

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

**IA 352 of 2019 in C.P.(I.B) No.162/NCLT/AHM/2018**

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

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 20.11.2019**

Name of the Company: Rajat Mukherjee RP For Shaifali Rolls Ltd  
V/s  
COC of Shaifali Rolls Ltd & Ors


Section of the Companies Act : Section 30(6) of the Insolvency and Bankruptcy  
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Kunal Kanungo Nipun Singhvi Vishal J. Dave	Adv.	Applicant	k n v R.
2.	Rajiv Kothari Anup Gadhvi	Adv.	Resp	


**ORDER**

The parties are represented through learned counsels.

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

  
**CHOCKALINGAM THIRUNAVUKKARASU**  
**MEMBER TECHNICAL**

Dated this the 20th day of November, 2019

  
**MANORAMA KUMARI**  
**MEMBER JUDICIAL**

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

I.A. No. 352 of 2019  
in  
CP(IB) No. 162 of 2018

**In the matter of:**

**IA 352 of 2019**

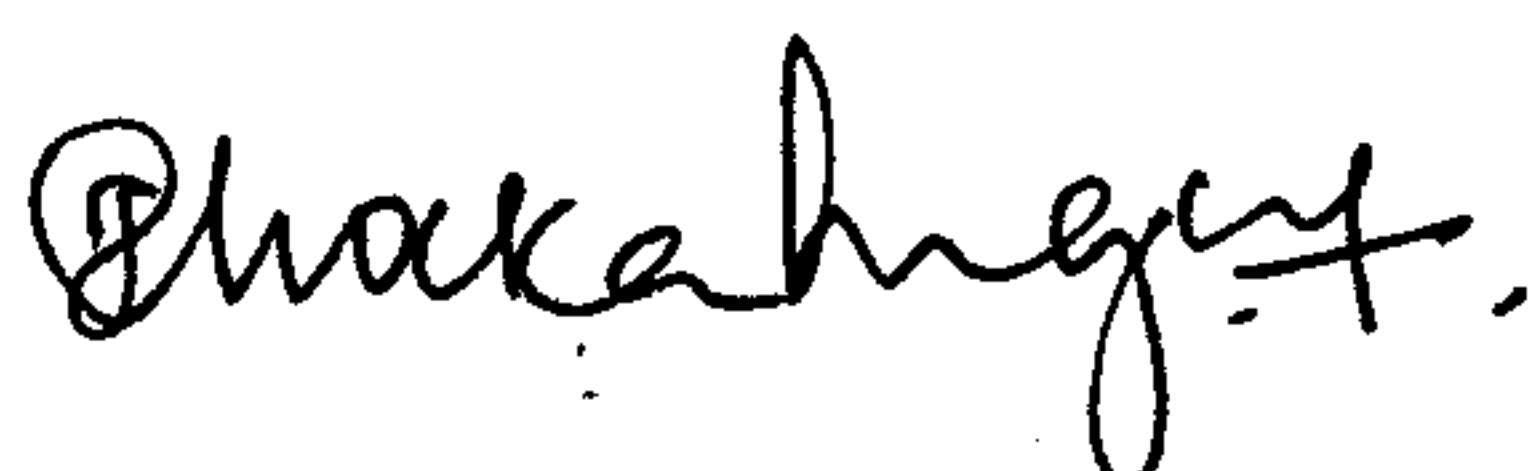
1. Mr. Rajat Mukherjee  
Resolution Professional of Corporate Debtor  
having its registered office at  
HO-302, Daga Complex II,  
103/5, B.K. Street, Uttarpura,  
Hooghly,  
West Bengal  
Branch Office: 1:708, Scarlet Gateway,  
Ahmedabad 380 015  
Branch Office: 2: Office No. 30, 2<sup>nd</sup> Floor,  
Lawyer Chamber,  
Picket Road,  
Marine Lines,  
Mumbai – 400 002

.... Applicant

**Versus**

1. Suspended Board of Directors of  
Shaifali Rolls Limited  
through Mr. Prakash V Shah  
30, Sumantha Bangalow,  
Village Shells,  
New 07 Club,  
Ahmedabad 380 058
2. Members of Committee of Creditors
  - a. Invent ARC Pvt. Ltd., Trust:  
Invent/1516/S31  
107, Jolly Maker Chamber No. 2,  
225, Nariman Point,  
Mumbai – 400 021
  - b. Bank of India,  
Bank of India, ARM Branch  
6<sup>th</sup> Floor, BOI Building,  
Bhadra,  
Ahmedabad

.....Proforma Respondent





- c. Corporation Bank,  
Corporation Bank,  
Corporate Banking Branch,  
1<sup>st</sup> Floor, Rangoli Complex,  
Opp. V.S. Hospital,  
Ashram Road,  
Ahmedabad
- d. Edelweiss Asset Reconstruction Company Limited,  
Edelweiss Asset Reconstruction in its  
capacity of EARC Trust SC 35,  
Edelweiss House, Off CST Road,  
Kalina,  
Mumbai – 400 098
- e. Invent ARC Pvt. Ltd. Trust:  
Invest/1516/S58.  
107, Jolly Maker Chamber No. 2,  
225, Nariman Point,  
Mumbai – 400 021
- f. Omkara Asset Reconstruction Pvt. Ltd.,  
C/515, Kanakia Zillion,  
Junction of LBS Road & CST Road,  
BKC Annexe,  
Near Equinox, Kurla (West)  
Mumbai – 400 070
- g. Invent ARC Pvt. Ltd., Trust:  
Invest/1516/S61  
107, Jolly Maker Chamber No. 2,  
225, Nariman Point,  
Mumbai – 400 021
- h. Union Bank of India,  
Ashram Road Branch,  
CU Shah Chamber,  
Near Gujarat Vidyapeeth,  
Ashram Road,  
Ahmedabad – 380 014
3. Consortium Between  
Fitcast Founders & Engineers Pvt. Ltd. &  
Omkara Assets Reconstruction Pvt. Ltd.  
314, Phase-II, GIDC Estate,  
Vatva,  
Ahmedabad – 382 445
- ....Respondents

Order delivered on 20<sup>th</sup> November, 2019

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

*Chockalingam*

*Manorama*

**Appearance in I.A. No. 352 of 2019**

Mr. Anip Gandhi and Mr. Raju Kothari, Advocates for Invent, Omkara and Union Bank of India.

Mr. Neeraj Vasu, Advocate for the Corporation Bank.

Mr. Kunal P Vaishnav, Advocate for the Suspended Management.

Mr. Arjun Pedhyar for Ms. Natasha Dhruvan Shah, Advocate for the Resolution Applicant.

Mr. Ketan M. Parikh, Advocate for the Respondent, Bank of India, Financial Creditor.

Mr. Nipun Singhvi, Mr. Vishal J. Dave and Mr. Pragati Tiwari, Advocates for the Applicant.

**ORDER**

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

1. The instant application (IA) No. 352 of 2019 in CP(IB)No. 162/2018, is filed by the applicant, the Resolution Professional of Corporate Debtor M/s. Shaifali Rolls Limited, under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "Code") for approval of the Resolution Plan submitted by Respondent No. 3 in respect of the Corporate Debtor with the prayer to approve the Resolution Plan of the Resolution applicant Consortium as agreed upon with the requisite majority of the Committee of Creditors (hereinafter referred to as CoC) by 67.08% votes in favor of the Resolution Plan as per the provisions of the Code.
2. For the sake of convenience, it is mentioned herein that:
  - 2.1 CP(IB)No. 162/2018 was filed by SMC Industries Pvt. Ltd., the Operational Creditor under Section 9 of the Code seeking initiation of Corporate Insolvency Resolution Process against Shaifali Rolls Limited (hereinafter referred to as "Corporate Debtor") having registered address at Block No. 1563, Sola, Kalol, Village Santej, Kalol in the State of Gujarat.

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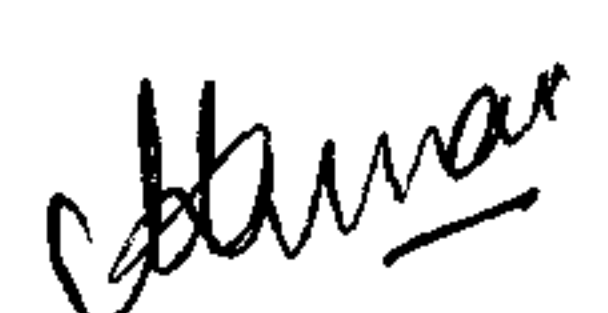


- 2.2 The said CP(IB) No. 162/2018 was admitted on 14.09.2018 by this Adjudicating Authority and appointed Shri Parag Sheth, as the Interim Resolution Professional (hereinafter referred to as "IRP") under Section 13(1) of the Code, in respect of the Corporate Debtor
- 2.3 The Resolution Professional, so appointed, made a public announcement inviting claims from all the creditors in Form A of the Schedule II as per Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "Regulations") on 20<sup>th</sup> September, 2018 in Business Standard and Jai Hind where the registered office of the Corporate Debtor is situated.
- 2.4 It is stated that pursuant to the public announcement, the IRP inter alia received claims from the creditors of the Corporate Debtor and pursuant to Section 21 of the Code, constituted the CoC and filed the list of creditors and report, certifying the constitution of CoC with this Adjudicating Authority on 9<sup>th</sup> October, 2018. It is stated in Annexure A of the Exhibit 4 of the IA that IRP received claims from the creditors amounting to Rs. 254,58,89,078.57 and claims were admitted for the full amount i.e. Rs. 254,58,89,078.57. Further, the final list of members of CoC as on 9<sup>th</sup> March, 2019 with their respective voting shares are as under:

S.No.	Financial Creditors	Voting Share%
1.	Bank of India	16.81
2.	Corporation Bank	8.44
3.	Edelweiss Asset Reconstruction Company Limited	7.67
4.	Invent ARC Pvt. Ltd. Trust Invent/1516/S31	36.53
5.	Invent ARC Pvt. Ltd. Trust Invent/1516/S58	3.25
6.	Union Bank of India	5.54
7.	Invent ARC Pvt. Ltd. Trust Invent/1516/S61	20.19
8.	Omkara Assets Reconstruction Pvt.Ltd.	1.57
	<b>Total</b>	<b>100.00</b>

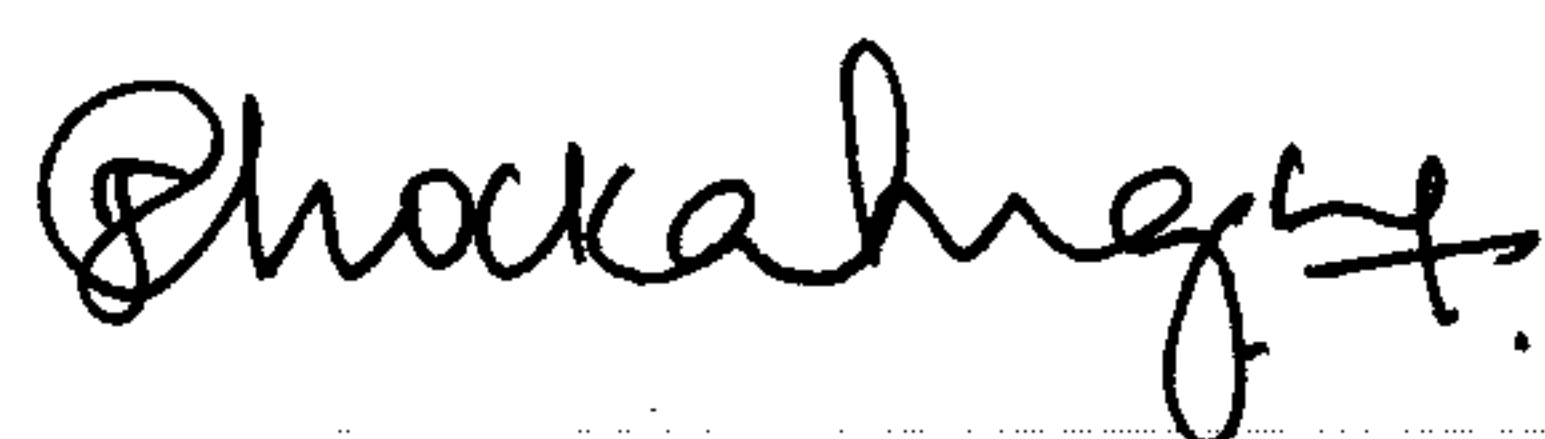
3. It is stated that first meeting of CoC was convened on 12<sup>th</sup> October, 2018 wherein, CoC recommended for replacement of IRP Shri Parag Sheth who

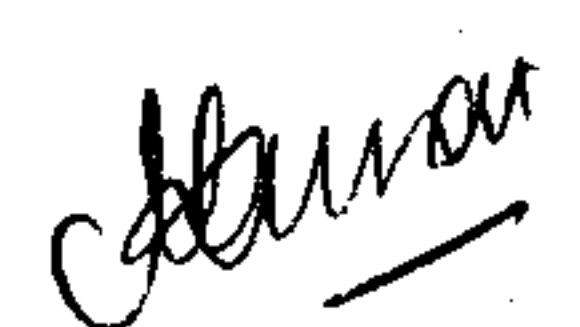




was appointed by this Adjudicating Authority and recommended Shri Rajat Mukherjee, as Resolution Professional (hereinafter referred to as RP) in respect of CIRP of the Corporate Debtor Company with a requisite majority of 100%. The intimation of change of IRP to RP was filed with this Adjudicating Authority on 26<sup>th</sup> October, 2018 and the order approving the appointment of Shri Rajat Mukherjee as RP was passed by this Adjudicating Authority on 6<sup>th</sup> December, 2018.

- 3.1 It is stated that in the second meeting of CoC held on 18<sup>th</sup> December, 2018, the members unanimously approved the eligibility criteria for inviting Expression of Interest (hereinafter referred to as "EoI") from the prospective resolution applicants as per Section 25(2) of the Code. Accordingly, EoI were invited from the prospective resolution applicants, fixing 10<sup>th</sup> January, 2019, however, the same was extended to 12<sup>th</sup> February, 2019 as per the decision of CoC taken in its third meeting held on 23<sup>rd</sup> January, 2019.
- 3.2 It is stated that in the third meeting of CoC held on 23<sup>rd</sup> January, 2019 it was decided to apply for extension of CIRP under Section 12A of the Code for further 90 days beyond 180 days and accordingly, the application was filed before this Adjudicating Authority on 25<sup>th</sup> February, 2019. This Adjudicating Authority vide its order dated 28<sup>th</sup> March, 2019 extended the CIRP period by 90 days beyond 180 days which expired on 12.03.2019.
4. It is stated that RP received two resolution plans, one from Legend Trade Corp and the other from M/s. Fitcast. The Resolution Plan received from Legend Trade Corp was rejected by the CoC whereas the Resolution Plan received from M/s. Fitcast (hereinafter referred to as "RA") was discussed and deliberated upon by the CoC. In the said fourth meeting of CoC, RP informed the CoC that Central Bank of India has declared Corporate Debtor and its directors Mr. Prakash Shah and Mr. Sangeeta Shah as willful defaulters who are also shareholders of M/s. Fitcast, i.e. the RA and which may frustrate the chances of M/s. Fitcast being an eligible RA. However, the notarized affidavit submitted by M/s. Fitcast stating that Mr. Prakash Shah is neither part of the management nor having any controlling authority in the management at present, therefore as per



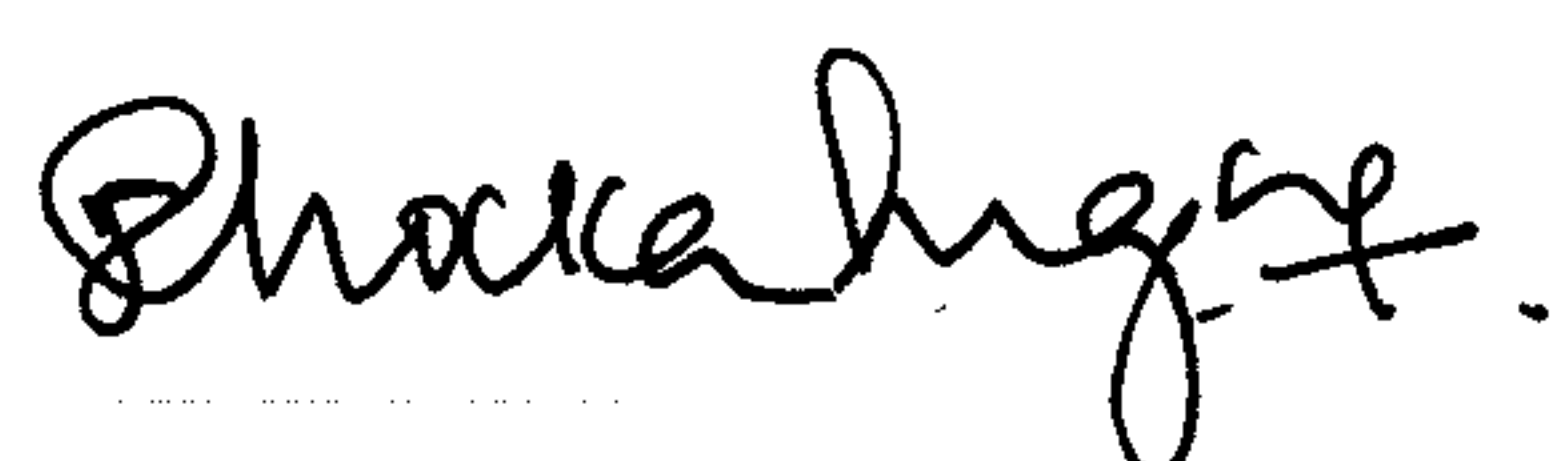


Explanation No. (i) and (ii) of connected persons given in the Code, mitigates the negativity, in eligibility prospects of M/s. Fitcast under Section 29A of the Code. However, it was decided to take a legal opinion regarding eligibility of M/s. Fitcast before the last date of finalizing RA i.e. 09.03.2019. It is stated that legal opinion so obtained gave a positive conclusion over the selection of M/s. Fitcast as prospective RA.

5. It is stated that in the fifth and sixth meetings of CoC, the resolution plan submitted by M/s. Fitcast, i.e. the RA, was discussed but expressed their dissatisfaction upon the amount offered to Financial Creditors in Plan Version 3. During the course of discussions, CoC requested RA to reconsider the plan value according to the value of CD's assets and future prospects and further requested the RA to submit their revised plan. Again in the seventh meeting of CoC, CoC expressed its dissatisfaction upon the value offered by the RA in their revised plan. The RA was advised to submit their revised plan latest by 24<sup>th</sup> May, 2019.

5.1 M/s. Fitcast, i.e. the RA submitted the final revised resolution plan on 24<sup>th</sup> May, 2019 which was considered in the eighth meeting of CoC by CoC members and the CoC members showed their satisfaction. The CoC expressed their view of not releasing personal and corporate guarantee as mentioned in the plan and negotiated over the resolution plan amount. Certain technical points were also discussed and requested to be amended in the resolution plan. However, the RA expressed its inability to enhance the plan value and agreed to submit the amended plan after considering all the views. The CoC agreed and it was unanimously decided that the plan will be E-voted till 8 PM on 4<sup>th</sup> June, 2019. Accordingly, the resolution plan was E-voted till 8 PM on 4<sup>th</sup> June, 2019 and the voting summary is as under:

S.No.	Voter Name	Accept	Abstain	Reject	Total
1.	Corporation Bank	0	0	8.44	8.44
2.	Bank of India	0	0	16.81	16.81
3.	Invent ARC Pvt. Ltd. Trust Invent/1516/S31	36.53	0	0	36.53
4.	Invent ARC Pvt. Ltd. Trust Invent/1516/S58	3.25	0	0	3.25
5.	Edelweiss Asset Reconstruction Company Limited	0	0	7.67	7.67







6.	Omkara Assets Reconstruction Pvt. Ltd.	1.57	0	0	1.57
7.	Invent ARC Pvt. Ltd. Trust Invent/1516/S61	20.19	0	0	20.19
8.	Union Bank of India	5.54	0	0	5.54
	<b>Total Count</b>	<b>67.08</b>	<b>0</b>	<b>32.92</b>	<b>100</b>

5.2 The RP, the Applicant confirms the compliance of the Resolution Plan, as under Section 30(2) of the Code and Regulation 38A of the CIRP Regulations and provided a compliance checklist for seeking approval of the Resolution Plan from this Adjudicating Authority.

**The compliance of the Resolution Plan:**

Section of the Code Regulation No.	Requirements with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Where the Resolution Applicant meets the criteria approved by the Committee of Creditors having regard to the complexity and scale of operations of business of the Corporate Debtor?	Clause No.10. Page No.43	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Clause No.10, Page No.43	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	-	Yes
Section 30(2)	Whether the Resolution Plan: (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment of the debts of operational creditors? (c) provides for the managements of the affairs of the Corporate debtor?	Clause 7.2, Page No.30  Clause 7.3, Page No.30  Clause 8.2, Page No.37	Yes  Yes  Yes  No

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	(d) provides for the implementation and supervision of the resolution plan? (e) contravenes any of the provisions of the law for the time being in force?		
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable according to the Committee of Creditors? (b) has been approved by the Committee of Creditors with 66% voting share	Clause 10, Page No.42  -	Yes  Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementations plan, according to the Committee of Creditors?	Clause 8.2 Page No.37	Yes
Section 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under section 43,45,50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	-	No
Resolution 38(1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the – (a) insolvency resolution process costs? (b) liquidation value due to operational creditors? (c) liquidation value due to dissenting financial creditors?	Clause 7.6, Page No.34	Yes Yes Yes
Regulation 38(A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 9, Page No.40	Yes
Regulation 38(2)	Whether the Resolution Plan provides:	Clause 7.7, Clause 8.0,	Yes\ Yes

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	(a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Clause 8.2 Page No.35, 36 & 37.	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 the approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Clause 10, Page No.42	Yes Yes Yes Yes  Yes
39(2)	Whether the RP has filed application in respect of transactions observed, found or determined by him?	-	Yes

6. The present application is filed for approval of the Resolution Plan under section 30(6) of the Code submitted by Consortium between Fitcast Founders & Engineers Pvt. Ltd. & Omkara Assets Reconstruction Pvt. Ltd., in respect of the Corporate Debtor.

6.1 The applicant i.e. RP, deliberating the sequence of events right from calling EoI up to approval of the Resolution Plan by the CoC in its eighth meeting held on 3<sup>rd</sup> June, 2019 and E-voting for the aforesaid Resolution Plan held on 4<sup>th</sup> June, 2019 submitted the Resolution Plan duly approved by the CoC and affirming that the aforesaid Resolution Plan complies with the provisions of Section 30(2) of the Code and Regulation 38(3A) of the CIRP Regulations and sought for approval of the Resolution Plan by this Adjudicating Authority.

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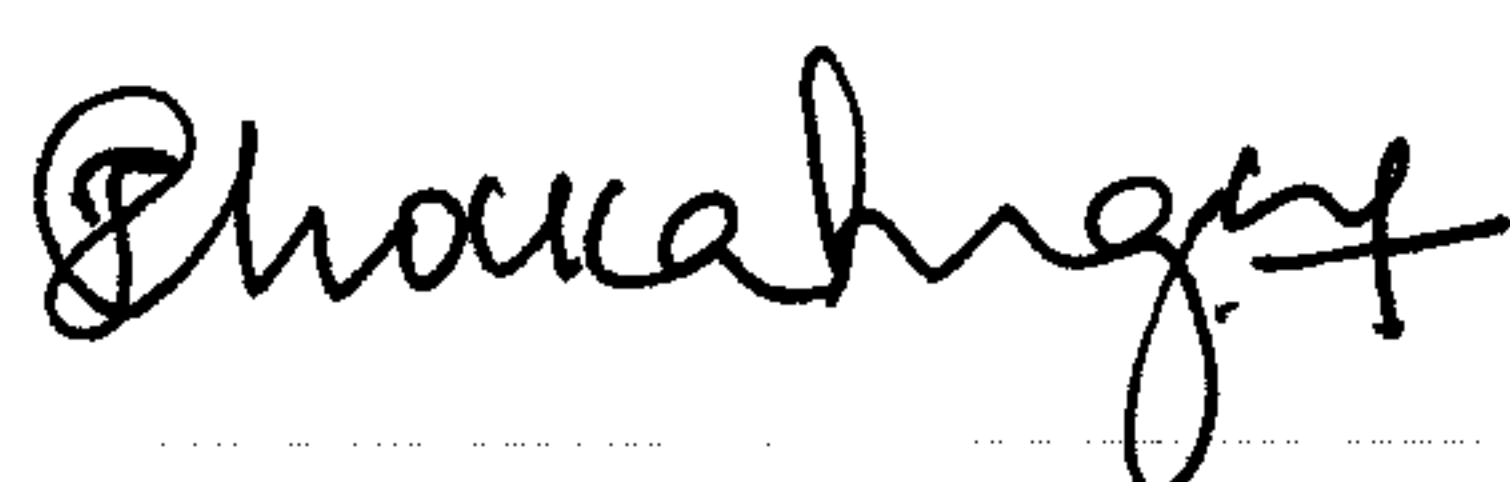
6.2 The Resolution Applicant in pursuance to the Public Notice dated 26<sup>th</sup> December, 2018 submitted the Plan relating to the insolvency resolution process of Shaifali Rolls Limited, Corporate Debtor under the provisions of Insolvency and Bankruptcy Code, 2016 and the rules and regulations framed there under.

6.3 On perusal of the Resolution Plan, it is found that Resolution Applicant viz. M/s. Fitcast Founders & Engineers Private Limited, is a company engaged in the manufacturing and marketing of CI Castings and other Castings which are having a direct relevance with the business of the Corporate Debtor and accordingly, the promoters are to be considered as from the same line of business having better understanding of the manufacturing process, market as well as entire technical aspects which shall definitely result into proper resolution of the Corporate Debtor. The RA along with its consortium member viz. Omkara Assets Reconstruction Private Limited is having adequate net worth and accordingly, the commitment by the RA can be fulfilled without any hesitation.

6.3.1 Omkara Asset Reconstruction Private Limited i.e. the Consortium Partner, is a Securitization and Reconstruction Company, registered with the Reserve Bank of India to carry on the business of Securitization of Assets and Reconstruction thereof under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and the various guidelines issued by RBI from time to time.

6.4 **Summary of the Resolution Plan:**

Resolution Applicant Proposed Amount	Amount (in Rs.)	Timeline	Clause	Securities Issued
Payment of CIRP Cost The Outstanding CIRP Cost has been independently estimated by the Resolution Applicant to be	25,00,000/-	Within T+2 Days	Para 7.2 in Page No. 30	The RA will infuse Rs. 0.25 Crore and will get Equity Shares of Corporate Debtor







up to Rs. 25,00,000/- (Rupees Twenty-Five Lacs Only). In the event, the CIRP cost is lower than Rs. 25,00,000/-, the excess amount shall be added to the payment being made to the Financial Creditors & if CIRP Cost is more than Rs. 25,00,000/- then RA shall provide fresh fund.				worth Rs. 0.25 Crore in the name of Fitcast Founders & Engineers Private Limited.
Payment of Workmen & Employees Dues Payment towards discharge of the Operational Creditors being the liabilities pertaining to the Workmen and Employees Dues in full and final settlement: 1.17 Crores (workers/employees have not made any claim but as per B/S as at 31.03.2018, an amount of Rs. 1.17 Cr. was payable which has been provided in the plan)	1,17,00,000	Within T+180 Days	Para 7.3 in Page No. 30	The RA will infuse Rs. 1.17 Crore and will get Equity Shares of Corporate Debtor, worth Rs. 1.17 Crore in the name of Fitcast Founders & Engineers Private Limited.
Payment towards the remaining Operational Creditors being towards the Statutory Dues of the Corporate Debtor and Other Creditors (excluding	78,00,000	Within T+180 Days	Para 7.4 in Page No. 31	The RA will infuse Rs. 0.78 Crore and will get Equity Shares of Corporate Debtor worth Rs.

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Related Party Creditors) (other than the Workmen and Employees Dues).				0.78 Crore in the name of Fitcast Founders & Engineers Private Limited
Payment to the Financial Creditors (excluding the Related Party Creditor) refer clause no. 7.5 for the detailed explanation and financial outlay)	16,00,00,000*	-1.78 Crore- Within T+2 Days (for Performance Commitment) -2.25 Crore- Within T+180 Days  -12 Crore- Within T+360 Days	Para 7.5 in Page No. 32	The RA will infuse Rs. 6 Crore and will get Equity Shares of Corporate Debtor worth Rs. 6 Crore in the name of Fitcast Founders & Engineers Private Limited. -Omkara ARC shall pay to the existing bankers Rs. 10 Crores against the assignment of Debt. Further this amount shall be termed as Restructured term loan in the books of Corporate Debtor after the approval of resolution plan. -Out of Rs. 12

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				Crore (to be paid within 360 days), 1 Crore will be specifically paid against Corporate as well as Personal Guarantee
Payment to Related Party Creditors & Existing Shareholders of the Corporate Debtor	NIL	NA		NA
Payment towards Contingency Fund	NIL	NA		NA
Additional Capital Expenditure	50,00,000	As per technical assessment		The RA will infuse Rs. 0.50 Crore and will get Equity Shares of Corporate Debtor worth Rs. 0.50 Crore in the name of Fitcast Founders & Engineers Private Limited.
Additional Operating Expenses (Working Capital)	50,00,000	As per technical assessment		The RA will infuse Rs. 0.50 Crore and will get Equity Shares of Corporate Debtor worth Rs. 0.50 Crore in the name of

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				Fitcast Founders & Engineers Private Limited.
<b>TOTAL PAYMENT</b>	<b>19,20,00,000</b>			

**\*Payment to Financial Creditors will be as under:**

<b>Particulars</b>	<b>Amount/INR</b>
Secured Financial Creditors (in the ratio of Secured Voting Share)	15,88,00,000
Unsecured Financial Creditor - UBI and Invent ARC- 10,00,000 - Omkara ARC - 2,00,000	12,00,000
<b>Total</b>	<b>16,00,00,000</b>

6.5. The Resolution Plan states that with respect to assignment of debt, all the guarantees of the promoters i.e. Mr. Prakash V Shah and Smt. Sangita P Shah as well as Corporate Guarantee by Shaifali Steel Limited and collateral Securities offered to the consortium of bankers shall be assigned to Omkara ARC. Also, all the suits filed against Corporate Debtor including suit filed in DRT, under Negotiable Instruments Act, shall be withdrawn.

Further, the RA proposes that if required, the RA shall furnish a Performance Bank Guarantee (PBG) of Rs. 3.05 crores (i.e. 25% of Rs. 19.20 crores i.e. 4.80 crores less 1.75 crores as down payment).

After due repayment by Omkara ARC of Rs. 10.00 crores, all the existing bankers shall assign their respective debt to Omkara ARC and shall extinguish their existing rights after the assignment.

Further, all the Security Interest including personal as well as corporate guarantor's security and charge on the primary as well as collateral properties shall be transferred/assigned to Omkara ARC.

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**6.6 Payment to Unsecured Financial Creditors:**

RA has proposed payment of Rs. 10 Lacs to Union Bank of India (UBI) & Invent ARC (who had been offered Corporate Guarantee of Corporate Debtor against the debt of Group concern viz. Shaifali Steel Ltd.) and Rs. 2.00 lacs to Omkara ARC against the unsecured loan originally granted by ICICI Bank whose debt has been acquired by Omkara ARC. Upon above payment, Corporate Guarantee of the Corporate Debtor will also be assigned to Omkara ARC.

**6.7 Payment to Workmen:**

Though the workers/employees have not made any claim but as per Balance Sheet as on 31.03.2018, an amount of Rs. 1.17 crores was payable, which has been provided in the Resolution Plan.

**6.8 Liquidation Value:**

The Liquidation Value of the Corporate Debtor Company has been taken at Rs. 14,93,26,000/-

**6.9 Payment to Operational Creditors:**

Operational Creditors shall be paid Rs. 0.25 crores being 10% of the Rs. 2.53 crores as stated in the Resolution Plan.

**6.10 Payment to Statutory Creditors:**

Statutory creditors of the Corporate Debtor who have already given their claims or whose cases are going on, shall be paid an amount of Rs. 0.53 crores as per the Resolution Plan.

Sr. No.	Operational Creditors/Statutory Authority	Original Dues (Rs. In Crores)	Proposed Amount (Rs. In Crores)
1.	Unsecured Creditors	2.53	0.25
2.	VAT/Sales Tax Liability	3.87	0.39
3.	Custom Duty	0.20	0.02
4.	Excise Duty	1.00	0.10

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5.	Professional Tax	0.0438	0.0044
6.	Property Tax	0.01	0.014
	<b>Total</b>		<b>0.78#</b>

**#This includes payment of Rs. 0.25 crores to Operational Creditors as mentioned in Para 6.9 above**

**6.11 Payment towards Personal as well as Corporate Guarantee:**

Out of Rs. 12 crore, which is to be paid within a period of 360 days, Rs. 1 crore shall be specifically paid to existing bankers towards Corporate as well as Personal Guarantees.

**6.12 Capital Expenditure:**

The RA has worked out an effective and feasible revival plan, wherein M/s. Fitcast i.e. the RA proposes to take the Corporate Debtor into profitable situation. For this purpose, in M/s. Fitcast's view, it has to incur an additional capital expenditure of Rs. 0.50 crores for its renovation as well as balancing equipments.

**6.13 Additional Operating Expenditure:**

The RA has on considering the various technical aspects, would require to incur Rs. 0.50 crores for putting the Plant into smooth operations.

**6.14 Assignment of Security Interest and Personal Guarantee/Corporate Guarantee of the existing guarantors:**

Upon making payment by Omkara ARC of Rs. 10.00 crores, all the existing bankers/financial institutions shall have to assign their entire debt due from the Corporate Debtor to the Omkara Assets Reconstruction Private Limited. The entire security lying with the bank/ARC including of personal and corporate guarantor's security are required to be assigned in favor of the Omkara ARC.

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**6.15 Monitoring Committee:**

A monitoring Committee shall be formed having the members of the new management with the present RP as Chairman till the final payment as proposed in the Resolution Plan and the Chairman shall monitor the activities of the Corporate Debtor. One authorized representative of CoC members shall be part of the Monitoring Committee.

**6.16 Share Capital:**

The existing equity shares and preference shares shall be de-rated and the equity shares and preference shares shall be reorganized. The existing equity shares and preference shares shall be acquired by the new promoters at a token value of Rs. 1/-

**7. At this stage, it is appropriate to go through Section 53 of IB Code which reads as under:**

Section 53(1) Notwithstanding anything to the contrary contained in any law enacted by the parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely: -

- i. The insolvency resolution process costs and the liquidation costs paid in full;
- ii. The following debts which shall rank equally between and among the following: -
  - (i) Workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
  - (ii) Debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
- iii. Wages and any unpaid dues owned to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- iv. Financial debts owed to unsecured creditors;
- v. The following dues shall rank equally between and among the following: -

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- (i) Any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
- (ii) Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- vi. Any remaining debts and dues;
- vii. Preference shareholders, if any; and
- viii. Equity shareholders or partners, as the case may be.

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

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

Explanation – For the purpose of this section –

(a) It is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

(b) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

- 8. Thus, Section 53 of the Code lists the priorities to be given to the beneficiaries, of liquidation value of the assets of the Corporate Debtor. The provisions of Section 53 make it amply clear that Operational Creditors are at the end of the list of beneficiaries as the Secured Financial Creditors have edge over the others.
- 9. It would also be pertinent to mention here that Operational Creditors have no locus standi as far as approval of the Resolution Plan by the CoC is concerned.

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10. To decide the issue, it will also be pertinent to notice the very object of the 'IB Code', 'Resolution' and Role of CoC.

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

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

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

**Resolution Plan**

The 'I&B Code' defines 'Resolution Plan' as a plan for insolvency resolution of the 'Corporate Debtor' as a going concern. It does not spell out the shape, color and texture of 'Resolution Plan', which is left to imagination of stakeholders. Read with long title of the 'I&B Code', functionally, the 'Resolution Plan' must resolve insolvency (rescue a failing, but viable business); should maximize the value of assets of the 'Corporate Debtor', and should promote entrepreneurship availability of credit and balance the interests of all the stakeholders.

it is pertinent to mention herein that the Hon'ble Supreme Court has observed in the matter of **K. Sashidhar Vs. Indian Overseas Bank &**

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**Ors** that National Company Law Tribunal has no jurisdiction and authority to analyze or evaluate the commercial decision of the Committee of Creditors (CoC) to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. The said position is also reaffirmed by the Hon'ble Supreme Court in Arcelor Mittal case recently pronounced by the Apex Court.

11. On perusal of the records, it is found that the Resolution Plan confirms to the criteria as provided under clauses (a) to (f) in section 30(2) of the Code and the CoC approved the Resolution Plan by 67.08 per cent majority of voting share. However, during the course of proceedings, the Bank of India submitted their acceptance to the Resolution Plan making the approval of the Resolution Plan by 83.89 per cent. The Resolution Plan also confirms to such other requirements as may be specified by the Board. The decisions of the CoC are based on their commercial wisdoms, hence does not attract any interference.

On perusal of the Resolution Plan, it is found that it meets the requirement of Section 31 r/w Section 30(2) of the Code. Therefore, the present application IA 352 of 2019 is allowed subject to certain observations.

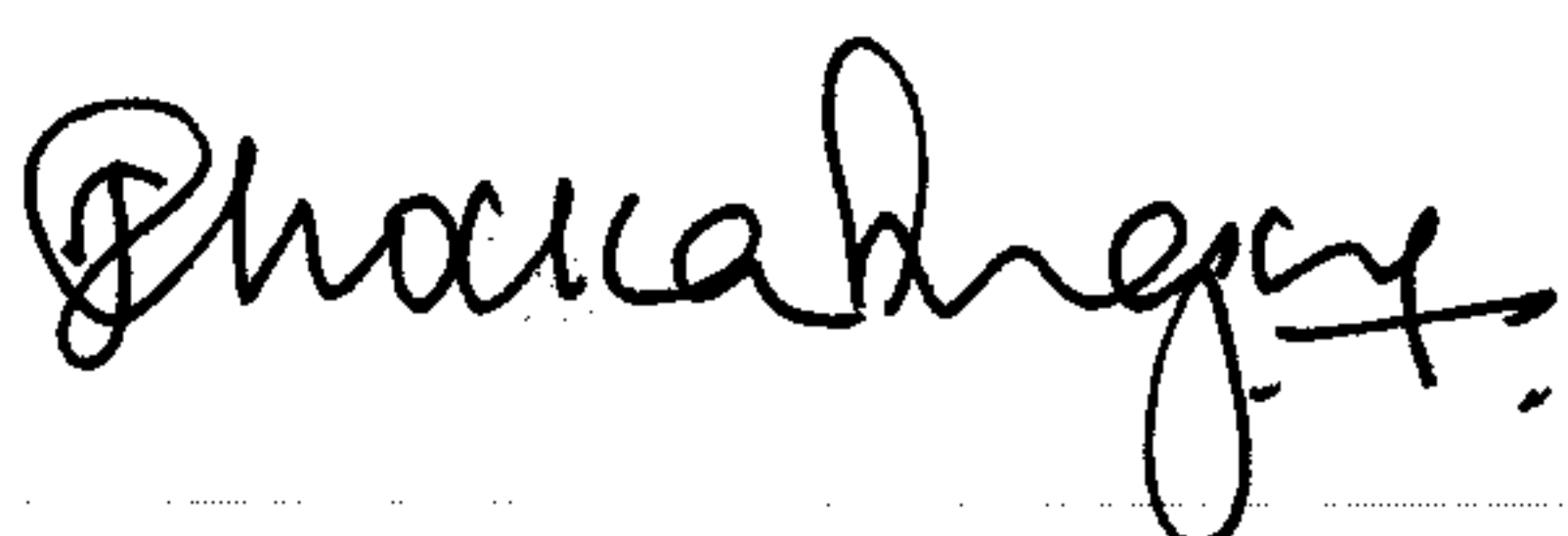
To make the provisions clearer, Section 30 of the IBC is reproduced hereunder:

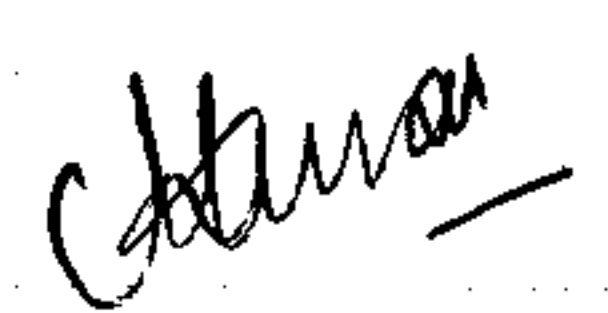
**Section 30: Submission of resolution plan:**

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

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

- (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the *2[payment]* of other debts of the corporate debtor;
- (b) provides for the *3[payment]* of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;
- (c) provides for the management of the affairs of the Corporate debtor





after approval of the resolution plan;  
(d) the implementation and supervision of the resolution plan;  
(e) does not contravene any of the provisions of the law for the time being in force;  
(f) conforms to such other requirements as may be specified by the Board.

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

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

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

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

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

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

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

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

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





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

12. **Reliefs Sought:**

In this regard, we are of the view that approval of the Resolution Plan does not mean automatic waiver or abetment of any legal proceedings which are pending by or against the Company/Corporate Debtor as those are the subject matter of the concerned Competent authorities having their proper/own jurisdiction to pass any appropriate order as the case may be. The Resolution Applicant on approval of the Plan may approach those Competent Authorities/Courts/Legal Forums/Offices – Govt. or Semi Govt. / State or Central Govt. for appropriate relief(s) sought for in **Clause No. 14 of the Resolution Plan.**

12.1 Thus, not allowing the above said Clause No.14 of the Resolution Plan is not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant(s) has/have liberty to approach Competent authorities for any concession, relief or dispensation as the case may be.

12.2 It is further directed that:

- i. The approved Resolution Plan shall come into force with immediate effect.
- ii. The Resolution Plan shall be subject to the various existing laws in force and shall also confirms to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.
- iii. The Resolution Applicant(s) shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws for the time being in force within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority under section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.


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- iv. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.
13. We, the Adjudicating Authority, are of the considered opinion and also being satisfied that the Resolution Plan as approved by the Committee of Creditors (CoC) meets the requirements as referred to under section 30(2) of the Code, accordingly IA 352 of 2019 is allowed with the above said observations and directions.

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

  
**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member (Technical)**

  
**Ms. Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**

**LCT**