

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

IA 593 of 2019 in C.P.(I.B) 172/NCLT/AHM/2018

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

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 19.03.2020**

Name of the Company: Parthiv Parikh RP For Jaihind Projects Ltd

Section : Section 31 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	GAURAV MATHUR	Advocate	For Axis Bank	[Signature]
2.	ABHISHEK SHAM 1/b Singh & Co.,			
3.	Ajay R. Sheth with Kajina R. Parvath	Adv. & Solicitor Adv.	RP	[Signature]

ORDER

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

[Signature]
CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 19th day of March, 2020

[Signature]
MANORAMA KUMARI
MEMBER JUDICIAL

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

**I.A. No. 593 of 2019
in
CP(IB) No. 172 of 2018**

Mr. Parthiv Parikh
Resolution Professional
Jaihind Projects Limited

... Applicant

In the matter of:

SKE Projects Pvt. Limited

... Operational Creditor

Versus

Jaihind Projects Limited

... Corporate Debtor

Order delivered on 19th March, 2020

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

Appearance: Advocate Ms. Krina Parikh with Advocate Mr. Arjun Sheth for RP. Senior Advocate Mr. Rashesh Sanjanwala with Advocate Mr. Sandeep Singhi for Axis Bank. Advocate Mr. Akshat Khare.

ORDER

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

1. The instant application bearing number as (IA) No. 593 of 2019 in CP(IB)No. 172 of 2018, is filed by the Applicant, the Resolution Professional of M/s. Jaihind Projects Limited (hereinafter referred to as "Corporate Debtor") under Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IB Code") for seeking approval of Resolution Plan of Resolution Applicant, namely Parixit Irrigation Limited qua Jaihind Projects Limited





2. The facts of the case is/are herein under:

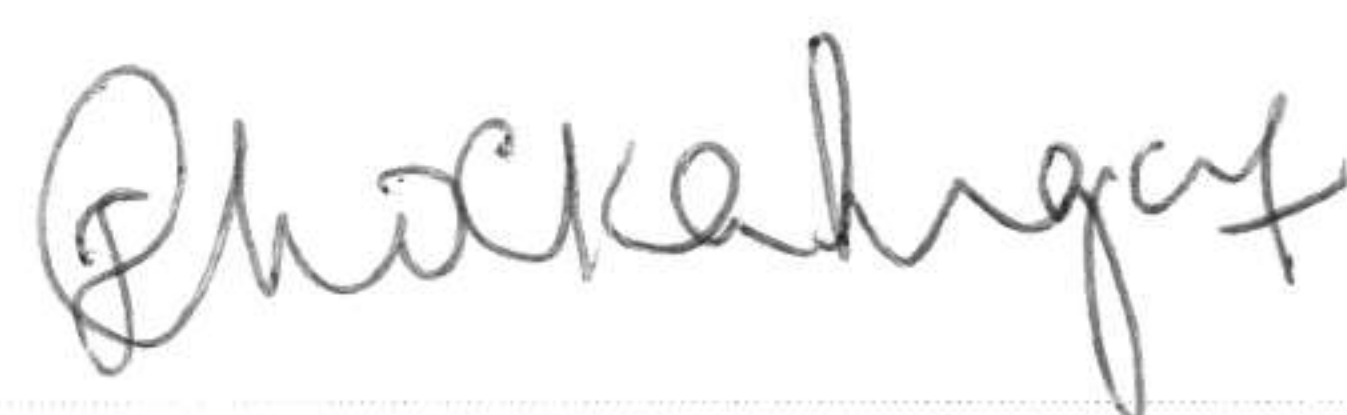
2.1 CP(IB)No.172 of 2018 was filed by Operational Creditor viz. SKE Projects Pvt. Limited, under section 9 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process(hereinafter referred as "CIRP") against the Corporate Debtor which was admitted on 02.11.2018 by this Adjudicating Authority. The Applicant was appointed as Resolution Professional (hereinafter referred as "RP") vide order dated 23.01.2019.

2.2 That the Committee of Creditors (hereinafter referred as "CoC") was formed, which met time to time and latest Information Memorandum was prepared pursuant to and based on the audited financial statements of Corporate Debtor for the Financial Year ending on 31.03.2018.

2.3 That on the expiry of 180 days of CIRP further 90 days beyond 180 days was extended vide order dated 25.04.2019. Thereafter, vide order dated 04.09.2019, the CIRP for further extended till 27.09.2019

2.4 The RP called for Expression of Interest (hereinafter referred as "EoI") vide publication dated 18.02.2019 but no EoI was received by the Applicant. Thereafter, Applicant extended the time for filing the EoI and further, CoC decided to re-issue the same vide publication dated 04.04.2019.

2.5 Pursuant to the invitation, four EoIs were received namely, (i) Mr. Dilipkumar S Sakhwala, (ii) Parixit Irrigation Limited, (iii) Mono Steel (India) Limited and (iv) Riyan Developers and Technologies Pvt. Limited and thereafter, two Resolution Plan





were submitted respectively by- Parixit Irrigation Limited and Mono Steel (India) Limited.

2.6 That time to time, the above stated plans were discussed amongst the CoC. However, only two plans i.e. Parixit Irrigation Limited and Mono Steel (India) Limited came forward with application along with various documents including the affidavit Under Section 29A of IB Code. That the two plans were put for consideration and voting for approval before the CoC in its 16th Meeting held on 03.09.2019. Out of the two plans, the plan submitted by Parixit Irrigation Limited was approved by the CoC with 72.03% of voting.

2.7 The Applicant filed Compliance Certificate in 'Form H' as reflected at page no. 82 as **Annexure D** of the application. Applicant has also submitted the two Liquidation value from two different valuers as reflected from page no. 83 of the application. Pursuant to the approval of the Resolution Plan by the CoC under Section 30(4) of the IB Code (as amended upto date) as the successful Resolution Plan, RP filed the instant application being IA No. 593 of 2019 under Section 31 of the Code with the following prayer:

- i. Pass appropriate order approving the Resolution Plan of the Resolution Applicant, Parixit Irrigation Limited qua Jaihind Projects Limited (the Corporate Debtor); and*
- ii. Pass any order(s) that this Hon'ble Adjudicating Authority deems fit.*



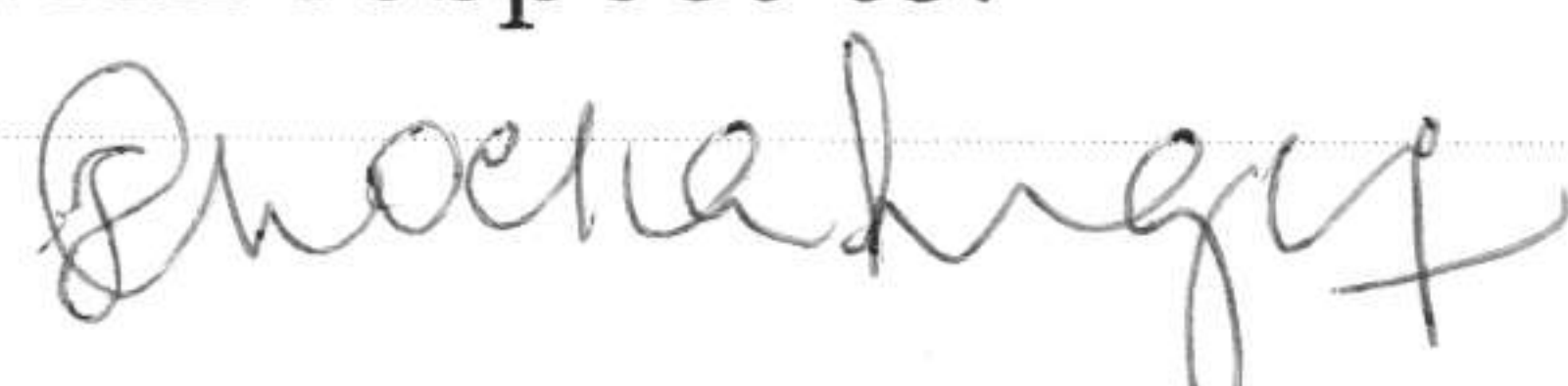


3. Heard the Applicant, Suspended Management and Resolution Applicant, the present application has been filed for approval of the Resolution Plan under Section 31 of the IB Code (as amended upto date) submitted by RP in respect of the Corporate Debtor. The Applicant/ the Resolution Professional, deliberating the sequence of events right from calling of EoI up to approval of the Resolution Plan by the CoC in its 16th meeting held on 03.09.2019 submitted the Resolution Plan duly approved by the CoC by 72.03% in favour of the Resolution Plan so submitted by Resolution Applicant as the Resolution Plan complies with the requirements as envisaged under Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as well as Section 30 of the Code, and sought for approval of the Resolution Plan by this Adjudicating Authority.
4. On perusal of the records, it is found that the Resolution Applicant has taken account the interest of all stakeholders of the Corporate Debtor to the extent possible, as envisaged in this Resolution Plan for insolvency resolution of "Jaihind Projects Limited" and to ensure continuity of business along with (i) most effective use of the assets, (ii) maximizing of the value of the assets and (iii) balance the interest of all stakeholders of Jaihind Projects Limited as going concern basis.

Business Rationale and Revival Plan envisaged by Resolution

Applicant in brief is as follows:

Resolution Plan envisaged under this Resolution Plan provides for Financial Restructuring through Compromise or Arrangement with the Financial Creditors and Operational Creditors and change of management of Corporate Debtor. Further it envisaged about proposals with respect to:





- a. Proposal for insolvency Resolution Process Costs in priority to all other debts
- b. Proposal for Financial Creditors (Secured and Unsecured)
- c. Proposal for Workmen/ Employees of Corporate Debtor (including Gratuity)
- d. Proposal for Operational Creditors
- e. Proposal for Statuary Dues
- f. Proposal for Contingent Liabilities and other dues
- g. Proposal for Consideration to the Equity Shareholders of Corporate Debtor pursuant to its change of management.

5. As per the Information Memorandum dated 20.04.2019, under "List of Financial Creditors" total outstanding of Financial Creditors of the Company is Rs. 1030.94 crores as follows:

Inward No	Name of the Claimant	Claimed Amount	Principal Amount	Interest Amount	Claim Admitted	Voting Share
1	Axis Bank	45.77	39.56	6.21	45.77	4.61%
2	Bank of Baroda	142.78	84.58	58.2	142.78	14.38%
3	IDBI Bank Limited	314.53	188.21	126.32	314.53	31.67%
4	Canara Bank	175.25	90.38	47.79	138.17	13.91%
5	Indian Bank	118.89	71.88	47.02	118.9	11.97%
6	State Bank of India	106.59	67.82	38.77	106.59	10.73%
7	Punjab National Bank	21.97	9.75	12.22	21.97	2.21%
8	Srei Equipment Finance Limited	105.17	31.94	72.37	104.31	10.50%
		1030.94	584.12	408.88	993.00	100.00%

Shoemah

Sharma

It could be seen from above table that admitted claims by RP are Rs. 993.00 Lakhs. It is proposed that as against Admitted Claim of Rs. 993.00 Lakhs, Financial Creditors will be settled for a One Time Settlement (OTS) amount of Rs. 53.00 Lakhs in full and final settlement of their outstanding dues against Corporate Debtor. Such payment will be made within 90 days from the date of approval of Resolution Plan by NCLT. The distribution ratio interse Financial Creditors will be decided by CoC.

The detailed terms and conditions are given under **Part B at page no. 33** of the application, which shall form the part of this Order.

6. As per the Information Memorandum dated 20.04.2019, under the head "The number of workmen and employees and liabilities of the corporate debtor towards them" as provided by the Resolution Professional, the total amount claimed by Workmen/ Employees of Corporate Debtor at Rs. 67,62,483/-, against these claims the admitted claims by the Resolution Professional is Rs. 4,58,120/-.

The detailed terms and conditions are given under **Part B (II) at page no. 34** of the application, which shall form the part of this Order.

7. The amount due to the Operational Creditors, Other Creditors and related party of Jaihind Projects Limited as provided in Information Memorandum dated 20th April 2019 under the head "List Of Operational Creditors", "List Of Other Creditors" And "Particulars Of A Debt Due From Or To The Corporate Debt Or With Respect To Related Parties" (other than government and statutory dues) is tabulated below:

No.	Particular	Total Claim	Amount
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Prachinagar

Adhikari

		Received (Amount in Rupees)	Admitted by RP (amount in Rupees)
1	Operational Creditors	3,07,58,66,617	47,39,65,796
2	Other Creditors	1,69,42,608	NIL
3	Related Party	2,42,48,224	NIL
	Total	3,11,70,57,449	47,39,65,796

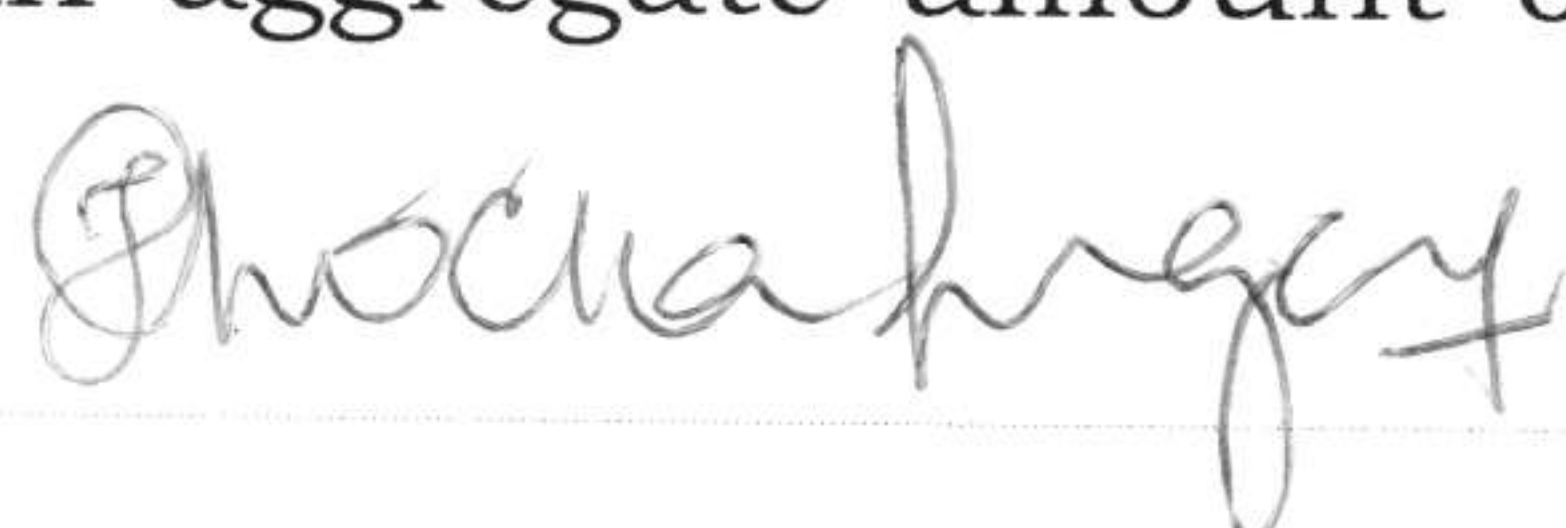
It has been brought to the notice of Resolution Applicant vide e-mail dated 19th July 2019, that few of the Operational Creditors had filed application under the provisions of IBC for admission of their respective claims. In case such claims will be admitted on a later date, the total claim amount and admitted amount will be increased with such amount.

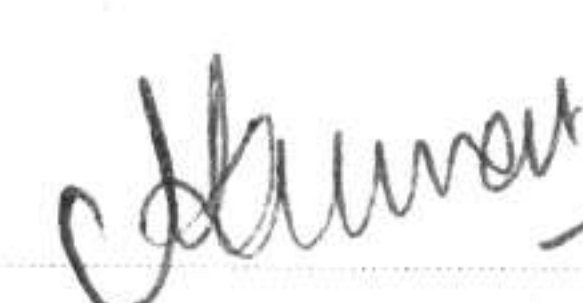
The detailed terms and conditions are given under **Part C at page no. 36** of the application, which shall form the part of this Order.

8. Further with regard to the sources of funds and applicability of the funds, it is mentioned hereunder:

Application of Funds	Rs. In Lakhs
Liabilities to be resolved/settled	
a. Insolvency Resolution Process Cost	175.00
b. Financial Creditors (Secured & Unsecured)	5300.00
c. Workmen/Employees	4.58
d. Gratuity Dues	5.00
Total	5484.58
e. payment to Operational Creditors	10.00
f. Statutory dues	50.00
g. Other Operational Creditors	10.00
h. Equity Share Capital	NIL
Total Cost of Resolution Plan	5554.58
Fresh fund based for capex for solar power project as advised by RP	250.00
Grand Total	5804.58

It could be observed from above that Resolution Applicant proposes to pay an aggregate amount of Rs. 5554.58 Lakhs against full and





final payment for all the liabilities of the Corporate Debtor and Rs. 250 Lakhs towards capex for solar power project as advised by RP aggregating to Rs. 5804.58 Lakhs.

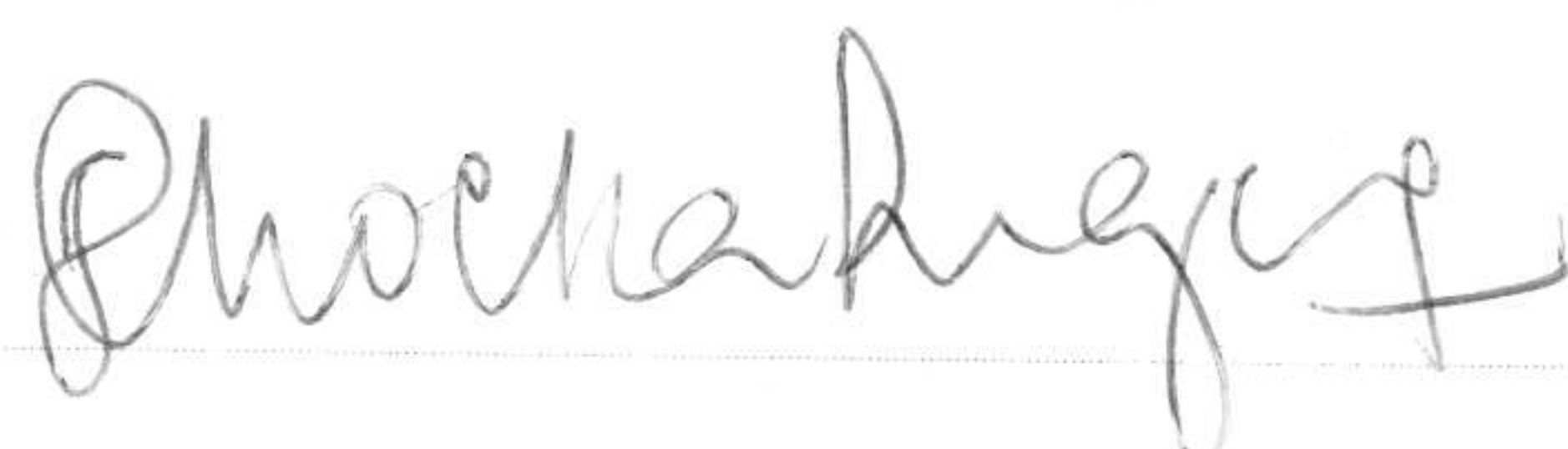
9. It is stated in Plan that contribution by Resolution Applicant and Internal accruals of Corporate Debtor from the Commencement of CIRP proceedings and upto NCLT order is Rs. 5804.58 Lakhs. The details of means of finance are as under:

Means of Finance	Rs. In Lakhs
Promoter' Contribution through Share Capital (Equity and Preference Share Capital)	400.00
Available Cash and Bank balance of Corporate Debtor upto date of NCLT order	800.00
Investments by Associate/Group Companies	4604.58
Grand Total	5804.58

In the event of available Cash & Bank Balance for meeting cost of Resolution Applicant is less than Rs. 800 Lakhs Resolution Applicant will make good the shortfall. Likewise, in the event available Cash Balance is more than Rs. 800 Lakhs, the same will be continued in Corporate Debtor to meet future needs of it.

If cash balance or any other current assets of Corporate Debtor has been utilized for meeting payments detailed in the Table of Application of Funds given in Point 5 of Part J of this plan, the same shall be adjusted towards that head and only balance amount will be paid.

10. On perusal of the record, it is found that the Resolution Applicant has also filed Form H as **Annexure D** under regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution





Process for Corporate Persons) Regulations, 2016 at page no. 82 of the application which is self explanatory.

11. During the pendency of the instant application filed under section 31 of the IB Code for sanction of the Resolution Plan of 'Parixit Irrigation Limited', the Axis Bank Limited filed its objection/ Intervention, agitating inter alia, that the Resolution Plan of the Resolution Applicant is illegal, contrary to the law, violative of provision of Code and deserves to be rejected along with the following prayer;

a) Direct the members of the CoC and/or Resolution Applicant to distribute the upfront amount payable to the Financial Creditors in such manner that the Objector is paid a sum of Rs. 15.09 crores or at least sum of Rs. 8.60 crores in terms of section 30(2)(b) of the IB Code read with Section 30(4);

Or in alternative;

b) Reject the present application and not approve the Revised Resolution Plan of the Resolution Applicant.

12. The main contention of the Axis Bank, who is one of the dissenting member of the COC, is that the mechanism of distribution adopted by CoC is substantially lower than the liquidation value, let alone the fair value, while other members of CoC receive much higher value which is reflected by the valuation report given by two valuers namely, GAA Advisory and *Mukesh Shah*. The liquidation value and fair value worked out by the said valuers is tabulated in the chart below-

	GAA	Mukesh Shah	Average
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Shalini Singh

Chauhan

I.A. No. 593 of 2019
in
CP(IB) No. 172 of 2018

	(Report dated 02.11.2018)		(Reports dated 26.04.2019)			
	Fair Value	Liquidati -on Value	Fair Value	Liquidati -on Value	Fair Value	Liquida -tion Value
<u>Non Current Asset</u>						
<u>Location 1: Village Chadiyana,</u>						
<u>Taluka Santalpur,</u>						
<u>District Patan, Gujarat-</u>						
<u>SOLAR PLANT</u>						
<u>Land at Chandiyan a village, Santalpur- Taluka, Patan Dist., Gujarat.</u>	1.53	0.77	2.66	1.59	2.09	1.18
Building and shed	-	-	0.06	0.04	0.03	0.02
Land and Building Sub total	1.53	0.77	2.72	1.63	2012	1.20
Plant and Machinery	11.93	4.30	14.00	10.50	12.97	7.40
Sub Total	13.46	5.07	16.72	12.13	15.09 *	8.60 *
<u>Location 2: Venus Atlantis,</u>						
<u>Ahmedabad, Gujarat</u>						
Office Area	30.26	21.18	26.89	18.82	28.57	20.00
Terrace Area	1.82	1.27	1.05	0.74	1.44	1.00
Plant & Machinery	0.01	0.01	-	-	0.01	0.01
Sub Total	32.09	22.47	27.94	19.56	30.02	21.01
<u>Location 3: Village Khumbiwali,</u>						
<u>Taluka- Khalapur,</u>						

Shri. Chandra Shekhar

Chandani

<u>District- Raigarh</u>						
Land	1.74	1.04	0.65	0.65	1.20	0.85
<u>Location 4: Assam- not visited</u>						
Plant and Machinery	-	-	-	-	-	-
<u>Location 5: Saudi Arabia- not visited</u>						
Plant and Machinery	-	-	-	-	-	-
Non Current Asset Total	47.29	28.58	45.31	28.57	46.30	28.57
<u>Current Assets</u>	4.86	3.43	3.97	2.59	4.42	3.01
<u>Total Non Current Assets</u> + <u>Current Assets</u>	52.00	32.00	49.28	31.16	50.64	31.58

Thus from the chart, it is apparent that under the garb of pro-rata treatment, the Axis Bank is provided only liquidation value i.e. Rs. 8.60 crores as against the fair value i.e. 15.09 crores as indicated by way of asterisk mark (*) in the above chart.

13. It is further submitted by the Objector (Axis Bank) that by virtue of Section 30(2)(b) of the IB Code (as amended upto date), the Objector was entitled to get at least the liquidation value of the asset exclusively charged to it i.e. Solar Project. As per the valuation report obtained by the RP, **the fair value of Solar Project is Rs. 15.09 crores and the liquidation value thereof, is Rs. 8.60**

Shoekat Hossain

Atunai

crores. Therefore, the Objector is entitled to receive a sum amounting to Rs. 8.60 crores, if not fair value. Instead of that, by adopting the pro-rata basis, the Axis Bank is provided a meagre sum amounting to Rs. 2.44 crores.

14. The Objector stated that by virtue of amendment more particularly in Section 30(2)(b) of the IB Code, Resolution Plan shall provide the payment of Financial Debts of a dissenting Financial Creditor which should not be less than the amount to be paid in the event of liquidation of Corporate Debtor in accordance with Section 53(1) of the IB Code.
15. It is further stated that the valuation report obtained by the Applicant also works on the same principle of liquidation value and fair value of each asset of the Corporate Debtor. Therefore, the Objector is, at least, entitled to the liquidation value i.e. Rs. 8.60 crores.
16. It is a matter of record that the Resolution Plan is amended from time to time. The initial Resolution Plan was dated 10.06.2019, and thereafter, the Resolution Applicant submitted a Revised plan dated 20.07.2019(hereinafter referred as Revised plan). On perusal of the record, it is found that and as also submitted that the Revised Resolution Plan was further amended twice i.e. on 26.07.2019 and 06.08.2019. During the interregnum, **the Amendment brought in by the Legislature, vide Insolvency and Bankruptcy Code (Amendment) Act 2019 (hereinafter referred as "Amendment 2019" or "IB Code") dated 05.08.2019, which has come into effect from the date of ratification i.e. on 16.08.2019.** As per the said Amendment, sub-clause (b) in Clause (2) of Section 30 of the

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IB Code has been inserted as per which the dissenting Financial Creditor is required to be paid a minimum value which shall not be less than the amount in the event of liquidation of the Corporate Debtor as per Section 53 (1) of the IB Code.

Under the said Amendment, the Legislature had also inserted; **Explanation-1**, which removes the doubt that the distribution of the amount in accordance with the provisions of the Code is required to be **fair** and **equitable** to such Creditor.

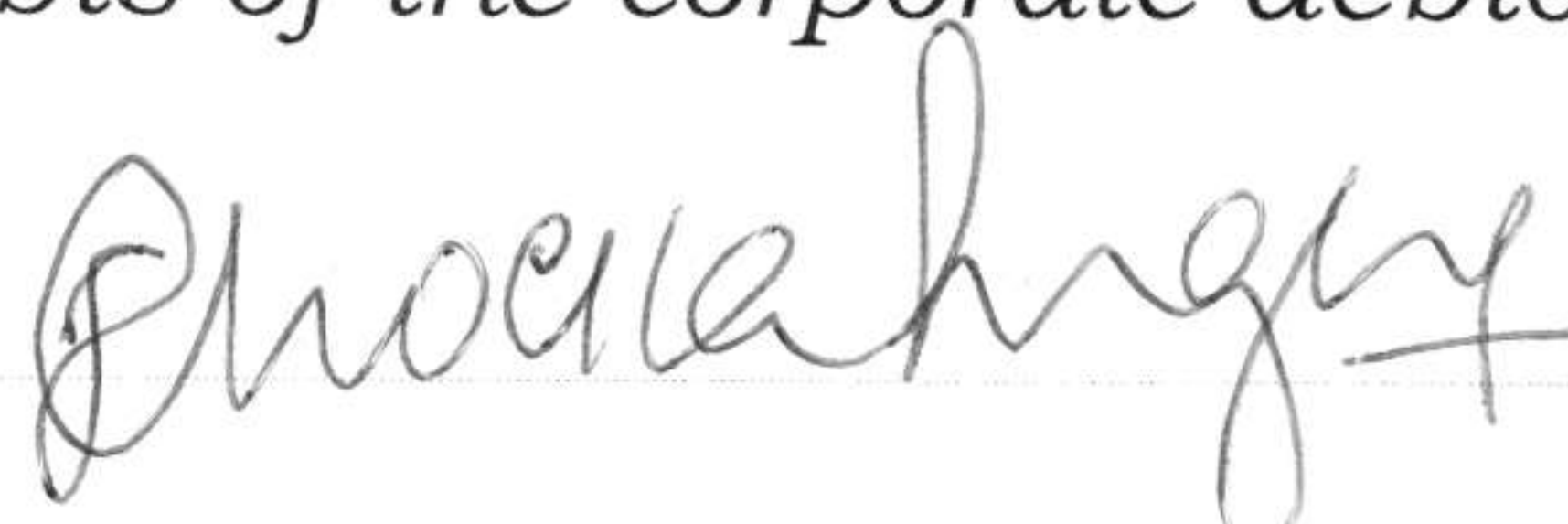
17. In view of such Amendment in the IB Code, the Revised Resolution Plan was filed in line with the Amendment vide addendum dated 30.08.2019, but then even the Resolution Applicant has failed to provide for such amount in its Resolution Plan as provided under Section 30 of the IB Code (as amended upto date).
18. It is pertinent to mention herein that by virtue of Explanation 2 (i) to Section 30(2)(b) of the IB Code, the amended Act was made retrospectively applicable. In view of that Section 30(2) and 30(4) is applicable in the instant case. For sake of the convenience the amended provision is reproduced herein below-

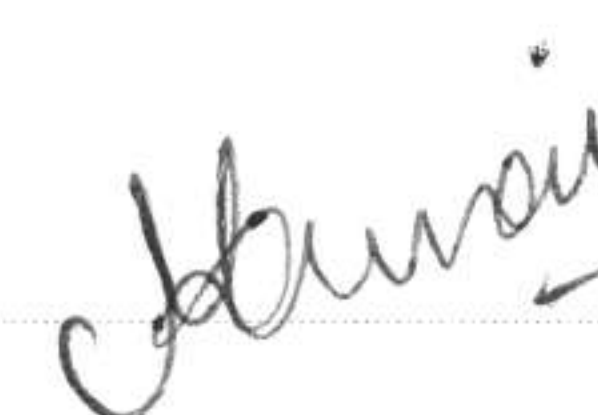
“30. Submission of Resolution Plan

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

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

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





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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. During the course of arguments, Resolution Applicant filed its affidavit stating, inter alia, that in response to the public announcement inviting claims to take over Jaihind Projects Limited (Corporate Debtor), Parixit Irrigation Limited submitted its Resolution Plan. He has further submitted that last addendum to the plan was submitted on 06.08.2019 and the same was accepted by COC in its meeting held on 13.08.2019, wherein, the Parixit Irrigation Limited was declared as successful Resolution Applicant with 72.03% of voting in favour of the Resolution Plan.

20. In view of that, as also required by COC, Resolution Applicant submitted performance bank guarantee no. 15300100008205 of Rs.

Chokha Hegde

Abhinav

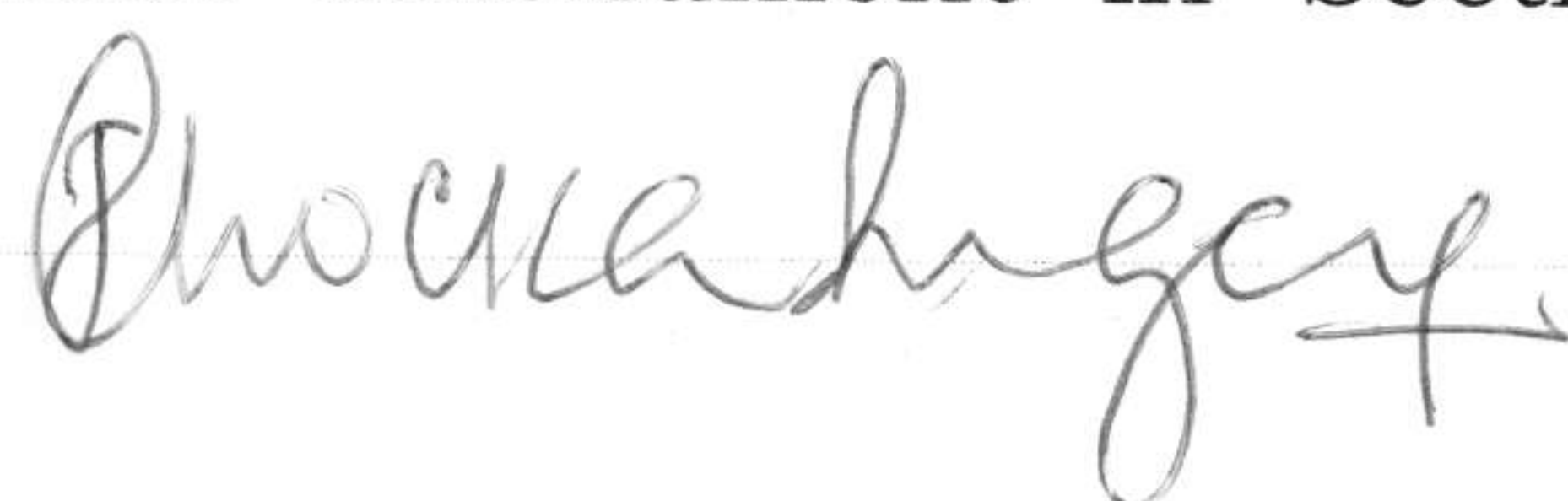
10,11,00,000/- (Rupees Ten Crores Eleven Lakhs only) of Axis Bank Limited dated 21.08.2019 valid upto 12.03.2020.

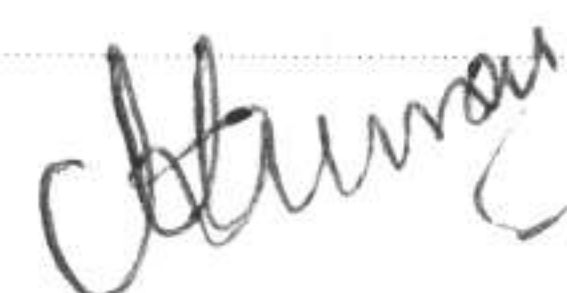
21. It is further stated that the Resolution Plan was based on assumption at the time of making first offer, the whole exercise of the CIRP will be completed within 180 days as provided in the IB Code. Subsequently, by an amendment, this period was increased to 330 days. However, as on date 486 days have already been passed and if the said plan is not allowed or approved, in that event, the Resolution Applicant has to bear irreparable loss due to the delay in approval of the plan as the condition of the project is steeply deteriorating. It is needless to mention herein that **as against the liquidation value of Rs. 3300 lakhs, the Resolution Applicant is paying upfront amount of Rs. 5854.81 lakhs** (including capex of Rs. 250 lakhs for Solar Plant.)

The Resolution Applicant was present in person during the course of argument and submitted that, if the approval of Resolution Plan is further delayed for one or the other reason(s), he will be constrained to withdraw his plan. Under such circumstances, he further prayed during the argument that the plan be approved as early as possible to save the Corporate Debtor as a going concern. Moreover, he is losing interest on the Bank Guarantee which is a huge amount.

FINDINGS:

22. Looking to the entire facts of the case, it is found that the COC has approved the plan with 72.03% voting in favour of the approval of the plan. However, the only objection raised by Axis Bank is in view of recent amendment in Section 30(2)(b) that he is entitled for





liquidation value at least, if not fair value as stated hereinabove. Under such circumstances, when there is no other objection in respect to the Resolution Plan and **only one objection is raised by the dissenting Financial Creditor i.e. Axis Bank Limited**, with regard to distribution on pro-rata basis, we are of the opinion and also in view of recent amendment, as well as, on the ground of reasonability and equity, the Axis Bank is entitled for liquidation value i.e. Rs. 8.60 crores, if not fair value i.e. Rs. 15.09 crores, as against pro-rata of Rs. 2.44 crores.

Moreso, when the Resolution Applicant fulfils the mandatory contents of the Resolution Plan as provided under Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. Regulation 38 is reproduced herein under-

“38. Mandatory contents of the resolution plan.

(1) A resolution plan shall identify specific sources of funds that will be used to pay the –

(a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;

(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and

(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.

Shri. A. K. Singh

Chakraborty

["(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor."]

(2) A resolution plan shall provide:

(a) the term of the plan and its implementation schedule;

(b) the management and control of the business of the corporate debtor during its term; and

(c) adequate means for supervising its implementation."

23. On bare perusal of the Chart in the preceding paragraph no.12, it is found that fair value of the asset and liquidation value of the asset (in crores) in respect of Solar Plant, upon which Axis Bank has exclusive charge, shows the disparity in the distribution. The said chart is reproduced herein below for the sake convenience-

	GAA		Mukesh Shah		Average	
	(Report dated 02.11.2018)		(Reports dated 26.04.2019)			
	Fair Value	Liquidation Value	Fair Value	Liquidation Value	Fair Value	Liquidation Value
<u>Non Current Asset</u>						
<u>Location 1: Village Chadiyana,</u>						
<u>Taluka Santalpur,</u>						
<u>District Patan, Gujarat-</u>						
<u>SOLAR PLANT</u>						
<u>Land at Chandiyana a village, Santalpur-Taluka, Patan Dist., Gujarat.</u>	1.53	0.77	2.66	1.59	2.09	1.18

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Building and shed	-	-	0.06	0.04	0.03	0.02
Land and Building Sub total	1.53	0.77	2.72	1.63	2012	1.20
Plant and Machinery	11.93	4.30	14.00	10.50	12.97	7.40
Sub Total	13.46	5.07	16.72	12.13	15.09 *	8.60 *
Location 2: Venus Atlantis,						
Ahmedabad, Gujarat						
Office Area	30.26	21.18	26.89	18.82	28.57	20.00
Terrace Area	1.82	1.27	1.05	0.74	1.44	1.00
Plant & Machinery	0.01	0.01	-	-	0.01	0.01
Sub Total	32.09	22.47	27.94	19.56	30.02	21.01
Location 3: Village Khumbiwali,						
Taluka- Khalapur,						
District- Raigarh						
Land	1.74	1.04	0.65	0.65	1.20	0.85
Location 4: Assam- not visited						
Plant and Machinery	-	-	-	-	-	-
Location 5: Saudi Arabia- not visited						
Plant and Machinery	-	-	-	-	-	-
Non Current Asset Total	47.29	28.58	45.31	28.57	46.30	28.57
<u>Current Assets</u>	4.86	3.43	3.97	2.59	4.42	3.01

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Total Non Current Assets + Current Assets	52.00	32.00	49.28	31.16	50.64	31.58

24. Under the fact and circumstances as discussed, herein above in sequence, we hereby direct the other Financial Creditors to contribute the remaining amount either on pro-rata basis and/or in proportion to the extent of their debt and/or as agreed by the other Financial Creditors, to the Axis Bank, so as to get atleast the liquidation value i.e. Rs. 8.06 crores, in view of the recent amendment made in Section 30 of the IB Code. By doing so, a going concern can be saved as the plan has been already approved by majority of voting share as such for disagreement in allocation of funds, the plan cannot be disturbed which has already been delayed. Any further delay, due to the dispute in allocation/distribution of the funds between the Financial Creditors will have far reaching consequences on the economy as a whole as well as it will be prejudicial to the interest of public and other stakeholders, workers, employees; whose livelihood is based on the Corporate Debtor.

25. Further, from the object of the IBC, it is amply clear that the **“Resolution is Rule and the Liquidation is an Exception”**. Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only, if there is any surplus after satisfying the

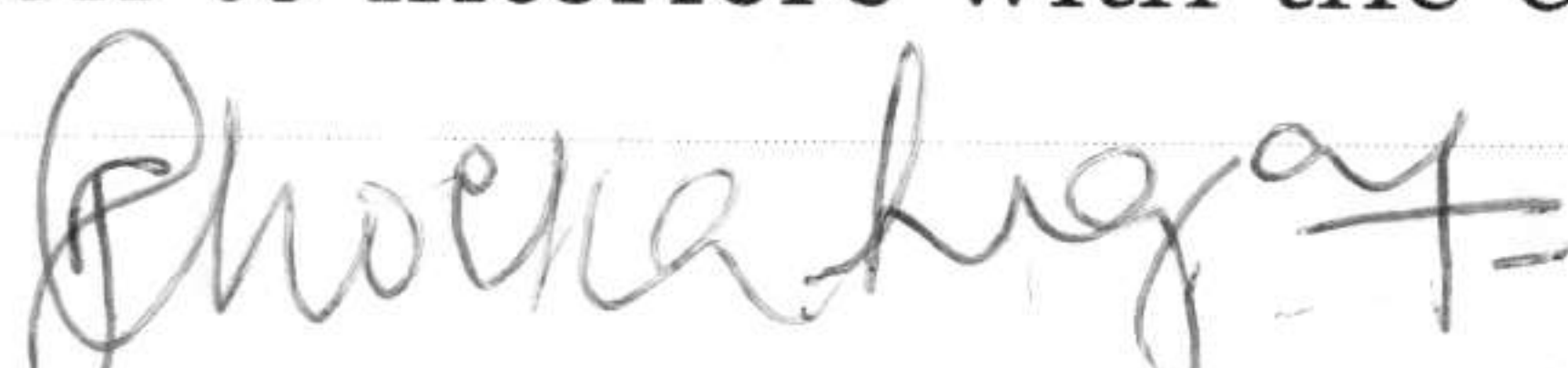
Shobha Singh

claims of a prior set of stakeholders fully. The IB Code', therefore, does not allow liquidation of a corporate debtor' directly. It allows liquidation only on failure of corporate insolvency resolution process'. It rather facilitates and encourages resolution in several ways.

The said objective of the Resolution Plan is affirmed in the decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors.** The Supreme Court has observed that National Company Law Tribunal has no jurisdiction and authority to analyze or evaluate the commercial decision of the Committee of Creditors (CoC) to enquire into the justness of the rejection of the Resolution Plan by the dissenting Financial Creditors.

Keeping in view such object behind the enactment of the Code, intention of the Legislature, that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for brining Resolution Plan were failed or it cannot be found workable in the larger public interest. Hence, now the approval of Resolution Plan by this Adjudicating Authority is rule as per the apex court's decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors** as discussed above.

The Hon'ble Supreme Court in its recent judgment in Civil Appeal No. 10673 of 2018 in **K. Sashidhar Vs. Indian Overseas Bank & Ors.** comprising of Hon'ble Justice A.M. Khanwilkar and Hon'ble Justice Ajay Rastogi observed that Adjudicating Authority has no jurisdiction to interfere with the commercial wisdom of the CoC.





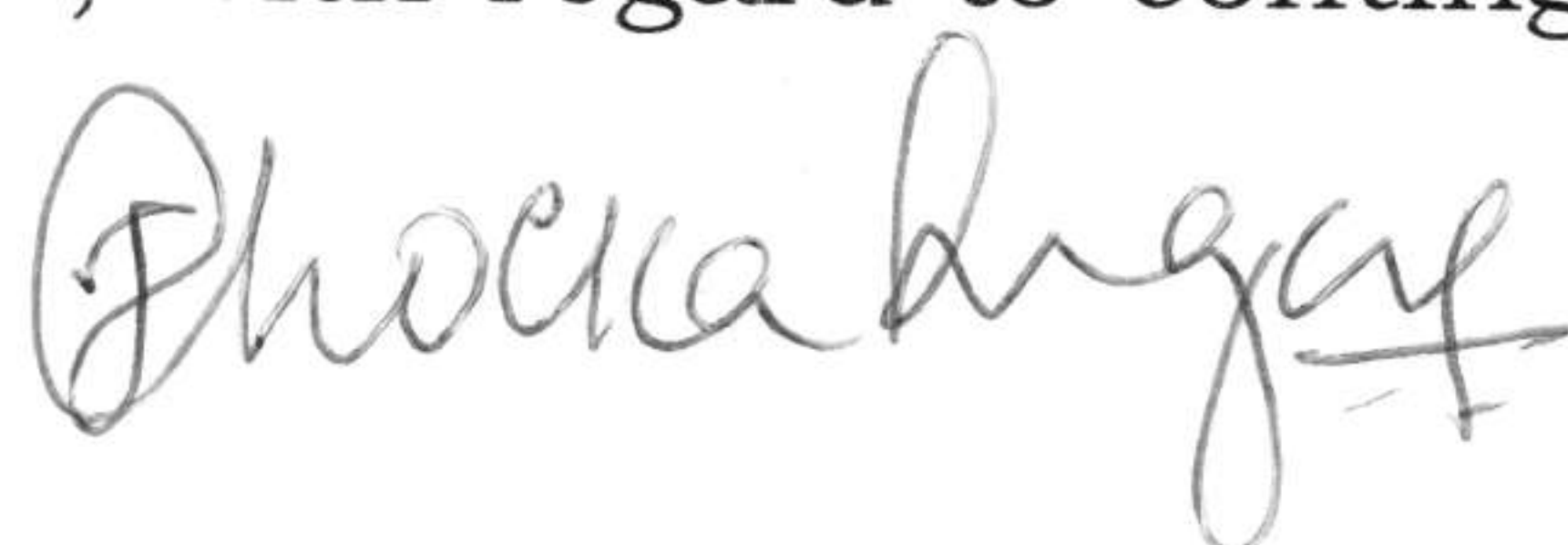
On the backdrop of the decision taken by Hon'ble Supreme Court, it is pertinent to note herein that in the instant case, there is no interference with commercial wisdom of CoC with regard to the implementation of the Resolution Plan. However, the observation so made is in view of the disparity caused in the distribution of the amount on the pro-rata basis as the Axis Bank is getting lesser amount as compare to other Financial Creditors.

26. However, with regards to the **Concession and Relief** sought for, by the Corporate Debtor, the Adjudicating Authority is of the opinion that:

26.1 With regard to Part G (1) sub-clause (c) as stated under the head "From the Government of Gujarat", this Adjudicating Authority is of the opinion to allow such relief.

26.2 With regard to Part G (1) sub-clause- (a),(b),(d),(e) & (g), Resolution Applicant may approach/ have all liberty to approach the concerned statutory/competent authority for any concession, waiver or exemption as per prevailing law(s) of the land or as the case may be. And;

With regard to Part (1) sub-clause (f) under the head "From the Government of Gujarat" i.e. full waiver of contingent dues and unconfirmed dues, this Adjudicating Authority is of the opinion that once the claim of the claimant either Operational Creditor or Financial Creditor is decided in the form of admission or rejection or have not lodged within a stipulated time, in that event they have no liberty to agitate their claim for reconsideration. However, with regard to contingent dues, it is only applicable for



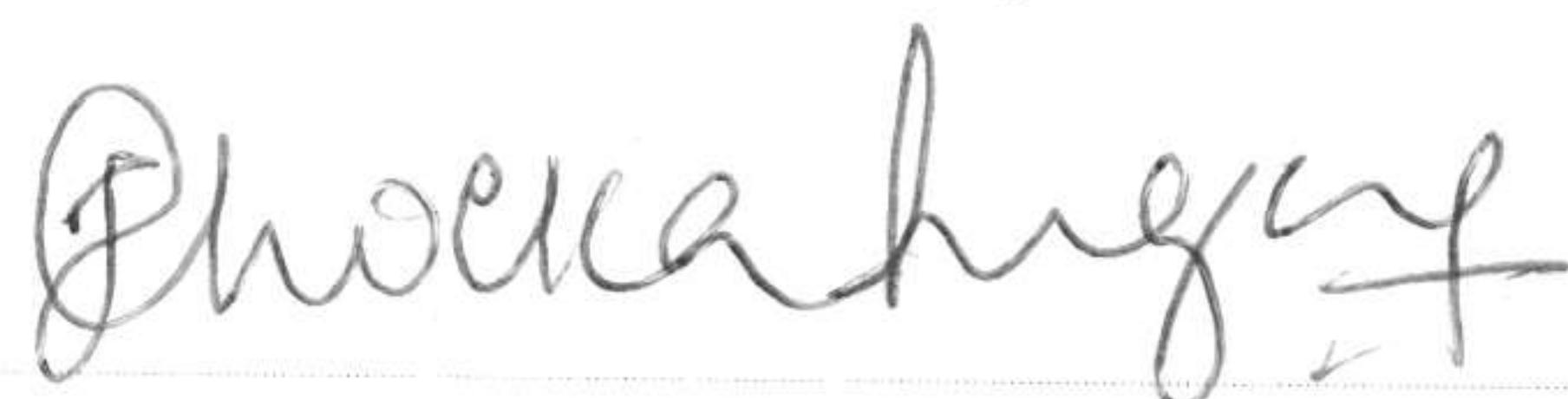


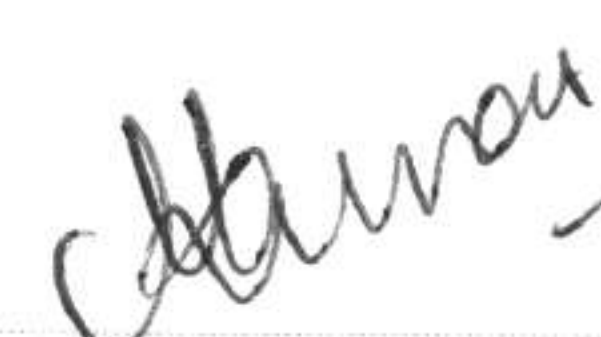
those whose application is pending/subjudiced or as the case may be.

26.3 With regard to Part G (2) and (3) i.e. 'Concession from SEBI and stock exchange and RBI', the Resolution Applicant have the liberty to approach the concern statutory/competent authority for any concession, waiver or exemption as the case may be, in view of the Resolution Plan.

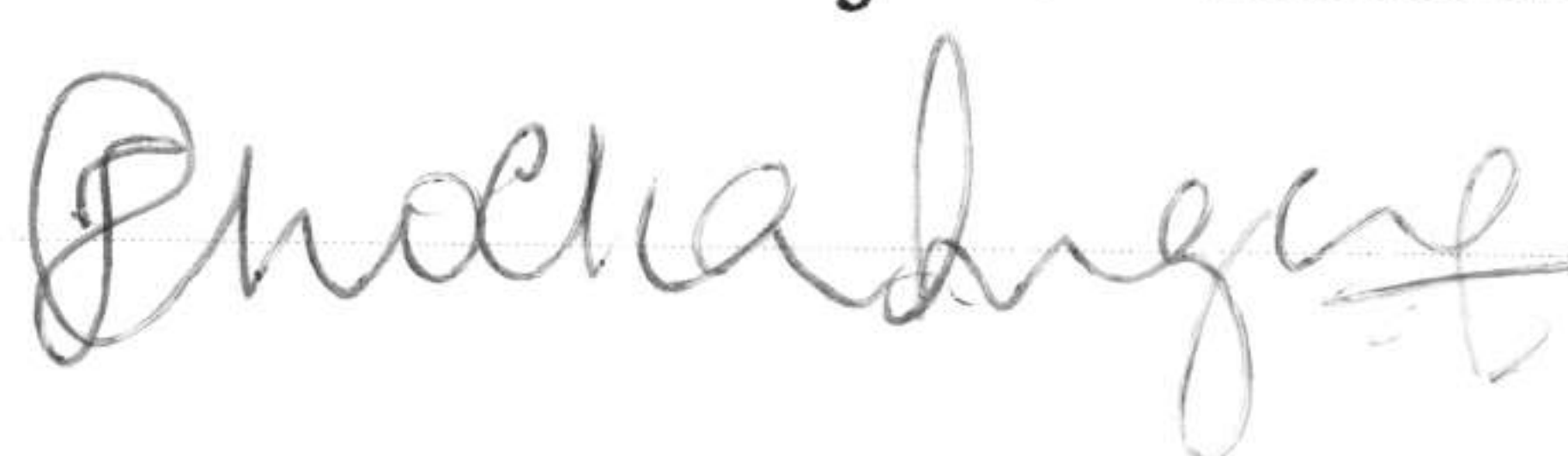
26.4 With regard to Part G (4) & (5) sub clause (a) & (b) i.e. 'Concession/relief sought from the unsecured Financial Creditor and Operational Creditor including statutory Operational Creditors, this Adjudicating Authority is of the opinion that whoever, whether they are Operational Creditor or Financial Creditor or unsecured Financial Creditor or other stakeholder, have approached and lodged their claim before RP and the same is either admitted/rejected, they do not have the liberty to agitate the claim for reconsideration before the Resolution Applicant as the approval of the plan reaches to its finality.

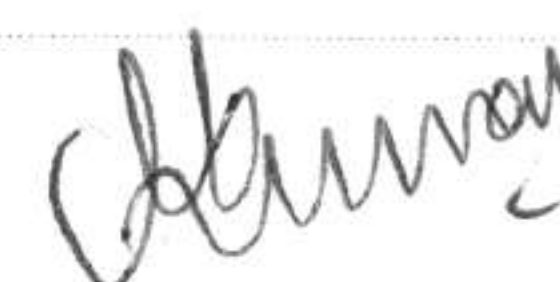
26.5 With regard to Part G (6) sub-clause (a), (b), (c) & (d) i.e. under the head 'Claims of previous management, Directors, Shareholders, its Associates and Family Members', this Adjudicating Authority is of the opinion that these issues are directly dealt with RP and COC and thereafter, the resolution is approved. Hence, it requires no further adjudication. Moreover, all the Financial Creditors, who are the member of the COC, considered the Resolution Plan looking to the lien and charges and has approved the plan accordingly.





- 26.6 With regard to Part G (7) sub-clause (a) & (b), this Adjudicating Authority is of the opinion that the Resolution Applicant will approach the statutory/competent authority of local body/ state/ Central Government/ any other competent authority/ Board/ Tribunal for any concession and waiver.
- 26.7 With regard to Part H i.e. Extinguishment of Claim/ Rights, this Adjudicating Authority is of the opinion that the claim which are not already dealt by RP or COC during the CIRP period or filed within the statutory period cannot be reagitated before the Resolution Applicant after the approval of the Plan. With regard to concession from any competent authority of Government/ Semi Government/ Central or Local Authority, Resolution Applicant shall approach them.
27. it is needless to mention herein that approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/Corporate Debtor as those are the subject matter of the concerned Competent Authorities having their proper/own jurisdiction to pass any appropriate order as the case may be. The Resolution Applicant(s) on approval of the Plan may approach those Competent Authorities/Courts/Legal Forums/Offices- Govt, or Semi Govt. / State or Central Govt, for appropriate relief(s) sought for in "Part G" of the Resolution Plan.
28. Thus, not allowing the above said Part G i.e. **Concession and Relief** sought for in Chapter IV of the Resolution Plan, is not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate



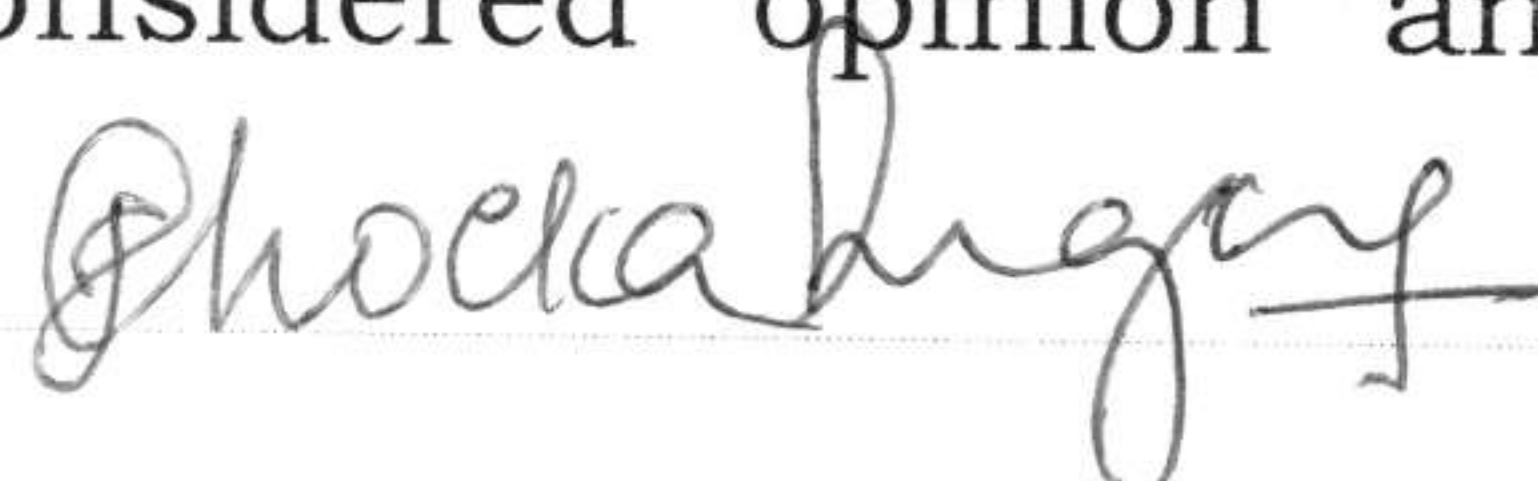


Competent Authorities. The Resolution Applicant(s) has/have liberty to approach Competent Authorities for any concession, relief or dispensation as the case may be as when required for proper and effective implementation of the Plan.

29. Apart from the above observations and directions, it is further directed/ observed that:

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

30. Under such facts and circumstances, we, the Adjudicating Authority, is of the considered opinion and also being satisfied that the

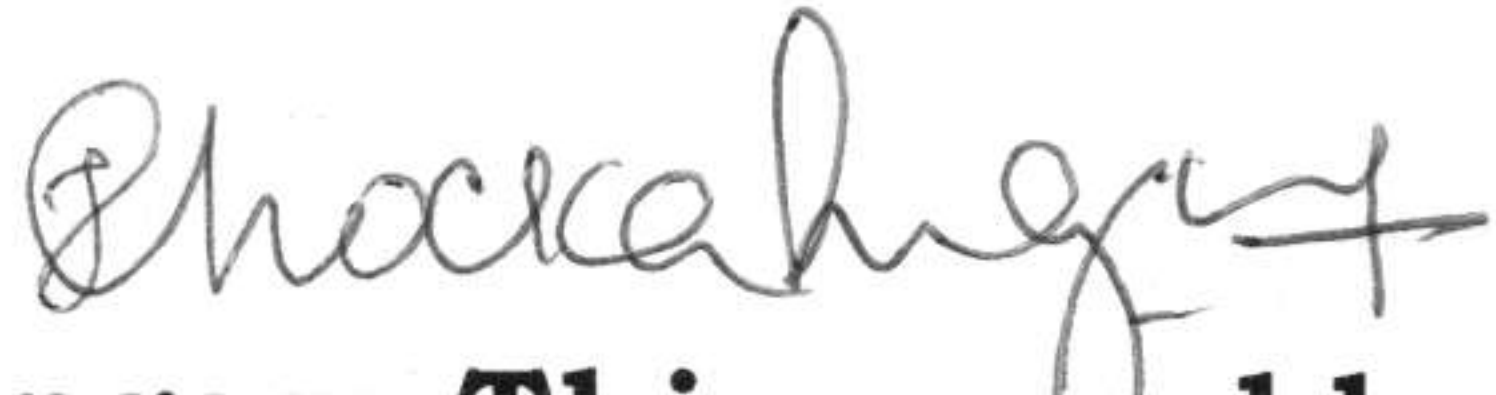


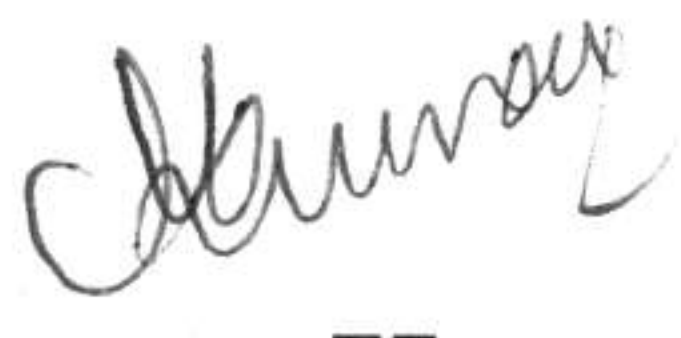


Resolution Plan as approved by the Committee of Creditors (CoC) meets the requirements as referred to under section 30(2) of the Code. However, one of the dissenting Financial Creditor made an objection with regard to the disparity in the distribution of amount on pro-rata basis which is not as per the amended Section 30 of the IB Code which is already discussed above. We are of the opinion that for this small issue the plan cannot be disturbed. Also, the other Financial Creditors are directed to contribute on pro-rata basis as or as per their proportionate stake/ debts to the Axis Bank so as to comply with newly amended Section 30 of the IB Code and Axis Bank gets atleast the liquidation value i.e. 8.60 crores if not fair value i.e. 15.09 crores.

To meet out such objection of the Axis Bank, and as other Financial Creditors have not approached this Adjudicating Authority as such, CoC/ Financial Creditors shall convene the meeting to resolve this issue without touching the other parts/ parameters of the Resolution Plan within the period of 15 days from the date of availability of this Order online.

31. Accordingly, IA 593 of 2019 is allowed with the above said observations and directions and stands disposed of in view of the above order.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member(Technical)


Manorama Kumari
Adjudicating Authority
Member(Judicial)

Shreya