

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

C.P.(IB)No.121/BB/2018
U/s 9 of the IBC, 2016,
R/w Rule 6 of I&B (AAA) Rules, 2016&
IA.No.210/2019
U/s 30(6) of the IBC, 2016
Regulation 39(4) IBBI (IRP for Corporate Persons)
Regulations, 2016

Shri Ashish Kanodia

Resolution Professional of
M/s. Maiyas Beverages and Foods Pvt. Ltd.

No. 5, Hetal Apartment,
1st Floor, above Arti Scan Centre,
N.S.Road, Mulund West,
Mumbai – 400 080.

- Applicant

In the matter of:

M/s. M.R.Betgeri

No.50, A.P.M.C Yard,
Byadgi,
Haveri – 581 106.

- Operational Creditor

Versus

M/s. Maiyas Beverages and Foods Pvt. Ltd.

No.53 (Old No.430), 7th 'B' Main,
30th Cross, 4th Block,
Jayanagar,
Bengaluru – 560 011.

- Corporate Debtor

Date of Order: 10th May, ,2019

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

Parties/Counsels Present:



For the Petitioner in CP : Ms. Anusha for A&Y Partners
For Resolution Professional : Shri Sanjay Sethiya &
Shri B.R.Vyasa Kiran Upadhya
For the Applicant :Shri V.Srinivasa Raghavan,
Sr.Counsel with Ms.Jayanthi
Goyal, Advocate
For Karnataka Bank Ltd : Shri Uday Holla, Sr. Counsel
along with Shri Adarsh Gangal

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

- 1) I.A No. 210 of 2019 in C.P(IB)No.121/BB/2018 is filed by Shri Ashish Kanodia, Resolution Professional of (M/s.Maiyas Beverages and Foods Pvt. Ltd), U/s 30(6) of the IBC, 2016, Regulation 39(4) IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, by inter alia, seeking to approve the resolution plan submitted by Akashika Foods Private Limited; to declare the moratorium orders passed on 24th July 2018 ceasing to have effect; to permit the resolution professional to sent copy of the order to ROC etc.
- 2) Brief facts of the case, which are relevant to the issue in question, as mentioned in the Application, are as follows:
 1. CP(IB)No.121/BB/2018 is filed by M/s.M.R.Betgeri, A Partnership Firm (Petitioner/Operational Creditor) U/s 9 of the IBC, 2016, R/w Rule 6 of I&B (AAA) Rules, 2016 by inter alia seeking to initiate CIRP, appoint IRP etc. Accordingly, the Tribunal admitted the case by order dated 24.07.2018 intralia appointing Shri Ashish Kanodia, as Interim Resolution Professional, imposing moratorium etc.



2. The Committee of Creditors in its meeting held on 30.08.2018, have unanimously confirmed the appointment of the said IRP as the Resolution Professional.
3. On 3rd December 2018, the Applicant received expression of interest ("EOIs") from six interested entities namely, Peepul Capital Investment Advisors Private Limited, Mr.SadanandaMaiya, Guiltfree Industries Limited, MTR Foods Private Limited, Akashika Foods Private Limited and Mr. Kamal Agrawal. The CoC was communicated the said EOI and also emailed the provisional list of prospective resolution applicants.
4. On 5th December 2018, the Applicant emailed the final list of prospective resolution applicants to the members of CoC. The Applicant requested for resolution plan vide letter dated 19th December 2018 to each prospective Resolution Applicant ("PRAs") and provided them access to a virtual data room ("VDR") upon procuring non-disclosure agreements executed by each PRA. In addition, all the PRAs were granted facility for inspection of the factory premises and interactions with the process consultant and RP team to address all issues raised by them. Necessary and adequate information, documents and explanation were given to the PRAs which were acknowledged by them.
5. As per the instructions of the CoC, the Applicant also ensured a forensic audit of the corporate debtor covering a period of two years prior to commencement of CIRP. The said report has been reviewed by CoC and the Applicant's explanation for the comments made by the forensic auditor has also been considered by the CoC.



6. On 30th March 2019, the Final PRAs each submitted their resolution plans and ancillary documents (including an affidavit under Section 29A of the Code) as per the terms set out in the request for resolution plan dated 04.12.2018. However, M/s.Peepul Capital, one of the PRAs, sent a letter on 31.03.2019 seeking additional time for submission of the plan on the plea that their interim application before this Hon'ble Tribunal are pending and outcome of such IA's would be crucial for them to submit the bid. The RP replied to them that as there were no such orders from this Hon'ble Tribunal, he would not be in a position to accede to their request.
7. Upon the cursory view of each resolution plan, the Applicant vide email dated 3rd April 2019 requested the Final PRAs to submit a revised resolution plan if they intend to revise the resolution plans prior to presenting the plan to the CoC. In addition, PRAs were also intimated about an opportunity being provided for an interactive session with the COC to enable the final PRAs to present and demonstrate the final resolution plan before the CoC.
8. The Applicant as per the instruction of the CoC, with the assistance of BDO, a specialist agency analyzed each resolution plan submitted by the Final PRA's and validated the methodology and awarded scores as per the evaluation matrix set out in the request for resolution plan dated 4th December 2018 with the concurrence of CoC.
9. The Applicant called upon the 7th CoC meeting on 8th April 2019, wherein the all CoC members were physically present for the meeting. As one of the agendas for the meeting the resolution plans submitted by the Final PRAs were placed

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before the CoC along with a summary of the analysis carried out by the Applicant with the assistance of the appointed specialist agency. The Applicant further states that during the 7th CoC meeting, he also informed the CoC members, that out of 6 PRAs, he has received resolution plan only from 3, that being Akashika, MTR and Mr. Kamal Agarwal.

10. Upon evaluating and assessing the analysis of the resolution plans presented by the Applicant, the CoC members considered to call upon representatives of the Final PRAs to discuss and deliberate the presented resolution plans. During the course of the 7th CoC meeting, each Final PRAs along with their representatives presented the resolution plan before the CoC members, detailing out the plan for resolving the debt and setting out the business plan for the revival of the Corporate Debtor. The CoC members suggested to each Final PRA certain amendments to the resolution plans, however, MTR and Akashika declined to any further revisions to the submitted resolution plan. However, Mr. Kamal Agarwal did consider increasing his bid by 2-3% on the assurance of the successful bid. In addition, Akashika Foods also produced letter of comfort/support from most of the employees, workmen, vendors and distributors of the Corporate Debtor which was taken on record by the CoC and its evidenced in the minutes of the 7th meeting of the CoC.
11. After observing the presentation delivered by the Applicant and the Final PRAs and upon further deliberations, evaluation and analysis of each resolution plan, the CoC members decided to vote for approving a resolution in accordance with Section 30(4) of the Code. The Applicant as



per Regulation 25(3) of CIRP Regulations, put forth the agenda of approving a resolution plan submitted by the final PRAs for voting at the CoC meeting. By way of show of hands, CoC members unanimously approved the resolution plan submitted by Akashika, thereby nominating Akashika as the successful resolution applicant.

12. The Applicant declared that the resolution plan dated 30th March 2019 submitted by Akashika ("Successful Resolution Plan") is in compliance with Section 30 of the Code and Regulation 38 of the CIRP Regulations and such other sections that may be applicable as per the Code. Further, the Applicant submits that Akashika is in compliance with Section 29A of the Code. Akashika has also submitted an additional affidavit of compliance affirming the various requirements under the IBC Code and regulations. The Successful Resolution Plan provides for payment of the costs towards the insolvency resolution process in priority to payments of other debts of the Corporate Debtor.
13. The Successful Resolution Plan envisages an 100% upfront payment to the Financial Creditors, workmen and employees, and statutory dues of the Corporate Debtor. Further, the other Operational Creditor have been offered a payment of about 15% of the admitted claim as a full and final settlement, who will be paid in priority to the Financial Creditors.
14. The Successful Resolution Plan provides for 100% extinguishment of existing paid up capital of the Corporate Debtor leading to a complete extinguishment of the capital structure of the Corporate Debtor. Further, the Resolution

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Plan simultaneously provides for infusion of funds towards capital structure of the Corporate Debtor. Upon such infusion, Akashika will be 100% shareholder of the Corporate Debtor. The Successful Resolution Plan provides for immediate set up of the management of the Corporate Debtor and effective taking over the affairs of the Corporate Debtor. The Successful Resolution Plan also details out of the implementation and supervision of the plan. Further, proposes complete extinguishment of all contracts, agreements and shareholder's agreement.

15. The Resolution Plan provides for complete extinguishment of all claims against the Corporate Debtor, including contingent liabilities. It also provides for continuation of the Corporate Debtor as a continuing entity with all the approvals already secured and in force.
16. Accordingly, and as directed by the CoC, the applicant has issued a letter of intent to the successful Resolution Applicant. The Applicant also has retained the EMD amount of INR 50 Lakhs received from Resolution Applicants as a performance guarantee as per instructions of CoC. The Applicant has also secured an undertaking from the successful Resolution Applicant that within 15 days from the date of approval of the Resolution plan by this Hon'ble Tribunal, they will submit a performance guarantee for the residual amount and CoC has consented for the same as evidenced in the minutes of the 7th CoC meeting held on 08.04.2019.



17. As per Regulations 39(4), the Applicant submits the approved Successful Resolution Plan before the Hon'ble Tribunal along with a compliance certificate.
18. In light of the aforesaid circumstances, the resolution plan submitted by Akashika Foods Private Limited has been approved by COC at 7th CoC meeting held on 8th April 2019 and this plan eligible to be considered by this Hon'ble Tribunal for approval as per Section 31(1) of the Code.
19. It is further declared that Successful Resolution Plan is in compliance with Section 30 of the Code and Regulation 38 of the CIRP Regulations and such other sections that may be applicable as per the Code. And Akashika Foods Private Limited is in compliance with Section 29A of the Code. It provides for payment of the costs towards the insolvency resolution process in priority to payments of other debts of the Corporate Debtor. The Successful Resolution Plan bid amount is much higher than the liquidation value of the Corporate Debtor. Further, the plan offers payment to the Operational Creditors over and above the liquidation value as a full and final settlement and in priority to the Financial Creditors.
20. Akashika brings about great technical and product expertise which will help revive the business of the Corporate Debtor. Further, it also provides for immediate set up of the management of the Corporate Debtor and effective taking over the affairs of the Corporate Debtor and has also envisaged a monitoring mechanism for the supervision and implementation of the Plan within the time frame.



- 3) Heard Shri V.SrinivasaRaghavan, the learned Senior Counsel for Shri Ashish Kanodia, learned Resolution Professional. Shri Udaya Holla, learned Senior Counsel representing Karnataka Bank, I have carefully perused the pleadings of the parties and extant provision of the Code and the law on the issue in question.
- 4) Shri V.Srinivasa Raghavan, the learned Senior counsel, while reiterating various averments made in the Application, has further submitted that the Resolution plan as approved by the COC satisfy all requisite conditions as per the provisions Code and the same is approved with requisite majority and thus urged the Tribunal to approve the Resolution plan.
- 5) Shri UdayaHolla, learned Senior Counsel representing Karnataka Bank Ltd, has inter alia submitted as under:
- (1) The Karnataka Bank Ltd, is one of the Members of CoC and is also a financial Creditor with 96.01% voting share. Corporate Debtor Maiyas Beverages and Foods Pvt. Ltd. (MBFPL) owes over Rs.77,00,00,000/- to Karnataka Bank Ltd. ICICI Bank is the other financial creditor which is also a member of CoC with 3.99% voting share and the amount due to them by MBFPL is over Rs.3,00,00,000/- . The other members of the CoC are related parties with no voting rights.
 - (2) As per the resolution plan submitted by AFPL, 100% dues of the Financial Creditor, workmen/employees and the statutory authorities. In addition to the above, a sum of Rs.100 Crores is also being paid up-front, in full and final settlement, to the Operational creditors. Therefore, the CoC, including Karnataka Bank Ltd., have accepted the Resolution Plan of AFPL as the same is in the best interest of all the stakeholders.

- (3) The CoC unanimously found that the plan submitted by AFPL is the most commercial viable and feasible plan, which is in the best interest of all stakeholders. The plan submitted by AFPL is also supported by workmen, vendors and distribution agents of the Corporate Debtor. The Plan submitted by AFPL provides for infusion of about 130 Crores into the Corporate Debtor whereas the plan submitted by MTR provides for infusion of only 63 Crores, less than even half the amount proposed by AFPL.
- (4) As a pre-condition for providing financial assistance of AFPL, one of the Banks, i.e, Kotak Mahindra required the Promoter to be consultants of the Company and also stand as guarantors for the loans advances to AFPL. In exercise of its commercial wisdom to select the most commercial feasible and viable resolution Plan and also seeing that there is no statutory bar or prohibition on such an arrangement. The CoC decided to approve the Plan of AFPL since it is commercially more feasible and is in the best interests of all stakeholder. None of the other plans, much less the one submitted by MTR, were found to be commercially feasible or viable.
- 6) In order to approve a Resolution Plan U/s 31(1) of the Code, Resolution Professional should examine each Resolution plan should confirm the following conditions as per section 30 (2) of the Code:”
- a) Provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the ²[payment] of other debts of the corporate debtor;
 - b) provides for the ³[payment] of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the



operational creditors in the event of a liquidation of the corporate debtor under section 53;

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

7) In compliance with said conditions, the Resolution Professional has submitted various documents and statements as per provisions of Code and the Rules made thereunder. And these compliances are briefly pointed hereunder.

8) The learned Resolution Professional has filed compliance certificate in Form H, Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:

1. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	Maiyas Beverages and Foods Private Limited
2	Date of Initiation of CIRP	24 th July 2018 / Date of receipt of Order is 30 th July 2018.
3	Date of Appointment of IRP	24 th July 2018 / Date of receipt of Order is 30 th July 2018.
4	Date of Publication of Public Announcement	1 st August 2018
5	Date of Constitution of CoC	30 th August 2018
6	Date of First Meeting of CoC	30 th August 2018
7	Date of Appointment of RP	30 th August 2018
8	Date of Appointment of Registered Valuers	5 th September 2018
9	Date of Issue of invitation for EoI	17 th November 2018
10	Date of Final List of Eligible Prospective Resolution Applicants	16 th December 2018
11	Date of Invitation of Resolution Plan	16 th December 2018

12	Last Date of submission of Resolution Plan	30 th March 2019
13	Date of Approval of Resolution Plan by CoC	8 th April 2019
14	Date of Filing of Resolution Plan with Adjudicating Authority	16 th April 2019
15	Date of Expiry of 180 days of CIRP	20 th January 2019
16	Date of Order extending the period of CIRP	27 th February 2019
17	Date of Expiry of Extended Period of CIRP	20 th April 2019
18	Fair Value	Rs.97,27,15,838/-
19	Liquidation value	Rs.58,39,29,503/-
20	Number of Meetings of CoC held	7 (Seven)

2. The Resolution Plan received from Resolution Applicant M/s. Akashika Foods Private Limited and approved by Committee of Creditors (CoC) of Maiyas Beverages and Foods Private Limited.

3. We hereby certify that:

- I. The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
- II. The Resolution Applicant M/s. Akashika Foods Private Limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit resolution plan. The contents the said affidavit are in order.
- III. The said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution



Plan has been approved by 100% (state the number of votes by which Resolution Plan was approved by CoC) % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

IV. The voting was held in the meeting of the CoC on 8th April 2019 where all the members of the CoC were present.

4. The list of financial creditors of the CD Maiyas Beverages and Foods Private Limited being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting Resolution (Voted / Dissented / Abstained)	for Plan
1	The Karnataka Bank Limited	96.01%	Voted For	
2	ICICI Bank	3.99%	Voted For	
	Total	100%	Voted For	

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

6. The amount provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. Lakh)

Sl No.	Category of Stakeholders*	Amount Claimed	Amount Admitted	Amount provided under the Plan#	Amount Provided to the Amount Claimed
1	Dissenting Secured	0.00	0.00	0.00	0.00

	Financial Creditors				
2	Other Secured Financial Creditors	7709.83 (Excluding unmatuuredBank Guarantee of Rs.384.66 Lakhs)	7694.00	7694.00	99.81%
3	Dissenting Unsecured Financial Creditors	0.00	0.00	0.00	0.00
4	Other Unsecured Financial Creditors	2814.71	2814.71	2814.71	100%
5	Operational Creditors	6897.70	6604.12	1000.00	15.14%
	Government	126.24	126.24	126.24	100%
	Workmen	58.00	58.00	58.00	100%
	Employees	522.27	435.81	435.81	100%
6	Other Debts and Dues	0.00	0.00	0.00	0.00
	Total	18128.75	17732.58	12128.76	68.40%

*If there are sub-categories in a category, please add rows for each sub-category.

#Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

7. The interests of existing shareholders have been altered by the Resolution Plan as under:

Sl. No.	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	49,96,360	0	100%	0
2	Preference	2,75,47,562	0	100%	0
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8. The compliance of the Resolution Plan is as under:

Section of the Code/Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Section 2, Clause 1/3, To be read with para 3 (a) of Affidavit of compliance and report of BDO a specialist agency who were appointed by CoC for independent evaluation for reporting whether Resolution applicant meets with the criteria approved by the COC	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Section 2, Clause 1(b) To be read with para 3 (b) of Affidavit of compliance	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Section 2, Clause 1(b)	Yes
Section 30(2)	Whether the Resolution Plan: a) Provides for the payment of insolvency resolution process costs? b) Provides for the payment of the debts of operational creditors? c) Provides for the management of the affairs of the Corporate Debtor? d) Provides for the implementation and supervision of the resolution plan?	Section 6, Clause 2(a) Section 6, Clause 2(c) Section 7, Clause 1 to 5 Section 7, Clause 4	Yes Yes Yes Yes



	e) Contravenes any of the provisions of the law for the time being in force?	To be read with para 3 (c) of Affidavit of compliance	No
Section 30(4)	Whether the Resolution Plan a) Is feasible and viable, according to the CoC? b) Has been approved by the CoC with 66% voting share?	- -	Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?		Yes
Regulation 35A	Where the Resolution Professional made a determination if the Corporate debtor has been subjected to any transaction of the nature covered under Sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	-	Yes
Regulation 38(1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the:- a) Insolvency resolution process costs? b) Liquidation value due to operational creditors? c) Liquidation value due to dissenting financial creditors?	Section 6 Clause 2(a) Section 6 clause 2(c) Not Applicable To be read with	Yes Yes NIL

		para 3(d) of Affidavit of compliance	
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Section 6	Yes
Regulations 38(1B)	<p>9) Whether resolution application or any of its related parties has failed to implement or contributed to the failure of the implementation of any resolution plan approved under the Code.</p> <p>10) If so, whether the resolution application has submitted the statement giving details of such non-implementation?</p>	To be read with para 3(e) of Affidavit of compliance	No
Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p>a) The term of the plan and its implementation schedule?</p> <p>b) For the management and control of the business of the corporate debtor during its term?</p> <p>c) Adequate means for supervising its implementation?</p>	<p>Section 6 clause 2(e)</p> <p>Section 7</p> <p>Section 7 Clause 4a</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
38(3)	<p>Whether the resolution plan demonstrates that-</p> <p>a) It addresses the cause of default?</p> <p>b) It is feasible and viable?</p> <p>c) It has provisions for its effective implementation?</p> <p>d) It has provisions</p>	<p>Section 4 clause 4</p> <p>Section 6 clause 6</p> <p>Section 7</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

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	for approvals required and the timelines for the same? e) The resolution applicant has the capability to implement the resolution plan?	clause 4 a to c Section 6 clause 2(e) Section 2 clause 1(a)	Yes Yes
39(2)	Whether the RP has filed application in respect of transactions observed, found or determined by him?	Not Applicable	No
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulations (4A) of regulation 36B)	-	Yes. Interim Performance Guarantee of Rs.50 Lakhs has been received by way of credit of the account of the Corporate Debtor. The balance performance guarantee has to be delivered by the successful resolution application after securing approval from NCLT a unanimously consented by 7 th CoC meeting held on 8 th April 2019.

9. Provide details of Section 66 or avoidance application filed/pending:

Sl No	Type of Transaction	Date of Filing with Adjudicating	Date of Order of the Adjudicating	Date of Order of the Adjudicating
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		Authority	Authority	Authority
1	Preferential transactions under section 43	None		
2	Undervalued transactions under Section 45	None		
3	Extortionate credit transactions under Section 50	None		
4	Fraudulent transactions under Section 66	None		

9) Shri Raghupathi Bhatta.K.R, Director and authorized representative of M/s. Akashika Foods Private Limited has filed sworn affidavit dated 30th March 2019, by inter alia declaring as follows:-

- i. The Resolution Applicant meets all the criteria specified by the CoC in respect of complexity and scale of operations of business of the Corporate Debtor, in compliance of the requirement under Section 25(2)(h) of the IBC, 2016.
- ii. The Resolution Applicant is eligible to submit resolution plan as per final list issued by the Resolution Professional.
- iii. The Resolution Applicant has submitted an affidavit dated 29.03.2019 stating that it is eligible to submit a resolution plan and is not disqualified in any manner under Section 29A.
- iv. The Resolution Plan identified specific source of funds that will be paid towards the insolvency resolution process costs, liquidation value to operational creditors and liquidation value due to the dissenting financial creditors, as details in the table below:

Source		Utilization	
Capital	30.00	Workmen & Employees	4.94
		Statutory Dues	1.26

		Other Operational Creditors	10.00
		CIRP Cost	0.98
		Transaction Cost	5.00
		Financial Creditor - Karnataka Bank	6.94
		Working Capital	0.88
Total	30.00	Total	30.00
Term Loan			
Source		Utilization	
Pheonix ARC	17.00	Financial Creditor - ICICI Bank	3.23
		Financial Creditor - Karnataka Bank	13.77
Total	17.00	Total	17.00
Source		Utilization	
Karnataka Bank	53.00	Closure of Bank Loan of CD	53.00
Total	53.00	Total	53.00
Working Capital			
Source		Utilization	
Karnataka Bank	20.00	Working Capital	30.00
Kotak Bank	10.00		
Total	30.00	Total	30.00
Grand total	130.00		130.00

- v. The Resolution Applicant, or any of its related parties, has not failed to implement and has not contributed to the failure of implementation of any Resolution Plan approved under the Code.
- vi. The Resolution Applicant has the capability to implement the Respondent Plan.
- 10) The Karnataka Bank has filed a letter dated 02.04.2019, by inter alia stating as follows:

"We are agreeable to accord in principal approval to consider the following creditor limits for facilitating the acquisition of Maiyas Beverages and Foods Private Limited and carrying forward the operations in the said Company.

Towards Terms Loans	53Cr
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<i>Towards Working Capital</i>	<i>20Cr</i>
<i>Total</i>	<i>73 Cr</i>

This is principal sanction is subject to his fulfillment of the terms and conditions as may be imposed by the Bank in its sole discretion and in compliance of various applicable banking regulations and internal guidelines.

In the event of his being declared as the successful bidder during the process of CIRP by the CoC. He is directed to contact our Branch Manager for completing the residual formalities and sanction conditions which would be communicate to him from time to time.”

- 11)** As stated supra, the Resolution Professional has filed Compliance Certificate dated 16.04.2019, Under Regulation 39(4) of the IBBI(Insolvency Resolution Process for Corporate Persons) Regulations, 2016, by inter alia stating, that there are no preferential transactions which shows are as under:

SL No.	Type of Transactions	Date of filing with Adjudicating Authority	Date of order of the Adjudicating Authority	Brief of the order
1.	Preferential Transactions under Section 43	None		
2.	Undervalued transactions under section 45	None		
3.	Extortionate Credit transactions under section 50			
4.	Fraudulent transactions under section 66	None		

And thus, they have filed any application for the same are pending before the Tribunal.

- 12)** The above facts and circumstances clearly established that the Resolution Plan dated March, 2019 for *M/s. Maiyas Beverages and Foods Pvt. Ltd. submitted Akashika Foods Private Limited(Resolution*



Applicant confirm all the requisite conditions so as to approve it under Section 31(1) of Code. The Resolution plan is approved by the COC with 100% in accordance with law. Therefore, I am of the considered opinion that the said Resolution Plan is a fit to be approved under Section 31(1) of the IBC, 2016.

9) In the result, by exercising the powers confirmed on this Adjudicating Authority, U/s 31(1) IBC, 2016, CP(IB) No.121 of 2018 & I.A No.210 of 2019 are disposed of with the following directions:

- (1) The Resolution Plan dated 30th March 2019 submitted by Akashika Foods Private Limited, (Resolution Applicant) as approved by the Committee of Creditors at 7th meeting held on 8th April, 2109 with 100 % is hereby approved 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 24.07.2018 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.



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL