all the Resolution Applicants affirming that they meet the mandatory criteria of eligibility as Resolution Applicants.
- 4) Confidential Report on compliance of the Resolution Plan dated 15.10.2018 along with the Addendum dated 30.11.2018.
- 5) Report by the Resolution Professional on the eligibility of the Resolution Applicants under section 29A of the IBC 2016 read with regulations as amended from time to time till date.
- 6) Certificate under section 39(2) of the IBBI (IRP for CP) Regulations 2016.
- 7) Affidavit dated 20.10.2018 from the earlier Resolution Applicants Mr. Ramesh Sorathia and Ms. Jayshree Sorathia stating that they have no objection to the Resolution Plan and to consider their EMD of Rs. 120 Lakhs towards the new Resolution Plan submitted by the directors of the Suspended Management of the Corporate Debtor.
- 8) Agreement dated 22.10.2018 between the Resolution Professional and the Resolution Applicants for implementation of the Resolution Plan dated 15.10.2018 and the Addendum dated 30.11.2018.

Phakarigye

Chakraborty

- 9) Clarification letters dated 22.10.2018 and 25.10.2018 signed by all the Resolution Applicants on various provisions of the Resolution Plan and as to the date of Resolution Plan.
 - 10) Affidavit dated 26.10.2018 by Mr. Ramesh Naran Sorathia jointly with Ms. Jayshree Sorathia, partners of Deep Constructions Co., the Operational Creditor giving their consent for waiver of their rights to receive their dues in priority to the Financial Creditors.
 - 11) Undertaking received on 08.12.2018 from the Unsecured Financial Creditors of the Corporate Debtor stating that the amount considered for payment in the Resolution Plan is as per the consent of all the related Unsecured Financial Creditors.
 - 12) Letter dated 01.12.2018 signed by all the four Resolution Applicants, being the directors of the Suspended Board of Management of the Corporate Debtor withdrawing unconditionally the complaint of theft made by them vide their letter dated 22.10.2018.
 - 13) Letter dated 01.12.2018 addressed to Mr. P. Venugopal appointing him as Supervisor of the Resolution Plan along with his acceptance and his brief profile.
9. In between the initiation of CIRP proceedings and the approval of the Resolution Plan, following IAs were filed which are as under:
- IA 233 of 2018 in CP(IB) No. 166 of 2017
 - IA 297 of 2018 in CP(IB) No. 166 of 2017
 - IA 161 of 2019 in IA 73 of 2018 in CP(IB) No. 166 of 2017
- All the above IAs have been destined to the dust of records of the Registry as either dismissed or withdrawn.
10. The present application has been filed for approval of the Resolution Plan under section 30(6) read with section 31(1) of the Code (as amended) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,

Chandrahase

Chandrahase

2016 (as amended) for submission and approval of Resolution Plan submitted by the directors of the Suspended Management of the Corporate Debtor M/s. A & I Hospitality Private Limited. However, their eligibility under Section 29A r/w Section 240A(1) of the IB Code has been looked into and the said facts have been clarified by filing a certificate of registration from the **Ministry of Micro, Small & Medium Enterprises** dated 26.02.2007 stating the Enterprise type as "Micro", and the same is annexed with the IA.

10.1 The Corporate Debtor is an **MSME** Unit. Therefore, the erstwhile promoters/directors of the Corporate Debtor are made eligible to submit Resolution Plan in respect of the Corporate Debtor by the introduction of Section 240A (Application of the IB Code to Micro, Small and Medium Enterprises enforced w.e.f. 06.06.2018 prescribed therein that in spite of anything to the contrary contained in the IB Code, the provisions of Clause (c) and (h) of Section 29A shall not apply to the Resolution Applicant in respect of Corporate Insolvency Resolution Process of any **Micro, Small and Medium Enterprises**. As a consequence, the Promoters/Directors are not disqualified from submission of the Resolution Plan of the Corporate Debtor of which they are/were the Promoter/Directors under Section 29A of the IB Code. These Applicants to be considered as eligible as Qualified Resolution Applicants.

10.2 IA 73/2019 was listed for clarifications on 18.06.2019 wherein this Adjudicating Authority granted time to the applicant to provide clarifications regarding the eligibility of the Resolution Applicants to file the aforesaid Resolution Plan dated 15.10.2018 and the addendum dated 30.11.2018 being a MSME.

10.3 In view of the above, it is submitted by the Resolution Applicants that the **Corporate Debtor is a Micro Enterprise** and hence, under Section 8 of the **Micro Small and Medium Scale Enterprise Act, 2006 (hereinafter referred as "MSME Act")**, filing of Memorandum is not mandatory.

Phanahary

Chaman

To make the provision clear, Section 8 of the MSME Act is reproduced hereunder:

8. Memorandum of micro, small and medium enterprises.—

“(1) Any person who intends to establish,—

- (a) a micro or small enterprise, may, at his discretion, or
- (b) a medium enterprise engaged in providing or rendering of services may, at his discretion; or
- (c) a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), shall file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):

Provided that any person who, before the commencement of this Act, established—

- (a) a small scale industry and obtained a registration certificate, may, at his discretion; and
 - (b) an industry engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O.477(E) dated the 25th July, 1991 filed an Industrial Entrepreneur's Memorandum,
- shall within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act.

(2) The form of the memorandum, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government after obtaining the recommendations of the Advisory Committee in this behalf.

(3) The authority with which the memorandum shall be filed by a medium enterprise shall be such as may be specified by notification, by the Central Government.

(4) The State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum.

Shoekhan

Sharma

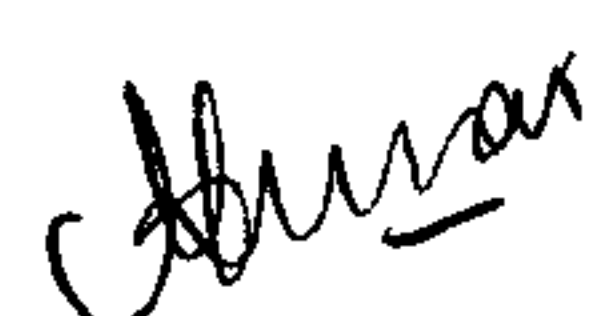
(5) The authorities specified under sub-sections (3) and (4) shall follow, for the purposes of this section, the procedure notified by the Central Government under sub-section (2)."

The said position is further cleared by the Ministry of Micro Small and Medium Scale Industries vide clarification dated 14.03.2018 based on the Judgement of Hon'ble Andhra Pradesh High Court in the case of The Indur District Cooperative Marketing Society Ltd. Vs. Microplex (India), Hyderabad and Ors. And Hon'ble Allahabad High Court in the case of Hameed Leather Finishers Vs. Associated Chemicals Industries Pvt. Ltd. stating that the registration under MSME Act, 2006 is not mandatory for the purpose of claiming status of Micro and Small Enterprise. It is further held by the Hon'ble Supreme Court of India in Swiss Ribbons Pvt. Ltd. vs. Union of India and Ors. [Writ Petition (Civil) No. 99 of 2012] while recognizing the importance of adding MSME friendly provisions in the Code, that the court found no fault in the exemption of MSME units under Section 29A of the Code. The Court further perceived the business of an MSME to attract interest from a promoter of an MSME and may not be of interest to other resolution applicants.

10.4 Recognizing the importance of MSME sector in the Indian economy and with the aim to enable MSME Units sail smoothly, the amendment inserted Section 240A in the Code which specifically dispenses with the applicability of Section 29A clause (c) and (h) of the Code, in case the Corporate Debtor is an MSME Unit, which relates to such promoters who have become NPA can also bid for their companies. Moreover, any bidder who is otherwise disqualified on the ground that its account has become an NPA can also bid for an MSME Unit. In other words, resolution applicants for MSMEs including the promoters of such MSMEs can now bid, even if they have provided guarantees that have been invoked by the lenders. The said amendment also empowers the Central Government to allow further exemptions or modifications with respect to the MSME Sector, if required, in public interest.

10.5 The applicant/the Resolution Professional, deliberating the sequence of events right from calling EoI up to approval of the Resolution Plan by the





CoC in its eighth meeting held on 10.12.2018 submitted the Resolution Plan duly approved by the CoC and affirming that he has verified the contents of the Resolution Plan and confirmed that it complies with the requirements envisaged under Regulation 38 of the CIR Regulations as well as Section 30 of the Code, and sought for approval of the Resolution Plan by this Adjudicating Authority.

10.6 The Resolution Applicants in pursuance to the directions of this Adjudicating Authority dated 16.08.2018 submitted the Plan relating to the insolvency resolution process of A & I Hospitality Private Limited (Company)/Corporate Debtor under the provisions of Insolvency and Bankruptcy Code, 2016 and the rules and regulations issued thereunder.

11. On perusal of the records it is found:

- The Resolution Professional has taken into consideration, the interest of all the stakeholders of the Corporate Debtor to the extent possible and to ensure continuity of the business of the Corporate Debtor as a going concern with optimum use of the assets of the Corporate Debtor.
- Liquidation value of the Corporate Debtor has been presumed at Rs. 1600.00 Lakh as per details given below:

Particulars	Amount /Rs./Lakhs	Amount /Rs./Lakhs
Presumed Liquidation Value		1600.00
Secured Financial Creditors' Dues	812.92	
Employees Dues	0.58	
Unsecured Financial Creditors' Dues	514.96	
Statutory Dues	40.00	
Less : Total Amount of distribution to various stake holders before distribution to Operational Creditors		1368.46

Phoucahng

Chun

as per Section 53 of IBC		
Liquidation Value due to Operational Creditors		231.54

➤ As per **Information Memorandum (IM)**, the amounts claimed and the amounts admitted are as under:

S.No.	Particulars	Amount claimed in Rs./Lakhs	Amount admitted in Rs./Lakhs	Amount to be paid in Rs./Lakhs
1.	IRP Costs	25.00	25.00	25.00
2.	Workers Dues of Corporate Debtor	4.41	0.58	0.58
3.	Secured Financial Creditors	813.00	813.00	813.00
4.	Unsecured Financial Creditors	514.96	514.96	333.10
				44.80
5.	Operational Creditors	793.18	583.36	500.98
6.	Government Dues	40.00	40.00	40.00
		2190.55	1976.90	1757.46

S.No.	Particulars	Amount to be paid in Rs./Lakhs	Additional Amounts to be paid in Rs./Lakhs	Total Amounts to be paid/retained in Rs./Lakhs	Total to be paid in Cash Rs./Lakhs	Amount to be retained and paid laterRs./Lakhs
1.	IRP Costs	25.00		25.00	25.00	
2.	Workers Dues of Corporate Debtor	0.58		0.58	0.58	
3.	Secured Financial Creditors	813.00	72.37	885.37	885.37	
4.	Unsecured Financial Creditors	333.10	125.00	125.00	125.00	333.10
		44.80		44.80	44.80	
5.	Operational Creditors	500.98		500.98	500.98	
6.	Government Dues	40.00		40.00	40.00	
		1757.46	197.37	1954.83	1621.73	333.10

Phoca Inge

Chhanna

Schedule of Cash Payment as per Addendum

		Soon after or before NCLT Order	Cash Outlay during different periods after the order of NCLT - days from the order (Amount in Rs./Lakhs)				Total
No.	Creditors & Payment	End of Days>>	30	90	150	210	
1	IRP Costs till the date of approval by the AA	25.00					25.00
2	Operational Creditors other than DCC	1.00					1.00
3	Operational Creditors - Deep Constructions Co.	0	125.00	125.00	125.00	125.00	500.00
4	Workers of CD	0.60					0.60
5	Financial Creditors - SIDBI	98.00	225.00	562.40			885.40
6	Financial Creditors - Unsecured	0	11.20	11.20	11.20	11.20	44.80
	Total:	124.60	361.20	698.60	136.20	136.20	1456.80

Amounts shown as payable within 30 days of order of the NCLT will be provided from the income generated from the business operations of the Corporate Debtor and the balances, deficits, if any, will be brought in to the company by equal contributions by all the four Resolution Applicants. The entire amount payable to the Secured Creditor SIDBI will be paid in full within 90 days from the date of order passed by NCLT. The amount payable to the SIDBI will be paid as per the working of the Financial Creditor SIDBI till the payment is made. The deficit, if any, of the amount provided by the Resolution Applicants due to difference in calculations by SIDBI and the Resolution Applicants will also be met out of the earning from the Corporate Debtor or from the additional fund that will be brought in by the Resolution Applicants in equal proportions.

Amounts shown as payable within 90 days of order of the NCLT will be provided from the income generated from the business operations of the Corporate Debtor and the balances, deficits, if any, will be brought in to the Company by equal contributions by all the four Resolution Applicants.

Phakar Singh

Chaman

Amounts shown as payable within 150 days of order of the NCLT will be provided from the income generated from the business operations of the Corporate Debtor and the balances, deficits, if any, will be brought in to the Company by equal contributions by all the four Resolution Applicants.

Amounts shown as payable within 210 days of order of the NCLT will be provided from the income generated from the business operations of the Corporate Debtor and the balances, deficits, if any, will be brought in to the Company by equal contributions by all the four Resolution Applicants.

11.1 Sources of funding the Resolution Plan:

(1) CIRP Cost:

CIRP cost which is estimated to be Rs. 25,54,163/- as per Addendum to the Resolution Plan, will be paid from the EMD deposit and interest accrued thereon.

(2) Workers' Dues:

The amount due to workers and employees of Corporate Debtor as per claim admitted by RP of Rs. 58,194/- shall be made by the Resolution Applicants on priority basis as per section 53(1) of IBC, 2016. The same shall be payable within 30 days from the Effective Date.

All workers and employees of the Corporate Debtor will cease to be employees of the Corporate Debtor in terms of this Resolution Plan and they will not be entitled to claim any continuity of their employment. However, the Resolution Applicants in their absolute discretion will consider their reemployment in case they are found to be physically and technically competent. In case, the Resolution Applicants so decide to re-employ some of the workmen, their new

Shankar Singh

Shankar

employment would become effective with new employment letter and from new employment date with new terms and conditions of the employment.

(3) **Secured Financial Creditors:**

The payment to the Secured Financial Creditors shall be funded/arranged by way of future revenue of Corporate Debtor and Resolution Applicants' own sources. If need be, the Resolution Applicants will avail loan from outsider Financial Institution.

Payment proposed to be made to Secured Financial Creditors as envisaged in this Resolution Plan is guaranteed by the Personal guarantee of the Resolution Applicants Mr. Ramesh Sorathia, Mr. Ram Issrani, Mr. Naresh Bulchandani and Mr. Harshad Gandhi.

All charges of Secured Financial Creditors will be automatically stand modified in terms of this Resolution Plan as envisaged in the Resolution Plan with effect from the Effective Date. The Financial Creditor shall re-execute the requisite documents as per the applicable laws for giving effect to the modification of charges envisaged in the Resolution Plan within 30 days of the Effective Date.

Terms of Cash Component:

Rs/Lakhs			
Time of Payment	Principal Amount	Interest Amount	Total Amount
At the time of submission of EoI	5.00	NIL	5.00
At the time of submission of Resolution Plan	115.00	NIL	115.00
Within 30 days from Effective Date	180.00	45.37	225.37
On or before 28.02.2019	513.00	27.00	540.00
Total	813.00	72.37	885.37

Phacalagay

Chaman

Simple interest @10.5% from 18.01.2018 to 31.07.2018 is considered. Entire amount paid or payable to the Secured Financial Creditors shall be brought by all the four Resolution Applicants in equal proportion.

Financial Creditors SIDBI shall continue to retain the securities of the assets created in their favor with them till the entire debt of the Financial Creditor is fully paid as per the terms of the Resolution Plan.

(4) **Unsecured Financial Creditors:**

Sr. No.	Name of Unsecured Financial Creditor	Amount/Rs/ Lakhs
1	Aditya Marine Limited, Mumbai	15.30
2	Ramesh Naranbhai Sorathia	26.17
3	Jayshreeben Rameshbhai Sorathia	26.17
4	Harshad D. Gandhi	139.71
5	Rita Gandhi	7.23
6	Sapna Issrani	78.40
7	Ram Issrani	26.50
8	Naresh Bulchandani	164.75
9	Neelam Bulchandani	7.23
10	Balaji Heavy Lifters Private Limited	23.50
	Total:	514.96

With the consent of all the Resolution Applicants, after due reconciliation of the accounts of the Unsecured Financial Creditors, the outstanding Unsecured Loan to remain as deposit in the books of accounts of the Corporate Debtor is mentioned hereunder and the same will be paid to the concerned Loan/Deposit holders only out of the profits of the Corporate Debtor as and when earned:

Chauhan

Chauhan

Sr. No.	Name of Unsecured Financial Creditor	Total Loan to be kept in Company Amount/Rs /Lakhs
1	Ramesh Sorathia and Jayshree Sorathia	52.33
2	Ram Issrani & Sapna Issrani	44.83
3	Naresh Bulchandani & Neelam Bulchandani	136.62
4	Harshad Gandhi & Rita Gandhi	99.32
	Total:	333.10

Further following balance of Unsecured Financial Creditors shall be paid by the Corporate Debtor in the manner as given hereunder:

Sr. No.	Name of Unsecured Financial Creditor	Total Loan to be paid by the Company Amount/Rs /Lakhs
1	Aditya Marine Limited, Mumbai	21.30
2	Balaji Heavy Lifters Pvt.Ltd	23.50
	Total:	44.80

The total amount of Rs. 44.80 Lakhs is to be paid to both the Unsecured Financial Creditors in four equal installments in the following manner:

Installment	Time Period	Amount/Rs /Lakhs
1	Within 30 days from the date of approval of Resolution Plan	11.20

Shachin

Sharma

2	Within 60 days from the due date of payment of 1 st installment	11.20
3	Within 60 days from the due date of payment of 2 nd installment	11.20
4	Within 60 days from the due date of payment of 3 rd installment	11.20
	Total:	44.80

For the payment of Rs. 44.80 lakhs to both the Unsecured Financial Creditors, all the four Resolution Applicants shall bring the equal amount on or before due date of payment of each installment.

The remaining amount of Rs. 137.06 lakhs payable to the Unsecured Financial Creditors shall be extinguished as per Extinguishment of Claim (Part L of Chapter IV of this Resolution Plan)

(5) **Operational Creditors:**

The amount due to the Operational Creditors as per Information Memorandum (other than government and statutory dues) is as detailed below:

No.	Name of the Operational Creditor	Total Claim Received	Amount Admitted
1	Deep Constructions Co.	7,86,89,042	5,82,37,579
2	Dipak Renukumar Jogi	53,700	53,700
3	Hiranandani & Co	44,270	44,270
4	Ajanta Properties	5,31,000	NIL
	Total:	7,93,18,012	5,83,35,549

The creditors who have not filed their claims but appearing in the books of accounts of the Corporate Debtor as admitted liabilities

Shankar Singh

Shankar

have been taken into consideration as outstanding dues as per provisional balance sheet.

After reconciliation of books of accounts for amount due to Deep Constructions Co, all the partners amicably settled and came to the conclusion to consider the sum of Rs. 500.00 Lakhs as full and final payment and same will be paid on priority basis as per Table A

Table A: Cash Payment to the Operational Creditor

Rs./Lakhs			
No.	Name of the Operational Creditor	Amount Admitted	Amount proposed to be paid
1	Deep Constructions Co.	582.37	500.00
2	Dipak Renukumar Jogi	0.54	0.54
3	Hiranandani & Co	0.44	0.44
4	Ajanta Properties	NIL	NIL
	Total:	583.35	500.98

Payment to Dipak Renukmar Jogi and Hiranandani & Co. shall be made within 30 days from the date of approval of the Resolution Plan.

Payment to Deep Constructions Co. shall be made in four installments as under for pending construction work.

Installment	Time Period	Amount/Rs /Lakhs
1	Within 30 days from the date of approval of Resolution Plan	125.00
2	Within 60 days from the due date of payment of 1 st installment	125.00
3	Within 60 days from the due date of payment of 2 nd installment	125.00
4	Within 60 days from the due date of payment of 3 rd installment	125.00
	Total:	500.00

Phakarage

Chatur

Following terms shall be attached with aforesaid schedule of payment:

- (a) All the payments to be made to the Operational Creditors shall be brought into the Company Account by all the four Resolution Applicants in equal proportions.
- (b) The payment towards the aforesaid installments shall have additional grace period of 15 (fifteen) days.
- (c) Payment made during grace period will be interest free.
- (d) Any failure to make the payment on or before completion of grace period shall attract interest @1.5 per cent per month to be paid by the defaulting parties.
- (e) Without prejudice to above, any loss caused to the Company i.e. the Corporate Debtor due to failure of the Resolution Applicants to fulfill their obligations as referred above shall make such defaulting Resolution Applicants exclusively liable to bear all the cost, expenses and charges to regularize the same.

Postdated cheques for the amount payable to the Operational Creditor viz. Deep Constructions Co. are provided by all the Resolution Applicants in the name of the Corporate Debtor and the same will be realized as per payment terms decided hereinabove. In the event of failure of Resolution Applicant(s) to make payment as envisaged in this Resolution Plan, consequences as per Section 33(3) of IBC, 2016 shall apply on the defaulting Resolution Applicant(s).

Compliance of Section 30(2)(b) r.w. Regulation 38(1)(b) of IBBI (Insolvency Resolution Process for Corporate Persons), 2016

Shankar Singh

Shankar Singh

As per the requirement of Section 30(2)(b) read with regulation 38(1)(b), the liquidation value due to the operational creditors is required to be paid in priority to any financial creditor which shall in any event be made before expiry of 30 days after approval of the Resolution Plan by this Adjudicating Authority.

Further, under the requirement of Regulation 38(1)(c) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the Operational Creditor Deep Constructions Co. waives its right to receive the liquidation value due to Operational Creditor within a period of 30 days to the extent of amount above Rs. 125 Lakhs. Copy of waiver letter received from the Operational Creditor Deep Constructions Co. is duly received and attached with the Resolution Plan as **Annexure C.**

(6) **Government Dues:**

As per the Information Memorandum, there are no statutory dues outstanding as on the date of commencement of CIRP and the RP has not received any claim from any of the Government Departments.

However, the Corporate Debtor has received letter No. F.No. IV/06-28/CEP/Kutch/2016-17 dated 21.12.2018 issued from the office of the Commissioner of Central Excise and Service Tax, Kutch (Gandhidham) and subsequent summons. However, it appears that no amount of tax is determined and the details are yet to be obtained. The Resolution Applicants provide for Rs. 40.00 Lakhs being the Service Tax principal amount and receipt of demand notice from the said department subject to right of appeal. Any interest, penalty or any other amount on Service Tax shall stand waived off.

12. Section 53(1) Notwithstanding anything to the contrary contained in any law enacted by the parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of

Phakarhage

John

priority and within such period and in such manner as may be specified, namely: -

- i. The insolvency resolution process costs and the liquidation costs paid in full;
- ii. The following debts which shall rank equally between and among the following: -
 - (i) Workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
 - (ii) Debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
- iii. Wages and any unpaid dues owned to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- iv. Financial debts owed to unsecured creditors;
- v. The following dues shall rank equally between and among the following: -
 - (i) Any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
 - (ii) Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- vi. Any remaining debts and dues;
- vii. Preference shareholders, if any; and
- viii. Equity shareholders or partners, as the case may be.

(2) Any contractual arrangement between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipients shall be distributed after such deduction.

Shacka Singh

John

Explanation – For the purpose of this section –

- (a) It is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and
- (b) The term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

13. Thus, Section 53 of the Code lists the priorities to be given to the beneficiaries, of liquidation value of the assets of the Corporate Debtor. The provisions of Section 53 make it amply clear that Operational Creditors are at the end of the list of beneficiaries as the Secured Financial Creditors have edge over the others.

14. **Shareholding Pattern of the Corporate Debtor:**

There will not be any change in the existing shareholding pattern and the paid up capital of the Corporate Debtor. Existing shareholders shall continue to hold the shares held by them without any change. Paid up share capital of the Corporate Debtor shall remain as it is i.e., Rs. 8,00,00,000/- of 80,00,000 Equity Shares of Rs. 10/- each.

15. **Management and Control of business of the Corporate Debtor:**

The management and control of the Corporate Debtor shall be handed over in the name of the Resolution Applicants who are the existing Directors of the Suspended Board. The Resolution Applicants shall consist and constitute the Board and will look after for proper running and operation of the warehouses of the Corporate Debtor subject to approval of CoC and this Adjudicating Authority. This, the objective of the I&B Code is.

Phooca Argye

Chhanna

16. **The objective of the 'I&B Code'**

"The objective of the Insolvency and Bankruptcy Code, 2016 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in time bound manner for maximization of the value of assets of such persons, to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders including alteration in the priority of the payments of the government dues, to establish an Insolvency and Bankruptcy Fund and matters connected therewith or incidental thereto."

Thus, the preamble of the I&B Code aims to promote resolution over liquidation.

The purpose of resolution is for maximization of value of assets of the 'Corporate Debtor' and thereby for all creditors. It is not maximization of value for a 'stakeholder' or 'assets of a stakeholder' such as creditors and to promote entrepreneurship, availability of credit and balance the interests. The first objective is 'resolution'. The second objective is 'maximization of the value of assets of the 'Corporate Debtor' and third objective is 'promoting entrepreneurship, availability of credit and balancing the interests'. This objective of the I&B Code is sacrosanct.

The said objective of the I&B Code is also affirmed by Hon'ble Supreme Court in Arcelor Mittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors wherein the Hon'ble Supreme Court observed that "the Corporate Debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the CIRP. If there is resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible.

In the backdrop of the object of the IBC, it is amply clear that the **"Resolution is Rule and the Liquidation is an Exception"**. Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to

Shavali Singh

Sharma

alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. 'The IB Code', therefore, does not allow liquidation of a corporate debtor' directly. It allows liquidation only on failure of corporate insolvency resolution process'. It rather facilitates and encourages resolution in several ways.

Keeping in view such object behind the enactment of the Code, intention of the Legislature is, that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for brining Resolution Plan were failed or it cannot be found workable in the larger public interest.

17. On perusal of the records, it is found that the Resolution Plan confirms to the criteria as provided under clauses (a) to (f) in section 30(2) of the Code and the CoC approved the Resolution Plan by 100.00 per cent majority of voting share. The Resolution Plan also confirms to such other requirements as may be specified by the Board.

On perusal of the Resolution Plan, it is found that it meets the requirement of Section 31 r/w Section 30(2) of the Code. Therefore, the present application IA 73 of 2018 is allowed subject to certain observations.

To make the provisions clearer, Section 30 of the IBC is reproduced hereunder:

Section 30: Submission of resolution plan:

"30. (1) A resolution applicant may submit a resolution plan *1/along with an affidavit stating that he is eligible under section 29A/* to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

Phakar Singh

Johnson

- (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the 2[payment] of other debts of the corporate debtor;
- (b) provides for the 3[payment] of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;
- (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- (d) the implementation and supervision of the resolution plan;
- (e) does not contravene any of the provisions of the law for the time being in force;
- (f) conforms to such other requirements as may be specified by the Board.

4[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

5["(4) The committee of creditors may approve a resolution plan by a vote of not less than 6[sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Chakrabarty

Chakrabarty

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of **section 12**, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.”.]

7[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]span>

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.”

18. However, Part K of the Resolution Plan for concessions and relief sought from the Kandla Port Trust and the State Government and extinguishment/settlement and abatement of claims/proceedings cannot be allowed as these are the subject matter of the various Competent Authorities having their own jurisdiction. Hence Resolution Applicants have liberty to approach the different competent authorities as per the requirement.

19. This Adjudicating Authority would like to make it clear to the public at large that approval of the Resolution Plan by NCLT is not a vaccination for immunity from the proceedings/abatements/settlements pending with the various statutory authorities and the Government Departments. Approval of the Resolution Plan does not mean automatic waiver or

Phakarhage.

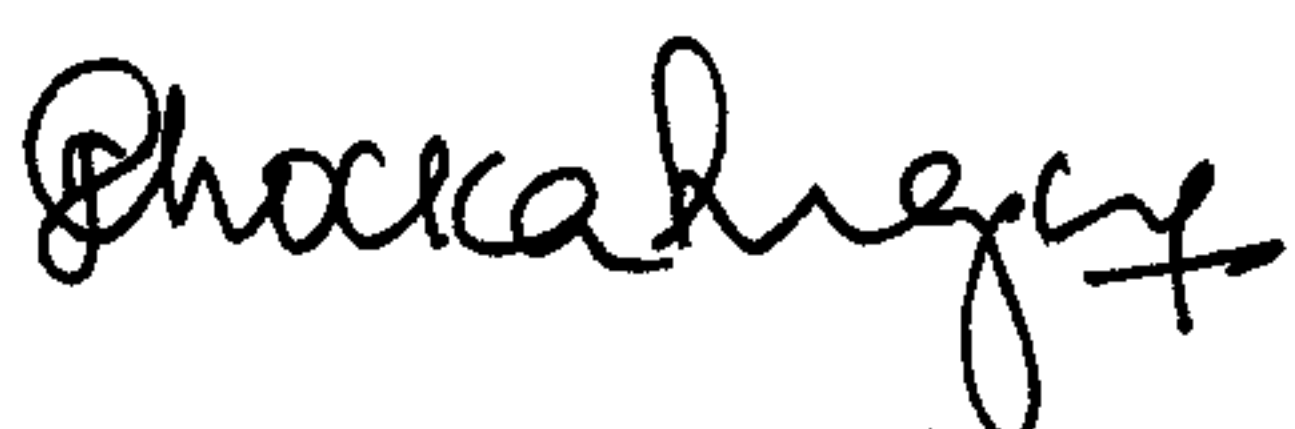
Chandra

abetment of any legal proceedings which are pending by or against the Company/Corporate Debtor as those are the subject matter of the concerned Competent authorities having their proper/own jurisdiction to pass any appropriate order as the case may be. The Resolution Applicants on approval of the Plan may approach those Competent Authorities/Courts/Legal Forums/Offices – Govt. or Semi Govt. / State or Central Govt. for appropriate relief(s) sought for in Part K of the Resolution Plan for concessions and relief sought from the Kandla Port Trust and the State Government(s). You can sail in one boat across the sea. You cannot sail in one boat on seven seas across the globe.

20. It is further directed that:

- i. The approved Resolution Plan shall come into force with immediate effect.
- ii. The Resolution Plan shall be subject to the various existing laws in force and shall also confirm to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.
- iii. The Resolution Applicant(s) shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws for the time being in force within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority under section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.
- iv. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.

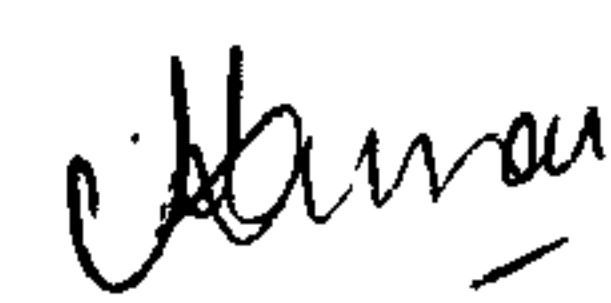
21. We, the Adjudicating Authority, are of the considered opinion and also being satisfied that the Resolution Plan dated 15.10.2018 and the



addendum dated 30.11.2018 as approved by the Committee of Creditors (CoC) in their seventh meeting held on 30.11.2018 meets the requirements as referred to under section 30(2) of the Code. Accordingly IA 73 of 2018 is allowed with the above said observations and directions.

22. Any other IA(s), if pending, also stand(s) infructuous and disposed of in view of the above order.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

LCT