

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

IA.No.54/2019 in  
C.P.(IB)No.136/BB/2017  
Under Rule 11 of NCLT Rules, 2016

**Employees of Indus Fila**

Rep.by. Shri L.MuralidharPeshwa  
Adv. &Vide President of  
Mysore District General Employees Union (CITU)  
(Registered Trade Union, Regd. Under the TU Act)  
No.2682, 1<sup>st</sup> Main, 1<sup>st</sup> Cross,  
Medarkeri, Nanjunalige,  
Mysuru – 570 004. - Applicant

**In the matter of:**

**SF Dyes**

1012, Barton Centre,  
84, M.G.Road,  
Bengaluru – 560 001. - Petitioner/Financial Creditor

**Versus**

**M/s. Indus Fila**

Survey No.284/285,  
37<sup>th</sup> KM Stone,  
Tumkur Road,  
T.Begur,  
Nelamangala,  
Bangalore – 562123. - Respondent/Corporate Debtor

**Date of Order: 16<sup>th</sup> May, 2019**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)



**Parties/Counsels Present:**

For the Applicant : Shri L.M.Peshwa  
Resolution Professional & his Counsel : Shri Udayraj Patwardhan  
: Shri Shreyas Jayasimha,

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

- 1) I.A No. 54 of 2019 in C.P(IB)No.136/BB/2017 is filed by **Employees of Indus Fila** (Applicant), Under Rule 11 of NCLT Rules, 2016, by inter alia, seeking that the Applicant herein to be made a party to the Company Petition and be given an opportunity to be heard in any proposed resolution plan; to directing the parties to the Company Petition to furnish copies of the papers to the petition and any proposed resolution plan that may be made with regard to the Corporate Debtor etc.
- 2) Brief facts of the case, as referred in the application, which are relevant to the issue, are as follows:
  1. Applicants are Employees of Indus Fila (Applicant) are the Employees/workmen of the Corporate Debtor represented by Shri L.Muralidhar Peshwa, an Advocate and Vice President of Mysore District General Employees Union, a registered trade union, bearing registration No.MYS/TUA/487/1961 espousing the cause of the Workmen/Employees of Mysuru District. The Workmen/Employees of the Corporate Debtor/Respondent above named are the members of the union. More than 100 workers/employees were working for the Corporate Debtor at plant located at Nanjangud in the Mysuru District of Karnataka before the Corporate Debtor

illegally caused lock out of the plant. More than 1000 people, including the employees, in and around the plant of the Corporate Debtor were dependent on the continued operations of the Corporate Debtor.

2. M/s. Indus Fila Limited (Corporate Debtor) is having its manufacturing unit at Nanjangud in the District of Mysuru of Karnataka. For the reasons best known to the Corporate Debtor the management of the Corporate Debtor was not paying the workers/employees' wages since the month of June, 2013, and the Corporate Debtor was also not remitting the contributions to the EPF and ESIC authorities of the contributions of the employees and the Employer of the Corporate Debtor since the year, 2011. Later by the Corporate Debtor stopped manufacturing activities at the plant and all the responsible management personnel also stopped attending the work and the employees and the workers were put in streets without work and wages.
3. The Applicant states that since the Corporate Debtor failed to make payment of wages to the workers, the workmen of the Corporate Debtor had filed a group Application for payment of wages before the appropriate authorities under the Payment of Wages Act, 1936 and also filed a dispute, through the union, on the illegal lock out caused to the workers. The Appropriate Authority under the Payment of wages were pleased to pass an order for the payment of wages of relevant period and the Government also referred the matter for adjudication on the issue of lock out caused to the workers by the Corporate Debtor. The matter concerning the lock out is

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now pending before the Hon'ble Industrial Tribunal, Mysuru, in reference 243/2015.

4. The Applicant states that the Corporate Debtor failed to comply with the order of the Authorities under the payment of wages act and hence the Applicant had moved the Recovery Authorities for the recovery of amount dues to the workers. But the Corporate Debtor had informed the Recovery Authorities that he had obtained an interim stay on the proceeding for the recovery of dues. The workers were severely affected with such non-payment of wages, the delayed legal proceedings to get their due wages and the continued illegal lock out of the Corporate Debtor.
5. That during pendency of the matter on illegal lock out caused to the employees/workers before the Industrial Tribunal, this Hon'ble Tribunal had appointed Shri Praveen R Navandkar as an Interim Resolution Professional and later Shri UdayrajPatwardhan was appointed as the Resolution Professional to carry out the CIRP. The Applicant filed an application before the Industrial Tribunal at Mysuru to include the Interim Resolution Professional and also later the Resolution Professional as a necessary party in the matter. But neither the Corporate Debtor nor the Resolution Professional have made any submission before the Industrial Tribunal at Mysuru.
6. In the meanwhile, claims on behalf of the employees/workmen were submitted to the Resolution Professional in the month of August 2018, by electronic mode and the corresponding documents were submitted through postal services. All the claims were calculated as per the

dues payable to the workmen/employees, by the Corporate Debtor, as on the date of submission of the claims to the Resolution Professional excluding the statutory remittances by the Corporate Debtor and the interest on the delayed wages and the non-payment of wages.

7. The workers are worried about the outcome of the Resolution Plan and the Applicant states that under Section 31 of the Insolvency and Bankruptcy Code 2016 any Resolution Plan accepted by the Adjudicating Authority shall be binding upon the workmen. Under both the Companies Act 1956/2013, the workmen have been made secured creditors by law.
8. The Applicant has made out a prima-facie case for grant of the aforesaid reliefs. If the reliefs as prayed for are not granted, grave and irreparable loss will be caused to the Applicant. No loss or prejudice whatsoever will be caused to the Respondents, if the reliefs prayed for are granted. The balance of convenience lies in favor of the Applicant. The Applicant further declares that no part of this Application is barred by limitation.
9. Subsequently, they have filed another I.A No.150 of 2019 U/R 32, R/w Rule 11 of the NCLT Rules, 2016, by inter alia seeking to modify the resolution plan submitted by the 2<sup>nd</sup> Respondent so that the workmen/employees are provided employment with continuity of services with all consequential benefits and that the 2<sup>nd</sup> Respondent states that the time frame within which the workmen/employees would be asked to resume their work; to all the dues, as claimed by the workmen and submitted to the 1<sup>st</sup> Respondent, are paid to the workmen without linking to any liquidation value etc.

10. The RP has filed a memo dated 21.03.2019, by enclosing copy of the report of the meeting of the representative of workers and employees of Indus Fila Ltd., CoC and Resolution Applicant held on 05.03.2019 at Edelweiss House, Mumbai, Maharashtra By Mr.UdayrajPatwardhan, Resolution Professional. As per the minutes Shri L.MuralidharaPeshwa representative of workers and employees of Indus Fila Ltd. Mr. Peshwa clarified that there are 138 workers and 5 employees. Amongst the five employees, some members were employed as managers. He said wages from 2011-13 remained unpaid as per the order of the Authority under Payment of Wages Act, 1936. Order provided for payment of approximately 50 lakh. He said provident fund, gratuity etc. and also remained unpaid.

11. Mr.Peshwa taking note of the Mr.Patwardhan's requests, put forth the following issues:

- i. Rs.17,00,000/- towards payment of dues to 138 workmen under the Resolution Plan is insufficient.
- ii. Resolution Plan should take into consideration the order of the Authority under the Payment of Wages Act, 1936 dated 6<sup>th</sup> June, 2014 and 20<sup>th</sup> November, 2014.
- iii. Employee's Provident Fund, Gratuity Fund etc., have not been remitted from 2011-13 and the same ought to be considered in the Resolution Plan.
- iv. Requested for continuation of employment services of the workmen and employees of Indus Fila once the Resolution Applicant takes over.
- v. Representation of workmen in the proposed Monitoring Agency under the Resolution Plan.

12. The Resolution Applicant, taking into consideration Mr.Peshwa's request replied:

- i. The request of Workers and Employees of Indus Fila Ltd. pertaining to the increase in the amount of consideration may be considered by the Resolution Applicant. However, currently, the applicant does not intend to increase the total consideration offered in Resolution Plan.
- ii. Insofar as continuing the employment of the current workmen and employees, the applicant cannot guarantee that all the employees or workmen will be retained. It is subject to the viability and requirement of the Resolution Applicant.
- iii. Resolution Applicant will take into consideration the request for the representation of the workman on the proposed Monitoring Agency under the Resolution Plan.

13. Representative from Corporation Bank has objected to nay ceding of its share under Resolution Plan to accommodate the request for increased consideration to the workmen and employees. The similar standing was also taken by the representatives of Axis Bank, Barclays Bank LLP and the Royal Bank of Scotland.

- 3) Heard Shri L.M.Peshwa, learned Counsel for Applicant and Shri Shri Udayraj Patwardhan, learned Resolution Professional and Shri Shreyas, learned counsel for Resolution Professional. I have carefully perused the pleadings of both the parties and extant provisions of the Code.



- 4) After hearing the learned Counsel for Applicant, the bench has directed the Resolution Professional to reconsider the grievance of the workers with regard to the provident fund, Pension fund, gratuity fund etc. Accordingly, the Authorised representative of workers and employees submitted that detailed calculations of the claims pertaining to Bonus, Gratuity, Employee Provident Fund and Wages including bifurcation of the amount due pertaining to the 24 months prior to the Insolvency Commencement dated, 19<sup>th</sup> March, 2019 with regard to the 138 workmen and none out of the 5 employees.
- 5) The RP further added that, in the meanwhile, the Resolution applicant vide its email dated March 07, 2019 intimated they offer to pay additional Rs. 17 Lakhs to the workers Beyond Total consideration offered in the Resolution Plan dated January 07, 2019.

The extract of the email read as follows:

*"... The claimed amount by the Labour union is 7.50 Crore. Against which we have provided paripassu share of the liquidation value in the resolution plan which works out to approximately 17 lacs. Keeping in mind the request made by the Union and direction given by the Hon'ble Bench to consider as a gesture, we will add 100% of their share in their favour as ex gratia, example: if their share as proposed in the Resolution plan based on Liquidation value comes up to 17 lacks, we will additionally give them 100% of the same that means 17 lacks more (100% of their share as per liquidation value)"*

During the discussions on this agenda item, the RP enquired Mr.jaySanghavi, Representative of Resolution Applicant how the




Resolution Applicant's presently perceives as to their offer for increment in Total consideration by Rs.17 Lacks.

Mr.Jay Sanghavi stated that the Resolution Applicant offers to increase the total consideration offered under Regulation Plan dated 07.01.2019 read along with the Amendment Letters dated 09.01.2019 and 11.01.2019 ("Resolution Plan") from 50.50 Crores to Rs.50.70 Crores as full and final consideration amount with a provision to allocate Rs.34 Lakhs towards workmen dues, subject to the same not being less than Liquidation value or amount attributable to them u/s 53(1) (b) of the Code. Mr.Jay Sanghavi further added that no other changes are proposed in the Resolution Plan.

- 6) Therefore, I am satisfied that the grievances of the applicants were duly considered by the Resolution Professional and COC, in accordance with law. As per provision of Code, CIRP would be conducted by IRP/RP with COC at the helm of affairs of Corporate Debtor, subject to overall superintending powers to be exercised by Adjudicating Authorities. All the decisions of COC would be taken as per law and those decisions would be binding on Corporate Debtors, employee, all stake holders etc as per Section 31(1) of the Code. It is settled position of law that even the Adjudicating Authority will have power only to direct COC to re-consider the grievance of other parties, who are not part of COC, if it finds that those grievances are required to be re-considered again. Basically all issues/claims arise out of CIRP would be decided basing on liquidation value of Assets and Liabilities of Corporate Debtor. Since the COC has already reconsidered the claims of the applicant vide CoC Meeting dated 15<sup>th</sup> April, 2019, I cannot entertain the instant application and it is not maintainable and thus it is liable to be disposed of.

- 7) In the result, I.A No. 54 of 2019 in C.P (IB)No.136/BB/2017 is hereby disposed of with an observation that Resolution Applicant would sympathetically consider the remaining grievances of Applicant, in accordance with law, while the resolution plan is under implementation. No order as to costs.

  
**(RAJESWARA RAO VITTANALA)**  
**MEMBER, JUDICIAL**

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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

IA.No.53/2019 in  
C.P.(IB)No.136/BB/2017  
U/s 60(5) (C) of the IBC, 2016  
R/w Rule 11 of the NCLT Rules, 2016

**In the matter of:**

**M/s. Axis Bank Limited**

A Banking Company incorporated under  
The Companies Act, 1956 and carrying  
on the business of Banking under the  
Banking Regulation Act, 1949.

**Registered office at:**

“Trishul”, 3<sup>rd</sup> Floor,  
Opposite Samatheshwar Temple,  
Near Law Garden, Ellisbridge,  
Ahmadabad - 380 006

**Corporate office at:**

Axis House, C-2,  
Wadia International Centre,  
Pandurang Bhudhkar Marg,  
Worli,  
Mumbai – 400 025.

- Applicant Bank

**Versus**

**Indus Fila Limited**

Rep. by its Resolution Professional  
Mr. Udayraj Patwardhan

Office at:

Sumedha Management Solutions Pvt. Ltd,  
C-703, Marathon Innova, Off. G.K.Marg,  
Lower Parel (West),  
Mumbai – 400 013.

- Corporate Debtor



**And**

**SPG Macrocosm Limited**

Through SPV-Vision Testile,  
Unit No.1207, B Wing One BKC Building,  
Plot No. C 66, Bandra East,  
Mumbai – 400 051.

- Resolution Applicant

**Date of Order: 10th May, 2019**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

**Parties/Counsels Present:**

For the Applicant	:	Shri Varun Srinivasan
For the Resolution Professional	:	Shri Udayraj Patwardhan
For the Resolution Applicant	:	Shri V.Srinivasa Raghavan along with Shri P.Chinnappa, Ms.Ayshwarya Chandar, Shri Sushal Tiwari

**ORDER**

**Per:**Rajeswara Rao Vittanala, Member (J)

- 1) I.A No. 53 of 2019 in C.P(IB)No.136/BB/2017 is filed by M/s. Axis Bank Limited, U/s 60(5) (C) of the IBC, 2016, R/w Rule 11 of NCLT Rules, 2016, by inter alia, seeking to delete/modify the Clause 4.5(g) from the Resolution Plan, as it being opposed to public policy and well established principles of law and thereby hold that the Personal Guarantees are enforceable and further grant liberty to the Applicant Bank to proceed as against the personal guarantors for satisfaction of its debts and thus render justice.



2) Brief facts of the case, which are relevant to the issue, as mentioned in the instant Application, are as follows:

- Initially, the main Company petition bearing C.P.(IB)No.136/BB/2017 was filed by M/s. S.F.Dyes (Operational Creditor) Under Section 9 of Code, R/w Rule 6 of I&B(AAA) Rules, 2016 to initiate CIRP in respect of **M/s.Indus Fila Limited (Corporate Debtor)** on the ground that it had committed a default of Rs. 76,83,803/. And thus case was admitted by the Adjudicating Authority vide order dated 20<sup>th</sup> February 2018, by inter alia initiating CIRP, appointing IRP, imposing moratorium etc.
- Accordingly, Committee of Creditors of Corporate Debtor consisting of following were constituted;

S L N o .	Name of Financial Creditor	Total Sanctioned Limit facility Limit	Claimed by financial creditors	Amount as per Indus Fila Limited	Admissible amount	Security Interest	Voting shares (%)	Remarks
1	Axis bank Limited	63.14	107.36	56.72	107.36	Hypothecation of whole of the current assets: Charge of movable fixed assets: industrial property land, building and other facilities at nangagud and Nelamangala, Plant and Machinery, Laboratory equipment, office equipment and	16.39	Rs.61.11 Cr. Estimated security value as per claim submitted plus there is security interest where valuation is not available. Also personal guarantee of promoters.

						Furniture & Fixtures located at unit II pennya Industrial Area Computers, Office Equipment's, Furniture & Fixtures Interior work located at corporate Office at Yeshwanthpur		
2	Corporation Bank		95.93	35.32	95.93	Hypothecation on current asset on pari passu basis with consortium lender on current assets, first charge on land, building and plant and machinery and other movable assets other than vehicle.	14.62	Rs.64.31 Cr. Estimated security value as per claim submitted
3	JM Financial Asset Reconstruction Company	74.18	102.57	64.03	102.57	Pari Passu first charge on entire fixed assets: Pari passu first charge on entire stock, book debts and current asset	15.63	Rs.98.46 Cr. Estimated security value as per claim submitted also personal guarantee of Promoters

						among consorti um member s		
4	Edelwiss Asset Reconstr uction Compan y		246. 82	153 .65	246.8 2	Pari Passu charge on fixed assets at Nelama ngala and Nanjang ud and PariPass u charge on current assets and other movable assets	37. 62	Rs.61.10 Cr. Estimate d security value as per claim submitte d. Also personal guarante e of promoter s
5	The Royal Bank of Scotland (formerly known as ABN AMRO Bank NV)	10	56.8 3	30. 43	56.83		8.6 6	Security interest to the extent of the charges created over the movable assets under the Hypothec ation deeds and registre d with the Registrar of Compani es also personal guarante e of promoter s
6	Barclays Bank PLC	15	35.4 8	15	35.48		5.4 1	Security interest to the extent of the charges create over the movable assets under

Resolution Plan for Indus fila Ltd. By SPG Macrocosm Ltd  
through its SPV vision textile



S L N o.	Name of Financial Creditors	Total Sanction ed Limit facility Limit	Claimed by financial creditors	Amount as per Indus Fila Limite d	Admissib le amount	Security Interest	Votin g shar es (%)	Remarks
								The hypothecati on deeds and registered with the Registrar of Companies also personal guarantee of promoters
1.	Sub-total	162.32	644.99	355.1 5	644.99		98.3	
B	Unsecur ed Financial Creditor							
1	Palash Corporati on	4	11.1	4.8	11.1	Unsecur ed	1.69	
	Sub-total	4	11.1	4.8	11.1		1.69	
	Total	166.32	656.09	359.9 5	656.09		100	

List the secured financial Creditor, who has not filed their claim:

SL No.	Bank Name	Facility limit	O/s Balance	Claimed by financial creditor	Amount as per IFL	Admitted claimed
1.	Standard Chartered Bank	-	-	-	27.23	-
2.	ICICIC bank Limited	-	-	-	1.26	-
	Total	-	-	-	28.49	-

Operational Creditors who filed their claim:

S L N o.	Name	Claim ed of Credit ors	Sup ply amo unt	Renten sion	Tot al	Admiss ible amoun t	Remar ks
1.	Ms. SP	6.05				3.54	Interes t of

	coal resour ces privat e Limite d						Rs.2.5 0 Cr Not allowe d since not mentio ned in invoice
2.	Harya na Texpri nts	4.23				4.23	
	Total	10.28				10.28	

**3)** Consequently, 15 COC meetings were held on various dates. And the last COC Meeting (15<sup>th</sup> CoC) was held on 8<sup>th</sup> January, 2019, which inter alia approved Resolution plan in question. The present applicant being part of all COC meetings.

1. M/s. Axis Bank Limited (herein after referred to as Applicant) has filed present application by inter alia objecting to Clause 4.5(g) of the Resolution Plan, namely, "No recourse on Corporate Debtor against any amount recovered from personal guarantors or corporate guarantors, if any" which in addition to being detrimental to the interests and rights of this Applicant Bank is also against the well-established principles of law. The Applicant Bank states that the said clause is reproduced hereunder:

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*“As per the Contract Act, 1872 the personal guarantor has counter indemnity from the Corporate Debtor for these personal guarantees under the right of subrogation”.*

2. Upon receipt of aforesaid amount, the erstwhile promoters shall be discharged from the above guarantees and simultaneously the counter indemnity of the Corporate Debtor to pay such guarantors shall be satisfied/discharged in full.
3. Personal Guarantees extended by the erstwhile promoters namely Mr. Nitin Mandhana, Mr. Shashikant Mandanna, and Mr. Prakash Mandanna stand fully discharged and waived on successful implementation of the Resolution Plan (after complete payment of agreed consideration).
4. The Applicant Bank states that it is a dissenting financial creditor to the Resolution Plan and having 16.36% voting shares. The Applicant Bank, among others, was approached by the Corporate Debtor in the year January 2007 for securing loans for its business and accordingly, a letter of sanction dated 04.01.2007 bearing reference No.RMD/BLR/SV for a sum of Rs.22 Crore as Term Loan with LC as sub limit under TUFS and in addition to a Loan Equivalent Risk (LER) of Rs.1 Crore was availed, which was reviewed/enhances/restructured from time to time. As security for the aforesaid loans, besides mortgage of immovable property, personal guarantees were provided by the three Promoters of the Corporate Debtor, namely, Mr. Nitin Mandhana, Mr. Shashikant Mandhana and Mr. Prakash Mandhana, by way of executing deed of guarantees dated 10.01.2007, 26.12.2008 & 12.12.2009. The Applicant Bank craves leave to rely upon the sanctions letters as and when required.

5. The Applicant Bank states that as the Corporate Debtor was not able to maintain the financial discipline and defaulted in the repayments of its loans, a demand notice dated 01.12.2014 was issued by this Applicant Bank.
6. The Applicant Bank submits that pursuant to issuing the said notice, an Original Application was filed by the Applicant Bank, namely, TA 885 of 2017 (OA No.1092/2015) before the Debt Recovery Tribunal (DRT) II, Bengaluru as against the Corporate Debtor and the Promoter/guarantors (Mr. Nitin Mandhana, Mr. Shashikant Mandhana and Mr. Prakash Mandhana). The Hon'ble DRT, vide its order dated 31.10.2017 held in favor of this Applicant Bank and accordingly, a Recovery Certificate No.07/2018 dated 15.12.2017 for a sum of Rs.77,90,12,078/- (Rupees Seventy Seven Crores Ninety Lakhs Twelve Thousand and Seventy Eight) was issued in favor of this Applicant. In the said recovery certificate, it is stated that if there is any shortfall, the same be recovered from the sale of the personal properties of the Defendants (which includes Corporate Debtor and its directors/promoters i.e. Mr. Nitin Mandhana, Mr. Shashikant Mandhana and Mr. Prakash Mandhana).
7. The Applicant states that the Learned Recovery Officer of DRT II Bengaluru has issued notice to the Corporate Debtor and Promoter/Guarantors (Mr. Nitin Mandhana, Mr. Shashikant Mandhana and Mr. Prakash Mandhana) on the Recovery Certificate and the same is pending execution. While the above action was pending, the Tribunal vide its order dated 20.02.2018 admitted the case by initiating CIRP, imposing moratorium etc.

8. It is stated when it has secured a recovery certificate against the Corporate Debtor and its Promoter/Guarantors (Mr.Nitin Mandhana, Mr.Shashikant Mandhana and Mr. Prakash Mandhana) and that the same had attained finality, it was shocked to note that the Resolution Applicant, during the 15<sup>th</sup> CoC meeting held on 08.01.2019, stated that he wanted to discharge/release of the personal guarantees in the proposed Resolution Plan, which is in complete disregard to the interest and rights of the Applicant Bank as protected by law. Therefore, it had objected to the same during the said 15<sup>th</sup> CoC meeting. It questions the intention and objective of the Resolution Applicant in discharging the liabilities of the personal guarantors, especially when the right of subrogation as against the Resolution Applicant is lost upon approval of the resolution plan. It contends that while the Resolution Applicant may be technically compliant/eligible under Section 29A of the Code, however, a commercial nexus as between the Resolution Applicant and Personal Guarantors cannot be ruled out.
9. It is stated that Section 29A makes the existing Corporate Debtor/promoters/guarantors ineligible to submit a resolution plan. The intention of the legislation is to penalize the guarantors/promoters who have not been able to pay the lenders by making them stay away from the affairs of the Corporate Debtor and continue to be liable to the lenders. Therefore, it is contended that there cannot be a situation where in, an independent third party (Resolution Applicant) takes over the Corporate Debtor, infuses funds and puts in time and energy to run the operations of the Corporate Debtor and repay the lenders/stakeholders and at the same by virtue of approval

of the resolution plan, allow the promoter/guarantors to get an easy and convenient discharge/release from their liabilities that they rightfully owe the lenders and thus contended that it cannot be object of the Code.

10. It is stated that the intention and objective of the Code is that through the process of resolution of the Corporate Debtor, maximum attempt is made to revive the Company and thereby make good the payments to various creditors. The Applicant Bank however, states that it was never the intention and objective of the Code to make the guarantors escape their liability the moment CIRP is ordered against the Corporate Debtor. The Applicant Bank submits that this principle is well encapsulated under Section 14 of the Code, wherein the order of moratorium will not be against the guarantors, who have been specifically excluded from the above process. It is stated that the law in this subject is also very clear that a contract of guarantee is an independent contract and the guarantor having a liability co-extensive with that of the Corporate Debtor, cannot be discharged or released by anybody, let alone the resolution applicant, except as per the provisions of law. The Applicant Banks states that this proposition of law has now become res Integra by virtue of the decision of the Hon'ble Supreme Court in *State Bank of India vs. V.Ramakrishnan & Anr. Civil Appeal No.3595 of 2018*.
11. It is further stated that the Insolvency Law Committee, appointed by the Ministry of Corporate Affairs, by its Report dated 26.03.2018, made certain key recommendations, one of which was that:



“Having remedy against both the surety and the Corporate Debtor, without the obligation to exhaust the remedy against one of the parties before proceeding against the other, is of utmost important for the creditor and is the hallmark of a guarantee contract, and the availability of such remedy is in most cases the basis on which the loan may have been extended. Further, since many guarantees for loans of Corporate are given by its promoters in the form of personal guarantees, if there is a stay on actions against their assets during a CIRP, such promoters (who are also corporate applicants) may file frivolous applications to merely take advantage of the stay and guard their assets”.

12. The Applicant Bank further states that as against its claim amount of Rs.107,36,39,220/- as on the date of commencement of CIRP, namely, 20.02.2018 pursuant to the approval of the Resolution Plan, the Applicant Bank is entitled to recover only Rs.10,33,89,000/-, thus leaving a huge balance of Rs.97,02,50,220/-, which would necessarily be required to be recovered only from the Personal Guarantors. The Applicant Bank further states that the Applicant Bank along with certain CoC members, in fact desired that the consideration payable to the Financial Creditors under the resolution plan should be Rs.55 Crore but however, as against this figure, the Resolution Applicant has only offered Rs.50.50 Crore. Therefore, it is contended that if personal guarantees are discharged/released through a Resolution Plan, the banking exposure of around Rs.8-10 lakh Crores may be at stake. In such a situation, the

bankers would be able to recover only a fraction of the NPA debt through the resolution plan and would lose huge monies if they are not able to pursue the personal guarantees.

13. It is further contended that the spirit and framework of the Code is not designed in a way so as to let go of promoters/guarantors, which as discerned from the decision of the Hon'ble NCLAT in *Lalit Mishra & Ors. Vs. Sharon Bio Medicine Ltd. & Ors.* (Company Appeal (AT) (Insolvency) No.164 of 2018), are one of the primary reasons for having contributed to the insolvency of the Corporate Debtor and being in the present scenario and hence, cannot be relinquished of their liabilities, when no rights exists to do so in the first instance. It is stated that the principle of bifurcation of interests as between the Corporate Debtor and the promoters is further captured in the decision of the Hon'ble Supreme Court in the case of *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.*, WP (Civil) No.99 of 2018, which further only goes to demonstrate that the rights to proceed against the promoter/guarantors, as against their liabilities, cannot be lost or taken away. Therefore, they have urged the Tribunal to allow the application as prayed for.

- 4) The Instant Application is opposed by the Resolution Professional by way of filing statement of objections dated 05.02.2019, by inter alia contending as follows:

1. It is contended that the Tribunal's jurisdiction under Section 60(5), Code does not extend to entertaining applications by different stakeholders in respect to the resolution plan before the Hon'ble Tribunal has had the chance to exercise its quasi-judicial powers in the determination of the said plan. Consequently, the present Application seeking interference of

the Hon'ble Tribunal before it can determine the validity of the Resolution Plan post its approval by the CoC, ought to be dismissed. The present Application if taken up at this stage in the CIRP will merely derail the timeline set by the Code and therefore go against the tenets of the Code itself. Should this Hon'ble Tribunal upon judicial determination approve the Resolution Plan, the Applicant may raise any grievance in respect to the Resolution Plan in appeal under Section 31 (3) (1), Code. On this ground alone, the present Application should not be entertained. In this respect regard, they have relied upon the judgment of the Hon'ble Supreme Court's rendered in Arcecolar Mittal Indian Private Limited vs. Satish Kumar Gupta & Ors. (Civil Appeal Nos. 9402-9405 of 2018, page 123)

2. They have denied the contention of the Applicant that Clause 4.5(g), Resolution Plan was invalid under the law, as it takes away its right to proceed against the personal guarantors and the same is wholly misconceived. Further, the contention of the Applicant that its right to proceed against the personal guarantors subsists despite the terms of the resolution plan on the basis of the deed of guarantees executed by the directors (Annexure A to the Application) and order of the Hon'ble Debt Recovery Tribunal (Annexure B to the Application) goes against the tenets of the Code.
3. It is further contended that Section 238 of Code, which being a non-obstante clause provides that the provisions of the Code shall apply notwithstanding any inconsistency with any law in existence or any instrument having effect in law.
4. The Hon'ble Supreme Court in Vijay Kumar Jain v. Standard Chartered Bank and Ors. Civil Appeal No.8430 of 2018 has

held that guarantees provided by the promoters or Directors may be considered as security interest and recognizes the fact that the principal debt in a resolution plan may be scaled down with or without the debt of the guarantor also being scaled down. The relevant portion is produced herewith:

“Also, under Regulation 37(d) of the CIRP Regulations, a resolution plan may provide for satisfaction or modification of any security interest. Security interest is defined by Section 3(31) of the Code as follows:

“3. Definitions:- in this Code, unless the context

Otherwise requires,

(31) “security interest” means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:

Provided that security interest shall not include a performance guarantee:

This would certainly include a guarantor who may be a member of the erstwhile Board of Directors. Further, under Regulations 37(1)(f), resolution plan may be provide for reduction in the amount payable to the creditors, which again vitally impacts the rights of a guarantor.”

5. They have further relied upon the judgment of the Hon'ble National Company Law Appellate Tribunal in *Lalit Mishra v. Sharon Bio Medicine Ltd & Ors.* (Company Appeal (AT) (Insolvency) No.164 of 2018), wherein the facts were similar to

the present case, where the resolution plan provided for the discharge of all securities/collaterals/margin money/fixed deposit with lien provided by the Company immediately on the effective date of the resolution plan. And the personal guarantee provided by the existing promoters shall result in no liability towards the company or the resolution applicant. Therefore, the contention of the applicant that the said treatment of security especially in regard to the personal guarantee provided by the promoters of the Company was in violation of Section 140 and Section 133 of the Indian Contract Act is not tenable. In this regard, the Hon'ble Tribunal found that the submissions of the applicant unacceptable on the grounds that the stakeholders have the right to say that the personal guarantee will not result in any liability towards the Company or the Resolution Applicant. The relevant portion is produces herein:

*“However, the aforesaid submissions cannot be accepted, as on approval of the “Resolution Plan”, the claim of the entire stakeholders stand cleared and the ‘Personal Guarantor’ thereafter cannot claim that they have been discriminated. All the stakeholders have already been cleared by the 3<sup>rd</sup> Respondent- ‘Successful Resolution Applicant’. It was open to them to say that the personal guarantee will not result into any liability towards the ‘Company’ or the ‘Resolution Applicant’.*

6. In the present instance, as per Clause 2, Resolution Plan, states that upon payment of the Rs.50.50 Crores to the workers and the secured creditors proportionate to their claim,

the dues of the secured creditors and the workers are deemed to be settled. The relevant portion is produced herein:

“On payment of aforesaid dues as proposed in the Resolution Plan, all the dues of the secured financial creditors would be deemed to be settled. It would be full and final settlement with no right to claim any further amount towards regular dues or termination dues and benefits. No further liabilities would be payable”.

7. The above clause read with Clause 4.5(g), Resolution Plan makes it apparent that the stakeholders in the CoC have chosen to accept the amount being received under the Resolution Plan in full and final settlement of its debts and have chosen to discharge the personal guarantors.
8. Moreover, the Applicant is bound by the decision of the supermajority of the CoC. The Applicant Bank was admittedly heard by the other stakeholders in the CoC in so far as its concerns in respect to the personal guarantees, and the stakeholders having taken the same into consideration have passed the resolution plan by a majority. The being the case, the Applicant is bound by the decision. This is in consonance with the findings of the Insolvency Law Committee Report of May 2018 which observing that the original threshold of 75% of voting share of financial creditors was not working in favour of the object of the Code which is to promote resolution, proposed a lower threshold of 66% or more of the voting share of the financial creditors. Therefore, to entertain objections by the minority stakeholders of the CoC merely because the



majority decision does not satisfy their requirements is a blatant disregard to the workings of the Code.

- 5) The Resolution Professional has relied upon the following judgments are as follows:
- *Arcecolar Mittal Indian Private Limited vs. Satish Kumar Gupta & Ors.*<sup>1</sup>
  - *Vijay Kumar Jain vs. Standard Chartered Bank and Ors.*<sup>2</sup>
  - *Lalit Mishra vs. Sharon Bio Medicine Ltd. & Ors.*<sup>3</sup>
- 6) Heard Shri Varun Srinivassan, learned Counsel for Axis Bank , Shri Shreyas Jayasimha, learned Senior Counsel for Resolution Professional, Shri V.Srinivassa Raghavan, learned Senior Counsel along with Shri P.Chinnappa, Ms. Ayshwarya Chandar, Sri Sushal Tiwari, learned counsel for Resolution Applicant, Shri Udayraj Patwardhan, learned Resolution Professional. I have carefully perused the pleadings of both the parties and extant provisions of the Code.
- 7) Shri Varun Srinivasan, the learned Counsel for the Applicant , while reiterating various averments made in their pleadings as briefly stated supra, has further inter alia contended as follows:
1. As far as the present case is concerned, the Applicant Bank is dissenting financial creditor (16.36% Voting Share) who was approached by the Corporate Debtor in 2007 for securing loans for its business. Pursuant to sanctioning the loan, personal guarantees were also secured from the Promoters. They have relied upon the 3 Judge decision of the Hon'ble Supreme Court of India in the case of ***Bank of Bihar Ltd. vs. Damodar***

<sup>1</sup> Civil Appeal Nos. 9402-9405 of 2018 (J.Nariman).

<sup>2</sup> (Civil Appeal No. 8430 of 2018) (Rohinton Fali Nariman and Navin Sinha, JJ).

<sup>3</sup> (NCLAT) (Company Appeal (AT) (Insolvency) No.164 of 2018).

**Prasad and Ors. AIR 1969 SC 297**, wherein the Court has held as follows:

*“4...In the absence of some special equity the surety has no right to restrain an action against him by the creditor on the ground that the principal is solvent or that the creditor may have relief against the principal in some other proceedings.*

*5. Likewise where the creditor has obtained a decree against the surety and the principal, the surety has not right to restrain execution against him until the creditor has exhausted his remedies against the principal...*

*6.....The very object of the guarantee is defeated if the creditor is asked to postpone his remedies against the surety.”*

2. Further, the case of *State Bank of India vs. V.Ramakrishnan, Civil Appeal 3598/2018* has now made it amply clear that the contract of guarantee being an independent contract will not come under the purview of Section 14 of the Code and hence appropriate action can be taken against the guarantor. In this context reference may also be made to Section 14(3)(c) of the Code, which clearly permits action against the guarantors during the period of moratorium.
3. It is contended that approval for the resolution plan by the CoC cannot by itself discharge the guarantors from their liability as the variation is one of law and not of contract or consent of the creditor. In this context, they have relied upon the decision of the Hon'ble Supreme Court in case of ***Maharashtra State Electricity Board, Bombay vs. Official***



**Liquidator, High Court, Ernakulam and Ors.** AIR 1982 SC 1497, wherein the court has held as follows:

*“7.... The fact that the Company in liquidation i.e. the principal debtor has gone into liquidation also would not have any effect on the liability of the Bank i.e. the guarantor. Under Section 128 of the Indian Contract Act, the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. A surety is no doubt discharged under Section 134 of the Indian Contract Act by any contract between the creditor and the principal debtor by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. But a discharge which the principal debtor may secure by operation of law in bankruptcy (or in liquidation proceedings in the case of a company) does not absolve the surety of his liability (See Jagannath Ganeshram Aggarwala vs. Shivnarayan Bhagirath & Ors. (1). See also in re Fitzgeorge Ex parte Robson....”*

4. As far as the reference to the decision of the Hon'ble Supreme Court in the case of Vijay Kumar Jain vs. Standard Chartered Bank as relied upon by the Counsel for the RP is concerned, it is contended that the ratio supports the case of Applicant rather than other side case. The Hon'ble Supreme Court has, therefore, only provided two circumstances. The first scenario is when the resolution plan may provide for scaling down of the debt of the principal debtor and thereby accordingly scale down the debt of the guarantor. This reasoning is based on Section 128 of the Indian Contract Act, 1872 which deals with

co-extensiveness of liability. For instance, if the amount of debt owned by the Principal Debtor is Rs.100,00,00,000/- and the same is scaled down to Rs.50,00,00,000/- then the liability of the guarantor, if all parties approve of the resolution plan, may also scale down the debt of the guarantor to Rs.50,00,00,000/- .The second scenario as per the said decision is that irrespective of scaling down the debt of the principal debtor, the debt owned by the guarantor would be for the full amount. For instance as per the same example quoted above, if the debt of the principal debtor is scaled down to Rs.50,00,00,000/- still guarantor's liability can be made liable towards the total sum of Rs.100,00,00,000/-

5. The following are list of judgments as referred to by the Learned Counsel for the Applicant for ready reference.
- *State Bank of India vs. V.Ramakrishnan & Anr.*<sup>4</sup> .
  - *State Bank of India Vs. V.Ramakrishnan (at para 22) and the decision of the Hon'ble NCLAT in the case of Lalit Mishra Vs. Sharon Bio Medicine Ltd.*<sup>5</sup>
  - *Maharashtra State Electricity Board, Bombay Vs. Official Liquidator, High Court, Ernakulam and Ors.*<sup>6</sup>
  - *Bank of Bihar Ltd Vs. Damodar Prasad and Ors.*<sup>7</sup>

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<sup>4</sup> Civil Appeal No.3595 of 2018.

<sup>5</sup> (Company Appeal (AT) Insolvency No.164/2018.

<sup>6</sup> Civil Appeal No.3182 of 1982 dated 13.10.1982.

<sup>7</sup> Civil Appeal No.1109 of 1965 dated 08.08.1968.



8) Shri Srinivasa Raghavan, learned Sr.Counsel for Resolution Applicant has relied upon the following judgment are as follows:

- Hon'ble Supreme Court of India in *K.Sashidhar Vs. Indian Overseas Bank & Ors.*<sup>8</sup>

9) Learned Senior Counsel for Resolution Applicant has filed a memo dated 22.04.2019 by placing the copy of the minutes of the 16<sup>th</sup> CoC meeting dated 15<sup>th</sup>April, 2019 and Compliance Certificate (Form H). While reading the main case the following facts are as under:

1. The RP further informed that the Bench at hearing held on March 07, 2019 issued oral directions to the counsel and the Authorised representative of workers and Employees to provide details of provident fund, pension fund, gratuity fund and any other dues to each workman for the 24 months and employees for 12 months preceding the CIRP commencement date, in the light of the provisions of section 53, of the Code, within two days from the date of the hearing, and that failing which the RP may proceed with finalizing the verification and admission of the modified claim with the information available with him.
2. The Authorised representative of Workers and Employees submitted the detailed calculations of the claims pertaining of Bonus, Gratuity, Employee Provident Fund and Wages including bifurcation of the amount due pertaining to the 24 months prior to the Insolvency Commencement date, on March 19, 2019 with regarding to the 138 workmen and none out of the 5 employees.

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<sup>8</sup>  
in Civil Appeal No.10673 of 2018 with C.A.No.10719 of 2018,

C.A.No.10971 of 2018 and SLP (C) No.29181 of 2018.

hnd

3. The RP further added that, in the meanwhile, the Resolution applicant vide its email dated March 07, 2019 intimated they offer to pay additional Rs. 17 Lakhs to the workers Beyond Total consideration offered in the Resolution Plan dated January 07, 2019. The extract of the email read as follows:

*"... The claimed amount by the Labour union is 7.50 Crore. Against which we have provided pari passu share of the liquidation value in the resolution plan which works out to approximately 17 lacs. Keeping in mind the request made by the Union and direction given by the Hon'ble Bench to consider as a gesture, we will add 100% of their share in their favour as ex gratia, example: if their share as proposed in the Resolution plan based on Liquidation value comes up to 17 lacs, we will additionally give them 100% of the same that means 17 lacs more (100% of their share as per liquidation value)"*

During the discussions on this agenda item, the RP enquired Mr.Jay Sanghavi, Representative of Resolution Applicant how the Resolution Applicant's presently perceives as to their offer for increment in Total consideration by Rs.17 Lacks.

- 10)** Mr.Jay Sanghavi stated that the Resolution Applicant offers to increase the total consideration offered under Regulation Plan dated 07.01.2019 read along with the Amendment Letters dated 09.01.2019 and 11.01.2019 ("Resolution Plan") from 50.50 Crores to Rs.50.70 Crores as full and final consideration amount with a provision to allocate Rs.34 Lakhs towards workmen dues, subject to the seam not being less than Liquidation value or amount attributable to them u/s

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53(1) (b) of the Code. Mr.Jay Sanghavi further added that no other changes are proposed in the Resolution Plan.

**11)** Accordingly, the resolution applicant availing total consideration offered resolution plan dated 07.01.2019 read along with the Amendment Letters dated 09.01.2019 and 11.01.2019("Resolution Plan") from Rs.50.50 Crores to Rs.50.70 Crores as full and final consideration amount with a provision to allocate Rs.34 Lakhs towards workmen dues. According the resolution approved by 69.01% votes in the favour.

**12)** The Compliance Certificate (Form-H) dated 16.04.2019 has also filed RP as per provisions of the Code, by inter alia declaring as follows:

- a) The said Resolution Plan complies with all the provisions of the I&BC 016 (Code), the IBBI Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
- b) The Resolution Applicant SPG Macrocosm Limited through SPV visions Textile has submitted an affidavit pursuant to section 30(1) of the Code confirming its edibility under Section 29A of the Code to submit the Resolution Plan. The contends of the said affidavit are in order.
- c) The said resolution plan has been approved by the CoC at its 15<sup>th</sup> meeting held on 08.01.2019, in accordance with the provisions of the Code and CIRP Regulations made thereunder. The Resolution Plan has been approved by five votes constituting 69.01% of voting share of financial creditors after considering its feasibility and viability and over requirements

specified by the CIRP Regulations. The modification pertaining to increase the total consideration, proposed by the Resolution Applicants was approved by the CoC at its 16<sup>th</sup> meeting held on 15.04.2019 was approved by five votes in favour constituting 69.01% of voting share of financial Creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

- d) He south vote of members of the CoC at its 15<sup>th</sup> meeting, by electronic voting system which was kept open at least for 24 hours as per the regulation 26. According, E-voting commenced on 11.01.2019 at 4:00 p.m and concluded on 15.01.2019 at 4:00 p.m.

The modification in the resolution plan was put to vote before the CoC at its 16<sup>th</sup> meeting, voting was held in the meeting of the CoC on 15.04.2019, where all the members of the CoC were present.

- 13)** The list of financial Creditors of the Indus Fila 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) for evoting concluded on 15.01.2019	Voting for modification in the resolution plan (Voted for/Dissented/Abstained) for voting held at meeting on April 15, 2019
1.	Edelweiss Asset Reconstruction Company	37.62%	For	For
2.	Axis bank Limited	16.36%	Dissented	Dissented
3.	JM financial Asset Reconstruction company	15.63%	For	For
4.	Corporation Bank	14.62%	Dissented	Dissented
5.	The Royal Bank of Scotland	8.66%	For	For

6.	Barclays Bank PLC	5.41%	For	For
7.	Palash corporation	1.69%	For	For

14) 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 thereunder:

SL no.	Category of Stakeholders	Amount Claimed	Amount admitted	Amount provided under the Plan	Amount provided to the amount claimed (%)
1.	Dissenting secured financial creditors	203.30	203.30	Out of total consideration of Rs.50.70 Crores, after payment of CIRP costs, and workers dues of Rs.34 Lacks the due of secured financial creditors as below	Approx. 7.54% the percentage has been derived based on the tentative attribution among the financial Creditors as proposed in the resolution Plan
2.	Other secured financial creditor	441.71	441.71	80% of the said dues shall be payable to terms lenders in the ration of their admitted claim towards terms lending. The balance 20% shall be payable to the working capital lenders in the ration of their admitted claim towards working capital lending Note: <u>No distinct provisions is proposed in the resolution plan for dissenting financial creditors and have been</u>	Approx 7.59% the percentage has been derived based on the tentative attribution among the financial Creditors as proposed in the resolution plan



				given the similar treatment with other secure creditor	
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- 15)** The interests of existing shareholders have been altered by the Resolution Plan as under:

SL No.	Category of share holder	No. of share held before CIRP	No. of shares held after the CIRP	Voting share (%) held before the CIRP	Voting share (%) held after the CIRP
1.	Equity	1,93,75,156	1,08,312	100%	2.12%
2.	Preference	N.A	N.A	N.A	N.A

Therefore, the learned Senior Counsel for Resolution Applicant submits that the Resolution Plan is strictly in accordance with law and the present application is misconceived and it is not maintainable and thus, Resolution plans are to be approved as per the Provisions of the Code and consequently, the instant applicant has to be rejected.

- 16)** Before advertng to various contentions raised by the respective parties, it is necessary to record the background of the IBC, 2016. Prior to introduction of Code, there is no single law in India that deals with Insolvency and Bankruptcy (I&B). Provisions relating to I&B for companies can be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debt due to Banks and Financial Institutions Act, 1983, the Securitisation and Reconstruction of Financial Assets and enforcement of Security Interest Act, 2002 and the Companies Act, 2013. These Statutes provide for certain of multiple for Board of Industrial and Financial Reconstructions DRT, NCLT, and their respective Appellate Tribunals. Liquidation of companies is handled by the High Courts, Individual Bankruptcy and Insolvency is dealt with under the Presidency Towns Insolvency existing framework

for I&B is inadequate, ineffective and results in undue delays in resolution.

**17)** Therefore, basing on the Bankruptcy Law Reform Committee proposal, a new legislation called IBC, 2016 came into effect. It will promote entrepreneurship, availability of credit and balance the interests of all the stake holders including alternation in the order of priority for payment of Government dues etc. in a time bound manner. For effective implementation of provisions of Code several amendments are being carried out to the Code to achieve the object of code. And the relevant provision in the instant issue is Moratorium provided U/s 14 of the Code which empowers the Adjudicating Authority to declare moratorium by prohibiting the institution of suits continuations of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any Court of law, Tribunal, Arbitration panel or other authority; etc. However, such transactions as may be notified by the Central government in consultations with any financial regulator; and a surety in a contract of guarantee to a Corporate debtor are exempted U/s 14(3) which is substituted by the IBC (Second Amendment)Act, 2018 w.e.f. 06.06.2018.

**18)** The Hon'ble Supreme Court of India, in State Bank of India Vs. V.Ramakrishnan & Another, cited supra, has mainly dealt with issue of Moratorium provided U/s 14 of Code with reference to its application to personal guarantor of a Corporate Debtor on the appeal filed by the State Bank of India against the orders passed by NCLT, which are subsequently affirmed by the Hon'ble NCLAT. The Apex court, after considering various issues revolves round the rights of a lender over surety/guarantor, has allowed the appeals by setting aside the

impugned judgment of Tribunal by judgment dated 14<sup>th</sup> August, 2018. As stated supra, the Code was also amended in the meanwhile by excluding a surety in a contract of guarantee to a corporate debtor from the operation of Moratorium, w.e.f. 06.06.2018, as contemplated U/s 14 of code. Therefore, there is no ambiguity with regard to exemption of Surety from effect of Moratorium as per Section 14 of Code. However, the issue remains to be considered in the instant case is whether a Member of the Committee of Creditor (COC) of the Corporate Debtor, in instant case is Axis Bank, in while participating in the entire process of CIRP till the resolution plan, and too after exercising its rights on par with other Committee of Creditors, is entitled to prosecute proceedings initiated by it against surety vide TA 885 of 2017 (OA No.1092/2015) before the Debt Recovery Tribunal (DRT) II, Bengaluru as against the Corporate Debtor and the Promoter/guarantors (Mr. Nitin Mandhana, Mr. Shashikant Mandhana and Mr. Prakash Mandhana) and the order passed on 31.10.2017 in favor of this Applicant Bank and issued Recovery Certificate No.07/2018 dated 15.12.2017 for a sum of Rs.77,90,12,078/- , that too when the Adjudicating Authority considering approval of Resolution plan as per provisions of Section 31 of Code.

- 19)** As per provisions of Section 31 of Code, the Adjudicating Authority is empowered to approve a Resolution Plan, provided it is satisfied that the Plan meets all requisite conditions as contemplated under the Provisions of Code and the Rules thereunder. While approving Resolution plan, the Adjudicating Authority shall declare that Resolution plan shall be binding on the Corporate Debtor, its employees, members, creditors, GUARANTORS and other stake holders. After approval of Resolution plan, moratorium as imposed under section 14 shall cease to have effect.



20) Indus Fila Limited, the Corporate Debtor herein is a Public Limited Company limited by shares. As per statement as extracted supra, the list of Financial Creditors consists of Axis Bank (16.39%), Corporation Bank (14.62%), JM Financial Asset Reconstruction Company (15.63%), Edelweiss Assets Reconstructions Company (37.62%), The Royal Bank of Scotland(formerly known as ABN AMRO Bank NV) (8.66%) and Barclays Bank PLC (5.41%) of financial personal guarantee. Apart from Axis Bank, JMFARC, Edelweiss Assets Reconstructions Company Royal Bank of Scotland Barclays Bank PLC, have in possession of Personal Guarantee of Promoters apart from hypothecations of Companies Properties. Therefore, under the CIRP process, all the issues relating to Assets/liabilities including related issues of hypothecations/ mortgages, surety/guarantor will be dealt. Promoters/Directors of a Company, in normal course of business, apart from mortgaging assets of a Company, Banks/financial Institutions would insist for their personal guarantee for the loans they used to extend the to their Companies. **Section 128** of the Indian Contract Act, 1872 defines the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the Contract. Section 134 Contract, discharge surety by release or discharge of principal debtor, by which the principal debtor is released, or by any act or omission of the Creditors, the legal consequence of which is the discharge of the principal debtor. In the instant case loans are extended by Financial Institutions by taking into consideration of various factors like nature of business, assets of a Company, financial capacity of Promoters/Directors of a Company to stand as surety/guarantee for the loans taken for the Company etc, Therefore, it is settled position of law

that Surety and Principal Debtor are jointly and severally liable to pay debt outstanding to the Creditor.

And thus Creditor is legally entitled to proceed against Principal Debtor and surety simultaneously and thus Axis Bank has initiated proceedings before DRT and obtained certificate.

**21)** As per law, during process of CIRP, the entire Board of Directors stands suspended and the affairs of Company shall vest in hands of IRP/RP. All the interests of all stake holders in Corporate Debtor would be taken care of by the Resolution Applicant. Therefore, all the interests of stake holders including financial/operation Creditors shall be merged in the final resolution plan subject to approval of the same by Adjudicating Authority. So once Resolution plan is approved by the Adjudicating Authority, the liability of corporate debtor towards various stake holders including Financial Creditors, stand discharged and merges in the scheme of Resolution plan. Therefore, the principal Debtor stand discharged and therefore, Sections 128 R/w S134 of Indian Contract Act, 1872 would prima facie applicable to the instant case and provisions of one of Section 31 would be applicable once Resolution plan is approved by Adjudicating Authority. Therefore, the applicant is not entitled for the relief as prayed for.

**22)** It is not the case of Axis Bank that it was not given opportunity during the process of CIRP, along with other COC members. The applicant is only entitled to participate in the Resolution process and it cannot have veto power or to claim separate rights to proceed with DRT proceedings as detailed supra and it is estopped from claiming so. It is prerogative of Adjudicating Authorities either to approve Resolution plan or to reject. And once, it is approved, it shall declare that Resolution plan would be binding on all stake holders including



guarantors etc. as per Section 31(1) of Code. As stated supra, it is not sole Financial Creditor which possess personal guarantee against the promoters of Corporate Debtor. Therefore, Axis Bank is bound by majority decision as per law and also Resolution plan if it is approved by the Adjudicating Authority, which is also decided by passing separate orders. As stated supra, the Hon'ble Supreme Court has discussed the question of moratorium applicable to surety or not in the above referred case **V.Ramakrishnan**, whereas , in the present stage of main case is whether Resolution plan in question is to be approved or not as per **Section 31(1)** of the IBC which reads as under:

*“ if the adjudicating authority is satisfied that the resolution plan an approved by the CoC 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, guarantors and other stakeholders involved in the resolution plan”.*

- 23) I have carefully perused the decisions cited by the Applicant as stated supra. However, I am of the considered opinion and with due respect, the ratio as decided in those cases are not applicable to the facts and circumstance of the instant case. Therefore, we are not in a position to accept prayer of the applicant that it should be promoted to go ahead with the personal guarantee against the promoters as per proceedings also initiated before DRT as detailed supra and, thus it is liable to be dismissed.

*Ljs*

24) For the aforesaid reasons and circumstance and the law as discussed above, I.A No. 53 of 2019 in C.P(IB)No.136/BB/2017 is hereby dismissed. No order as to costs.



**(RAJESWARA RAO VITTANALA)**

**MEMBER, JUDICIAL**

Raushan

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

C.P.(IB)No.136/BB/2017 U/s 9 of Code  
& I.A No. 40/2019  
U/s 30(6)& Section 31 of the IBC, 2016  
R/w Rule 11 of the NCLT Rules, 2016

**In the matter of:**

**1, Indus Fila Limited**

Survey No.284/285, 37<sup>th</sup>K.M.Stone,  
Tumkur Road, NH.4,  
T.Begur,  
KasabaHobli,  
Taluk Nelamangala - 562 123  
Rep by Resolution Professional

- Applicant/Corporate Debtor

2, SPG Macrocosm Limited  
through SPV-Vision Textile,

- Resolution Applicant

Versus

**SF Dyes**

1012, Barton Centre,  
84, M.G.Road,  
Bengaluru - 560 001.

- Petitioner/Operational Creditor

**Versus**

**Date of Order : 10<sup>th</sup> May, 2019**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

**Parties/Counsels Present:**

For the Petitioner  
Resolution Professional

: Shri Varun Srinivasan  
: Shri Udayraj Patwardhan

*Udayraj*

For the Resolution Applicant

: Shri V.SrinivasaRaghavan  
Shri P.Chinnappa,  
Ms.AyshwaryaChandar,  
Shri Sushal Tiwari

**ORDER**

**Per** : Rajeswara Rao Vittanala, Member (J)

- 1) I.A No. 40 Of 2019 in C.P(IB)No.136/BB/2017 is filed by Resolution Professional representing **Indus Fila Limited, the Corporate Debtor** U/s 30(6) (C) and Section 31 of the IBC, 2016, R/w Rule 11 of NCLT Rules, 2016, by inter alia, seeking to approve the Resolution Plan dated 7<sup>th</sup> January 2019 submitted by SPG Macrocosm Limited through SPV-Vision Textile, (Resolution Applicant) as approved by the Committee of Creditors by e-voting on 15<sup>th</sup> January 2019.
- 2) Brief facts of the case as stated in the application and main Company Petition which are relevant to the issue in question are as follows:
  1. The Main Company Petition bearing CP(IB) No.136/BB/2017 is filed by M/s. S.F.Dyes (Operational Creditor) u/s 9 of Code, R/w Rule 6 of I&B(AAA) Rules, 2016, by inter alia seeking to initiate CIRP, impose moratorium etc. Accordingly, the case was admitted on 20.02.2018, by initiating CIRP in respect of Corporate Debtor imposing moratorium, appointing IRP Mr.Pravin.R.Navandar as the Interim Resolution Professional and instituted moratorium U/s 14, Code.
  2. It is stated that in pursuant to Section 24, Code read with Regulation 17, IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations")



the IRP constituted CoC on 17<sup>th</sup> March, 2018 and convened the first meeting of the CoC on 27<sup>th</sup> March, 2018. During the said meeting, the CoC resolved to appoint as the Resolution Professional. The decision taken by the CoC in its first meeting, the CoC through its designated representative, filed the necessary application before this Tribunal and appointment as the RP was confirmed by this Tribunal vide order dated 28<sup>th</sup> May, 2018 and took charge of the CIRP from 30 May 2018.

3. It is stated that since the 180 days period was to lapsed on 19<sup>th</sup> August 2018 and sought an extension of the CIRP period by 90 days which came to be granted by this Tribunal on 14<sup>th</sup> August 2018. He has published 'Form G' under Regulation 36A (1) CIRP Regulations 2016 on 27<sup>th</sup> July 2018 wherein the last date for receipt of 'Expression of Interest' was 11 August 2018. And the said Form G was modified and approved by the CoC. Consequently, a second advertising inviting 'Expression of Interest' from prospective Resolution Applicants was published on 29 August 2018. The last date of receipt of 'Expression of Interest' was 07 September 2018. Thereafter, issued the information memorandum, evaluation matrix and invitation for submission of resolution plans (invitation) to prospective resolution applicants on 09 September 2018.
4. It is stated that last date of submission of Resolution Plan was 10 October 2018 and received on resolution plan from SPG Macrocism Ltd ('Resolution Applicant') on 10<sup>th</sup> October 2018. The said resolution plan was presented to the CoC at its ninth meeting held on 12 October 2018. The CoC took the



same on record and during the said meeting it was agreed to peruse the plan once it had been examined by the RP as per the provisions of the Code.

5. It is stated that upon examination of the Resolution Plan dated 10<sup>th</sup> October 2018, it is found that the Resolution Plan was not compliant with the Code, Consequently, vide email dated October 15, 2018 the Resolution Applicant was intimated of the discrepancies and requested to carry out the necessary changes before October 16, 2016, 4 P.M. Thereafter, the Resolution Applicant on October 16, 2018 submitted a modified resolution plan dated October 16, 2018.
6. It is stated that the resolution plan dated October 16, 2018 was also found non-compliant with the Code and CIRP Regulations and the same was intimated to the Resolution Applicant vide email dated October 22, 2018 with the request that the revisions be carried out by October 23, 2018, by noon. Moreover, the CoC, also requested the Resolution Applicant to improve the commercial terms and viability of the resolution plan and make the same procedurally compliant under the Code. The Resolution Applicant as a consequences submitted the modified resolution plan on October 23, 2018.
7. It is stated that at the 11<sup>th</sup> CoC meeting, Resolution Applicant was again requested to consider improving the commercial terms and modify the resolution plan to ensure compliance with the Code and Regulations. The Resolution Applicant was to revert on or before October 26<sup>th</sup>, 2018, 6.00 pm. Thereafter, the Resolution Applicant submitted the modified resolution plan dated 26<sup>th</sup> October, 2018 on October 26, 2018.



8. It is stated that modified resolution plan dated October 26, 2018, and found that there was still no change in the commercial terms as required by the CoC. However, the said plan was compliant with the provisions of the Code and Regulations. Consequently, presented the same together with the RP's certificate before the CoC at its 12<sup>th</sup> meeting in accordance with Section 30 of the Code read with regulations 39(2) of CIRP Regulations. The representatives of the Resolution Applicant were invited to the 12<sup>th</sup> meeting of the CoC and the terms of the resolution plan were discussed and negotiated. Based on the said discussions, a modified resolution plan dated October 30, 2018 with revised commercial terms was submitted by the Resolution Applicant vide email dated October 31, 2018.
9. It is stated that findings from the examination of the revised resolution plan dated October 30, 2018 were duly intimated to the Resolution Applicant vide email dated November 01, 2018. Accordingly, the modified Resolution Plan dated October 30, 2018 was received by him vide email dated November 01, 2018 and a hard copy of the same was received on November 02, 2018 by way of hand delivery.
10. It is stated that, thereafter examined the modified resolution plan received on November 01, 2018 and found the same to be compliant with the Code. Consequently, the same was presented to the CoC together with the certificates of the RP at its thirteenth meeting in accordance with Section 30 of the Code read with Regulation 39(2) of CIRP Regulations. However, the members of the CoC observing that the total consideration proposed was not as per the discussions of the



10<sup>th</sup> and 12<sup>th</sup> Meetings of the CoC, concurred that terms of the Resolution Plan required further negotiation with the Resolution Applicant.

11. It is stated that owing to the ongoing negotiations between the CoC and the Resolution Applicant, pursuant to the resolution passed by the CoC in its 13<sup>th</sup> meeting, he filed an application u/S.12 read with Section 60(5)(C), Code read with Rule 11, National Company Law Tribunal Rules, 2016 seeking exemption of 48 days from the CIRP period on account of the time lost during the change in RP.
12. It is stated that, the application for exemption was being heard by this Tribunal and before the 270 day period lapsed on 17 November 2018, the CoC in its 14<sup>th</sup> meeting rejected the resolution plan dated 1<sup>st</sup> November 2018. This Tribunal was notified of this fact on 27 November 2018. Application seeking exemption of 48 days came to be allowed vide order dated 29 November 2018, certified copy of which was made available by the Registry on 14 December 2018. Therefore, the CIRP period stands extended to 31<sup>st</sup> January 2019.
13. In view of the examination application being allowed, the Resolution Applicant submitted a modified resolution plan dated January 3, 2019 and the same was examined by him in accordance with the provisions of the Code and Regulations made there under. The observations/issues with respect to the said plan were intimated to the Resolution Applicant by the RP vide email dated January 07, 2019. The Resolution Applicant submitted resolution plan with slight modifications vide email dated January 07, 2019 and the same has been examined and found to be in compliance with the provisions



of the Code and Regulations. The same not being in contravention of any of the provisions of the law for the time being in force, was presented before the CoC with the certificate of the RP, for consideration and approval of the CoC in its 15<sup>th</sup> meeting held on January 8, 2019.

14. Thereafter at the 15<sup>th</sup> meeting of the CoC decided that Resolution Plan dated 7 January 2019, with addendums, if any, was to be considered for approval of the CoC through e-voting. Thereafter, the CoC finding the Resolution Plan dated 7 January 2019 to be both feasible and viable, approved the same the relevant portions are produced hereunder:

15. *“RESOLVED THAT pursuant to Section 30 sub-section (4) and sub-section (6) of the Insolvency and Bankruptcy Code, 2016 read with regulations 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016 and Regulation 34 and Regulation 31 of the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations 2016 and other applicable provisions of Insolvency and Bankruptcy code, 2016, and Rules and Regulations made thereunder, the Committee of Creditors of Indus Fila Limited hereby approves the Resolution Plan dated January 07, 2019 to be read with the addendum, if any, submitted by SPG Macrocism Ltd SPG Macrocism Limited through SPV – Vision Textile for Insolvency Resolution Process of Indus Fila Limited, after considering its feasibility and viability*

*RESOLVED FURTHER THAT the Committee of Creditors hereby authorise the Resolution Professional to intimate the decision of the Committee to the Successful Resolution Applicant.*

*RESOLVED FURTHER THAT the Resolution Professional shall submit the Resolution Plan approved by the Committee of Creditors with the Adjudicating Authority subject to receipt of further deposit of Rs.4(four) Crore by way of Demand draft/Financial Bank Guarantee within 3(three) days from date of intimation to the successful Resolution Applicant and non-receipt of further deposit will render the Resolution Plan futile and forfeiture of Earnest Money Deposit.*

*RESOLVED FURTHER THAT in case the Resolution Plan is rejected by the Adjudicating Authority then the Resolution Professional (RP) shall continue to discharge its duty till appointment of the Liquidator at the fee of 3,50,000/- (Indian Rupees Three Lakh Fifty Thousand) per month plus out of pocket expensed and applicable taxes.*

*RESOLVED FURTHER THAT the Committee hereby authorize Mr. UdayrajPatwardhan, Resolution Professional to seek legal assistance from external legal consultant to give effect to this resolution and the cost incidental to give effect to this Resolution to be treated as Insolvency Resolution Process cost of Indus Fila Limited.*

*RESOLVED FURTHER THAT the Committee of Creditors hereby authorize Mr.UdayrajPatwardhan Resolution Professional to undertake debit transactions for the same and the said payment of fees/expenses/cost shall be disbursed by debiting the bank account of Indus Fila Ltd.*

*RESOLVED FURTHER THAT the Committee of Creditors hereby authorize Mr. UdayrajPatwardhan, Resolution Professional to*



*do all acts, deeds and matters as may be necessary to give effect to this resolution”.*

16. It is stated that based on the discussions in the 15<sup>th</sup> CoC meeting, amendment were proposed to the Resolution Plan dated 7 January, 2019 by the Resolution Applicant by way of Amendment Letters dated 9 January 2019 and 11 January 2019. Accordingly, a Resolution Plan dated 07 January 2019 together with the Amendments was approved by the CoC through e-voting held on 15 January 2019 by 69.04% votes.
  17. It is stated that the Resolution Plan is compliant with the provisions of Section 30(2), Code and has received the necessary approval by the CoC.
  18. It is stated that the Resolution Applicant has further deposited for INR 4,00,00,000/- (Indian Rupees Four Crores only) by way of two demand drafts of an amount of INR 2,00,00,000/- (Indian Rupees Two crores) each bearing number 073956 and 073957 both dated 7 January, 2019, in terms of invitation.
- 3) M/s. Axis Bank Limited (impleading Applicant), which has also filed IA No. I.A No. 53 of 2019 in C.P(IB)No.136/BB/2017 is filed by M/s. Axis Bank Limited, U/s 60(5) (C) of the IBC, 2016, R/w Rule 11 of NCLT Rules, 2016, by inter alia, seeking to delete/modify the Clause 4.5(g) from the Resolution Plan, as it being opposed to public policy and well established principles of law and thereby hold that the Personal Guarantees are enforceable and further grant liberty to the Applicant Bank to proceed as against the personal guarantors for satisfaction of its debts and thus render justice. Except the above objection, the Resolution plan is accepted by them

too. I have dealt this issue by separate order dated May 2019 by rejecting their prayer. Therefore, I am not adverting their contentions again here.

- 4) Shri L.Muralidhara Peshwa, learned Counsel for Applicant has filed objections on behalf of the Resolution Professional to the Application filed by the Employees of Indus Fila, and also filed a separate I.A No. 54 of 2019 in C.P(IB)No.136/BB/2017 is filed by **Employees of Indus Fila** (Applicant), Under Rule 11 of NCLT Rules, 2016, by inter alia, seeking that the Applicant herein to be made a party to the Company Petition and be given an opportunity to be heard in any proposed resolution plan; to directing the parties to the Company Petition to furnish copies of the papers to the petition and any proposed resolution plan that may be made with regard to the Corporate Debtor etc. The Adjudicating Authority dismissed the IA way of separate order dated May 2019 Therefore, I am not dealing with various contentions raised by them again.
- 5) Heard Shri Shreyas Jayasimha, learned Senior Counsel for Resolution Professional, Shri V.Srinivassa Raghavan, learned Senior Counsel with Shri P.Chinnappa, Ms. Ayshwarya Chandar, Sri Sushal Tiwari, learned counsel for Resolution Applicant, Shri Udayraj Patwardhan, and learned Resolution Professional. Shri Varun Srinivassan, learned Counsel for Axis bank. I have carefully perused the pleading of both the parties and extant provision of the Code and relevant law as relied upon by both the parties.
- 6) The Learned Resolution professional has produced the minutes of 15<sup>th</sup> meeting of CoC of Indus Fila Limited, the Corporate Debtor, held at Axis Bank Limited, Axis House, C-2, Wadia International

Centre, P.B.Marg, Worli, Mumbai -400 025 on Tuesday, 08.01.2019 at 10.30 A.M wherein the proposed Resolution plan originally submitted on 10<sup>th</sup> October, 2018 which was subsequently modified as on 07.01.2019 filed by SPG Macrocosm Limited through SPV – Vision Textile was considered in depth. He has also submitted that the 16<sup>th</sup> finally CoC meeting held on 15.04.2019, and also filed Compliance Certificate in Form-H, Under Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- 7) As detailed supra, the learned Resolution professional has conducted CIRP in question, strictly in accordance with provisions code and has taken steps for maximation of assets and to see that Corporate Debtor is a going concern rather than to send it for liquidation. The CoC also discussed about non-discharge/release of personal guarantee in the proposed Resolution Plan at the instance of Mr.Chandrashekar Rao, General Authorised representative of Karnatka Bank Limited MTR, and the same was not agreed by Mr.Prince Goyal, representative of Resolution Applicant and he wants to avoid any further litigations in this matter and submitted that the waiver of personal guarantee is sought to safeguard the interest of the Resolution Applicant against right of subrogation. Mr.C.V.Sheshachala, Authorised Representative of Corporation Bank also pointed out that release of Personal Guarantee should not be part of the Resolution Plan. The same was supported by Mr.Vidyesh Dalvi, Authorised Representative of Axis Bank by contending that there is jurisprudence that there shall be no right of subrogation against the CD by personal Guarantor post approval of Resolution Plan. Therefore, Clause 4.5(g) of Resolution plan was retained in the plan which was put for voting, which reads as



under: **No recourse on Corporate Debtor against any amount recovered from personal guarantors or corporate guarantors, if any:**

“As per the Contract Act, 1872, the personal guarantor has counter indemnity from the corporate Debtor for these personal guarantee under the right of subrogation. Upon receipt of aforesaid amount, the erstwhile promoters shall be discharged from the above guarantees and simultaneously the counter indemnity of the Corporate Debtor to pay such guarantors shall be satisfied/discharged in full.

Resolution Plan for Indus Fila Ltd. by SPG Macrocosm Ltd. Through its SPV- Vision Textile Personal guarantees extended by the erstwhile promoters namely Mr.Nitin Mandhana. Mr.Shashikant Mandhana, Mr.Prakash Mandhana stand fully discharged and waived on successful implementation of the Resolution Plan (After complete payment of agreed consideration).”

The issue of discharge of personal guarantee of the promoters was considered at the instance of Axis Bank, who has filed I.A No. 53 of the 2019, by opposing discharge of Guarantors. The Adjudicating Authority has dismissed the said IA by detailed separate order. Therefore, I am not discussing the issue again here.

8) The Learned Resolution professional has also Compliance Certificate in Form-H, Under Regulation 39(4) of IBBI( IRP for Corporate Persons) Regulations 2016 by inter alia stating as follows:

**(1) He has certified that :**

- a) The said Resolution Plan complies with all the provisions of the I&BC 016 (Code), the IBBI Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
- b) The Resolution Applicant SPG Macrocosm Limited through SPV visions Textile has submitted an affidavit pursuant to section 30(1) of the Code confirming its edibility under



Section 29A of the Code to submit the Resolution Plan. The contents of the said affidavit are in order.

- c) The said resolution plan has been approved by the CoC at its 15<sup>th</sup> meeting held on 08.01.2019, in accordance with the provisions of the Code and CIRP Regulations made thereunder. The Resolution Plan has been approved by five votes constituting 69.01% of voting share of financial creditors after considering its feasibility and viability and over requirements specified by the CIRP Regulations. The modification pertaining to increase the total consideration, proposed by the Resolution Applicants was approved by the CoC at its 16<sup>th</sup> meeting held on 15.04.2019 was approved by five votes in favour constituting 69.01% of voting share of financial Creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
- d) He sought vote of members of the CoC at its 15<sup>th</sup> meeting, by electronic voting system, which was kept open at least for 24 hours as per the regulation 26. According, E-voting commenced on 11.01.2019 at 4:00 p.m and concluded on 15.01.2019 at 4:00 p.m.
- e) The modification in the resolution plan was put to vote before the CoC at its 16<sup>th</sup> meeting, voting was held in the meeting of the CoC on 15.04.2019, where all the members of the CoC were present.

(2) The list of financial Creditors of the Indus Fila 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	Voting for modification in the resolution plan
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			for/dissented/abstained) for evoting concluded on 15.01.2019	(Voted for/Dissented/Abstained) for voting held at meeting on April 15, 2019
1.	Edelweiss Asset Reconstruction Company	37.62%	For	For
2.	Axis bank Limited	16.36%	Dissented	Dissented
3.	JM financial Asset Reconstruction company	15.63%	For	For
4.	Corporation Bank	14.62%	Dissented	Dissented
5.	The Royal Bank of Scotland	8.66%	For	For
6.	Barclays Bank PLC	5.41%	For	For
7.	Palash corporation	1.69%	For	For

(3) 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 thereunder:

SL no.	Category of Stakeholders	Amount Claimed	Amount admitted	Amount provided under the Plan	Amount provided to the amount claimed (%)
1.	Dissenting secured financial creditors	203.30	203.30	Out of total consideration of Rs.50.70 Crores, after payment of CIRP costs, and workers dues of Rs.34 Lacks the due of secured financial creditors as below	Approx. 7.54% the percentage has been derived based on the tentative attribution among the financial Creditors as proposed in the resolution Plan
2.	Other secured financial creditor	441.71	441.71	80% of the said dues shall be payable to terms lenders in the ration of their admitted	Approx 7.59% the percentage has been derived based on the tentative attribution



				claim towards terms lending. The balance 20% shall be payable to the working capital lenders in the ratio of their admitted claim towards working capital lending Note: <u>No distinct provisions is proposed in the resolution plan for dissenting financial creditors and have been given the similar treatment with other secure creditor</u>	among the financial Creditors as proposed in the resolution plan
3.	Dissenting Unsecured Financial Creditors	N.A	N.A	N.A	N.A
4.	Other Unsecured Financial Creditors	11.10	11.10	Liquidation Value- Nil in this matter.	0%
5.	Operational Creditors	11.78	9.27	Liquidation Value Nil In this Matter	0%
	Government	21.51	18.49	Liquidation Value Nil In this Matter	0%
	Workmen	N.A	N.A	N.A	N.A
	Employees		N.A	N.A	N.A



		N.A			
	Authoritative Representative of Employees/Workmen a. Employee	0.36	.28	Liquidation Value Nil in this matter	0%
	b.Workmen	9.72	8.59	0.34	3.50%
6.	Other Debts and Dues	N.A	N.A	N.A	N.A
	Total	699.49	694.74	50.74	-

(4) **Section 8.1** Supervision of the plan:

“The newly appointed board shall have the responsibility of effective implementation of the proposed Plan. The actions necessary for independent supervision of plan are as follows:

Agency to monitor implementation of the plan

On approval of Resolution Plan by NCLT, Resolution Applicant proposes to appoint monitoring agency comprising of 3 members as below:

- i. Insolvency Professional, Shri Udayraj Patwardhan.
- ii. One representative of secured Financial Creditors
- iii. One representative of Resolution applicant.

The monitoring agency shall have the following responsibilities:

- Possession of Assets will vest with monitoring agency till such time the entire agreed dues are paid to the secured financial Creditors.
- To supervise implementation of resolution plan as approved by NCLT, by the new management of the Company.
- To provide regular updates to the lenders.
- To provide undated, if any, to insolvency and Bankruptcy Board of India (IBBI) as and when required.



- To ensure disbursement of dues to financial and operational creditors as per the approved plan.
- All other responsibility for the smooth implementation of the Resolution plan.
- Extent full co-operational in implementation of the Resolution Plan.

(5) Section 8.4 for the Resolution Plan deals with the supportive that the plan and moratorium agency was also proposed **Section 8.4** which reads as under:

- i. The Resolution Applicant fulfils the criteria prescribed under section 29A of the I&BC (Amendment), 2017 and Regulation 38(3) of the IBBI, (insolvency Resolution Process for Corporate Persons), Regulations, 2016.
- ii. The Proposals provides for the payment of the cost of CIRP and fee payable to the IRP/RP in terms of Regulation 38(1) (a) of the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016.
- iii. The Resolution Plan complies with the guidelines in Regulations 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- iv. There is no liquidation process involved, the Corporate Debtor will be back on track and would function as a going concern.  
Resolution Plan for Indus Fila Ltd. By SPG Macrocosm Ltd through its SPV- Vision Textile.
- v. No internal accruals are considered for the CIRP, however, in case shortfall the same shall be made good by infusion of funds from existing businesses operations of Resolution Applicant as all the obligations are met with fresh infusion of funds.



vi. The debt would be paid in a time bound manner, and the Corporate Debtor Company is being taken over acquisition of share of the Corporate Debtor.

(6) **Section 11.1** Conclusion ,which reads as under:

- The Resolution Plan envisages a settlement package for all the stakeholders.
- Induction of fresh funds by the Resolution Applicant to finance the cost of the revival.
- The Resolution Plan includes measures covered by Regulation 37, of CIRP Regulations,
- The mandatory requirements, under Regulation 38 are also satisfied.
- Then the Company shall deliver the maximum possible economic value to all stakeholders including secured and unsecured financial creditors, operational Creditor including workmen, statutory dues as against the Liquidation Value.
- The resolution Plan would enable restoration and/or generation of employment to about 200 persons and also preach the livelihood of many families. It would, as well, reinforce the positive trends in socio-economic development Mysore and Bangalore region.
- Revival of IFL would also contribute to exchequer by way of GST and other Taxes like property tax and ion income generation to Income Tax. It may also contribute to earnings of foreign exchange with export of its products.

9) By perusal various documents/Balance sheets/Audit report filed by the Resolution Applicant prima facie establish that the Resolution Applicant is financially competent enough to be Resolution Applicant



to carry out terms and conditions of the Resolution Plan in question. The Resolution plan is approved by the COC with 69.04% in accordance with law. Therefore, I am of the considered opinion that the resolution Plan is a fit to be approved under Section 31(1) of the IBC, 2016.

10) In the result, by exercising the powers U/s 31(1) IBC, 2016, C.P.(IB)No.136/BB/2017 & I.A No.40 of 2019 are disposed of with the following directions:

- (1) It is hereby approved the Resolution Plan dated 7<sup>th</sup> January 2019 submitted by SPG Macrocosm Limited through SPV-Vision Textile, (Resolution Applicant) as approved by the Committee of Creditors by e-voting held on 15<sup>th</sup> January 2019 with 69.04 % and the same was again approved with few modifications as per 16<sup>th</sup> COC held on 15.04.2019 with 69.01 % with only alteration in total consideration from Rs 50.50 Crore to 50.70 Crores by declaring that the Resolution Plan will be binding on the Corporate Debtor and its employees, members, creditors, guarantors, and other stakeholders involved in the resolution plan.
- (2) The moratorium imposed vide order dated 20.02.2018 passed in the CP shall cease to have affect from the date of communication of the order.
- (3) The Resolution Professional is directed to handover the management control all the assets, documents/records in physical and/ or digital form on an as is where is basis to the Resolution Applicant immediately, and the Resolution Professional will ceased to be resolution professional .

- (4) The Resolution Professional shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.
- (5) 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 the 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 (12 of 2003), 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.
- (6) The Resolution Applicant is at liberty to file any miscellaneous application seeking for clarification, if any, in the implementation of the terms and conditions to the Resolution Plan.
- (7) No order as to costs.

  
(RAJESWARA RAO VITTANALA)  
MEMBER, JUDICIAL.