

IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH-V

IA No. 5334 of 2020

In

Company Petition (IB)No.2413 of 2019

In the matter of:

Section 30(6) of the Insolvency and Bankruptcy Code, 2016 for approval of the Resolution Plan

AND

In the matter of:

M/s Imperial Fastners Private Limited  
1092, Shiv Motor Market,  
Bara Bazar, Kashmiri Gate,  
New Delhi-110006

...RP/Applicant

VERSUS

M/s Solven Power Systems Pvt. Ltd.  
B1/E1, 2<sup>nd</sup> Floor, Rajendra House,  
Mohan Cooperative Industrial Estate,  
Mathura Road, New Delhi-110044

Also At:

House No. 106, Shop No. 1,  
Ground Floor, BLK-C, Pkt.-7,  
Sector-8, Rohini,  
Delhi-110085

...Corporate Debtor

IA No. 641 of 2021

In

Company Petition (IB)No.2413 of 2019

In the matter of:

Sections 24(3) & 30(2) of the Insolvency and Bankruptcy Code, 2016

AND

In the matter of:

M/s Imperial Fastners Private Limited  
1092, Shiv Motor Market,  
Bara Bazar, Kashmiri Gate,  
New Delhi-110006  
Email: [imperialfastners@gmail.com](mailto:imperialfastners@gmail.com)

...Operational Creditor/Original Applicant

IA No. 5334 of 2020, IA No. 641 of 2021 and IA No. 970 of 2021

In

Company Petition (IB)No.2413 of 2019



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9/4/2021

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**VERSUS**

**M/s Solven Power Systems Pvt. Ltd.  
B1/E1, 2<sup>nd</sup> Floor, Rajendra House,  
Mohan Cooperative Industrial Estate,  
Mathura Road, New Delhi-110044  
Email: solvenpower2017@gmail.com**

**Also At:**

**House No. 106, Shop No. 1,  
Ground Floor, BLK-C, Pkt.-7,  
Sector-8, Rohini, Delhi-110085**

**...Respondent/Corporate Debtor**

**AND IN THE MATTER OF:**

**1. Rahul Khilnani  
R/o 203, Jacaranda, Shipra Srishti,  
Indrapuram, Ghaziabad-201301  
Email: [anubhavgupta.law@gmail.com](mailto:anubhavgupta.law@gmail.com)**

**Office At: F-4, Jagat Puri,  
Parwana Road, Gali No. 14,  
Delhi-110051**

**2. H&R Enterprises  
Through Sole Proprietor,  
Mr. Mangharam Khilnani,  
Available At:  
F-4, Jagat Puri, Parwana Road,  
Gali No. 14, Delhi-110051  
Email: [anubhavgupta.law@gmail.com](mailto:anubhavgupta.law@gmail.com)**

**...Applicants/ Operational Creditors**

**IA No. 970 of 2021**

**In**

**Company Petition (IB) No.2413 of 2019**

**In the matter of:**

**Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 and Regulation 18 of IBBI (Insolvency Regulation Process for Corporate Persons) Regulation, 2016**

**AND**

**In the matter of:**

**M/s Imperial Fastners Private Limited  
1092, Shiv Motor Market,  
Bara Bazar, Kashmiri Gate,**



**IA No. 5334 of 2020, IA No. 641 of 2021 and IA No. 970 of 2021  
In  
Company Petition (IB) No.2413 of 2019**

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New Delhi-110006  
Email: [imperialfastners@gmail.com](mailto:imperialfastners@gmail.com)

...Operational Creditor

VERSUS

M/s Solven Power Systems Pvt. Ltd.  
B1/E1, 2<sup>nd</sup> Floor, Rajendra House,  
Mohan Cooperative Industrial Estate,  
Mathura Road, New Delhi-110044  
Email: [solvenpower2017@gmail.com](mailto:solvenpower2017@gmail.com)  
Through Resolution Professional

Also At:  
House No. 106, Shop No. 1,  
Ground Floor, BLK-C, Pkt.-7,  
Sector-8, Rohini, Delhi-110085

...Corporate Debtor

AND IN THE MATTER OF:  
SM Finlease Ltd.  
Through Authorized Representative  
Available at M-10,  
Greater Kailash-II, New Delhi-48

...Applicants/ Financial Creditor

Versus

Sh. Atul Kumar Jain  
Resolution Professional  
B-4/522 Ekta Gardens,  
9 IP Extn.  
Delhi-110092  
Reg. No. IBBI/IPA-002/IP-N00734/2018-2019/12266  
[cirp.solven@gmail.com](mailto:cirp.solven@gmail.com)  
[atulkj@gmail.com](mailto:atulkj@gmail.com)

...Respondent/Resolution Professional

**ORDER DELIVERED ON: .08.04.2021**

**CORAM :**

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)  
Sh. Kapal Kumar Vohra, Hon'ble Member (Technical)

**PRESENT:** - Adv. Jitender Chaudhary for applicant in IA-641/2021  
and Adv. Anurag Bhatt for Resolution Applicant, Adv. Ashish Makhija,  
Adv. Shreya Bajpai and Adv. Harsh Arora for Resolution Professional.

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**ORDER****AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER, JUDICIAL****Facts of IA/5334/2020:-**

Since, other two IAs i.e. IA/641/2021 and IA/970/2021 have been filed on behalf of Operational Creditor and the Financial Creditor respectively and by filing these two applications, they have raised the objections on the Resolution Plan (Registered as IA/5334/20200), therefore, we would like to dispose of all these three IAs with this common order.

2. By filing this application i.e. IA/5334/2020, the applicant has prayed for following prayers reliefs:-

**(i). Order for approval of Resolution Plan of the Corporate Debtor;**

**(ii). Pass such other orders as this Tribunal may deem fit in the facts and circumstances of the case.**

3. This Adjudicating Authority vide its order dated 18.02.2020, admitted, the application filed by M/s Imperial Fastners Private Limited, u/s 9 of the Insolvency and Bankruptcy Code, 2016 against M/s Solven Power Systems Private Limited and appointed Mr. Neeraj Parmar (IRP), Insolvency Professional having his registration No. IBBI/IPA-002/IP-N00485/2017-2018/11447 as Interim Resolution Professional.

4. The IRP made a Public Announcement in the prescribed Form-A on 21.02.2020 by publications in "Financial Express" (English Newspaper) and in "Jansatta" (Hindi Newspaper) and declared 03.03.2020 as last date of submission of claims.

5. The IRP constituted a Committee of Creditors (COC), consisting M/s SM Finlease Limited being the only financial creditor, and the report of constitution of COC filed before this Adjudicating Authority on 11.03.2020.

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6. In the meeting of COC, held on 17.03.2020, it was resolved to replace the IRP with another Insolvency Professional, Mr. Atul Kumar Jain as Resolution Professional (RP) having registration No. IBBI/IPA-002/IP-00734/2018-19/122166. It was submitted that till the approval of appointment of Mr. Atul Kumar Jain as RP by this Adjudicating Authority, the IRP continued to perform his duties under the Code.

7. The IRP on 29.05.2020 appointed two registered Valuers namely; Mr. Tarun Jain and Mr. Arunesh Kumar for valuation of securities and financial assets, and further appointed two more registered Valuers namely; Mr. Abhay Kumar and Mr. Nandu Ram Sharma for valuation of plant and machinery of Corporate Debtor.

8. The aforesaid Valuers submitted their Valuation Reports to the RP. It is submitted that the as per Valuation Reports submitted by the aforesaid valuers, the fair value and liquidation value of Corporate Debtor is as under;

*Valuation of Securities and Financial Assets*

<b>Valuer</b>	<b>Fair Market value (Amount in Rs.)</b>	<b>Liquidation Value (Amount in Rs.)</b>	<b>Report Date</b>
Mr. Tarun Jain(A)	2,65,69,917.39	2,04,56,172.74	14.08.2020
Mr. Arunesh Kumar (B)	2,58,14,519.00	2,58,14,519.00	01.08.2020
Total	5,23,84,436.39	4,62,70,691.74	
Average value of Securities and Financial Assets (A+B)/2	2,61,92,218.20	2,31,35,345.87	

*Valuation of Plant and Machinery*

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Valuer	Fair Market value	Liquidation Value	Report Date
Mr. Abhay Kumar (A)	1,24,70,000.00	91,70,000.00	07.08.2020
Mr. Nandu Ram Sharma (B)	1,14,52,000.00	1,01,33,000.00	24.06.2020
Total	2,39,22,000.00	1,93,03,000.00	
Average value of Securities and Financial Assets (A+B)/2	1,19,61,000.00	96,51,500.00	

9. The IRP published Form-G on 06.06.2020 in Financial Express (English Newspaper) and Jansatta (Hindi Newspaper) and subsequently on 24.09.2020 in Business Standard (English and Hindi Newspaper) inviting the Expression of interest from prospective Resolution Applicants.

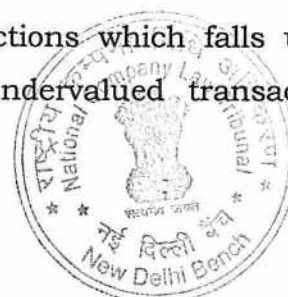
10. On receipt of more claims of creditors, the RP reconstituted the COC and file the report of reconstitution of COC before this Adjudicating Authority on 18.08.2020.

11. On publication of Form- G, as aforesaid, the RP received expression of interest from two Resolution Applicants namely Mr. Sharad Maheshwari and M/s Ranjit Fintrade. However, Mr. Sharad Maheshwari has withdrawn his expression of interest and consequently the plan furnished by M/s Ranjit Fintrade was placed before the meeting of COC for approval.

12. The approval of this Adjudicating Authority was obtained by the RP for extension of time period of CIRP beyond 180 days vide order dated 03.11.2020.

13. The IRP / RP did not found any transactions which falls under preferential transactions under section 43; undervalued transactions

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under section 45; extortionate credit transactions under section 50; and fraudulent transactions under section 66.

14. The resolution professional placed the resolution plan of M/s Ranjit Fin Trade Private Limited before COC for its consideration and approval and the COC in 8<sup>th</sup> meeting dated 11.11.2020 after due deliberations and discussion approved the same on 12.11.2020. It is submitted that the COC authorized and instructed the RP to do all such acts, deeds, things to give effect to this Resolution Plan including but not limited to filing the plan with Adjudicating Authority for its approval.

15. The Resolution plan submitted by the M/s Ranjit Fin Trade Private Limited has been approved by the COC and is now being submitted by the Resolution professional for the approval of this Adjudicating Authority under section 31 of the IBC 2016.

16. The Resolution Professional has submitted the Form H as required under Regulation 39(4) of IBBI (IRP for corporate persons) regulations, 2016 for the compliance certificate under IBC 2016.

17. Form H of Resolution Plan annexed as Annexure A-10 from page 237 to 248 of the paper book and the same is quoted below:-



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**FORM II  
COMPLIANCE CERTIFICATE**

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

I, **Atul Kumar Jain**, an insolvency professional enrolled with The ICSI Institute of Insolvency Professionals (Formerly known as ICSI Insolvency Professionals Agency) and registered with the Board with registration number **IBBI/IPA-002/IP-N00734/2018-2019/12265**, am the resolution professional for the corporate insolvency resolution process (CIRP) of **Solven Power Systems Private Limited (CD)**.

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	Solven Power Systems Private Limited.
2	Date of Initiation of CIRP	18.02.2020
3	Date of Appointment of IRP	18.02.2020
4	Date of Publication of Public Announcement	21.02.2020
5	Date of Constitution of CoC	11.03.2020
6	Date of First Meeting of CoC	17.03.2020
7	Date of Appointment of RP	AA approved the appointment on 23.06.2020. The order was uploaded on website on 09.07.2020
8	Date of Appointment of Registered Valuers	29.05.2020
9	Date of Issue of Invitation for EoI	06.06.2020 & 24.09.2020
10	Date of Final List of Eligible Prospective Resolution Applicants	17.07.2020 & 03.11.2020
11	Date of Invitation of Resolution Plan	07.07.2020 & 24.10.2020
12	Last Date of Submission of Resolution Plan	06.08.2020 & 23.11.2020
13	Date of Approval of Resolution Plan by CoC	12.11.2020
14	Date of Filing of Resolution Plan with Adjudicating Authority	
15	Date of Expiry of 180 days of CIRP	23.10.2020
16	Date of Order extending the period of CIRP	03.11.2020
17	Date of Expiry of Extended Period of CIRP	21.01.2021
18	Fair Value	Rs. 3,81,53,218
19	Liquidation value	Rs. 3,08,14,060
20	Number of Meetings of CoC held	3 (Eight)



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2. I have examined the Resolution Plan received from Resolution Applicant M/s Ranjit Fin Trade Private Limited and approved by Committee of Creditors (CoC) of Solven Power Systems Private Limited.

3. I hereby certify that-

- (i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
- (ii) the Resolution Applicant M/s Ranjit Fin Trade Private Limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.
- (iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100 % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
- (iv) The voting was held in the meeting of the CoC on 11.11.2020 /12.11.2020 where all the members of the CoC were present.

~~I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.~~

~~strike off the part that is not relevant.~~

The list of financial creditors of the CD Solven Power Systems 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	M/s SM Finance Private Limited	83.35%	Voted For
2	M/s Ranjit Fin Trade Private Limited	2.2 %	Voted For
3	Jaspal Singh Kochar	3.71%	Voted For
4	Shrud Shri	4.63%	Voted For
5	M/s Cyber Gear Technologies Private Limited	0.42%	Voted For
6	M/s View Telly Mesh Private Limited	5.69%	Voted For

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

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

(Amount in Rs. lakh)						
Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan <sup>9</sup>	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	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	NIL	NIL	NIL	NIL
		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	NIL	NIL	NIL	NIL
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	546.31	540.27	540.27	98.89%
		Total[(a) + (b)]	546.31	540.27	540.27	98.89%

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3	Operational Creditors	(a) Related Party of Corporate Debtor				
		(b) Other than (a) above:	322.96	173.74	NIL	0%
		(i) Government	0	0	1.00	100%
		(ii) Workmen	0	0	0	
		(iii) Employees	4.91	1.38	0.34	7%
Total((a) + (b))		327.87	175.12	1.34	0.41%	
4	Other debts and dues	Loan from TATA Capital not claimed			8.64	100%
Grand Total			874.18	715.39	550.7	62.94%

\*If there are sub-categories in a category, please add rows for each sub-category.  
# Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. (It is not NPV.)

5. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	10000	0	100	0
2	Preference	0	0	0	0

9. The compliance of the Resolution Plan is as under: The "Appointed Date" mentioned in this clause is the date of approval of resolution plan by the Adjudicating Authority.

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(b)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	The Resolution Applicant is a Non-Banking Financial Company registered with Reserve Bank of India having registration number B.14-03398 and engaged in business of providing different types of loan i.e. personal Loan- Secured Loan (Against Property) & unsecured loan for self-employed and salaried individuals and Professionals.  The Resolution applicant is having AGP Finance India Limited, Rika International, Enterprises, Techchef Consultancy Pvt. Ltd and Micro Business Machines Spares as its major customers.  Further, the resolution applicant is	Yes
		also a one of the unsecured financial creditor of the corporate debtor and having transaction of granting loan and provision of interest on loan outstanding in last two years.  Schedule 2 & 4	
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?	The RA has submitted the affidavit as required under section 29A dated 27.10.2020	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes, The RA has submitted an undertaking dated 27.10.2020 along with an affidavit stating that he is eligible w/s 29A of the Code	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs?  (b) provides for the payment to the operational creditors?  (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?  (d) provides for the management of the affairs of the corporate debtor?	(a) The Resolution plan provides that the CIRP costs is assumed to Rs.1Cr. shall be paid towards full and final payment of the insolvency resolution process costs and if there is any increase in the CIRP cost, the same will be adjusted from the other payments mentioned (Para 2.2 of Sch-5 of the plan page no. 13).  (b) The Resolution Plan value shall not cover any payment to operational creditor of the corporate debtor (Para 2.5 of Sch-5 of the plan, page no. 14)  (c) All the financial creditors voted in favour of the plan. The plan also provides for 100% payment to the financial creditors. Para 2.4 schedule 5.  (d) Resolution Plan provides for Management of the affairs of the CD as follows:  (i) Before the appointed date, the resolution professional is requested to manage the affairs of the corporate debtor till the monitoring committee is appointed, continue his duties and obligations as set out in the code and CIRP Regulations, (schedule 7 page 19 of the plan) and  (ii) after appointed date Resolution Applicant	Yes

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	<p>(e) provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?</p>	<p>and its nominees shall be the only shareholders of the Corporate Debtor and the reconstituted Board of the Corporate Debtor shall manage the business and operations of the Corporate Debtor (schedule 7 Page no. 19 of the plan</p> <p>(e) Resolution Plan provides for the implementation and supervision of the resolution plan during plan period under schedule 7 Page no. 19 of the Plan.</p> <p>(f) The Resolution Plan does not provide any clause for non-contravention of the provisions of the insolvency law for the time being in force.</p>	
Section 30(4)	<p>Whether the Resolution Plan (a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66% voting share?</p>	<p>Yes, the matter was deliberated in the CoC.</p> <p>(b) The CoC meeting was attended by financial creditors having 100% Voting right. The resolution plan was approved unanimously.</p>	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Resolution Plan provides for the implementation and supervision of the resolution plan during plan period under schedule 7 Page no. 19 of the Plan.	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transactions of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fiftieth day of the insolvency commencement date, under intimation to the Board?	No. IRP / RP did not find any transaction of the nature that falls under sections 43, 45, 50 or 66.	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?	No payment is proposed to Operational Creditors. Para 2.5.1 of schedule 5 of the resolution Plan (Page no. 14)	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Resolution plan includes a statement as to how it has dealt with the interests of all stakeholders (Para 9 of schedule 10 of the resolution Plan (page no. 26)	Yes
Regulation 38(1B)	(1) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure	(1) Resolution Applicant clarified whether he or any of his related parties has failed to implement or	Yes



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	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?	contributed to the failure of implementation of any resolution plan approved under the Code Under last para of schedule 10 (page no. 27)  As given under last para of schedule 10 (page no. 28) that neither the resolution applicant nor his related parties have ever failed to implement or contribute to the failure of implementation of any other resolution plan approved by the adjudicating authority at any time in the past	
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?	(a) Terms of the plan is mentioned on page 17 schedule as 17 months from the Appointed date.  (b) Under Schedule 7 (page no. 19)  (c) Provided under last Para of schedule 7 (However, it is provided that resolution applicant and resolution professional will jointly supervise the implementation for the period up to appointed date and after appointed date, implementation shall be monitored by the Monitoring committee)	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?	The resolution applicant in schedule 4 of the plan find two major reason of failure of the CD i.e  (a) The resolution applicant in schedule 4 of the plan find two major reason of failure of the CD i.e. working capital shortfall and lack of modernization/automation (page No.11)  (b) The RA in schedule 4 (page no. 12) provides that the resolution plan is feasible and viable.  (c) It has been provided in Schedule 4 (page no. 12)  (d) The resolution in schedule 4 (page no. 12) provides that prima facie it does not seem requirement of	Yes

	(e) the resolution applicant has the capability to implement the resolution plan?	any approval. However, if any approval required the resolution applicant shall apply for the same within 3 months from the appointed date.  (e) Resolution plan in Schedule 4 (page 12) provides that RA is committed to place an experienced team of professionals to run the operations. With the strategic tie-ups in place and with secured financial commitments, the RA is confident of implementation of the plan.	
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No, the RP has not filed any application	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.		Yes

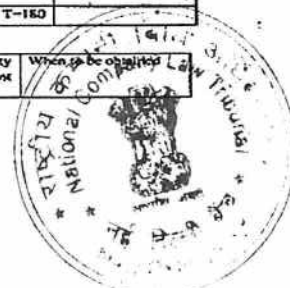
10. The CIRP has been conducted as per the timeline indicated as under: ANNEXURE A

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	T
Regulation 6(1)	Publication of Public Announcement	T+3	
Section 13(1)(c) / Regulation 12(1)	Submission of Claims	T+14	
Regulation 13(1)	Verification of Claims	T+21	
Section 26(GA) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	
Regulation 35A	Determination of fraudulent and other transactions	T+113	
Regulation 27	Appointment of two Registered Valuers	T+47	
Regulation 36(1)	Submission of Information Memorandum to CoC	T+54	
Regulation 36A	Invitation of EoI	T+73	
	Publication of Form G	T+73	
	Provisional List of Resolution Applicants	T+100	
	Final List of Resolution Applicants	T+113	
Regulation 36B	Issue of Request for Re-outline Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+163	
Section 31(1)	Approval of Resolution Plan	T+180	

11. The time frame proposed for obtaining relevant approvals is as under:

Sl.No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant	When to be obtained

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			Approval	
1	N.A	N.A	N.A	N.A
2	N.A	N.A	N.A	N.A
3	N.A	N.A	N.A	N.A

12. The Resolution Plan is not subject to any contingency. N.A  
 or  
 The Resolution Plan is subject to the following contingencies (Elaborate the contingencies):  
 .....

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1	NIL	NIL	NIL	NIL
2	NIL	NIL	NIL	NIL
3	NIL	NIL	NIL	NIL

14. The Resolution Plan is being filed ..... days before the expiry of the period of CIRP provided in section 12 of the Code.

15. Provide details of section 66 or avoidance application filed / pending.

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

15A. The committee has approved a plan providing for contribution under regulation 39B as under: N.A  
 a. Estimated liquidation cost: Rs. .... N.A  
 b. Estimated liquid assets available: Rs. .... N.A  
 c. Contributions required to be made: Rs. .... N.A  
 d. Financial creditor wise contribution is as under:

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
---------	----------------------------	--------------------------------

1	N.A	N.A
2	N.A	N.A
..	N.A	N.A
Total	N.A	N.A

15B. The committee has recommended under regulation 39C as under: N.A  
 a. Sale of corporate debtor as a going concern: Yes / No  
 b. Sale of business of corporate debtor as a going concern: Yes / No  
 The details of recommendation are available with the resolution professional.

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D.] N.A

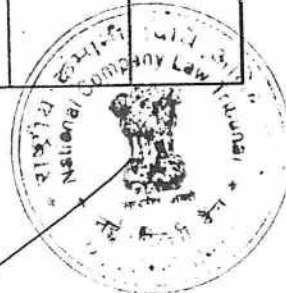
16. I ATUL KUMAR JAIN hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

(Signature) Atul Kumar Jain

Name of the Resolution Professional: Atul Kumar Jain  
 IP Registration No.: IBBI/IPA-002/IP-330734/2018-2019/12266  
 Address as registered with the Board: B-4/522, Ekta Gardens, 9 IP Extra, Delhi- 110092  
 Email Id as registered with the Board: ajulki@gmail.com



Section/Regulation	Description of Activity	Latest Timeline	Latest date considering lock down period of 68 Days	Actual Date
Section 16(1)	Commencement of CIRP and appointment of IRP	T	N.A.	18-Feb-20
Regulation 6(1)	Public announcement inviting claims	T+3	N.A.	21-Feb-20
Section 15(1)(c) / Regulations 6(2)(c) and 12(1)	Submission of claims	T+14	03-Mar-20	
Regulation 13(1)	Verification of claims received under regulation 12(1)	T+21	10-Mar-20	CALIMS WERE ACCEPTED TILL 25TH JULY
Section 26(6A) / Regulation 15A	Application for appointment of AR	T+23	12-Mar-20	N.A.
Regulation 17(1)	Report certifying constitution of CoC	T+23	12-Mar-20	11-Mar-20
Section 22(1) / and Regulation 17(2)	1st Meeting of the CoC	T+30	19-Mar-20	17-Mar-20
Regulation 27	Appointment of two registered valuer	T+47	12-Jun-20	29-May-20
Regulation 35A	RP to make a determination on fraudulent and other transactions.	T+115	02-Sep-20	N.A.
Regulation 36(1)	Submission of IM to CoC	T+54	19-Jun-20	03-Jun-20



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Regulation 36A	Invitation of EOI	T+75	10-Jul-20	06-Jun-20
	Publication of Form G	T+75	10-Jul-20	*06-05-2020 & 24-Sep-2020
	Provisional list of Resolution Applicants	T+100	04-Aug-20	02-Jul-2020 & 10-Oct-20
	Final List of Resolution Applicants	T+115	19-Aug-20	24-07-2020 & 16.10.2020
Regulation 36B	Issue of request for Resolution Plan, which included Evaluation Matrix and IM to RA	T+105	09-Aug-20	07-07-2020 & 18-Oct-2020
AA allowed extension of timeline U/s 13 for 90 days. The last date of CIRP as per extension is 21-Jan-2021				
Regulation 39(4)	Submission of CoC approved Resolution Plan to AA	T+165	06-Jan-21	
Section 31(1)	Approved of resolution plan by AA	T=180	21-Jan-21	
*Due to non-receipt of any compliant Resolution Plan, CoC decided to reinvoke EOI.				

ATUL KUMAR JAIN  
Digitally signed by ATUL KUMAR JAIN

18. When the Resolution Plan approved by the CoC was placed before the Adjudicating Authority then the Adjudicating Authority vide order dated 15.01.2021 directed the Resolution Professional to bring the facts mentioned in the order dated 15.01.2021 before the CoC. Accordingly, the matter was placed before the CoC in its meeting dated 17.01.2021 and CoC approved the revised Resolution Plan by 100% voting and accordingly, the said Resolution Plan again placed before this Adjudicating Authority for approval.

**Facts of IA/641/2021:-**

19. By filing this application, the applicant has prayed for following reliefs :-

**a. Direct the Resolution Professional to induct the Applicant Operational Creditors in the CoC in view of Section 24(3)(c) of the IBC, 2016.**

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In  
**Company Petition (IB)No.2413 of 2019**



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- b. Direct the Resolution Professional to convene a CoC meeting urgently and address the objections and claims of the applicant Operational Creditors.
- c. Direct the Resolution Professional to pay 100% of the dues of the Applicant Operational Creditors being Rs. 51,91,935/- along with accruing @ 18% and not discriminate between the same class of creditors.
- d. Direct the Resolution Professional to provide the documents relied upon for assessing the liquidation value of the Corporate Debtor in the information memorandum.
- e. **Decline to accept the Resolution Plan moved by the Resolution Applicant.**

20. Brief facts of the case is as follows:

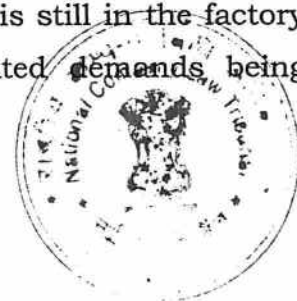
- a. Vide order dated 18.02.2020, moratorium was imposed by this Adjudicating Authority on the assets of the Corporate Debtor in Company Petition No, IB-2413(ND)/2019, in the matter titled "Imperial Fastners Pvt. Ltd. vs. Solven Power Systems". Insolvency Resolution Professional was appointed and issued Information Memorandum and other communications from time to time and intimated the dues to Applicant Operational Creditor along with other such Operational Creditor.
- b. The Applicant operational Creditors filed their claims before the Interim Resolution Professional wherein the claim of the Applicant Operational Creditor (Rahul Khilnani) was Rs. 11,05,850/- dated 14.03.2020 and the claim of the Applicant Operational Creditor (H&R Enterprises) was Rs.40,86,085/- dated 13.03.2020. It is submitted by the Applicant that the claim of the Applicants



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were wrongly taken of Operational Creditor while the Applicants were Financial Creditors.

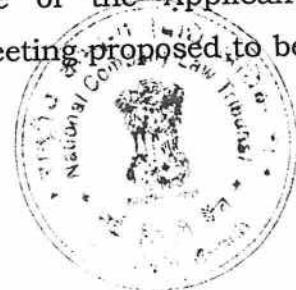
- c. The Hon'ble NCLT vide order dated 07.01.2021 directed the Resolution Applicant to give the details as to how the interest of the Operational Creditor is being taken care of in compliance with Regulation 38 Sub Regulation 3(a) and (b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Further, vide order dated 15.01.2021, the Adjudicating Authority specifically directed the RP to convince the Bench about adherence to section 30(2) Explanation 1 regarding fair and equitable distribution and especially in view of no provision of payment of dues of Rs. 173 lacs to the Operational Creditors other than the employees and also advised the RP to bring the details of the total assets like Information Memorandum etc. during the final hearing.
- d. It is submitted by the Applicant that the Applicant Operational Creditors noticing serious and deliberate fraud in the CIRP by all stakeholders in connivance with the suspended members of the Corporate Debtor to defraud the operational creditors issued a notice dated 20.01.2021 to the RP, CoC members and the suspended members of the board pointing out the illegalities in the CIRP claiming the dues liable to be paid to the Applicants being Rs. 51,91,935/-. It is further submitted that the entire resolution process was carried out to dupe the operational creditors and usurp the raw material supplied by the Applicants wherein the operational creditors are being paid a paltry 2% under the Resolution Plan, while all creditors are being paid 100%. The material supplied by the Applicant operational creditors which is still in the factory is not being returned despite repeated demands being



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made, clearly, the entire process is to usurp the monies of the operational creditors.

- e. The Applicant Operational Creditors again issued a notice dated 22.01.2021 to the RP, CoC members and the suspended members of the board requesting for all the documents that the RP has relied upon for assessing the liquidation value of the Corporate Debtor but were never supplied to the Applicant Operational Creditors in view of the fraud committed by the RP and the Resolution Applicant not disclosing the true net worth of the Corporate Debtor and only assessing the assets worth.
- f. The Applicant Operational Creditors received an email dated 23.01.2021 from the Financial Creditor M/s SM Finlease Ltd. requesting the RP to fix a CoC meeting in view of the objections and illegalities pointed out by the Applicant Operational Creditors in the CIRP and the observations made by the Adjudicating Authority vide order dated 15.01.2021 proposing to hold a meeting on 24.01.2021 in the interest of justice and to ensure legal compliance for fair and equitable distribution of the funds of the Resolution Applicant inviting the Applicant Operational Creditors to take part in the CoC meeting.
- g. The Applicant Operational Creditors issued a notice dated 25.01.2021 to the RP, CoC members and the suspended members of the board requesting for the details of the participant representing Operational Creditors, minutes of the meeting held on 24.01.2021 and the documents sought under our above referred notice dated 22.1.2021.
- h. The Financial Creditor M/s SM Finlease Ltd. in reply to the legal notice dated 25.01.2021 issued by the Applicant Operational Creditors sent an email dated 25.01.2021 wherein it came to the knowledge of the Applicant Operational Creditors that the CoC meeting proposed to be



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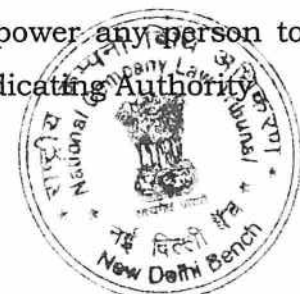
held on 24.01.2021 could not be convened due to the illness of the RP, assuring the Applicant Operational Creditors that the claims and objections of the Applicant Operational Creditors will not be ignored by the CoC members and the concerns in the CIRP will be addressed diligently.

- i. The Applicant Operational Creditor thereafter in reply to the email of the Financial Creditor M/s SM Finlease Ltd. issued a legal notice dated 25.01.2021 requesting to postpone the proceedings before the Adjudicating Authority on 29.01.2021 in view of the failure to hold a CoC meeting on 24.01.2021 due to the illness of the RP to enable the Applicant Operational Creditors to consider the outcome of the proposed meeting. It may please be borne in mind that the object and illegalities pointed out by the Applicants are serious in nature and the CoC as well the RP may consider to give a detailed reply as well as any documents pursuant to the notices sent by the Applicant Operational Creditors.
- j. The Financial Creditor M/s SM Finlease Ltd. addressed an email to the RP dated 27.07.2021 stating that the CoC will be constrained to file an application before the Adjudicating Authority addressing the objections and illegalities in the CIRP seeking directions against the RP for convening a CoC meeting as soon as possible.
- k. The RP in reply to email informed vide email dt. 27.01.2021 that the RP will not be able to call for any meeting of CoC as the CIRP period has expired and neither the members of the CoC nor the RP are empowered to call any meeting and take any decision in this regard.

21. The Resolution Professional in its reply dated 08.02.2021 that:

- a. The provisions of Section 24(3) of the Insolvency and Bankruptcy Code, 2016 does not empower any person to move any Application before this Adjudicating Authority

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- b. The Applicants are operational creditors of the Corporate Debtor and do not have any locus to raise the objections as raised by the Applicants.
- c. The Corporate Insolvency Resolution Process of the Corporate Debtor has been successfully completed on 21.01.2021 and a Resolution Plan was approved by the members of CoC which is pending for approval before this Adjudicating Authority under Section 31 of the Insolvency and Bankruptcy Code, 2016.
- d. The Applicants are challenging the commercial wisdom exercised by the members of CoC while approving the Resolution Plan.
- e. The Applicants are not entitled to know the liquidation value of the Corporate Debtor or question the liquidation value arrived at by the valuers registered with the Insolvency and Bankruptcy Board of India. It is submitted by the respondent that as per Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, only the members of CoC are entitled to know the fair value and the liquidation value after the receipt of the Resolution Plan in accordance with the Code.
- f. The CoC in their meeting held on 17.01.2020 provided for payment of dues to the Operational Creditors including employees and the revised resolution plan was approved with 100% voting shares.
- g. The Resolution Professional sought clarification from the Applicant No. 1 vide email dated 18.07.2020 in order to collate its claim as Financial creditor. The Resolution Professional did not receive any response from the Applicant No. 1 and hence, the Resolution Professional collated the claim of the Applicant No. 1 as Operational



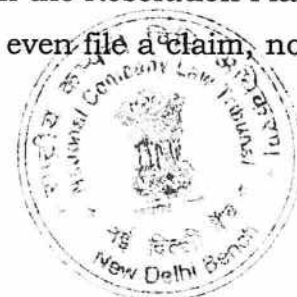
Creditor. An intimation in this regard was also sent to the Applicant vide email dated 30.07.2020.

- h. The Applicants never made any demand for return of raw material or made any representation to the RP claiming the raw material.
- i. As per section 21 of the Code, it is clearly stated that the CoC shall only comprise of the financial creditors and the Applicants being the Operational Creditors are not entitled to be part of CoC.
- j. The payments provided under the Resolution Plan is subject to negotiation between the Resolution Applicant and the members of CoC.

22. The Applicants in their rejoinder dated 13.02.2021 is as follows:

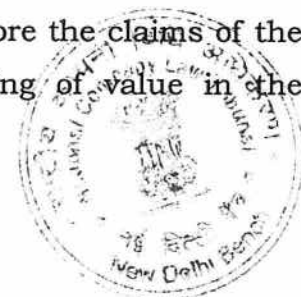
- a. Even though persons such as operational creditors have no right to vote but are only participants in meetings of the committee of creditors, yet, they would certainly have a right to be given a copy of the resolution plans before such meetings are held so that they may effectively comment on the same to safeguard their interest.
- b. The Applicants were not made part of CoC in view of Section 24(3)(c) of the code.
- c. There was violation of mandate of Section 24 (3) (C), in as much as no representative of the Operational creditors was allowed to participated in the CoC meetings nor any notice was furnished despite the fact that there was operational creditors having aggregated dues more than 10 % of the debt.
- d. The Resolution Plan is per se discriminatory and suffers from perverse illegalities.
- e. M/s Tata Capital is being paid 100% in the Resolution Plan , even when M/s Tata Capital did not even file a claim, nor its claim were verified by the RP/IRP.

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- f. The CoC till date has not satisfied this Adjudicating Authority as regards violation of Section 30(2)(b) of the Code and observations made under order dated 07.01.2021 and 15.01.2021 and also compliance of Regulation 38 Sub Regulation 3 (a) and (b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- g. The liquidation value assessed for the Corporate Debtor is fraudulent which has been assessed at around three Crore as disclosed in the hearing before the Adjudicating Authority while in the last about 3 months, more than 5 crore worth of fabrication has been done by the Corporate Debtor during the CIRP period and almost order worth Rs. 20 crores have been procured during CIRP period and no details of this business was shown in Information Memorandum and further to the information of the Applicant the suspended board of directors signed the said contracts and RP unlawfully gave them all authority to conduct businesses, the original applicant, who got the Insolvency Petition admitted could not even get his claims admitted and the entire things looks as if it was a well thought game plan to usurp the supplies of steel by the Operational Creditors, the liquidation value of the Corporate Debtor was grossly undervalued.
- h. The Applicants also requested for compliance certificate done by the RP certifying that there has been no discrimination amongst the same class of creditors which was never supplied by the RP and also the documents relating to business done by the Corporate Debtor during CIRP.
- i. RP and the CoC cannot choose to ignore the claims of the Applicants in the guise of maximizing of value in the



process discriminating between the same class of creditors acting in an illegal and arbitrary manner.

23. RP cannot put an end to the CIRP process passing a resolution plan wherein discrimination is being made between the same class of creditors, when the Corporate Debtor has been actively taking orders during the moratorium period and the fraudulent conduct of the RP in connivance with the CoC, suspended board of directors to usurp the dues of the Operational Creditors.

**Facts of IA/970/2021:-**

24. By filing this application i.e. IA/970/2021, the applicant has prayed for following reliefs :-

- a. **Directing the Respondent/RP to convene a meeting of the Committee of Creditors in order to consider the Resolution Plan received and for appropriate resolution of Corporate Debtor as per law.**
- b. **Pass such order or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the matter and in the interest of justice.**

25. The present application is being filed by the sole Financial Creditor having 82% voting right holder in the Committee of Creditors. The Applicant through the present application seeks directions to the Respondent/ RP to convene a CoC meeting under the powers of Regulation 18 and praying grant of permissible unutilized time of CIRP period to address the various infirmities in the present Resolution Plan which has been raised by this Adjudicating Authority and also to address the objections of the Operational Creditors raised before this Adjudicating Authority. The Applicant under the mandate provided under Regulation 18 of the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations 2016 sought to convene a meeting, however, the Respondent

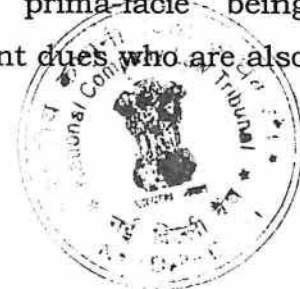
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RP did not convene a meeting and was of the view that appropriate application be made before this Adjudicating Authority.

26. The Applicant filed this Application as this Adjudicating Authority under orders dated 7.01.2021 and 15.01.2021, sought various explanations and compliances with regard to the Resolution Plan submitted for approval before it, particularly in view of the fact that the Government Authorities under the Plan are being offered 100%, the employees are being offered 100%, while the Operational Creditors are being offered 2%. The fact is that the order dated 15.01.2021 was not available before the CoC when meeting was convened on 17.01.2021 by the CoC and the Resolution Plan was approved and thus the directions and compliances particularly sought by the Adjudicating Authority under order dated 15.01.2021 could not be complied.

27. The Applicant contended that after the objections placed by the Operational Creditors various facts have come to light which were concealed by the Respondent/RP and which were totally important for CIRP process. The CoC has a bounden duty in law to balance the interests of all stakeholders in view of Regulation 38(1A) of the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations 2016. The Respondent/RP could not have resorted to illegal conducts. The Applicant further contended that the CoC was never informed that during the CIRP process the Corporate Debtor got fresh orders worth more than Rs.20 crores. This fact was never disclosed to CoC by the Respondent/RP. Also, the Respondent/RP is not even informing who negotiated or executed the contracts for the said orders. The said orders should have been disclosed in the Information Memorandum to invite better participation of prospective Resolution Applicants. The said orders are more than 7 times the earlier turnover of the Corporate Debtor and such orders without consent of CoC could not be taken. It is further contended by the Applicant that the Operational Creditors are prima facie being discriminated in as much as employee and government dues who are also



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Operational Creditors are being offered 100% while goods suppliers are being offered 2%. It seems that the suspended directors and the RP committed a fraud to devalue the company with Rs. 20 Cr running orders to show liquidation value of merely Rs. 3 Crores. At the same breath CIRP costs of Rs. 1 Crore are shown while only paltry amounts were placed and got approved from CoC.

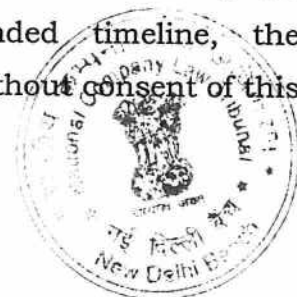
28. The Applicant further contended that the Resolution Plan was submitted for approval before the Adjudicating Authority is being opposed by certain operational creditors and also on the aspect that under Section 24(3)(c) representative of Operational Creditors were to be invited to be present in the CoC meeting and further, the Operational Creditors were not shared the plan nor allowed to participate. The Respondent/RP has not even provided accounts and seeks Rs. 1 crore as CIRP costs without any basis and this amount was not disclosed in Information Memorandum. The claims of Company of Tata Group was not received, no claims of government dues were received and yet provisions are being made for their payment and Respondent RP approves of such provisions without disclosure of accounts.

29. The Applicant sought to convene a CoC meeting but the Respondent RP denied for convening the meeting.

30. Brief facts of the case is as follows:

- a. Vide order dated 18.02.2020, moratorium was imposed by this Adjudicating Authority on the assets of the Corporate Debtor in Company Petition No, IB-2413(ND)/2019, in matter titled "Imperial Fastners Pvt. Ltd. vs. Solven Power Systems".
- b. The Adjudicating Authority vide order dated 03.11.2020 was pleased to extend the timeline for conducting the CIRP process. As per the extended timeline, the permissible time available for CIRP without consent of this

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Adjudicating Authority to complete the CIRP is till 21.03.2021, however much before on 6.12.20, the CoC approved and sent the Resolution Plan.

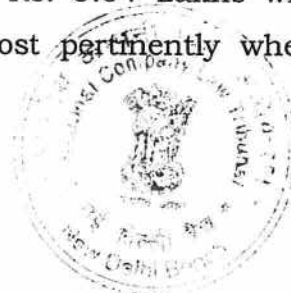
- c. The Adjudicating Authority vide order dated 07.01.2021 directed the Resolution Applicant to give the details as to how the interest of the Operational Creditor is being taken care of in compliance with Regulation 38 Sub Regulation 3(a) and (b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Further, vide order dated 15.01.2021, the Adjudicating Authority specifically directed the RP to convince the Bench about adherence to section 30(2) Explanation 1 regarding fair and equitable distribution and especially in view of no provision of payment of dues of Rs. 173 lacs to the Operational Creditors other than the employees and also advised the RP to bring the details of the total assets like Information Memorandum etc. during the final hearing.
- d. Following infirmities is contended by the Applicant in the present Resolution Plan:
- i. Regulation 38 of the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations 2016 have been ignored in the approved Resolution plan which provides for payment to financial Creditors in priority to Operational Creditors.
  - ii. The Resolution Plan proposes the CIRP Cost estimated at Rs. 1 Crore, however, the said amount was never brought before the COC in its meetings nor was the same mentioned in the Information Memorandum. The Respondent RP has not provided any reasoning to approve an amount of Rs. 1 Crore towards CIRP Cost nor consent of CoC was taken nor the Respondent RP



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has been able to justify the CIRP costs of Rs. 1 crore and the unspent CIRP cost is liable to be usurped.

- iii. The verified claims of the Unsecured Financial Creditors have been incorrectly stated to be estimated as Rs. 540.72 Lacs, whereas the correct value of the verified claims of the unsecured financial Creditors is Rs. 540.27 Lacs.
- iv. The Operational Creditors are being discriminated in as much as employee and government dues who are also operational creditors are being offered 100% while goods suppliers whose goods are still lying in the factory are being offered 2% while all others are offered 100% of their claims.
- v. Violation of Section 24(3)(c) of IBC, 2016, was done as operational creditors were to be made part of the CoC if the amount of their aggregate dues is not less than 10% of the debt. The Respondent/RP was to provide them a copy of the Resolution Plan and discussion on feasibility of plan was to take place. Respondent/RP cannot act arbitrarily and discriminate between the same class of creditors thereafter passing a Resolution Plan wherein the Operational Creditor is being paid paltry 2% of dues while the other Operational creditors are being paid 100% of their claims in derogation of Section 30(2) & Explanation 1 of Section 53 of the Code and in derogation of procedure established by law.
- vi. As per the Resolution Plan, one entity being A Company of Tata Group has been offered 100% of its Claimed Amount of Rs. 8.64 Lakhs without any verification and most pertinently when no



claims by Company of Tata Group, had been filed with the Respondent/RP. That the Claims of Company of Tata Group which have been approved, without being verified and without being filed before the Respondent/RP is completely arbitrary and against the provisions of the Code and against the interest of all the other stakeholders. Letter of Intent from Company of Tata Group was received in August, 2020 for about Rs. 12 Crore and the first dispatch under the LOI was made in November, 2020 before the approval of the Resolution Plan but still all this was concealed by the Respondent/RP from the CoC and was also not made part of the Information Memorandum fraudulently.

- vii.** 100% dues of the Government Authorities which have been included in the Resolution Plan were not included in the Information Memorandum and no claims were received from the concerned Government authorities before the Respondent/RP, however they have fraudulently been approved in the present Resolution Plan approved by the CoC.

31. Since the dues of Company of Tata Group were never received by the Respondent RP and which were also not made a part of the Information Memorandum, the total claim amount as calculated in the Resolution Plan approved by the CoC is also incorrect.

32. We have heard the Ld. Counsel for the Resolution Professional, Ld. Counsel for the Operational Creditor and Ld. Counsel for the Financial Creditor i.e. M/s SM Finlease Ltd and perused the averment made in the application filed by the R.P, Operational Creditor and Financial Creditor i.e. M/s SM Finlease Ltd.

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33. Ld. Counsel for the Resolution Professional submitted that earlier the Resolution Applicant had not made the provision for the employees as well as for the Operational Creditor but when the original Resolution Plan was placed before this Adjudicating Authority then this Adjudicating Authority vide order dated 15.01.2021 directed the Resolution Professional to place these facts mentioned in the order dated 15.01.2021 before the CoC and accordingly, the revised Resolution Plan was submitted by the Resolution Applicant.

34. He further submitted that in the revised Resolution Plan, the Resolution Applicant has made a provision for the employees as well as for the Operational Creditor and the plan was in terms of the provision of the IBC as well as the Regulations and he also filed the revised Form H along with the revised Resolution Plan.

35. On the other hand, Ld. Counsel for the Operational Creditor has submitted that in view of Section 24 of IBC, the Resolution Professional shall have to give notice of each meeting of the CoC to the Operational Creditor or their representative if the amount of their aggregate dues is not less than 10% of the debt.

36. He further submitted that the Resolution Professional is also required to furnish a copy of the Resolution Plan to the Operational Creditor but herein this case, the Resolution Professional neither gave the notice to the Operational Creditor whose dues are more than 10% of the debt nor served the copy of the Resolution Plan. Therefore, there is a violation of Section 24 of IBC.

37. He further submitted that in view of Section 30(2) of IBC, the Resolution Plan must make a provision of payment of debt of the Operational Creditor in such manner as may be specified by the Board and in terms of Section 53 of the IBC 2016. Therefore, the plan is not in terms of Section 24(3) and 30(2) of the IBC.

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38. He further submitted that the RP and the Suspended Directors committed a fraud to devalue the company with Rs. 20 Cr running orders to show liquidation value of merely Rs. 3 Crores.

39. He further submitted the Financial Creditors will receive 100% of their dues but the operational Creditor will get only 2%.

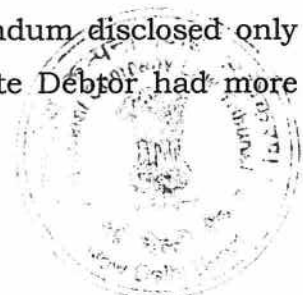
40. He further submitted that in view of Regulation 38 of Insolvency Resolution Regulation 2016, the amount due to the Operational Creditor under the Resolution Plan shall have to given priority in payment over Financial Creditor.

41. He further submitted that the applicant/Operational Creditor received an email dated 23.01.2021 from the Financial Creditor M/s SM Finlease Ltd. requesting the RP to fix a CoC meeting in view of the objections and illegalities pointed out by the Applicant Operational Creditors in the CIRP and the observations made by this Adjudicating Authority vide order dated 15.01.2021 proposing to hold a meeting on 24.01.2021 but the Resolution Professional has not hold any meeting of the CoC.

42. He further submitted that again the Financial Creditor M/s SM Finlease Ltd. sent an email dated 25.01.2021 wherein it came to the knowledge of the Applicant Operational Creditors that the CoC meeting proposed to be held on 24.01.2021 could not be convened due to the illness of the Resolution Professional.

43. He further submitted that Resolution Professional addressed an email to the CoC members, suspended members of the board and the Applicant Operational Creditors dated 27.01.2021 stating that the RP will not be able to call for any meeting of CoC as the CIRP period has expired and neither the members of the CoC nor the RP are empowered to call any meeting and take any decision in this regard.

44. He further submitted that information memorandum disclosed only assets worth and did not disclose that the Corporate Debtor had more



than Rs. 20 crores worth of orders in hand/pipeline and that too from repeated clients and further various huge work orders are in progress or in pipeline.

45. He further submitted that the Resolution Applicant is himself a creditor of the Corporate Debtor but the claims of the Resolution Applicant was never admitted by the Corporate Debtor showing the fraudulent conduct of the Resolution Professional.

46. He further submitted that Resolution Plan was approved by the CoC cannot be considered due to its perverse illegality in the constitution of the CoC not comprising of the Operational Creditor or their representative as per law.

47. He further submitted that Hon'ble NCLAT in the case of Binani Industries Ltd Vs. Bank of Baroda & Anr which was further ratified by the Hon'ble Supreme Court held that government authorities, the employees are all operational creditors but the Corporate Resolution Process and the Resolution Plan intends to give such operational creditors 100% of their claims while the applicant operational creditors are being offered only 2% which is unfair.

**WRITTEN SUBMISSION ON BEHALF OF FINANCIAL CREDITOR**

48. The sole Financial Creditor who was the part of the CoC, and approved the Resolution Plan has also filed an objection and submitted that SM Finlease Ltd., intends a Resolution of the CD, however a legal, just and fair resolution. The Operational Creditor raises legal infirmity of (a) no representative of OC being given Notice of CoC, as mandated in Section 24(1)(c); (b) no Resolution Plan being shared with OC for its comments, as mandated by Hon'ble Supreme Court in the case of Vijay Kumar Jain (c) genuine business of CD not being placed in the Information Memorandum to ensure better participation of Resolution Applicants, (d) non compliance of directions of order dated 15.1.2021, passed by this Adjudicating Authority.(e) Due to non availability of order

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in meeting held on 17.1.2021 only 2% being given to OCs like the Applicants, while rest of OCs being given 100%, (f) Tata Capital being paid 100% and Governmental Authorities, being paid 100%, without claim (g) non justification of Rs. 1 Crore as CIRP cost and CIRP Cost not being approved in CoC (h) OCs not being paid in priority over FCs, rather OCs being paid later (i) discrepancies in amounts due to FCs as in IM and as in Resolution Plan.

49. Further, It is submitted that SM Finlease Ltd., has not committed any irregularity, but was rather mislead from the certificate of RP that the plan complies with legal requirements and further since the SM Finlease Ltd. was getting 100%, SM Finlease did not get into finer details, however, now when deficiencies are pointed out by OC, SM Finlease Ltd., intends to seek a chance for success of Resolution Process by sending the plan back to the CoC as was sent earlier and as was deliberated on 17.1.2021. SM Finlease being 82% voting right holder, intends to reconsider the Resolution to satisfy/reduce the grievances of OC, lest, the plan and resolution may adversely suffer due to avoidable litigation.

50. Further, SM Finlease Ltd., various aspects as pointed out by the OC can possibly have material effect on the decision of CoC as they were not available before the CoC, such as Rs. 20 Crore orders have been received by the CD during CIRP, this aspect could have been mentioned in the Information Memorandum for inviting better Resolution Amounts. SM Finlease Ltd., has filed an application before this Adjudicating Authority seeking the said information and calling for meeting of CoC.

51. Further, The CIRP process is within the allowable time, this Adjudicating Authority may kindly consider referring the matter to the CoC.

Chart denoting the timeline for the period of CIRP in the present matter in view of orders passed by this Adjudicating Authority and Judgments

**Time line**

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Date of Moratorium	18.02.2020	15.08.2020	Last Date of expiry of 180 days of CIRP
		16.08.2020	Date of Expiry of 180 days of CIRP during normal course
COVID period	25.03.2020 to 31.05.2020 as affirmed by the Hon'ble NCLT	68 Days	Total Number of COVID period days deducted to calculate the actual period of CIRP vide order dated 03.11.2020 passed by Hon'ble NCLT
		22.10.20	Last Date of Expiry of 180 days after deduction of Covid Period of 68 days
		23-10-20	Period of 180 Days of CIRP Stood Expired
		03.11.2020	Order passed by the Hon'ble NCLT deducting the period of COVID while calculating CIRP and further granting extension of further 90 days
		13.01.2021	Expiry of 330 days if Covid period is not

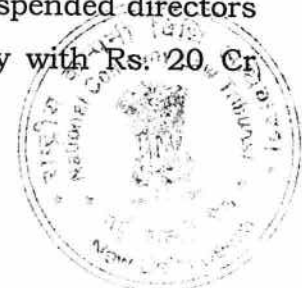
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			deducted
		20.01.2021	Last Date before Expiry of 270 days after 23-10-2020
		21.03.2021	(330th day of CIRP) Last Date before Expiry of 330 days since imposition of moratorium
		22.03.2021	(331st day) Date of Expiry of 330 days of CIRP
			That the above is without any extension, the Judgement in Essar Steel permits extension of Resolution Process even beyond 330 days

52. Further, The CoC has a bounden duty in law to balance the interests of all stakeholders in view of Regulation 38(1A) of the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations 2016. The Respondent/RP could not have resorted to illegal conducts (as pointed out by the OC). That the CoC was never informed that during the CIRP process the Corporate Debtor got fresh orders worth more than Rs.20 crores. This fact was never disclosed to CoC by the Respondent/RP infact the Respondent/RP is not even informing who negotiated or executed the contracts for the said orders. The said orders should have been disclosed in the Information Memorandum to invite better participation of prospective Resolution Applicants. The said orders are more than 7 times the earlier turnover of the Corporate Debtor and such orders without consent of CoC could not be taken. It seems that the suspended directors and the RP committed a fraud to devalue the company with Rs. 20 Cr

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running orders to show liquidation value of merely Rs. 3 Crores. At the same breath CIRP costs of Rs. 1 Crore are shown while only paltry amounts were placed and got approved from CoC.

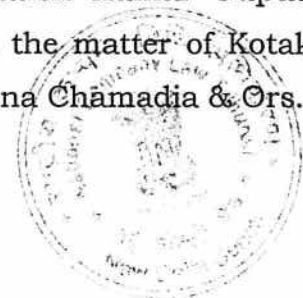
53. Further, as per the Resolution Plan, one entity being a Company of Tata capital has been offered 100% amount of Rs. 8.64 Lakhs without any claim, verification and most pertinently when no claims by Company of Tata Group, had been filed with the Respondent/RP. That the Claims of Company of Tata Group which have been approved, without being verified and without being filed before the Respondent/RP is completely arbitrary and against the provisions of the Code and against the interest of all the other stakeholders. That it is pertinent to mention here that the Letter of Intent from Company of Tata Group was received in August, 2020 for about Rs. 12 Crore and the first dispatch under the LOI was made in November, 2020 before the approval of the Resolution Plan but still all this was concealed by the Respondent/RP from the CoC and was also not made part of the Information Memorandum fraudulently.

54. Further, the 100% dues of the Government Authorities which have been included in the Resolution Plan were not included in the Information Memorandum and that no claims were received from the concerned Government authorities before the Respondent/RP, however they have fraudulently got approved by the COC.

55. He further placed reliance upon the following decisions and the same are quoted below: -

- a. The Hon'ble Supreme Court of India in the case of Vijay Kumar Jain vs. Standard Chartered Bank and Ors. [AIR 2019 SC 2477]
- b. Company Appeal(AT) (Insolvency) No. 82 of 2018 (Binani Industries Limited versus Bank of Baroda and Anr).
- c. Hon'ble NCLAT relying on the judgment in Committee of Creditors of Essar Steel v Satish Kumar Gupta, (2020) 8 SCC 531 has stated in the matter of Kotak Investment Advisors Ltd. vs Krishna Chamadia & Ors.

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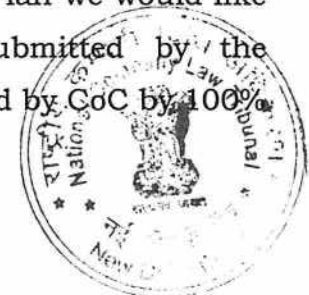
- d. IDBI Bank Limited v Cyclo Transmissions Ltd. CP IB No. 381 of 2018 (Mumbai Bench), Order dated 07.10.2020.
- e. Committee of Creditors of Essar Steel v Satish Kumar Gupta, (2020) 8 SCC 531.
- f. Quinn Logistics India Pvt. Ltd. vs Mack Soft Tech Pvt. Ltd, CA (AT) No. 185 of 2018, NCLAT Judgment dated 08.05.2018.
- g. Mr. Ashutosh Agarwala Vs. M/s Cox and Kings Ltd, IA no. 1069/2020 (Mumbai) in CP IB No. 2640/2019.

56. In reply the Ld. Counsel for the RP submitted that all the objections raised by the Operational Creditor as well as Financial Creditor are false because the Financial Creditor has participated in the meeting and he also approved the Resolution Plan by 100% voting and the point which the Financial Creditor has raised here, earlier had not been raised by the Financial Creditor before the CoC.

57. He further submitted that the plan is in terms of Section 30(2) read with Section 53 of the BIC as well as Regulation 38, the distribution has been made in accordance with the provisions of law.

58. He further submitted that absence of Operational Creditor in the CoC meeting could not vitiate the proceedings and on this ground alone the proceeding of such meeting shall not invalidate as referred in Section 24(4) proviso of the IBC.

59. Now, in the light of the submissions of the parties, we consider the Resolution Plan but before considering the Resolution Plan we would like to refer the amended/revised Resolution Plan submitted by the Resolution Professional and the same was duly approved by CoC by 100% voting.



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60. At this juncture, we would like to refer the summary of financial plan which is at page 15 of the revised Resolution Plan and the same is quoted below: -

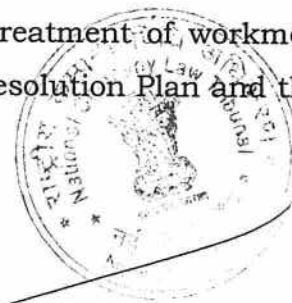
**SCHEDULE 6 : SUMMARY OF FINANCIAL PLAN**

(All figures are rounded off to nearest Rupees Lakhs)

Particulars	Claim Amount	Verified Claims	Proposed Settlement	Amount payable within 60 days of the Appointed Date	Amount payable in 16 equal monthly Installments starting after 30days from the Appointed Date	Monthly Installment amount of 16 Installments
CIRP Cost	-	-	100.00	100.00		
Secured Financial Creditors	-	-	-	-	-	
Unsecured Financial Creditors	546.31	540.72	540.72	60.00**	480.72**	30.05
			[100.00%]			
TATA Capital Loan	8.64	-	8.64	1.00**	7.64**	0.48
			[100.00%]			
Dues to Related Parties	1.85	-	-	-	-	
Operational Creditors	322.96	173.74	3.47	3.47	-	
			[2.00%]			
Employee Dues	4.91	1.38	1.38	1.38	-	
			[100.00%]			
Statutory Dues	-	-	1.00	1.00	-	
			[100.00%]			
<b>TOTAL</b>	<b>884.66</b>	<b>715.85</b>	<b>655.21</b>	<b>166.85</b>	<b>488.36</b>	

\*\*Operational debts shall be paid in priority over this amount of unsecured creditors

61. At this juncture, we would like to refer the treatment of workmen and employees which is at page 18 of the revised Resolution Plan and the same is quoted below:-



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**TREATMENT OF WORKMEN AND EMPLOYEES**

- a) On the Appointed Date, the employment of all the Competent Employees and Workmen shall remain continued and shall not be terminated from the service. However, in case of resignation/ retrenchment of any employee or workmen, such employee and/or workmen shall be given their all valid claims against the Corporate Debtor including gratuity, provident fund, leave encashment etc.
- b) The Resolution Professional shall before expiry of 30 (thirty) days of the NCLT order approving the Plan, notify the Resolution Applicant of the final:
- i. list of Workmen and Employees of the Corporate Debtor;
  - ii. their name, designation, job description, and undertaking of the Corporate Debtor to which they relate;
  - iii. their period of service with the Corporate Debtor; and
  - iv. dues payable to each Employee which dues have priority treatment under Section 53(1)(c) of the Code out of the total verified amount of the Claim of such Employee; and

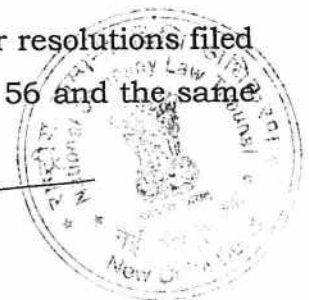
each of which shall be agreed with the Resolution Applicant in order to enable the Resolution Applicant to make payment of the Priority Employee Amount in accordance with **SCHEDULE 5 (Financial Plan)**

For RANJIT FINTRADE PVT. LTD

62. We notice that at page 17 of the revised Resolution Plan, in Schedule 7 the term, implementation schedule and monitoring of the Resolution Plan is given. The provision for monitoring committee to constitute the monitoring committee as to monitor the implementation of the plan.

63. We further notice that in order to operate the Corporate Debtor is a going concern, the Resolution Applicant would need to infuse funds to meet working capital requirements, which is likely to be tune of INR 1,00,00,000/- and in addition to the above, an amount of about INR 6,55,21,000/- is proposed to be paid in full and final settlement by Resolution Applicant is respect of all past dues.

64. The revised Form H is also enclosed along with their resolutions, filed by the Resolution Professional which is from page 45 to 56 and the same are quoted below:-



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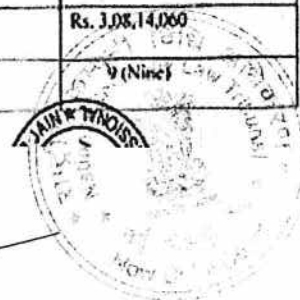
**FORM II  
COMPLIANCE CERTIFICATE**

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

1. Atul Kumar Jain, an insolvency professional enrolled with The ICSI Institute of Insolvency Professionals (Formerly known as ICSI Insolvency Professionals Agency) and registered with the Board with registration number IBIIIPA-002/IP-N00734/2018-2019/12266, am the resolution professional for the corporate insolvency resolution process (CIRP) of Solven Power Systems Private Limited (CD).

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	Solven Power Systems Private Limited.
2	Date of Initiation of CIRP	18.02.2020
3	Date of Appointment of IRP	18.02.2020
4	Date of Publication of Public Announcement	21.02.2020
5	Date of Constitution of CoC	11.03.2020
6	Date of First Meeting of CoC	17.03.2020
7	Date of Appointment of RP	AA approved the appointment on 23.06.2020. The order was uploaded on website on 09.07.2020
8	Date of Appointment of Registered Valuers	29.05.2020
9	Date of Issue of Invitation for EoI	06.06.2020 & 24.09.2020
10	Date of Final List of Eligible Prospective Resolution Applicants	17.07.2020 & 03.11.2020
11	Date of Invitation of Resolution Plan	07.07.2020 & 24.10.2020
12	Last Date of Submission of Resolution Plan	06.08.2020 & 23.11.2020
13	Date of Approval of Resolution Plan by CoC	12.11.2020
14	Date of Filing of Resolution Plan with Adjudicating Authority	
15	Date of Expiry of 180 days of CIRP	23.10.2020
16	Date of Order extending the period of CIRP	03.11.2020
17	Date of Expiry of Extended Period of CIRP	21.01.2021
18	Fair Value	Rs. 3,81,53,218
19	Liquidation value	Rs. 3,08,14,060
20	Number of Meetings of CoC held	9 (Nine)



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2. I have examined the Resolution Plan received from Resolution Applicant M/s Ranjit Fin Trade Private Limited and approved by Committee of Creditors (CoC) of Solven Power Systems Private Limited.

3. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) the Resolution Applicant M/s Ranjit Fin Trade Private Limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100 % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) The voting was held in the meeting of the CoC on 11.11.2020 /12.11.2020 and on 17.01.2021 for amended resolution plan where all the members of the CoC were present.

or

~~I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.~~

~~[strike off the part that is not relevant]~~

The list of financial creditors of the CD Solven Power Systems 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	M/s SM Finlease Private Limited	83.35%	Voted For
2	M/s Ranjit Fin Trade Private Limited	2.2 %	Voted For
3	Jaspal Singh Kochar	3.71%	Voted For
4	Shruti Shah	4.63%	Voted For
5	M/s Cyber Grail Technologies Private Limited	0.42%	Voted For
6	M/s View Telly Mesh Private Limited	5.69%	Voted For

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

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

(Amount in Rs. lakh)						
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	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	NIL	NIL	NIL	NIL
		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan				
		Total(a) - (b)	NIL	NIL	NIL	NIL
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	546.31	540.72	540.72	98.99%
		Total(a) - (b)	546.31	540.72	540.72	98.99%



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3	Operational Creditors	(a) Related Party of Corporate Debtor				
		(b) Other than (a) above:	322.96	173.74	3.47	1.07%
		(i) Government	0	0	1.00	100%
		(ii) Workmen	0	0	0	
		(iii) Employees	4.91	1.38	1.38	28%
Total[(a) + (b)]		327.87	175.12	5.85	1.78%	
4	Other debts and dues	Loan from TATA Capital not claimed			8.64	100%
Grand Total			874.18	715.39	555.21	63.51%

\*If there are sub-categories in a category, please add rows for each sub-category.  
 # Amount provided over time under the Resolution Plan and includes estimated value of non-cash components.  
 It is not NPV.]

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	10000	0	100	0
2	Preference	0	0	0	0

9. The compliance of the Resolution Plan is as under: The "Appointed Date" mentioned in this clause is the date of approval of resolution plan by the Adjudicating Authority

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 CIRP?	<p>The Resolution Applicant is a Non-Banking Financial Company registered with Reserve Bank of India having registration number B.14-03398 and engaged in business of providing different types of loan i.e. personal Loan- Secured Loan (Against Property) &amp; unsecured loan for self-employed and salaried individuals and Professional.</p> <p>The Resolution applicant is having AGF Fintease India Limited, Risk International, Enterprises, Techchef Consultancy Pvt. Ltd and Metro Business Machines Stores as its major customers.</p>	Yes



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		Further, the resolution applicant is also a one of the unsecured financial creditor of the corporate debtor and having transaction of granting loan and provision of interest on loan outstanding in last two years.	
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?	Schedule 2 & 4 The RA has submitted the affidavit as required under section 29A dated 27.10.2020	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes. The RA has submitted an undertaking dated 27.10.2020 along with an affidavit stating that he is eligible u/s 29A of the Code.	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs?  (b) provides for the payment to the operational creditors?  (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?  (d) provides for the management of the affairs of the corporate debtor?	(a) The Resolution plan provides that the CIRP costs is assumed to Rs.1 Cr. shall be paid (Para 2.2 of Sch-3 of the plan page no. 13).  (b) The Resolution Plan provides for 2% payment to the operational creditor of the corporate debtor (Para 2.5 of Sch-3 of the plan, page no. 14).  (c) All the financial creditors voted in favour of the plan. The plan also provides for 100% payment to the financial creditors. Para 2.4 schedule 5.  (d) Resolution Plan provides for Management of the affairs of the CD as follows:  (i) Before the appointed date, the resolution professional is requested to manage the affairs of the corporate debtor till the monitoring committee is appointed, continue his duties and obligations as set out in the code and CIRP Regulation. (schedule 7 page 19 of the plan) and  (ii) after appointed date	Yes

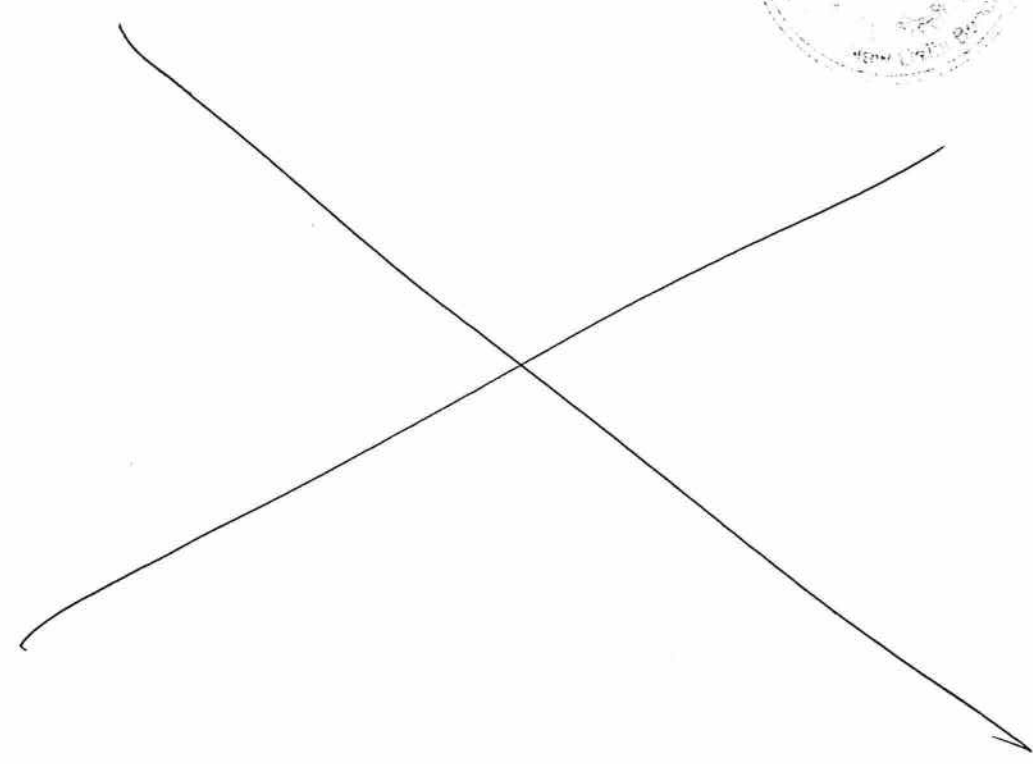


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	<p>(e) provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?</p>	<p>Resolution Applicant and its nominees shall be the only shareholders of the Corporate Debtor and the reconstituted Board of the Corporate Debtor shall manage the business and operations of the Corporate Debtor (schedule 7 Page no. 19 of the plan)</p> <p>(e) Resolution Plan provides for the implementation and supervision of the resolution plan during plan period under schedule 7 Page no. 19 of the Plan.</p> <p>(f) The Resolution Plan does not provide any clause for non-contravention of the provisions of the insolvency law for the time being in force.</p>	
Section 30(4)	<p>Whether the Resolution Plan (a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66% voting share?</p>	<p>Yes, the matter was deliberated in the CoC.</p> <p>(b) The CoC meeting was attended by financial creditors having 100% Voting right. The resolution plan was approved unanimously.</p>	Yes
Section 31(1)	<p>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</p>	<p>Resolution Plan provides for the implementation and supervision of the resolution plan during plan period under schedule 7 Page no. 19 of the Plan.</p>	Yes
Regulation 35A	<p>Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fiftieth day of the insolvency commencement date, under intimation to the Board?</p>	<p>No. IRP / RP did not find any transaction of the nature that falls under sections 43, 45, 50 or 66.</p>	Yes
Regulation 38(1)	<p>Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?</p>	<p>Yes. Para 2.5.4 of schedule 5 of the resolution plan (Page no. 14)</p>	Yes
Regulation 38(1A)	<p>Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?</p>	<p>Resolution plan includes a statement as to how it has dealt with the interests of all stakeholders (Para g of schedule 10 of the resolution plan) (page no. 26)</p>	Yes
Regulation 38(1B)	<p>(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure</p>	<p>(i) Resolution Applicant clarified whether he or any of his related parties has failed to implement or contributed to the failure of implementation of any</p>	Yes



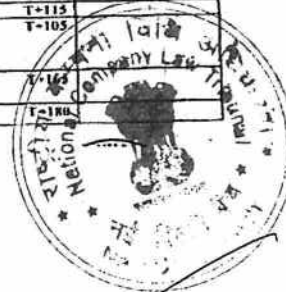
	<p>of implementation of any resolution plan approved under the Code.</p> <p>(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?</p>	<p>resolution plan approved under the Code Under last para of schedule 10 (page no. 27)</p> <p>As given under last para of schedule 10 (page no. 27) that neither the resolution applicant nor his related parties have ever failed to implement or contribute to the failure of implementation of any other resolution plan approved by the adjudicating authority at any time in the past</p>	
Regulation 34(2)	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p> <p>(b) for the management and control of the business of the corporate debtor during its term?</p> <p>(c) adequate means for supervising its implementation?</p>	<p>(a) Terms of the plan is 17 months from the appointed date as mentioned in Schedule 5, 6 &amp; 7 &amp; specifically mentioned on page 14</p> <p>(b) Under Schedule 7 (page no. 19)</p> <p>(c) Provided under last Para of schedule 7 (However, it is provided that resolution applicant and resolution professional will jointly supervise the implementation for the period up to appointed date and after appointed date, implementation shall be monitored by the Monitoring committee).</p>	Yes
34(3)	<p>Whether the resolution plan demonstrates that -</p> <p>a) it addresses the cause of default?</p> <p>b) it is feasible and viable?</p> <p>(c) it has provisions for its effective implementation?</p>	<p>The resolution applicant in schedule 4 of the plan find two major reason of failure of the CD i.e</p> <p>(a) The resolution applicant in schedule 4 of the plan find two major reason of failure of the CD i.e. working capital shortfall and lack of modernization/automation (page No.11)</p> <p>(b) The RA in schedule 4 (page no. 12) provides that the resolution plan is feasible and viable.</p> <p>(c) It has been provided in Schedule 4 (page no. 12)</p> <p>(d) The resolution in schedule 4 (page no. 12) provides that prima facie it does not seem requirement of</p>	Yes



	(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?	any approval. However, if any approval required the resolution applicant shall apply for the same within 3 months from the appointed date.  (e) Resolution plan in Schedule 4 (page 12) provides that RA is committed to place an experienced team of professionals to run the operations. With the strategic tie-ups in place and with secured financial commitment, the RA is confident of implementation of the plan.	
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No, the RP has not filed any application	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.		Yes

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

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	T
Regulation 6(1)	Publication of Public Announcement	T+3	
Section 15(1)(c) / Regulation 12(1)	Submission of Claims	T+14	
Regulation 13(1)	Verification of Claims	T+21	
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+30	
Section 22(1) and regulation 17(2) / Regulation 35A	First Meeting of the CoC	T+115	
Regulation 27	Determination of fraudulent and other transactions	T+47	
Regulation 36(1)	Appointment of two Registered Valuers	T+54	
Regulation 36A	Submission of Information Memorandum to CoC	T+75	
	Invitation of Exit	T+75	
	Publication of Form G	T+100	
	Provisional List of Resolution Applicants	T+115	
	Final List of Resolution Applicants	T+105	
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants		
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan		
Section 31(1)	Approval of Resolution Plan		



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11. The time frame proposed for obtaining relevant approvals is as under:

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1	N.A	N.A	N.A	N.A
2	N.A	N.A	N.A	N.A
3	N.A	N.A	N.A	N.A

12. The Resolution Plan is not subject to any contingency. N.A

or  
The Resolution Plan is subject to the following contingencies (Elaborate the contingencies):

.....

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1	NIL	NIL	NIL	NIL
2	NIL	NIL	NIL	NIL
3	NIL	NIL	NIL	NIL

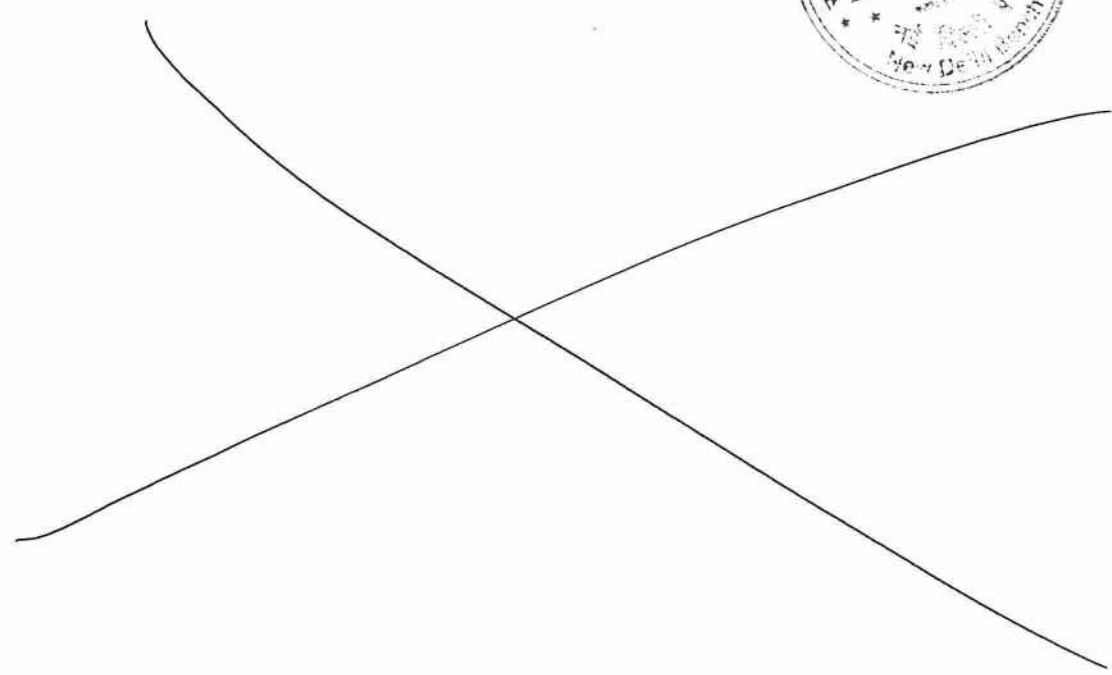
14. The Resolution Plan is being filed ..... days before the expiry of the period of CIRP provided in section 12 of the Code.

15. Provide details of section 66 or avoidance application filed / pending.

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	Exorbitant credit transactions under section 50	NIL	NIL	NIL
4	Fraudulent transactions under section 66	NIL	NIL	NIL

15A. The committee has approved a plan providing for contribution under regulation 39(1) as under:

a. Estimated liquidation cost: Rs. ....



(2)

b. Estimated liquid assets available: Rs. .... N.A.  
 c. Contributions required to be made: Rs. .... N.A.  
 d. Financial creditor wise contribution is as under:

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1	N.A	N.A
2	N.A	N.A
..	N.A	N.A
Total	N.A	N.A

15H. The committee has recommended under regulation 39C as under: N.A  
 a. Sale of corporate debtor as a going concern: Yes / No  
 b. Sale of business of corporate debtor as a going concern: Yes / No  
 The details of recommendation are available with the resolution professional.

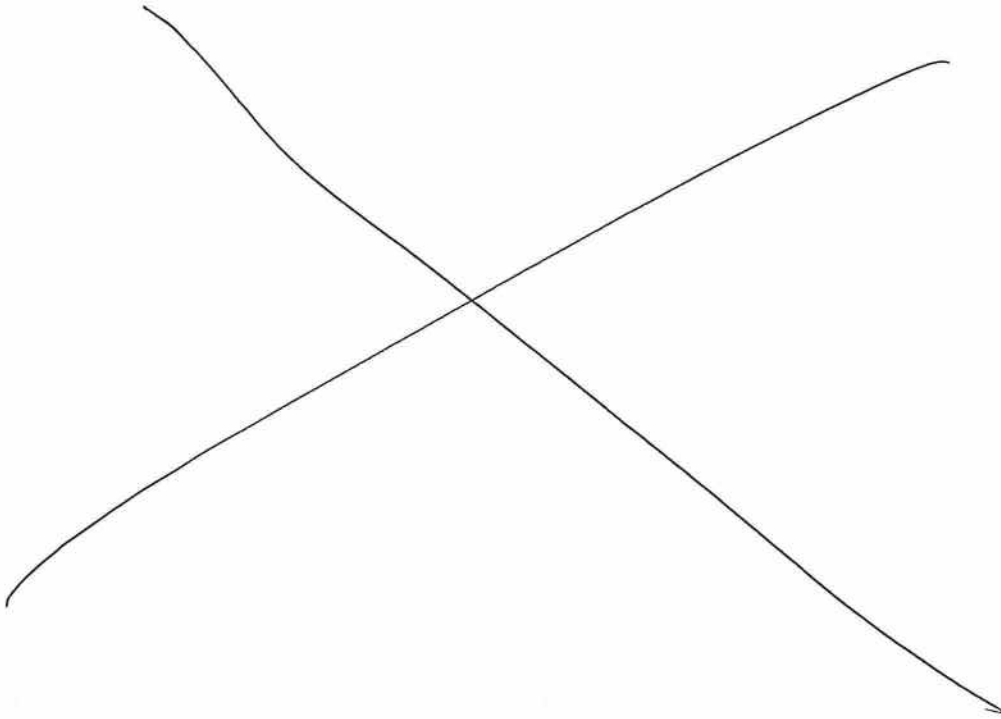
15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D.] N.A

16. I ATUL KUMAR JAIN hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

(Signature)

*Atul Jain*

Name of the Resolution Professional: Atul Kumar Jain  
 IP Registration No.: IH11/PA-002/IP-100734/2018-2019/122  
 Address as registered with the Board: B-4/522 Ekta Gardens, 9th Floor, Conch Agency, Sector-110, Gurgaon, Haryana-122002  
 Email id as registered with the Board: atul.jain@ipr.com



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## Annexure A

Section/Regulation	Description of Activity	Latest Timelime	Latest date considering lock down period of 68 Days	Actual Date
Section 16(1)	Commencement of CIRP and appointment of IRP	T	N.A.	18-Feb-20
Regulation 6(1)	Public announcement inviting claims	T+3	N.A.	21-Feb-20
Section 15(1)(e) / Regulations 6(2)(c) and 12(1)	Submission of claims	T+14	03-Mar-20	
Regulation 13(1)	Verification of claims received under regulation 12(1)	T+21	10-Mar-20	CALIMS WERE ACCEPTED TILL 25TH JULY
Section 26(6A) / Regulation 15A	Application for appointment of AR	T+23	12-Mar-20	N.A
Regulation 17(1)	Report certifying constitution of CoC	T+23	12-Mar-20	11-Mar-20
Section 22(1) and Regulation 17(2)	1st Meeting of the CoC	T+30	19-Mar-20	17-Mar-20
Regulation 27	Appointment of two registered valuer	T+47	12-Jun-20	29-May-20
Regulation 35A	RP to make a determination on fraudulent and other transactions.	T+115	02-Sep-20	N.A

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Regulation 36(1)	Submission of IM to CoC	T+54	19-Jun-20	03-Jun-20
Regulation 36A	Invitation of EOI	T+75	10-Jul-20	06-Jun-20
	Publication of Form G	T+75	10-Jul-20	*06-06-2020 & 24-Sep-2020
	Provisional list of Resolution Applicants	T+100	04-Aug-20	02-Jul-2020 & 10-Oct-20
	Final List of Resolution Applicants	T+115	19-Aug-20	24-07-2020 & 16.10.2020
Regulation 36B	Issue of request for Resolution Plan, which included Evaluation Matrix and IM to RA	T+105	09-Aug-20	07-07-2020 & 18-Oct-2020
AA allowed extension of timelimit U/s 12 for 90 days. The last date of CIRP as per extension is 21-Jan-2021				
Regulation 39(4)	Submission of CoC approved Resolution Plan to AA	T+165	06-Jan-21	
Section 31(1)	Approved of resolution plan by AA	T+180	21-Jan-21	
*Due to non-receipt of any compliant Resolution Plan, CoC decided to reinstate EOI				



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65. At first, we would like to consider the objections raised by M/s SM Finlease Ltd i.e Financial Creditor in IA/970/2021.

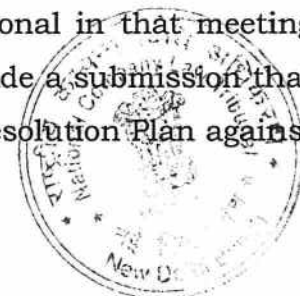
66. **IA/970/2021:-** We have already discussed the arguments advanced on behalf of the Ld. Counsel for the Financial Creditor and on the basis of that, we notice that this applicant had not only participated in the meeting of the CoC and approved the first resolution plan by 100% voting. Rather when an order was passed by this Adjudicating Authority on 15.01.2021 and meeting of COC was convened on 17.01.2021 then they had participated in the meeting and discussed the revised Resolution Plan. They also approved the Revised Resolution Plan by 100% voting. We notice voting share of this applicant is 83.35%, which means having a maximum share of votes and having control over the decision of the CoC. In view of Section 30(4) of the IBC Resolution Plan must be approved by the committee of creditors by a vote of not less than 66 per cent of voting share of the financial creditors.

67. At this juncture, we would like to refer the Resolution dated 17.01.2021 which is at page 31 of the revised Resolution Plan, which show this applicant was represented through Mr. Sharad Maheshwari on that day and voting sheet is at page 39 of the revised Resolution Plan duly signed by the representative of the applicant. The applicant approved the revised Resolution Plan without any objection regarding the non participation of the Operational Creditor in view of Section 24(3) of the IBC, 2016, in which it is specifically mentioned that workmen and other statutory dues have been revised and the Operational Creditor who had earlier not given any amount is given 2% of the claim.

68. We further notice reference regarding the order passed by this Adjudicating Authority is also made in the Resolution.

69. We further notice that the Resolution Professional in that meeting informed the COC that Resolution Applicant has made a submission that Rs. 655.21 lakhs is the amount offered under the Resolution Plan against

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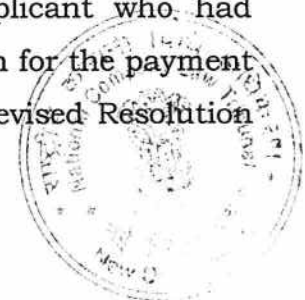
the liquidation value of Rs. 308.14 lakhs of the Corporate Debtor and it is also mentioned that it would demonstrate that the amount to be paid to the Operational Creditors has to be higher of either the amount to be paid to such Operational Creditors under Section 53 of the Code, in the event of the liquidation of the Corporate Debtor and after considering all these, the CoC have approved the revised Resolution Plan in which the proposal of payment of 2% of the claim of the Operational Creditor other than the workmen dues is made.

70. At this juncture, we would like to refer the Section 115 of the Evidence Act deals with the provision of estoppel and the same is quoted below:-

**“When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing”**

71. When we consider the submission of the Ld. Counsel for the Financial Creditor in the light of Section 115 of the Evidence Act then we are of the considered view that at this stage, the applicant is not permitted to raise the point that the Operational Creditor was not received the notice to participate in the CoC meeting under Section 24(3) of the IBC and Operational Creditor is entitled to get more than the amount, which is proposed in the plan. In our considered view, the applicant has to stopped from raising this point and the principle of waiver is also applied because the applicant cannot take a plea that at the time of participation in the meeting of the CoC, he had no knowledge of law because in the minutes Section 24(1) IBC is referred. The applicant is also not permitted to raise the amount which is given to the Operational Creditor is the smaller/lesser amount, because he was the person, who voted in the favour of the Resolution Plan as well as in favour of the revised Resolution Plan. It is the applicant who had approved the first resolution plan, in which, no provision for the payment of the Operational Creditor was made and the in the revised Resolution

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Plan he actively participated and approved the plan and allowed 2% of the total claim of the Operational Creditor other than workmen.

72. We further notice that apart from that, the applicant has also raised the payment made to the Tata Capital, who according to the applicant had not raised the claim. On the basis of the aforesaid discussions, we are of the considered view that since the applicant was the party to that proceeding, therefore, he is not permitted to raise this issue.

73. We further notice that by filing this application the Financial Creditor M/s SM Finlease has prayed for direction to Resolution Professional to convene a meeting of the CoC in order to consider the Resolution Plan and in reply the Resolution Professional informed that the period of CIRP has already been expired.

74. For the reasons discussed above, we find, no force in the contention made on behalf of the applicant/Financial Creditor M/s Finlease Ltd to direct the Resolution Professional to convene a meeting and we also find no force in the objection raised by the Applicant/Financial Creditor M/s SM Finlease Ltd on the approval of the Resolution Plan. In our considered view, the objection raised by the Financial Creditor is not sustainable and since the period of CIRP has already been expired therefore, their prayer to direct the Resolution Professional to convene a CoC meeting is hereby rejected.

**75. With this order, IA/970/2021 filed on behalf of the Financial Creditor i.e. M/s SM Finlease Ltd is hereby dismissed.**

76. **IA/641/2021:-** Now, coming to the objections raised by the Operational Creditor, the main grievance is that the workmen and the other statutory dues have been paid 100% and the financial creditors have also been given 100% of their claims whereas the Operational Creditor has given only 2%, which is in contravention of the provision of Section 30(2) (b) read with Section 53(1) of IBC and Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the other grievance is that

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in view of Section 24(3) of IBC, the Resolution Professional failed to give notice of each meeting of the CoC to the Operational Creditor or their representative, because the amount of their aggregate dues is more than 10% of the debt.

77. At this juncture, we would like to refer the arguments of the Operational Creditor who submitted that the Resolution Professional has not denied that the aggregate dues is more than 10% of the debt but the Resolution Professional has not complied the provision contained under Section 24(3) of IBC, 2016.

78. So, before making any comments on this submission, we would first like to refer Section 24 of the IBC and the same is quoted below:-

**Section 24-Meeting of committee of creditors.**

**(1) The members of the committee of creditors may meet in person or by such electronic means as may be specified.**

**(2) All meetings of the committee of creditors shall be conducted by the resolution professional.**

**(3) The resolution professional shall give notice of each meeting of the committee of creditors to—**

**(a) members of Committee of creditors committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5) ;**

**(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;**



(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

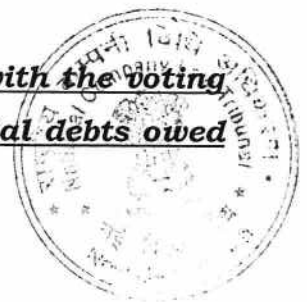
(4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings:

Provided that the absence of any such direct or, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

(5) Any creditor Subject to sub-sections (6) and (6A) of section 21 and sub-section (5) who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors:

Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.

(6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.



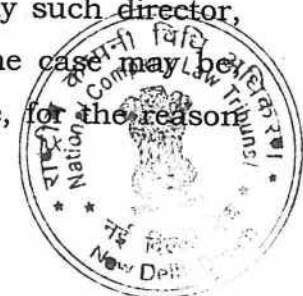
**(7) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.**

**(8) The meetings of the committee of creditors shall be conducted in such manner as may be specified.**

79. Mere plain reading of Section 24 (3) of IBC 2016 shows that it is fact that the Resolution Professional shall have to give a notice of each meeting to the members of the CoC, members of the Suspended Board of Directors or the partners of the corporate persons or operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

80. Herein the case in hand, from the resolutions, we notice the members of the CoC and the members of Suspended Board of Directors had participated in the meeting but none has appeared on behalf of the Operational Creditor. In course of hearing, the Resolution Professional has not given any satisfactory reply why the notice had not been served upon the Operational Creditor, if the dues is more than 10% of the total debt. Therefore, we find admittedly, the Resolution Professional has not complied the provision of Section 24(3) of the IBC but at this juncture, we would also like to refer proviso of Section 24(4) of IBC 2016, which provides that in the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting and if we consider proviso of Section 24(4) of the Code along with Section 24(3) of the Code together then we are of the considered view that of course, the word "shall" is mentioned in Section 24(3) of the Code but the proviso Section 24(4) of the Code makes it clear that even in the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting. Hence, for the reason

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discussed above, we are of the considered view although there is non-compliance of Section 24(3) of the Code and the notice was not issued upon the Operational Creditor but in view of Section 24(4) of the IBC, 2016 on this ground, the proceeding shall not be invalidated.

81. Now, coming to the next question, the Operational Creditor submitted that they have not given the amount in the manner specified in Section 53 of the IBC and the Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

82. Therefore, we would like to refer Section 53 of the IBC and the same is quoted below: -

**Section 53-Distribution of assets.**

**(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—**

**(a) the insolvency resolution process costs and the liquidation costs paid in full;**

**(b) the following debts which shall rank equally between and among the following :—**

**(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and**

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(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following:—

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and



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**(h) equity shareholders or partners, as the case may be.**

83. In the light of that provision, when we consider the Resolution Plan then we notice that Section 53(1) (a) says that the insolvency resolution process costs paid 100% on priority basis.

84. We further notice that in terms of Section 53(1) the employee dues and statutory dues have also been paid on priority basis. Since, there is no secured financial creditor, the unsecured financial creditor has been given preference as per Section 53(1)(d) and so far the debt of Operational Creditor is concerned it comes under Section 53(1)(f).

85. At this juncture, we would like to refer Section 30(2) (b) and also the unamended Section 30(2) (b) of the IBC and the same is quoted below:-

**Section 30-Submission of resolution plan.Effective from 01.12.2016 and font in blue is effective from 06.06.2018**

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

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

**(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment payment of other debts of the corporate debtor;**

**(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—**

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(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.— For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.— For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

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(b) provides for the repayment payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

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

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

(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy-five sixty-six per cent, of voting share of the financial creditors, after considering its feasibility and viability the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value



of the security interest of a secured creditor, and such other requirements as may be specified by the Board:

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

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

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

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

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



**(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy five per cent. of voting share of the financial creditors.**

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

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

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

86. When we consider the amended provision of Section 30(2)(b) along with the unamended provision of Section 30(2)(b) then we notice that prior to the amendment, there was provision for the payment of the debts of the Operational Creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53 but after amendment that provision was substituted and provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53 or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53.

87. Therefore, at this juncture, we would like to refer the Resolution which is at page 31 of the revised Resolution Plan and we notice that at page 32, the Coc has discussed the Section 30(2)(b) of the IBC and Regulation 38

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Sub Regulation 3(a) and (b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

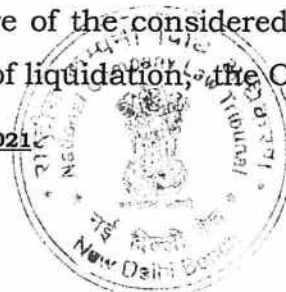
*Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*

The Chairman informed the Board that the RA has made a submission that Rs 655.21 lacs is the amount offered under Resolution plan against the liquidation value of Rs 308.14 lacs of Corporate Debtor. Section 30(2)(b) would demonstrate that the amount to be paid to the Operational Creditors has to be higher of either the amount to be paid to such Operational Creditors under Section 53 of the Code in the event of liquidation of the Corporate Debtor [“Situation 1”] or the amount under the Resolution plan when distributed in accordance with the order of priority in sub-section (1) of Section 53 [“Situation 2”]. In the instant case under Situation 1, the amount payable to the Operational Creditors is NIL and in Situation 2, the amount payable to the Operational Creditors is also NIL. Nonetheless, as far as the debt owed to the other Operational Creditors are concerned, the Resolution Plan as approved, proposes a payment of 2% of their claim thereby increasing the plan value to Rs 655.21 Lacs from earlier approved plan of Rs 650.70 Lacs. Now the financial summary of the plan is as follows

88. On the basis of that Resolution, we are of the view that provision of Section 30(2) of the IBC and Regulation 38 have been discussed in the meeting of the CoC and it was observed that liquidation value of the Resolution Plan was Rs. 308.14 lakhs whereas the resolution applicant has offered value of Rs. 655.21 lakhs, which is more than the liquidation value and it is further observed that there are two situations under Section 53, under situation 1, the amount payable to the operational creditors in the event of liquidation is NIL and in situation 2, the amount payable to the operational creditor is also NIL. Therefore, in our considered view that the provision regarding the payment of Operational Creditor to the extent of 2% is in accordance with the provision of Section 30(2)(b) of the IBC and Regulation 38 of of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

89. For the reasons discussed above, we are of the considered view that the contention of the applicant, in the event of liquidation, the Operational

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Creditor is entitled to get more than the amount, which is proposed to be paid to the Operational Creditor, in our considered view is not liable to be accepted.

90. At this juncture, we would also like to refer Section 31 of the IBC and the same is quoted below:-

**31-Approval of resolution plan.**

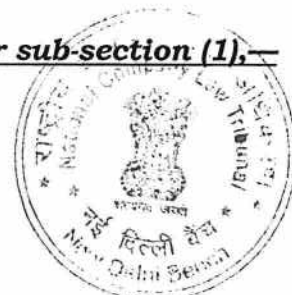
**(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate 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 in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.**

**Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.**

**(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.**

**(3) After the order of approval under sub-section (1),—**

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(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

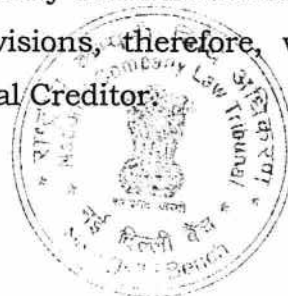
(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law,

whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.

91. Mere plain reading o Section 31(1) shows that the power of the Adjudicating Authority is very limited, the Adjudicating Authority before approving the Resolution Plan which was approved by the CoC, is only required to consider whether it needs requirements as referred under Section 30(2) of the IBC or not ? As we have already discussed and notice that Resolution Plan has complied these provisions, therefore, we are unable to accept the contention of the Operational Creditor.

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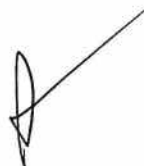
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92. At this juncture, we would also like to refer the latest judgment of the Supreme Court decided on 10.03.2021 in Civil Appeal No. 2943-2944 and ors in the matter of Kalpraj Dharamshi and Ors Vs. Kotak Investment Advisors Ltd and Ors.. In this decision, the Hon'ble Supreme Court reiterated the earlier decision of the Hon'ble Supreme Court in the case of K. Sashidhar (supra) .Relevant paragraphs of that decision are quoted below:-

**146. In all the aforesaid three judgments of this Court, the scope of jurisdiction of the Adjudicating Authority (NCLT) and the Appellate Authority (NCLAT) has also been elaborately considered. It will be relevant to refer to paragraph 55 of the judgment in the case of K. Sashidhar (supra), which reads thus:**

**5.5. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established Under Section 188 of the I&B**

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Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan Under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan Under Section 30(4) of the I&B Code.

150. The position is clarified by the following observations in paragraph 59 of the judgment in the case of K. Sashidhar (supra), which reads thus:

59. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors.....

151. This Court in Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra) after reproducing certain paragraphs in K. Sashidhar (supra) observed thus:



**Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar**

**152. It can thus be seen, that this Court has clarified, that the limited judicial review, which is available, can in no circumstance trespass upon a business decision arrived at by the majority of CoC.**

93. In view of the aforesaid decision, we are of the considered view that since the power of adjudicating authority while considering the Resolution Plan which was duly approved by the CoC is very limited and we have already discussed that the Resolution Plan has made the provision for payment of Insolvency Resolution Process Costs, the repayment of debt of Operational Creditor, the management of the affairs of the Corporate Debtor, the implementation and management of the Resolution Plan and the plan does not contravene any provision of the law. Therefore, we have no option but to reject the prayer of the applicant of IA/641/2021. We find, no force in the contention raised on behalf of the applicant/Operational Creditor, in our considered view the objections raised by the Operational Creditor is not sustainable. Therefore, the prayer of the Operational Creditor/ Applicant to direct the Resolution Professional to induct the applicant in the CoC and also direct the Resolution Professional to convene a CoC meeting and to pay 100% of the dues of the applicant/Operational Creditor are hereby rejected.

**94. Accordingly, the present application i.e. IA/641/2021 filed on behalf of the Operational Creditor stands dismissed.**

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95. **IA/5334/2020:-** For the reasons discussed above, in our considered view the Resolution Plan fulfilled the requirement as referred in Section 30(2) and there are sufficient provisions in the plan for its effective implementation as required under the proviso of Section 31 of the IBC, therefore, in our considered view, the Resolution Plan is required to be approved by this Adjudicating Authority.

96. Accordingly, we hereby approved the revised Resolution Plan, which was earlier approved by the CoC by the majority vote of 100% and in view of minutes dated 17.01.2021, we, hereby, approved the modification of timeline of the payment of the schedule in the Resolution Plan submitted by the Resolution Applicant.

97. **The Approved Revised Resolution plan alongwith minutes dt 17.01.2021 shall be part of this order.**

98. **Accordingly, the present application i.e. IA/5334/2020 filed on behalf of Resolution Professional for the approval of the revised Resolution Plan is hereby allowed.**

-Sd- 4.21  
Kapal Kumar Vohra  
(Member Technical)



-Sd- 01/04/2021  
Abni Ranjan Kumar Sinha  
(Member Judicial)

P/h 09.4.2021  
Deputy Registrar  
National Company Law Tribunal  
CGO Complex, New Delhi-110003