



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 218
IB-130/ND/2024
IA-7/2025

IN THE MATTER OF:

Savitur Infrastructure Private Limited ... **Petitioner/
Financial Creditor**

Versus

Aqua Electronics & Solutions Private Limited ... **Respondent/
Corporate Debtor**

AND IN THE MATTER OF IA-7/2025:

**Aqua Electronics & Solutions Pvt. Ltd. (In
Cirp) Through Resolution Professional
Shamsher Bahadur Singh**

48, Sidhartha Apartment, Behind Inder
Enclave, Rohtak Road, Opp. Jwala Puri No. 5,
New Delhi - 110087

Communication Address:

D-54, First Floor,
Defence Colony,
New Delhi-110024

... **Applicant/RP**

Versus

**Gateway Investment Management Services Limited
Successful Resolution Applicant**

L 21-01, ICD Brookfield Place,
Dubai International Financial Centre,
Dubai, UAE

... **Respondent**

Under Section: 30(6) of IBC, 2016

Order delivered on 17.03.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

MS. REENA SINHA PURI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant :

For the Respondent :

For the RP : Adv. Vishwajeet Singh a/w Mr. S. Bahadur
Singh



Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

IA-7/2025: The prayer made in the captioned application preferred under Section 30(6) of IBC, 2016 reads thus:-

“a) Allow the present Application;

b) Approve and accept the Resolution Plan dated 08.10.2024 submitted by Gateway Investment Management Services (DIFC) Limited, as approved by CoC with 100% voting share during its 9th meeting;

c) Declare that upon approval of Resolution Plan by this Hon'ble Tribunal, the provisions of the Resolution Plan shall be binding on the Company, its Creditors, Guarantors, Members, Employees and other stake holders in accordance with Section 31 of the Code, and shall be given effect to and implemented pursuant to the order of this Hon'ble Adjudicating Authority;

d) Approve the Appointment of the Monitoring Committee as approved by the CoC;

e) Approve and grant reliefs and directions sought under the Resolution Plan by the Resolution Applicant;

f) Pass any such order(s) as this Hon'ble Tribunal may deem fit.”

2. The factual position has been delineated in para 4 to 37 of the application which reads thus:-

“4. That this Hon'ble Adjudicating Authority, vide Order dated 01.04.2024 (received on 06.04.2024), was pleased to admit the present Company Petition (IB) 130/ND/2024, filed by Savitur



*Infrastructure Pvt. Ltd being the Financial Creditor against Aqua Electronics & Solutions Private Limited, the Corporate Debtor, for initiating Corporate Insolvency Resolution Process ("CIRP") under the provisions of Section 7 of the Code. Copy of order dated 01.04.2024 passed by this Hon'ble Adjudicating Authority is annexed herewith and marked as **ANNEXURE A-2**.*

5. That vide order dated 01.04.2024 this Hon'ble Adjudicating Authority whilst admitting the application and declaring moratorium inter-alia, appointed Mr. Shamsheer Bahadur Singh as an Interim Resolution Professional ("IRP") and directed as under:-

"8. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -

(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the



corporate debtor."

*6. That in pursuance of CIRP order dated 01.04.2024, the Applicant herein, issued Public Announcement on 07.04.2024 in Form A in terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") and the same was published on 07.04.2024 in newspapers namely, Financial Express (English) and Jansatta (Hindi), thereby inviting claims from the creditors of the Corporate Debtor. It is submitted that in terms of Regulations 6(2) (c) of the CIRP Regulations, the last date for submission of claim was specified as 20.04.2024. Copy of the FORM A dated 07.04.2024 along with newspaper cutting are annexed and marked as **ANNEXURE A-3 (COLLY)**.*

7. In pursuance of the above, the Applicant duly verified the claims of the creditors in terms of Regulation 17(1) of the CIRP Regulations, further, the Applicant herein filed a report certifying constitution of the CoC which had been taken on record by this Hon'ble Adjudicating Authority on 20.05.2024.

*8. That subsequent to the Constitution of CoC, the Applicant convened the 1st meeting of CoC on 04.05.2024, during the said meeting, the members of the committee resolved to confirm the Applicant as the Resolution Professional (hereinafter referred to as "RP") of the Corporate Debtor. Copy of the minutes of 1st meeting of CoC is annexed herewith and marked as **ANNEXURE A-4**.*

*9. That the Applicant herein convened the 2nd meeting of CoC, wherein the Applicant put forth the draft eligibility criteria for invitation of Expression of Interest ("EOI") in Form G before the members of the CoC for its approval. Copy of the minutes of 2nd meeting of CoC is annexed herewith and marked as **ANNEXURE***



A-5.

10. That following the approval of draft of Form G during the 2nd Meeting of CoC held on 28.05.2024, the Applicant published the same under the Regulation 36A(1) of the CIRP Regulations on 31.05.2024 in News Paper namely, Financial Express Delhi NCR Edition('English Version') and Jansatta- Delhi NCR Region ('Hindi Version'), thereby, inviting Expression of Interest ('EOI') on 31.05.2024. Copy of Form G dated 31.05.2024 is annexed herewith and marked as **ANNEXURE A-6.**

11. That on 09.07.2024 the Applicant convened the 3rd meeting of CoC wherein, the Applicant apprised the members of CoC that the Applicant is in receipt of 3 EOIs as on last date of submission of EOI i.e. 15.06.2024. The list of Prospective Resolution Applicants (PRAs) from whom the EOIs have been received by the Applicant is provided as under:

S.NO.	NAME OF PROSPECTIVE RESOLUTION APPLICANT
1	SPSS Infrastructure Private Limited
2	Subhlaxmi Investment Advisory Private Limited
3	Nakshatra Assets Ventures Limited

A copy of the minutes of the 3rd CoC meeting and the copy of the list of PRAs issued on 25.06.2024 is annexed herewith and marked as **ANNEXURE A-7 (COLLY).**

12. That after due discussions and deliberations, the CoC in its commercial wisdom decided that in order to maximise the value of the Assets of the Corporate Debtor, it would be in the interest of the stake holders republish the Form G and seek more Prospective Resolution Applicants for the better resolution of the Corporate Debtor. The Applicant took note of the same and republish the Form



G in terms of Regulation 36A (1) of the CIRP Regulation on 11.07.2024 in News Papers namely Financial Express- Delhi NCR Edition ('English Version') and Jansatta- Delhi NCR Region ('Hindi Version'), thereby inviting EOIs from the PRS. Copy of the republish Form G dated 11.07.2024 is annexed herewith and marked as **ANNEXURE A-8.**

13. That the Applicant herein convened the 4th Meeting of CoC on 28.08.2024 wherein, the Applicant apprised the members of the CoC that the Applicant is in receipt of 6 new EOIs as on 26.07.2024. it is important to note that the EOIs as received in terms of 1st Form G published on 31.05.2024 were also included in the newly prepared provisional list of PRAs. The newly prepared list of PRAs is provided herewith:

S.NO.	NAME OF PROSPECTIVE RESOLUTION APPLICANT
1	SPSS Infrastructure Private Limited
2	Subhlaxmi Investment Advisory Private Limited
3	Nakshatra Assets Ventures Limited
4	AKB Ventures Private Limited
5	Mr. Piyush Jain
6	Mr. Anuj Goyal
7	Mr. Ankit Garg
8	JFC Finance (India) Limited
9	Gateway Investment Management Services (DIFC) Limited

14. That the Applicant further apprised the members of the CoC that post scrutiny of the documents submitted by the PRAs on the basis of eligibility criteria, section 29A compliance and after receiving all the requisite documents from the PRAs, the Applicant herein prepared the final list of PRAs on 20.08.2024. Copy of the final list of PRAs is annexed herewith and marked as **ANNEXURE A-9.**



15. Further, during the aforesaid meeting of the CoC, the Applicant herein apprised the members of the CoC that in terms of Regulation 36B of the CIRP Regulations, the Applicant has prepared and Evaluation Matrix and a Request for Resolution Plan ('RFRP') for sharing with the PRAs and for the evaluation of the Resolution Plans as may be submitted by the PRAs. Copy of the Minutes of the 4th meeting of CoC is annexed herewith and marked as **ANNEXURE A-10**.

16. That on 23.09.2024 the Applicant convened the 5th meeting of CoC wherein the members of the CoC enquired about the status of the Resolution Plan to which the Applicant apprised the members of the CoC that the last date for the receipt of the Resolution Plan is 24.09.2024 and till date of the present CoC meeting no Plan has been received from any of the PRAs as were included in the Final List of PRAs. Consequently, the members of the CoC directed the Applicant herein to extend the last date for submission of Resolution Plan by 15 days. That in compliance of Regulation 36B of the CIRP Regulations, and after seeking approval of the members of the CoC, the Applicant herein was pleased to extent the last date for submission of Resolution Plans for a period of 15 days. Therefore, the last date for submission of Plan was 28.09.2024. Further, during the aforementioned meeting of CoC the Members of the CoC also resolved to extend the period of CIRP for period of 90 days beyond 180 days. Copy of the minutes of meeting of 5th CoC is annexed herewith and marked as **ANNEXURE A-11**.

17. That the Applicant filed an Application bearing I.A. No. 4887/2024 before this Hon'ble Tribunal in terms of Section 12(2) of the Code to seek an extension for the period of 90 days beyond 180 days i.e. beyond 28.09.2024. It is further submitted that this Hon'ble Tribunal vide order dated 09.10.2024 in aforementioned



*Application was pleased to extend the period of CIRP of the Corporate Debtor for a period of 90 days beyond 180 days. Copy of the Order dated 09.10.2024 passed by this Hon'ble Tribunal is annexed herewith and marked as **ANNEXURE A-12.***

*18. That the Applicant herein convened the 6th Meeting of CoC on 19.10.2024, wherein the Applicant herein apprised the members of the CoC that the Applicant is in receipt of two Resolution Plans from Gateway Investment Management Services (DIFC) Limited and Subhlaxmi Investment Advisory Private Limited. That the Applicant further apprised the members of the CoC that the Applicant received the Earnest Money Deposit (EMD) from the two PRAs viz. Gateway Investment Management Services (DIFC) Limited and Subhlaxmi Investment Advisory Private Limited, on 14.10.2024 and 15.10.2024 respectively. Further, the Applicant herein put forth the Resolution Plans as received from aforementioned PRAs and opened the same before the members of the CoC. The Applicant sought time from the member of the CoC to evaluate the Resolution Plans as received from the two PRAs to evaluate whether the same are compliant with the Regulations and Provisions of the Code. Copy of the Minutes of meeting of the 6th CoC dated 19.10.2024 is annexed herewith and marked as **ANNEXURE A-13.***

19. That the Applicant convened the 7th meeting of CoC on 21.11.2024, wherein the Applicant herein apprised the members of the CoC, that the Applicant had done the verification of the Plans and requisite documents were duly submitted by the PRAs viz. Gateway Investment Management Services (DIFC) Limited and Subhlaxmi Investment Advisory Private Limited. It is further submitted that the members of the CoC had opined that since there are only two PRAs Swiss Challenge Mechanism, can be opted for the maximisation of the value of the Corporate Debtor. It is further



submitted that the Applicant apprised the same to both PRAs for the smooth conduct of the CIRP. Copy of the 7th meeting of the CoC convened on 21.11.2024 is annexed herewith and marked as **ANNEXURE A-14**.

20. That on 12.12.2024, the Applicant convened the 8th meeting of CoC, wherein the bidding of the Resolution Plans was done and during the 3rd round of the bidding process, one of the Resolution Applicant viz. Subhlaxmi Investment Advisory Private Limited, dropped out of the bidding process and declined to improvise the financial proposal in the Resolution Plan any further. Consequently, another Resolution Applicant viz. Gateway Investment Management Services (DIFC) Limited, was declared as the H1 bidder by the Applicant. Further, during the aforesaid meeting the members of the CoC requested the Successful Resolution Applicant ('SRA') i.e. Gateway Investment Management Services (DIFC) Limited, to enhance the financial proposal in their Resolution Plan. Further, during the said meeting members of the CoC sought time to discuss the Financial Proposal with their management before moving forward.

21. Since, the period of CIRP was to end on 27.12.2024, and the members of the CoC required time to discuss the Financial Proposal with their Management, therefore the Members of the CoC during the aforesaid meeting resolved to extend the period of the CIRP for a period of 60 days beyond 270 days i.e. beyond 27.12.2024. Copy of the Minutes of the 8th CoC meeting dated 27.12.2024 is annexed herewith and marked as **ANNEXURE A-15**.

22. That the Applicant filed an application bearing I.A. No. 6143/2024, before this Hon'ble Tribunal in terms of Section 12(2) of the Code to seek an extension for a period of 60 days beyond the period of 270 days. That this Hon'ble Tribunal vide order dated



03.01.2025 was pleased to extend the period of CIRP of the Corporate Debtor for a period of 60 days beyond 270 days. Copy of the Order dated 03.01.2025 passed by this Hon'ble Tribunal is annexed herewith and marked as **ANNEXURE A-16**.

23. That the Applicant herein convened the 9th Meeting of the CoC on 18.01.2025 wherein, the Applicant apprised the members of the CoC that in terms of the bidding process during the 8th meeting of the CoC, the SRA viz. Gateway Investment Management Services (DIFC) Limited was declared as a successful bidder. That the Applicant during the 9th Meeting further apprised the members of the CoC that on request of the Applicant, the SRA has improved/modified its resolution plan. The Applicant further apprised the members of the CoC that the Resolution Plan proposes to pay the CIRP cost in actual and in addition Rs.50,00,000/- (Rupees Fifty Lakhs Only) is to be paid to the Creditors of the Corporate Debtor. That the SRA proposes to implement the Resolution Plan within a period of 45 days from the date of approval by the Hon'ble NCLT.

24. That the Applicant during the aforesaid meeting submitted before the members of the CoC that the Resolution Plan is compliant of all the necessary provisions of the Code read with relevant rules and regulations made there under, specifically, Section 30(2) of the Code read with Regulations 37, 38 & 39 of the CIRP Regulations. Upon discussion and deliberations, the members of the Coc requested the Applicant to put the Resolution Plan submitted by viz. Gateway Investment Management Services (DIFC) Limited, for voting. Accordingly, the following Resolution was put for voting before the members of the CoC:

"RESOLVED THAT, pursuant to Section 30(3)&(4) of Insolvency Bankruptcy Code, 2016, and Regulations 39 of the Insolvency and Bankruptcy Board of India (Insolvency



Resolution Process for Corporate Persons) Regulations, 2016, and other applicable provisions, of the Insolvency and Bankruptcy Code, 2016 and in accordance with rules and regulations made thereunder, the Resolution Plan submitted by Resolution Applicant, M/s Gateway Investment Management Services (DIFC) Limited, be and is hereby approved by the CoC."

"RESOLVED FURTHER THAT pursuant to Section 30(6) of Insolvency Bankruptcy Code, 2016, the Resolution Professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

"RESOLVED FURTHER THAT Resolution Professional be and is hereby authorized to do all such acts, deeds and things as may be required necessary or incidental thereto."

That the Resolution for approval of Resolution Plan submitted by Gateway Investment Management Services (DIFC) Limited, was approved by the members of CoC with 100% voting share.

25. Thereafter, the Applicant in compliance of Regulation 39B of the CIRP Regulation place the Agenda to make a best estimate of the Liquidation Cost in the event an order for the Liquidation is passed under Section 33 of the Code. Upon deliberations and discussions, the members of the CoC approved the Resolution Plan to contribute towards the Liquidation Cost with a voting share of 100%. That in compliance of Regulation 39BA of the CIRP Regulations, the Applicant placed an agenda before the Members of the CoC to explore compromise and arrangement till Liquidation process is initiated by the Hon'ble NCLT. That the members of the CoC after deliberations and discussions rejected the aforesaid agenda with a voting share of 100% and further, requested the Applicant herein to



file an application before this Hon'ble Tribunal Seeking approval of the Resolution Plan submitted by the SRA.

*26. That the Applicant compliance with Regulation 39C of the CIRP Regulation, place the agenda for sale of Corporate Debtor as a going concern in case an order for Liquidation is passed against the Corporate Debtor. Upon deliberations and discussions, the members of CoC approved the Resolution to sell the business of the Corporate Debtor as a going concern if an order for Liquidation of the Corporate Debtor is passed by this Hon'ble Tribunal, with a voting share of 100%. Subsequently, the Applicant placed an agenda to fix the fee payable in accordance with Regulation 39D of the CIRP Regulation before the members of the CoC. Upon discussions and deliberations, the members of the CoC approved the Resolution to fix the fee of the Liquidator with 100% voting share. Copy of the minutes of 9th meeting of CoC convened on 18.01.2025 is annexed herewith and marked as **ANNEXURE A-17**.*

27. That the brief contours of the Resolution Plan submitted by Gateway Investment Management Services (DIFC) Limited, as approved by the Committee of Creditors with 100% voting shares is detailed herein under:

Category	As per information in the Intimation				Total Amount Offered (in Rs.)
	Total No. of Claimants	Number of Claimants whose Claims have been admitted	Total Amount Claimed (in Rs.)	Total Amount Admitted (in Rs.)	
Category A1 Secured Financial Creditors (other than financial creditors belonging to any class of creditors)					



-	-	-	-	-	-
Category A2					
Unsecured Financial Creditors (other than financial creditors belonging to any class of creditors)					
Savitur Infrastructure Pvt. Ltd.	1	1	6,01,33,217/-	6,01,33,217/-	50,00,000/-
Category A3					
Unsecured Financial Creditors (Belonging to any Class of Creditors) - Homebuyers					
-	-	-	-	-	-
Category A4					
Secured Financial Creditors (belonging to any class of creditors)					
-	-	-	-	-	-
Category B					
Operational Creditors					
-	-	-	-	-	-
Category C					
Other Creditors					
-	-	-	-	-	-
TOTAL	1	1	6,01,33,217/-	6,01,33,217/-	50,00,000/-

Copy of the Resolution Plan dated 08.10.2024 as approved by the CoC is annexed herewith and marked as **ANNEXURE A-18**.

28. That the Resolution Applicant has submitted an undertaking an affidavits stating that the Resolution Applicant is eligible under Section 29A of the Code. A copy of the undertaking and Affidavits dated 11.10.2024, submitted by the Resolution Applicant under Section 29A of the Code and Regulation 39(1) of the CIRP Regulation 2016, are annexed herewith and marked as **ANNEXURE A-19 (COLLY)**.

29. The Committee of Creditors of the Corporate Debtor constitutes of the following Financial Creditor and details of the claim summary is provided herewith:

S.NO.	NAME OF CREDITOR	CLAIM ADMITTED (RS.)	VOTING SHARE (%)
1	Savitur Infrastructure Private Limited	6,01,33,217.00	100%
	TOTAL	6,01,33,217.00	



CLAIM SUMMARY

PARTICULARS	AMOUNT CLAIM	CLAIM ADMITTED
Financial Creditors (Secured)	-	-
Financial Creditors (Unsecured)	6,01,33,217.00	6,01,33,217.00
Operational Creditors	-	-
Workmen and Employees	-	-
Other Creditors	-	-
TOTAL	6,01,33,217.00	6,01,33,217.00

30. That Section 30(6) of the Code mandates the Applicant as a Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority for approval under Section 31(1) of the Code. Accordingly, as the Resolution Plan submitted by the SRA has been duly approved by the members of the CoC by a voting share of 100% which is more than the requisite voting share required i.e. 66%, the Applicant is filing the present Application for approval of the Resolution Plan before this Hon'ble Adjudicating Authority.

31. That in terms of Regulation 39(4) of the CIRP Regulation, the Applicant is required to submit a compliance certificate in prescribed format i.e. Form H, stating that the Resolution Plan is compliant with the provisions of the Code. Copy of the Form H duly signed by the Applicant is annexed herewith and marked as **ANNEXURE A-20**.

32. That pursuant to the approval of the Resolution Plan by the CoC, the applicant issued a letter of intent dated 21.01.2025, to the Resolution Applicant and the Resolution Applicant was requested to convey their unconditional acceptance. The Resolution Applicant duly submitted their unconditional acceptance on 21.01.2025 and



submitted a performance security in the form of NEFT Transactions dated 30.01.2025 for total sum of Rs. 20,00,000 (Rupees Twenty Lakhs Only) besides the EMD amount submitted earlier of Rs.10,00,000/- (Rupees Ten Lakhs Only). Copy of Letter of Intent dated 21.01.2025, signed and acknowledge as unconditional acceptance by the Resolution Applicant and PBG acknowledged dated 30.01.2025 are annexed herewith and marked as **ANNEXURE A-21 (COLLY)**.

33. That the Resolution Plan submitted by the Resolution Applicant is in compliance of the provisions of the Insolvency & Bankruptcy Code, 2016 and the Regulations as detailed below:

I. Compliance of Section 30 of the IB Code:

S. No.	Provisions of IBC	Page	Chapter/ Clause Nos. in Resolution Plan
1.	Management of affairs after approval of resolution plan	28	Part 8 Para 8.9
2.	Sec. 30(2)(a) of IBC 2016: Provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor	15	Part 6 Para 6.1
3.	Sec. 30(2)(b) of IBC 2016 & Regulation 38(1)(a): operational creditors shall be paid in priority over financial creditors	16-17	Part 6 Para 6.4
4.	Sec. 30(2)(b) of IBC 2016 & Regulation 38(1)(b): Dissenting financial creditors shall be paid in priority over assenting financial creditors	16	Part 6 Para 6.3
5.	Sec 30(2)(d) of IBC, 2016 read with Regulation 38(3)(c) of CIRP Regulations: implementation and supervision: provisions for effective implementation	27-29	Part 8
6.	Sec 30 (2)(e) of IBC, 2016: does not contravene any provisions of law	25	Part 7 Para 7.3



II. Regulation 31A of the CIRP Regulations:

S. No.	Sub Clause	Regulations	Clause nos. in Resolution Plan
1	(1)	A regulatory fee calculated at the rate of 0.25 per cent of the realizable value to creditors under the resolution plan approved under Section 31, shall be payable to the Board, where such realizable value is more than the liquidation value:	Part 7 Para 7.9

III. Regulation 34B of the CIRP Regulations

S. No.	Sub Clause	Regulations	Clause nos. in Resolution Plan
1	(4)	For the resolution plan approved by the committee on or after 1st October 2022, the committee may decide, in its discretion, to pay performance-linked incentive fee, not exceeding five crore rupees, in accordance with clause 3 and clause 4 of Schedule-II or may	-

extend any other performance-linked incentive structure as it deems necessary.

IV. Regulation 38 of the CIRP Regulations:

S. No.	Regulations	Clause nos. in Resolution Plan
1	Regulation 38 (1) of CIRP Regulations: (a) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors; and (b) to the financial creditors, who have a right to vote under subsection (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.	Part 6 Para 6.4.1 Part 6 Para 6.3
2	Reg. 38(1A) of CIRP Regulations: Statement regarding how the resolution plan deals with interests of all stakeholders	Part 6
3	Reg. 38(1B) of CIRP Regulations: Details of non-implementation by RA or its related entity of any resolution plan approved by the Adjudicating Authority	Part 8



4	Reg. 38(2) (a): Term of the plan and implementation schedule	Part 8 Para 8.10
5	Reg. 38(2) (b) of CIRP Regulations: management and control of the business during the term of the resolution plan	Part 8 Para 8.9
6	Reg. 38(2) (c) of CIRP Regulations: adequate means for supervising its implementation.	Part 8 Para 8.2
7	Regulation 38(2)(d) of CIRP Regulations: Resolution Plan has provided for the manner in which proceedings in respect of PUFE transactions shall be distributed	Part 6 Para 6.11
7	Reg. 38(3) (a) of CIRP Regulations: addresses the cause of default	Part 5 Para 5.1
8	Reg. 38(3)(b) of CIRP Regulations: Feasible and Viable	Part 5 Para 5.4
9	Reg. 38(3)(c) of CIRP Regulations: has provisions for effective implementation	Part 8 Para 8.2
10	Reg. 38(3)(d): provisions for required approvals and timeline for the same	Part 10
11.	Reg. 38(3)(e) of CIRP Regulations: RA has the capacity to implement the resolution plan	Part 7 Para 7.7

34. That Section 32A has been brought into the Code by way of an amendment which is provided as under:

“Section 32A. Liability for prior offences, etc.

[32A. Liability for prior offences, etc.-(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not--

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or



(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a designated partner as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an officer who is in default, as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the



Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter II of Part II of this Code to a person, who was not--

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.--For the purposes of this sub-section, it is hereby clarified that,-

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be



required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.]”

35. *As in the Resolution Plan submitted by the SRA, there is change in management and control of the Corporate Debtor and as such change satisfies the condition stipulated under Section 32A of the Code, therefore, the benefit of the immunity under section 32A of the code will be applicable to the Resolution Applicant.*

36. *That in the fact and circumstances as detailed above, the Resolution Professional under CoC member have taken guidance from the judgment passed by the Hon'ble Supreme Court in the matter of **Arcellor Mittal India Pvt. Ltd. Vs. Satish Kumar Gupta (Civil Appeal Nos.9402-9405 OF 2018)**, wherein, it has been held that the only reasonable construction of the code is the balance to be maintain between timely completion of the CIRP and the Corporate Debtor otherwise being put into the Liquidation and if there is a Resolution Applicant who can continue run the Corporate Debtor as a going concern, every effort must be made to try and see that this is made possible. In fact and circumstances of the case the Applicant has examined the Resolution Plan and have certified Resolution Plan as being compliant of IBC 2016. The Applicant is filing the present Application under Section 30(6) & 31 of the Code read with Regulation 39 of the CIRP Regulation for approval of Resolution Plan by this Adjudicating Authority.*

37. *That the Registered valuers as appointed and subsequently ratified by the CoC had submitted their reports providing the fair*



and Liquidation Value of the Assets of the Corporate Debtor. The summary of the valuation report is as under:

PARIVARTAN BUILDCON PRIVATE LIMITED				
SUMMARY OF VALUATION REPORT				
Sr.	Name of the Valuer	Class of Asset	Fair Value (in Rs.)	Liquidation Value (in Rs.)
1	Ankit Gupta	Securities & Financial Assets	13,80,300	13,80,300
2	Bhavin Patel	Securities & Financial Assets	13,80,300	13,80,300
GRAND TOTAL			27,60,600	27,60,600
ESTIMATED AVERAGE VALUE			13,80,300	13,80,300

Copy of the Valuation Reports are annexed herewith and marked as ANNEXURE A-22(COLLY).”

3. The Resolution Plan has been enclosed as Annexure-18 to the application. As can be seen from the plan, it contains the provisions regarding payment of CIRP cost on priority. The relevant excerpt of the plan reads thus:-

“6.1 TREATMENT OF CIRP COST

The CIRP Costs (to the extent unpaid) on 'Actual basis shall be paid in priority to any other creditors of the Corporate Debtor within 45 days from the NCLT Approval Date. It is further clarified that unpaid CIRP costs shall be paid in priority to any other payment under the Resolution Plan. The CIRP Cost shall be paid as per applicable law.”

4. Ld. Counsel for the applicant submitted that the corporate debtor had no operational creditors. According to him, the RP received no claim from any workman also. The averments in this regard have been in clause

6.4 of the plan which reads thus:-



“6.4 PROPOSAL FOR OPERATIONAL CREDITORS

6.4.1 Proposal towards Operational Creditors - Workmen and Employee: As per the Information Memorandum and based on latest data provided by the Resolution Professional, there are no claims filed by the Workmen and Employees of the CD. No claim of any other Workman / Employee will be entertained by the RA. It is further clarified that said amount will be paid, if any, according to the priority order outlined in Section 30(2) and Regulation 38 of the CIRP Regulations, along with Section 53 of the IBC.

6.4.2 Proposal towards Operational Creditors -

Government Dues related to workmen i.e. EPFO, Gratuity, ESI and Retrenchment Compensation: These payments will be prioritized as per Sections 30(2), Regulation 38 of the CIRP Regulations, and Section 53 of the IBC, without impacting the amounts owed to Secured Financial Creditors.

6.4.3 Operational Creditors relating to all Statutory / Government Liabilities:

Although the RP has not informed the RA about the Liquidation Value of the CD as per the provisions of the Code and CIRP Regulations, however as per the estimates of the RA the Liquidation Value of the CD in any case shall not be sufficient to repay the debt of even the Secured Financial Creditors and therefore, the liquidation value applicable to OCs in terms of sub clauses (i) and (ii) to section 30(2)(b) as mentioned above, would in all likelihood be NIL.

As such, the Resolution Applicant proposes to pay NIL Amount to all Statutory / Government Liabilities (other than EPFO,



Gratuity, ESI) in full and final settlement of all their dues / claims. Further, it is clarified that upon approval of this Resolution Plan by the Hon'ble NCLT, all the Statutory / Government liabilities (if any) relating to the period up to the Effective Date (whether assessed or not assessed, disputed or undisputed, disclosed or undisclosed, reflected in the Balance Sheet or not) in relation to dues of whatever nature due to any Tax Authorities including Entertainment Tax, Property Tax, Entry Tax, Sales Tax, GST, VAT, Income Tax, MAT, Service Tax, Custom Duty or any other tax or duty or cess as applicable to the CD; any State Govt., Central Govt., Semi Government, Public Sector Undertaking; Development Authorities, Development Bodies or any other local Municipal Corporation / authorities, whether specifically mentioned in this Resolution Plan or not; with regard to which, the claims have been filed/ not filed/verified/not verified/admitted or not; shall stand terminated/waived/written off and extinguished in full and no liability/ dues shall be payable by the CD/RA to these creditors/claimants.

5. It is also the submission made on behalf of the applicant that the corporate debtor had no dissenting financial creditor. The stand in this regard has been taken in Clause 6.3 of the plan which is reproduced herein below:-

“6.3 PROPOSAL FOR DISSENTING FINANCIAL CREDITORS

The Dissenting Financial Creditors who do not vote in favour of this Resolution Plan, shall be duly paid the amount as per the section 30(2)(b) read with section 53 of the Code and as per Sub Section (2) of Section 21 of the Code, shall be paid in



priority over Financial Creditors who voted in Favor of the Plan. In this regard, the financial creditors who abstains from voting shall also be considered as "Dissenting FC." The payments to be made to Dissenting Secured Financial Creditors will be made as per the payment schedule given in the Resolution Plan in preference to the payment to the assenting Financial Creditors."

6. Ld counsel for the applicant contended that the plan contain sufficient provision regarding its implementation. Our attention is drawn to clause 6.13 of the plan to espouse that the SRA is capable to implement the plan. The clause 6.13 including notes 1 & 2 thereunder reads thus:-

6.13 FINANCIAL OUTLAY AND SOURCES OF FUNDS	
Synopsis of Financial Proposal	
Particulars	INR Lacs
Financial Outlay	
Payment toward CIRP cost	At Actuals
Payment to SFCs	50,00,000.00
Payment to OC – Workmen & Employee	Nil
Payment to OC – EPFO & Retrenchment Compensation	At Actuals
Payment to OC – ESI, Gratuity, Regulatory Fee & more than estimated retrenchment compensation as per legal obligation	At Actuals
Total	50,00,000.00
Source of Funds	
Funds invested by the RA	50,00,000.00
Total	50,00,000.00

“Notes:



1. Subject to change based on payment amount towards Gratuity, ESI, other Regulatory Fee and more than estimated retrenchment compensation as per legal obligation.

2. Funds shall be brought in by the RA or its nominees by way of their internal sources. It is stated that overall responsibility of arranging funds and to pay the Resolution Amount lies with the Resolution Applicant. In the event, any assignee is introduced by the RA, then RA ensure that such assignee shall be 29A compliant. 29A compliance may be checked by MC/lenders as well. The Resolution Applicant manages assets totalling USD 622.93 million (approximately INR 5,229 crore), as detailed in point 18 of the Notes to the Financial Statements for the year ending December 31, 2023. In addition to this, the Resolution Applicant has access to additional committed funds from clients that can be drawn upon as needed. Currently, the company holds USD 15 million (about INR 126 crore) in cash from clients available for investment. Furthermore, the Resolution Applicant generates annual fee income from its existing AUM, which contributes additional funding capacity. For the year 2023, the company reported a profit of nearly USD 7 million (around INR 58 crore).”

7. Clause 8.9 & 8.10 of the Resolution Plan specifically provides for steps in the direction of implementation of plan. The clauses reads thus:-

“8.9 MANAGEMENT OF CD POST TRANSFER DATE

8.9.1 Within 45 days from the NCLT Approval date all the existing Directors of the CD shall be deemed to have demitted office and shall stand removed as Directors of the CD and the Resolution Applicant shall appoint two directors on the Board of Directors of CD ("Reconstituted Board of Directors of CD" or "Reconstituted BoD") which would consist of two nominees of



RA and accordingly, the business of CD shall be carried on by the new management. It is further clarified that Monitoring Committee which will be formed on the NCLT Approval Date will supervise the operations of the CD from the NCLT Approval Date till its Dissolution as per clause 8.8 above.

8.9.2 SFC continue to have charge over assets of the CD till the payment of Resolution Amount as specified in the Resolution Plan.

8.9.3 The Registrar of the Companies will remove the names of the existing Directors of the CD on presentation of the order of the Hon'ble NCLT approving this Resolution Plan without any further act or deed on behalf of the existing Directors and permit the authorised Representative of the Reconstituted Board of Directors to file / upload the documents relating to their appointment as Directors.

8.9.4 On dissolution of monitoring committee, as mentioned in earlier chapters, the Reconstituted BoD shall assume their powers as per the provisions of the Companies Act, 2013.

8.10 INDICATIVE TIMELINE AND IMPLEMENTATION SCHEDULE

The Resolution Plan shall be implemented in the following manner, as per the timelines stated below or as per applicable laws:

SN	Activity	Time Line
1	Date on which the NCLT approves the Resolution Plan	T
2	Constitution of Monitoring Committee	T



3	Removal of existing Directors on the Board of CD, and Reorganisation of Share Capital of CD	T + 45 days
4	Appointment of new Directors on the Board of the CD	T + 45 days
5	Payment Towards CIRP Costs	T + 45 days
6	Upfront Payment to SFCs	T + 45 days
7	Complete Takeover of the management and control of the CD, including its books, records, and assets & properties by RA i.e., =E Transfer Date	T + 45 days

8. The provisions regarding Monitoring Committee and supervision of the plan are provided in clause 8.2 of the plan which reads thus:-

“8.2 SUPERVISION BY MONITORING COMMITTEE (MC)

Monitoring Committee will come into force on the date of approval of Resolution Plan by Hon'ble NCLT. Monitoring Committee will comprise Two members: An Insolvency Professional (IP) appointed by the Resolution Applicant (RA) who meets the qualifications of Section 29A of the IBC and One representative from the RA.

8.3 The MC shall supervise the implementation of the Resolution Plan and shall be required and entitled to do all such acts, deeds, matters and things as may be necessary, desirable, or expedient to implement and give effect to this Resolution Plan in accordance with its terms, and shall act under the supervision of NCLT.

8.4 The MC shall be vested with the powers of the Board of Directors as prescribed under the Companies Act, 2013 till the



control and management of the CD is handed over to the RA on or before Transfer Date.

8.5 The MC shall endeavour to take all decisions by simple majority.

8.6 The MC shall be entitled to make an application to the NCLT directing local law enforcement authorities and local district administration authorities to assist in the implementation of the Resolution Plan, if required. The FCS, MC, erstwhile management, employees, shareholders and other creditors or stakeholders shall, to the extent within their reasonable control, provide all the necessary cooperation as shall be required for obtaining the necessary regulatory approvals for implementation of this Resolution Plan. The existing promoter group and the current management team of the CD will undertake to do all such acts, deeds and things required by the MC including executing all documents as may be required for the purpose of implementation of the Resolution Plan.

8.7 The Cost of the Monitoring Committee would be paid by the RA on actual basis as may be negotiated / settled by mutual consent.”

9. The Ld. Counsel for the RP could draw our attention to the affidavit under Section 29A of the IBC, 2016 filed on behalf of SRA. The affidavit is filed by Mr. Mukesh, on behalf of the SRA to declare that the SRA is not ineligible or disqualified to submit the plan in terms of the aforementioned provisions of the Code. The text of affidavit reads thus:-



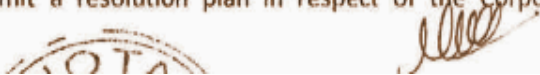
FORMAT IX - FORMAT OF AFFIDAVIT UNDER SECTION 29A

I, Mukesh Rao, son of Jyoti Bhushan Rao, aged about 53 years, currently residing at Flat No. 313, DDA Flats, Mansarovar Park, Shahdara-110032 and having Aadhar number 8427 1582 8680, on behalf of Gateway Investment Management Services (DIFC) Ltd. having registered office at Unit L21-01, Level 21, ICD Brookfield Place, DIFC, PO Box 506822, Dubai, UAE ("**Applicant**", a term which also includes any person acting jointly with the Applicant) pursuant to authorization of the Board of Directors of the Applicant dated 25-07-2024 (as enclosed herewith) do solemnly affirm and state to Committee of Creditors ("**COC**") of AQUA ELECTRONICS & SOLUTIONS PRIVATE LIMITED ("**Corporate Debtor**") and the Resolution Professional of the Corporate Debtor ("**RP**") as follow:

1. That I am duly authorized and competent to make and affirm the instant affidavit for and on behalf of the Applicant in terms of [resolution of its board of directors/ power of attorney dated 25-07-2024. The said document is true, valid and genuine to the best of my knowledge, information and belief.

2. That the Applicant or any person acting jointly with the Applicant or in concert with Applicant or any person who is a 'Connected Person' (as defined under the Insolvency and Bankruptcy Code, 2016 ("**Code**"), listed herein as '**Annexure I**':
 - a. is not an undischarged insolvent;
 - b. is not a willful defaulter in accordance with the guidelines of Reserve Bank of India ("**RBI**") issued under the Banking Regulation Act, 1949 (the "**BR Act**");
 - c. at the time of submission of the resolution plan does not: (i) have an account which has been classified as non-performing asset in accordance with the guidelines of the RBI under the BR Act or the guidelines of a financial sector regulator issued under any other law for the time being in force, and (ii) controls or manages or is the promoter of a corporate debtor whose account has been, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force; and such classification has continued for a period of one year or more from the date of such classification till the date of commencement of the corporate insolvency resolution process of the Corporate Debtor⁶;
 - d. has not been convicted for any offence punishable with imprisonment:



- i. for 2 (two) years or more under any act specified under the twelfth schedule of Code ;
 - ii. for seven years or more under any law for the time being in force.
 - e. has not been disqualified to act as a director under the Companies Act, 2013;
 - f. has not been prohibited by Securities and Exchange Board of India from trading in securities or accessing the securities markets;
 - g. has not been a promoter or in the management or control of a corporate debtor (as per the Code) in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the National Company Law Tribunal, Allahabad or any other bench of the National Company Law Tribunal under the provisions of the Code;
 - h. has not executed a guarantee in favour of creditor(s), in respect of a corporate debtor (as per the Code) which is under insolvency resolution process or liquidation under the Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;
 - i. has not been subject to any disability, corresponding to clauses (i) to (viii) above, under any law in a jurisdiction outside India.
3. That the Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as required under Regulation 38(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
4. That the Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as per the provisions of the Code and the rules and regulations framed thereunder to submit a resolution plan and that it shall provide all documents, representations and information as may be required by the RP or the COC to substantiate to the satisfaction of the RP and the COC that the Applicant is eligible under the Code and the rules and regulations thereunder to submit a resolution plan in respect of the Corporate Debtor.
- 



5. That the Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this affidavit.
6. That the Applicant understands that the COC and the RP may evaluate the resolution plan to be submitted by the Applicant or any other person acting jointly with it and such evaluation shall be on the basis of the confirmations, representations and warranties provided by the Applicant under this affidavit.
7. That the Applicant agrees that each member of the COC and the RP are entitled to rely on the statements and affirmations made in this affidavit for the purposes of determining the eligibility and assessing, agreeing and approving the resolution plan submitted by the Applicant.
8. That in the event any of the above statements are found to be untrue or incorrect, then the Applicant unconditionally agrees to indemnify and hold harmless for the RP and each member of the COC against any losses, claims or damages incurred by the RP and / or the members of the COC on account of such ineligibility of the Applicant.

9. That the Applicant agrees and undertakes to disclose/inform forthwith, to the RP and the members of the COC, if the Applicant becomes aware of any change in factual information in relation to it or its connected person (as defined under the Code) which would make it ineligible under any of the provisions of Section 29A of the Code at any stage of the Corporate Insolvency Resolution Process of the Corporate Debtor, after the submission of this affidavit.
10. That if, at any time after the submission of this affidavit and before the approval of the Applicant's resolution plan by the Hon'ble Adjudicating Authority under the Code, the Applicant becomes ineligible to be a resolution applicant as per the provisions of the Code (and in particular Section 29A of the Code), the fact of such ineligibility shall be forthwith brought to the attention of the RP and the COC.
11. That this affidavit shall be governed in accordance with the laws of India and the relevant courts shall have the exclusive jurisdiction over any dispute arising under this affidavit.

SOLEMNLY AFFIRMED AT NEW DELHI ON THIS THE 11th DAY OF OCTOBER 2024.



10. Ld. Counsel for the RP as also RP who is present virtually could draw our attention to deposit made by the SRA with Kotak Mahindra Bank as performance security to implement the Resolution Plan. The relevant excerpt from entries from banker's book (Kotak Mahindra Bank) which reads thus:-

Account Statement

PARIVARTAN BUILDCON PRIVATE LIMITED IN CIRP

D-54 1st Floor
Defence Colony
Delhi
DELHI
INDIA
110024

Cust. Reln. No. : 803872230
Account No. 9349475487
Period From 01/01/2025 To 03/02/2025
Currency INR
Branch DEFENCE COLONY, NEW DELHI
Nomination Regd N
Nominee Name

Sl. No.	Date	Description	Chq / Ref number	Amount	Dr / Cr	Balance	Dr / Cr
1	01/02/2025	FD BOOKED/9349814842/PARI VARTAN BUILDCON PRIVATE L		2,000,000.00	DR	1,005,472.00	CR
2	30/01/2025	NEFT NRE REM GATEWAY INVESTMENT MANAGEMENT SERVIC	NEFTINW-1109185799	2,000,000.00	CR	3,005,472.00	CR
3	14/01/2025	FUND TRF FROM SHAMSHER BAHADUR SINGH		15,000.00	CR	1,005,472.00	CR
4	14/01/2025	GBMULTRA_TIN0060271514 0125_CRN_25011300103266 _4620	39	15,450.00	DR	990,472.00	CR
Opening balance		as on 01/01/2025 INR 1,005,922.00					
Closing balance		as on 03/02/2025 INR 1,005,472.00					



11. The SRA accepted unconditionally, the terms and conditions of the Letter of Intent. The declaration made to the effect reads thus:-

Subject: Declaration of the Successful Resolution Applicant and issuance of Letter of Intent (“LOI”) by the Resolution Professional as Authorised by the Committee of Creditors of Aqua Electronics & Solutions Private Limited, the Corporate Debtor

This is with reference to the Corporate Insolvency Resolution Process (“CIRP”) of Aqua Electronics & Solutions Private Limited, the Corporate Debtor (“CD”). Pursuant to the newspaper advertisement, inviting Expression of Interest for submission of Resolution Plan for Aqua Electronics & Solutions Private Limited published on 31.05.2024 and 11.07.2024 (“Invitation for EOI”) and the Request for Resolution Plan (“RFRP”) issued to you on 29.08.2024, you had submitted the resolution plan dated 08.10.2024 for Aqua Electronics & Solutions Private Limited.

1. The undersigned being the Resolution Professional (“RP”) of Aqua Electronics & Solutions Private Limited is issuing this Letter of Intent to you in your Capacity as Successful Resolution Applicant under the instruction of and authorization from the Committee of Creditors of Aqua Electronics & Solutions Private Limited.
2. In terms of Section 30(4) of the Code read along with the Regulation 39(3) of CIRP Regulations, 2016 and the relevant clauses of the RFRP, the CoC in its 9th CoC meeting convened on 18.01.2025 has approved the final resolution plan submitted by you.
3. Therefore, in terms of the relevant clauses of RFRP, you have been selected as Successful Resolution Applicant subject to the following conditions:
 - i. Approval of the Resolution Plan by the Hon’ble NCLT and your compliance with the terms of the RFRP.
 - ii. You shall furnish a Performance Bank Guarantee issued by any Public Sector bank in India of INR 20,00,000/- (Rupees Twenty Lacs Only) along with acceptance to LoI within 7 (seven) days of issuance of LoI, in favour of “Aqua Electronics &



Solutions Private Limited” (PBG or Performance Bank Guarantee). The Resolution Applicants can remit the aforementioned PBG either through:

- a) a direct deposit by way of the real time gross settlement system (RTGS) into the account of **“Aqua Electronics & Solutions Private Limited in CIRP”**, the details of which is provided below; or

Beneficiary Name	AQUA ELECTRONICS & SOLUTIONS PVT LTD IN CIRP
Account number	9349479133
Beneficiary Bank Name	Kotak Mahindra Bank
IFSC Code	KKBK0004620
Account Type	Current Account
Branch Address	A-266, Bhisma Pitamah Marg Defence Colony, New Delhi-110024

- b) A bank guarantee shall be in accordance with Format XII of RFRP, or

- c) A Demand Draft issued by any Scheduled Commercial Bank in India in favor of **“Aqua Electronics & Solutions Private Limited in CIRP”**.

- iii. Make the payment of the Resolution Plan consideration within 45 days from the date of approval of the Resolution Plan by the Hon’ble NCLT.
- iv. You shall accept this Letter of Intent, without any conditions and record such acceptance by providing the Resolution professional with one copy of the Letter of Intent with an endorsement stating that **“Accepted unconditionally”**, under the signature of the SRA.
- v. Upon the approval of the Resolution Plan by Hon’ble NCLT, you shall implement the resolution plan approved by the Hon’ble NCLT as per the timelines set out there in the plan.
- vi. The PBG (where in the nature of a bank guarantee) should be valid until the entire payment under NCLT approved Resolution Plan is made by the RA. It is hereby clarified that non-submission of the PBG by the Resolution Applicant along with the acceptance of the LoI shall lead to cancellation of LoI unless otherwise determined by the CoC at its sole discretion.



- vii. The PBG amount may be allowed to be adjusted with last tranche of resolution amount as per the decision and approval of Monitoring Committee or Agency as the case maybe after deliberation with the sole Secured Financial Creditor namely, Savitur Infrastructure Private Limited.
- viii. The PBG can be invoked at any time, if
 - a) any of the conditions under the bid document or Letter of Intent or Approved Resolution Plan is breached; or
 - b) non-receipt of required approvals (including CCI approval, if required) for implementation of approved resolution plan of the successful resolution applicant within the timelines specified in the approved resolution plan or if the resolution plan is not effective due to any approval required by the successful resolution applicant to give effect to the approved resolution plan.
- ix. This LoI cannot be assigned or transferred in any manner whatsoever to any other person.
- x. This LoI shall be governed by and be construed in accordance with applicable laws of the land and that NCLT, New Delhi/ courts in Delhi shall have jurisdiction over all disputes arising out, pursuant to or in connection with this LoI.
- xi. This LoI shall be read with the terms of the RFRP and the Resolution Plan, and this letter of intent shall be binding on the Resolution Applicant and the CoC. Unless otherwise defined herein, capitalized terms used herein shall have meanings ascribed to their under the RFRP subject to all applicable provisions of IBC, 2016 and regulations made thereunder.

12. Ld. Counsel for the RP as also RP submitted that the corporate debtor does not owe any debt to any public or private bank. It is also their stand that no claim was submitted before RP by any Government Department including GST and Income Tax. According to them the plan is approved by the members of CoC with 100% vote shares. The financial



outlay and sources of funds mentioned in clause 6.13 of the plan has already been reproduced hereinabove. As per clause 7 of certificate given by the RP in Form-H the amount provided for the stakeholder is Rs. 50 Lakhs.

The clause 7 reads thus:-

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

Sl. 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	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	-	-	-	-
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan Savitur Infrastructure Private Limited	6,01,33,217	6,01,33,217	50,00,000	8.31%



		Financial Creditors				
		Total[(a) + (b)]	-	-	-	-
3	Operational Creditors	(a) Related Party of Corporate Debtor				
		(b) Other than (a) above:				
		(i) Government				
		(ii) Workmen (iii) Employees Bharat Singh	-	-	-	-
		Total[(a) + (b)]	6,01,33,217	6,01,33,217	50,00,000	8.31%
4	Other debts and dues		-	-	-	-
Grand Total			6,01,33,217	6,01,33,217	50,00,000	8.31%

13. The certificate also indicate that the Resolution Plan was approved by the CoC with 100% vote shares. Clause 5 of the certificate given by the RP in Form-H reads thus:-

5. The list of financial creditors of the CD, Aqua Electronics & Solutions Private Limited being members of the CoC and distribution of voting share among them is as under:

Sl No.	Name of Creditor	Voting Share )%(	Voting for Resolution Plan)Voted for / Dissented / Abstained(
1	Savitur Infrastructure Private Limited	100	Voted For

14. As far as the amount provided for stakeholders under the Resolution Plan is concerned, it is stare decisis that it is the domain of commercial wisdom of the CoC to accept such distribution. It is made clear that we have not granted any relief and concession to the SRA/corporate debtor either in the process of implementation of plan or thereafter. In clause 9 of the certificate given by RP in Form-H he has certified that the Resolution Plan is in compliance of the provisions of Regulation 25(2)(h) Section 29A, Section 30(1), Section 30(2), Section 30(4), Section 31 and Regulation 38 of the IBBI (CIRP), Regulations, 2016. The relevant excerpt of the Plan reads



thus:-

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

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance)Yes / No(
25)2)h(	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	-	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	-	Yes
Section 30)1(	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Annexure to plan	Yes

Section 30)2(	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	Clause 6.1	Yes
	(b) provides for the payment to the operational creditors?	Clause 6.4	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Clause 6.3	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Clause 8	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Clause 8	Yes
	(f) contravenes any of the provisions of the law for the time being in force?]	Clause 7.3	Yes
Section 30)4(	Whether the Resolution Plan		
	a(is feasible and viable, according to the CoC? b(has been approved by the CoC with 66% voting share?	Clause 5.4 -	Yes Yes
Section 31)1(	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause 8.2	Yes
Regulation 38)1(	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Clause 6.4	Yes
Regulation 38)1A(	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 6	Yes
Regulation 38(1B)	(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. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	Clause 11	Yes



Regulation 38)2(	Whether the Resolution Plan provides:)a(the term of the plan and its implementation schedule?)b(for the management and control of the business of the corporate debtor during its term?)c(adequate means for supervising its implementation?	Clause 8	Yes
38)3(	Whether the resolution plan demonstrates that –)a(it addresses the cause of default?)b(it is feasible and viable?)c(it has provisions for its effective implementation?)d(it has provisions for approvals required and the timeline for the same?)e(the resolution applicant has the capability to implement the resolution plan?	Clause 5.1 Clause 5.4 Clause 8.2 Clause 10 Clause 6	Yes Yes Yes Yes Yes
39)2(	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	-	No such transactions report by the auditor
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Undertaking relied upon	Yes

15. As can be seen from clause 7.3 of the Resolution Plan, the SRA has stated that the plan is not in contravention of any law. Clause 7.3 of the plan reads thus: -

7.3 DECLARATION THAT RESOLUTION PLAN IS NOT IN CONTRAVENTION OF PROVISIONS OF THE APPLICABLE LAW

The Resolution Applicant hereby declares that the Resolution Plan does not contravene any provisions of Applicable Law.

16. It is pertinent to note that in Part 10 of the Resolution Plan, the SRA has sought a number of reliefs and concessions. However the SRA has declared that he would implement the plan irrespective of denial of relief and concessions. Part 10 of the plan reads thus:-



The Resolution Applicant submits that, at the time of seeking approval from the NCLT, the reliefs provided below shall be included, with such modifications as may be considered necessary by the NCLT:

- 10.1 Post the settlement of Debt of Financial Creditors as provided in this resolution plan, the amount of Debt outstanding towards Financial Creditors (in the books of CD) in excess of the resolution amount, to be paid to the FCs/OCs/etc. as per this resolution plan, if written off and any liability in respect of minimum alternate tax or any other tax liabilities arising pursuant to such write off shall be waived and no demand pertaining to the said write off shall be raised against the CD, its subsidiaries or the RA, its nominee by the income tax authorities. Further CD, its subsidiaries shall also be exempted from any tax liability (including but not limited to liability on account of minimum alternate tax) as may arise on account of various steps as proposed in the resolution plan, including but not limited to tax liabilities, if any (under Section 41 (1), Section 56, Section 28, Section 115JB of the Income Tax Act, 1961, arising on account of write back assignment/ resolution of book value of debt of FCs/OCs in excess of the settlement consideration to those creditors), levies, fees, transfer charges, transfer premium, cess and surcharge that arise from or relate to implementation of the resolution plan; without any impact on carry forward of/ brought forward tax and book loss / depreciation.
- 10.2 The CD, its subsidiaries shall be allowed to carry forward and set off the accumulated business losses, unabsorbed depreciation, accumulated capital losses etc as per Section 79 of the Income-tax Act, 1961, and also the business/ capital losses lapsed during the last five assessment years; for a further period of eight assessment years subsequent to the relevant assessment year in which the resolution plan is approved by the hon'ble Adjudicating Authority.
- 10.3 Any write off of the receivables, loans and advances given whether long term or short term, unbilled revenue shall be allowed as expenditure under Section 37 of the Income Tax Act for the computation of income under Income Tax Act, 1961.
- 10.4 The requirement of obtaining a no objection certificate under Section 281 of the Income Tax Act, 1961 and provisions of taking over its predecessor's tax liability



under Section 170 of the Income Tax Act, 1961 shall not be applicable. Further, the transaction shall not be treated as void/ voidable under Section 281 of Income Tax Act, 1961 for any claims in respect to tax or any other sum payable by the Corporate Debtor and its subsidiaries. Similarly, any requirement to obtain waivers from any tax authorities including but not limited to waiver in terms of Section 79 and Section 115B of the Income Tax Act, 1961 is deemed to have been granted upon the approval of this resolution plan on the date of NCLT Approval Order.

- 10.5 The Registrar of Companies having jurisdiction over the CD, its subsidiaries to take on record and implement the plan, upon approval of the plan by NCLT, without any further compliances, re-instate all the approvals and waive all the financial or other penalties / interest / prosecution of all or any type and nature including but not limited to restructuring of capital as per this resolution plan.
- 10.6 Upon approval of this plan, all contracts, minutes, agreements, settlements or analogous documents executed by CD/ its promoter/ its management for land of Noida Unit, building and access/ common area/ utilities, are valid and shall continue in full force and effect post approval of the plan. All defaults, under the same shall be deemed to be unconditionally waived and revoked.
- 10.7 All litigations in relation to any Claim/ dispute which pertains to a period prior to the Effective Date, whether decreed or sub-judice including but not limited to civil suit/ winding up proceeding, arbitration proceedings or any case yet to be filed before any court, tribunal or any other judicial, quasi-judicial forum against the CD, its subsidiaries shall stand extinguished, closed qua the CD, its subsidiaries, upon approval of this resolution plan by the Hon'ble Adjudicating Authority, and the RA, its nominees / CD, its subsidiaries shall not be liable in any way with regard to the outcome of the said litigations.
- 10.8 As the Resolution Applicant, its nominees is required to take over the Corporate Debtor's business on a 'going concern' basis, all Business Permits, clearances, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, shall continue to remain valid, notwithstanding any provision to the contrary in their terms, and provided that in case of Business Permits, rights, entitlements, benefits and privileges that have expired or lapsed, notwithstanding that they may have already lapsed or expired due to any breach,



non-compliance or efflux of time, be deemed to continue without disruption for the benefit of the Corporate Debtor, for a period of 1 (one) year from the Effective Date or such other period as required under applicable law.

- 10.9 Furthermore, as per section 32 (A) of IB code, immunity shall be deemed to have been granted to CD from all proceedings and penalties under all Applicable Laws for any non-compliance for the period prior to the Effective Date and no interest/penal implications shall arise due to such non-compliance /default /breach in relation to any period prior to the Effective Date. This includes, without limitation, waiver/extinguishment of any penalties / interests/ charges by whatsoever names called in relation to any period up to the Effective Date.
- 10.10 In the interest of keeping the Corporate Debtor and its subsidiaries a going concern, unless otherwise specified in this resolution plan, all contracts and agreements shall continue to remain valid and notwithstanding any lapse, non-compliance, breach or expiry of underlying terms of such contracts and agreements, these contracts and agreements shall be deemed to continue without disruption for the benefit of the Corporate Debtor and its subsidiaries for their original tenure. It is clarified that any security deposits, payments, or advances provided by the Corporate Debtor and its subsidiaries under such contracts and arrangements shall continue to remain valid.
- 10.11 Unless otherwise provided in this plan, any and all other Claims, rights and entitlements of any person, including but not limited to any actual or potential creditors of the Corporate Debtor and its subsidiaries (including but not limited to all Financial Creditors, Operational Creditors, other creditors, and government and statutory authorities and any person who may claim to be a creditor by way of exercise of rights under applicable laws or equity), whether or not such claims rights or entitlements (including but not limited to any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated damages, and other charges already accrued/accruing or in connection with any third party claims) have been filed before the resolution professional or not, whether admitted by the resolution professional or not, whether or not set out in the Information Memorandum, the virtual Data Room, the balance sheets of the Corporate Debtor and its subsidiaries or the profit and loss account statements of the Corporate Debtor and its subsidiaries, being due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, disputed or undisputed, in relation to any



period prior to the Effective Date, shall be deemed to be written-off and permanently extinguished with effect from the date of NCLT Approval Order. The Corporate Debtor and its subsidiaries or the Resolution Applicant and its nominees shall at no point of time, directly or indirectly, have any obligation, liability, or duty in relation thereto.

- 10.12 Extinguishment of any other liability, investigations, inquiry pending against the Corporate Debtor and its subsidiaries due to non-compliance with any environmental clearance or any penalties due to the lapse of the Development License issued by any Government and Statutory Authorities.
- 10.13 All benefits and incentives, including but not limited to, under all such incentive schemes, subsidy schemes and policies that the Corporate Debtor and its subsidiaries is entitled under, and all such benefits shall remain vested in the Corporate Debtor and its subsidiaries with effect from the date of NCLT Approval Order.
- 10.14 Stamp Duty & Registration charge waiver: - All relevant governmental authorities, including but not limited to the ROC, to grant relief from payment of stamp duty, registration charges, and other applicable fees for (i) successful implementation of the plan (including but not limited to charges on all transactions contemplated herein, for increase in authorised share capital, any capital reduction, issuance or transfer of shares or debentures, provision of loan and related security interest, release of security interest, as contemplated in this plan); (ii) all documents that may be executed by the Resolution Applicant or its nominees and Corporate Debtor and its subsidiaries in respect of the transactions contemplated under this plan; and (iii) change in shareholding of Corporate Debtor and its subsidiaries.
- 10.15 Regulatory Authority to grant concession/ relief for plan implementation: -All governmental authorities (including but not limited to BSE, NSE, ROC, SEBI, Electricity Regulatory Commission and RBI) or other relevant authorities under any jurisdiction shall grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the plan in accordance with its terms and conditions, and to waive and have no continuing claims on account of the non-compliances of the Corporate Debtor and its subsidiaries prior to the Effective Date.
- 10.16 That the Resolution Applicant shall unconditionally and irrevocably implement the Resolution Plan and shall not back out at any time from implementation of Resolution plan during its tenures if any relief or concession as asked for in the resolution plan is not granted by the Hon'ble National Company Law Tribunal in pursuant to the provision of the Insolvency and Bankruptcy Code, 2016.
- 10.17 For such further or other relief/s be granted and/or directions be given as the NCLT may deem fit and proper in the facts and circumstances of the case and in the interests of resolution of the insolvency of the Corporate Debtor.



17. Besides, we note that in terms of the judgment of Hon'ble Supreme Court in the case of **Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors.** [Civil Appeal No. 8766-67 of 2019], it is the subject matter of commercial wisdom of CoC to take decision regarding the amount of bid offered by SRA and the scope for this Tribunal to interfere on such issues is negligible. The above view was also reiterated by Hon'ble Supreme Court in **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr.** (Civil Appeal No. 3224 of 2020) wherein the Hon'ble Court ruled that the scope of examination of the application for approval of Resolution Plan by this Tribunal is confined to the provisions of Section 30(2) of IBC, 2016. Para 153 of the Judgment reads thus: -

“153. Regulation 38(3) mandates that a Resolution Plan be feasible, viable and implementable with specific timelines. A Resolution Plan whose implementation can be withdrawn at the behest of the successful Resolution Applicant, is inherently unviable, since open-ended clauses on modifications/withdrawal would mean that the Plan could fail at an undefined stage, be uncertain, including after approval by the Adjudicating Authority. It is inconsistent to postulate, on the one hand, that no withdrawal or modification is permitted after the approval by the Adjudicating Authority under Section 31, irrespective of the terms of the Resolution Plan; and on the other hand, to argue that the terms of the Resolution Plan relating to withdrawal or modification must be respected, in spite of the CoC's approval, but prior to the approval by the Adjudicating Authority. The former position



follows from the intent, object and purpose of the IBC and from Section 31, and the latter is disavowed by the IBC's structure and objective. The IBC does not envisage a dichotomy in the binding character of the Resolution Plan in relation to a Resolution Applicant between the stage of approval by the CoC and the approval of the Adjudicating Authority. The binding nature of a Resolution Plan on a Resolution Applicant, who is the proponent of the Plan which has been accepted by the CoC cannot remain indeterminate at the discretion of the Resolution Applicant. The negotiations between the Resolution Applicant and the CoC are brought to an end after the CoC's approval. The only conditionality that remains is the approval of the Adjudicating Authority, which has a limited jurisdiction to confirm or deny the legal validity of the Resolution Plan in terms of Section 30 (2) of the IBC. If the requirements of Section 30(2) are satisfied, the Adjudicating Authority shall confirm the Plan approved by the CoC under Section 31(1) of the IBC.”

18. As far as the issue of reliefs and concessions which fall in the jurisdiction of different Government Authorities, and/ or are subjected to the provisions of different laws for the time being in force are concerned, it is made clear that the amount payable by the SRA in terms of the plan to different creditors, stakeholders, and to keep the Corporate Debtor as a going concern cannot be subject to any condition, assumptions, relief/ concessions and/ or qualification. It also needs to be underlined that the provisions of Section 31(4) of IBC, 2016 mandates the Resolution Applicant to obtain the necessary approval required under any law 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 of the IBC, 2016. In terms of the provisions of Section 14 of the Code even during the period of CIRP, no default in payment of current dues is a precondition for continuation of the License, Permit, Registration and similar rights. Thus, even during the moratorium period, some of the facilities forming part of the reliefs and concessions sought are made available to the CD only when there is no default in payment of the current dues. On approval of the Resolution Plan, the SRA/CD cannot be put on a better footing by exempting it from paying its legitimate dues under the law. For the sake of convenience, the explanation below Section 14 of the code is extracted below:

“14. Moratorium. –

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

(a)

(b)

(c)

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.- For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit,



registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;”

(Emphasis Supplied)

19. In any case, in terms of the provisions of Sections 13 and 15 of the IBC 2016 read with Regulations 6, 6A, 7, 8, 8A, 9 and 9A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, all the claimants such as Operational Creditors, Financial Creditors, Creditors in Class, Workmen and Employees and other Creditors can raise their claims before the IRP/RP. The claims are dealt with by IRP in terms of the provisions of Section 18(1)(b) of the IBC, 2016 and by RP in terms of the provisions of Section 25(1)(b) thereof read with Regulations 12A, 13 and 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Thereafter, the RP prepares an Information Memorandum in terms of the provisions of Regulation 36(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Memorandum contains inter alia a list of creditors containing the range of creditors, the amounts claimed by them, the amount of their claim admitted and the security interest if any in respect of such claims. As has been provided in



Regulation 36(1) of the Regulations (ibid), the Information Memorandum is required to be submitted in electronic form to each member of CoC, on or before 95th day from the Insolvency commencement date. As has been provided in Regulation 36A of the Regulations the RP publish brief particulars of the invitation for Expression of Interest in Form G of Schedule I to the Regulations at the earliest i.e. not later than 60th day from the Insolvency commencement date, from interested and eligible Prospective Resolution Applicants to submit Resolution Plans. As can be seen from Regulation 36B of the Regulations, the RP shall issue Information Memorandum Evaluation Matrix (IMEM) and request for Resolution Plans, within 5 days of the date of issue of provisional list of eligible Prospective Resolution Applicants (required to be issued under Regulation 36A(10) of the Regulations). It is with reference to such Information Memorandum Evaluation Matrix that the RP issues request for Resolution Plan. The request for Resolution Plan details each step in the process and the manner and purposes of interaction between the Resolution Professional and the Prospective Resolution Applicant. The Resolution Plan submitted after consideration of the IMEM and RFRP is then examined by the Committee of Creditors. Nevertheless, it needs to satisfy the requirements of Regulation 37 and 38 of the extant Regulations. Once the plan is approved by the CoC, in terms of the provisions of Regulations 39 of the aforementioned Regulations, it virtually becomes a contract entered into between the CD represented through RP, SRA and the Creditors of the CD. On being approved by this



Adjudicating Authority, by operation of Section 31(1) of the Code, the plan becomes binding on the Corporate Debtor and its employees, members, creditors (including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being enforced such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan. Thus, Section 31(1) of IBC, 2016, takes care of most of the relief/concession/waiver solicited by the Resolution Applicant.

20. Besides, in terms of the provisions of Section 32A, for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process, the liability of the CD ceases and the CD is not liable to be prosecuted from the date of approval of Resolution Plan by this Adjudicating Authority, if the Resolution Plan results in change of management or control of the CD to a person who was not promotor or in the management or control of the CD or a related party of such a person or a person with regard to whom the concerned Investigating Agency has reason to believe that he had abated or conspired for the commission of the offence and has submitted or filed a report or a complaint to the relevant statutory authority or Court. In such cases, where the prosecution is instituted against the CD, during CIRP, the CD stands discharged qua the same from the date of approval of the Resolution Plan. Nevertheless, every person who was a designated partner as defined in clause (j) of Section 2 of the Limited Liability Partnership Act, 2008, “an officer who is in default” as defined in



Clause (60) of Section 2 of Companies Act, 2013 or was in any manner in charge of, or responsible to the CD for the conduct of his business or associated with the CD in any manner and was directly or indirectly involved in the commission of an offence as per the report submitted or complaint filed by Investigating Agency shall continue to be liable to be prosecuted and punished for such an offence committed by the Corporate Debtor notwithstanding the Corporate Debtors' liability ceases after approval of the plan.

21. In the wake of the provisions of Section 32A(2), no action is taken against the property of the Corporate Debtor in relation to an offence committed prior to the commencement of the Corporate Insolvency Resolution Process of the CD, where such property is covered under Resolution Plan approved by this Authority under Section 31, which result in the change in the control of the CD to a person who was not a promotor or in the management or control of the Corporate Debtor or related party of such person or a person with regard to whom the Investigating Agency has reason to believe that he had abated or conspired for commission of the offence and has submitted or filed a report or complaint to the relevant statutory authority or Court.

22. The action against the property of the Corporate Debtor as referred to in Section 32A of the Code includes the attachment, seizure, retention or confiscation under such law as may be applicable to the Corporate Debtor. One may also be not oblivious of the fact that in the backdrop of provisions



of Section 31(3)(a) of the IBC, 2016, the moratorium order passed by the Adjudicating Authority under Section 14 ceases to have effect. In sum and substance, the SRA/CD would be entitled to no other relief/concession/waiver except those, which are available to it as per the provisions of Section 31(1) and 32A of IBC, 2016.

23. In clause 10 of the certificate, RP has stated that CIRP has been conducted as per the timeline indicated therein. The Clause 10 reads thus:-

10. The CIRP has been conducted as per the timeline indicated as under:

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	01.04.2024 (Copy of order received on 05.04.2024)
Regulation 6(1)	Publication of Public Announcement	T+3	07.04.2024
Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	19.04.2024
Regulation 13(1)	Verification of Claims	T+21	26.04.2024
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	-
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	25.04.2024
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	04.05.2024
Regulation 35A	Determination of fraudulent and other transactions	T+115	06.05.2024
Regulation 27	Appointment of two Registered Valuers	T+47	06.05.2024
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54	11.07.2024
Regulation 36A	Invitation of EoI	T+75	First Round- 31.05.2024 Second Round- 26.07.2024



	Publication of Form G	T+75	First Round- 31.05.2024 Second Round- 26.07.2024
	Provisional List of Resolution Applicants	T+100	First Round- 25.06.2024 Second Round- 05.08.2024
	Final List of Resolution Applicants	T+115	20.08.2024
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	29.08.2024
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	03.02.2025
Section 31(1)	Approval of Resolution Plan	T=180	

24. In clause 6.12 & 6.13 the plan, the SRA has given capital restructuring qua the corporate debtor and has provided that how the share capital would be dealt with the clause 6.13 and 6.13.2 of the plan reads thus:-

6.13.1 Current Capital Structure of the CD: As per the IM shared by the RP and as evident from the financial statements Capital Structure of the CD is as follows;

Particulars	Face Value	No. of shares	Share Capital
Authorized Share Capital			
Equity Shares	10	1,30,00,000	13,00,00,000
Redeemable Preference Shares	10	10,000	1,00,000
Total Authorized Share Capital			13,01,00,000
Issued, Subscribed and Paid-Up Share Capital			
Equity Shares	10	25,15,400	2,51,54,000
Redeemable Preference Shares	10	5,000	50,000
Total Issued, Subscribed and paid-up Share Capital			2,52,04,000



6.13.2 Upon payment which are proposed to be paid within 45 days of NCLT Approval Date, the entire Issued, Subscribed and Paid up Equity Share Capital of the CD shall be cancelled/ extinguished/ written down to zero and no amount shall be paid to any of the existing shareholders and the CD/ RA shall be exempt from following the applicable provisions of Companies Act 2013 and IBC 2016 to the extent permissible in law in respect of such cancellation of the share capital of the CD, except to submit the Approved Resolution Plan to RoC / MCA.

25. As per Regulation 38(2)(d) of the CIRP Regulations, 2016, a resolution plan shall provide the manner in which the proceedings with respect to avoidance transactions and fraudulent/ wrongful trading is to be pursued and the manner in which the proceeds, if any, from such proceedings shall be distributed. In this regard, it is appropriate to note that as per Form – H given by the Applicant/ RP, no application filed under Sections 43, 45, 50 and 66 of the Code is pending. The relevant excerpt of Form- H reads thus:

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	NIL	NIL	NIL
2	Undervalued transactions under section 45	NIL	NIL	NIL
3	Extortionate credit transactions under section 50	NIL	NIL	NIL
4	Fraudulent transactions under section 66	NIL	NIL	NIL



26. Para 5.1 of the plan indicate that what was the cause of default. The para 5.1 of the of the plan reads thus:-

5.1 CAUSE OF DEFAULT

According to the Resolution Applicant's (RA) understanding, Aqua Electronics & Solutions Private Limited (or Aqua or CD) encountered a significant financial crisis over a period due to market conditions.

27. Further, in compliance of Regulation 38(3)(b) of CIRP Regulations, 2016, the Resolution Plan under clause 5.4 also demonstrates as how the plan will be feasible and viable. The said clause reads thus: -

“5.4 FEASIBILITY AND VIABILITY OF THE PLAN

The plan proposed by Resolution Applicant is in compliance with Insolvency and Bankruptcy Code, 2016 (IBC) and its regulations. Resolution Applicant has proposed the payment to the stakeholders which has been discussed in Financial Proposal Part. The resolution applicant and its technical team, to be introduced for the management of the affairs of the company, are quite experienced and technically capable to revive and turnaround the CD in the best interest of all the stakeholders. The plan also states the process of its implementation and management to make it feasible and Viable.”

28. Regulation 38(1B) of CIRP Regulations, 2016 provides that a Resolution Plan shall include a statement giving details as to whether the SRA or any of its related parties have failed to implement or contributed to the failure of implementation of any other resolution plan approved by the



Adjudicating Authority at any time in the past. In this regard, a declaration has been given by the SRA in clause 7.4 of the plan, which reads thus: -

“7.4 OTHER INFORMATION AS REQUIRED IN TERMS OF THE CIRP REGULATIONS

The Resolution Applicant confirms that neither the Resolution Applicant nor any of its related parties have failed to implement or contributed to the failure of implementation of any other resolution plan approved by the NCLT at any time in the past.”

29. In any case, the SRA has also stated in the Resolution Plan that the plan is unconditional. Relevant excerpt of the same reads thus: -

“10.16 That the Resolution Applicant shall unconditionally and irrevocably implement the Resolution Plan and shall not back out at any time from implementation of Resolution plan during its tenures if any relief or concession as asked for in the resolution plan is not granted by the Hon'ble National Company Law Tribunal in pursuant to the provision of the Insolvency and Bankruptcy Code, 2016.”

30. It is further directed that the SRA shall implement the plan as per the timelines indicated in the Resolution Plan.

31. In the backdrop of aforementioned factual position, discussion, analysis and findings, the IA-7/2025 filed by the Applicant/ RP for approval of the Resolution Plan is allowed. The Plan submitted by the SRA, certified by the RP by issuing a certificate in prescribed form viz. Form “H”, is approved.



32. As a sequel, we issue the following directions: -
- i. The approved Resolution Plan shall become effective from the date of passing of this Order and shall be implemented strictly as per the term of the plan and implementation schedule given in the Plan;
 - ii. The SRA/CD would be entitled to no other reliefs/concessions/waivers except those are available/permissible to it as per the provisions of Section 31(1) and 32A of IBC, 2016. The SRA is at liberty to approach the relevant authorities who would consider these claims as per the provisions of the relevant law in an expeditious manner;
 - iii. Following steps would be taken in terms of the resolution plan: -

SN	Activity	Time Line
1	Date on which the NCLT approves the Resolution Plan	T
2	Constitution of Monitoring Committee	T
3	Removal of existing Directors on the Board of CD, and Reorganisation of Share Capital of CD	T + 45 days
4	Appointment of new Directors on the Board of the CD	T + 45 days
5	Payment Towards CIRP Costs	T + 45 days
6	Upfront Payment to SFCs	T + 45 days
7	Complete Takeover of the management and control of the CD, including its books, records, and assets & properties by RA i.e., Transfer Date	T + 45 days = E



- iv. The order of the moratorium in respect to the corporate debtor passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order;
 - v. The SRA shall act in terms of the provisions of Section 31(4) of IBC 2016;
 - vi. The Monitoring Committee shall file progress report regarding implementation of the Plan before this Tribunal, every month;
 - vii. The RP shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to the IBBI for its record and database;
 - viii. The RP shall also forthwith send a copy of this order to the participants and the Resolution Applicant. He would also send a copy of this order to the ROC concerned within 15 days of this order;
 - ix. The RP shall intimate each claimant about the principle or formulae, as the case may be, for payment of debts under the Plan;
 - x. The SRA would file the specific affidavit regarding the breakup of the funds. In the affidavit the SRA would also mention about its latest financial condition. The affidavit would be supported by the latest statutory balance-sheets/documents.
33. The Court Officer and Resolution Professional (RP) shall forthwith make available/send a copy of this Order to the CoC and the Successful Resolution Applicant (SRA) for immediate necessary compliance.



34. A copy of this order shall also be sent by the Court Officer and Applicant to the IBBI and RoC for their record.

Sd/-
(REENA SINHA PURI)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)