

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

TCP 600/I&BP/NCLT/MAH/2017

MA No. 1613 of 2018

Under **Section 30(6)** of the IBC, 2016

Mr Ram Ratan Kanoongo

...Resolution Professional/ Applicant

And

MA No. 464 of 2018

Under **Section 33** of the IBC, 2016

Mr Ram Ratan Kanoongo

...Resolution Professional/ Applicant

And

MA No. 9 of 2019

Under **Section 60(5)** of the IBC, 2016

Mr Ram Ratan Kanoongo

...Resolution Professional/ Applicant

In the matter of

D. Chhaganlal & Co.

... Operational Creditor

v/s

Say India Jewellers Pvt. Ltd.

... Corporate Debtor

Coram: Hon'ble Shri V.P. Singh, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Resolution Professional: Adv. Khushboo Shah Rajani a/w CA Ayush J Rajani i/b
AKR Advisors LLP

For the Resolution Applicant: Senior Counsel Gaurav Joshi a/w Adv Kazan Shroff &
Adv. Avinash Joshi i/b Mulla & Mulla a/w Mr.
Sandeep Chadha, Authorised Representative of
Resolution Applicant,

Per V.P. Singh, Member (Judicial)

ORDER

1. MA No. 9 of 2019 has been filed by the Resolution Professional u/s 60(5), IBC seeking exclusion of 62 days from the CIRP and praying that Form H to be taken on record, given Regulation 39(4) of the CIRP Regulations.

2. The Resolution Professional has provided an elaborate table, detailing the series of events along with each day count, which is as follows:

Date	Particulars	Resolution Applicant's submissions	Count of Days	No. of days claimed for exclusion from CIRP
1.8.2017	Section 9 application filed by the Operational Creditor was admitted	Commencement of CIRP	Day 0	--
3.10.2017	Appointment of IRP by IBBI	Mr Akshay R. Shah appointed as IRP.	Day 63 (IRP takes charge for the 1 st time)	62
6.11.2017	1 st CoC meeting was held	IRP was not appointed as RP during the 1 st CoC meeting. New RP was not recommended by CoC. Hence 2 nd CoC meeting was fixed on 20 November 2017	Day 97	--
20.11.2017	2 nd CoC meeting was held	CoC recommends the Applicant as the Resolution Professional and files application with NCLT for his appointment.	Day 111	--
15.12.2017	Hon'ble NCLT passes an order approving the Applicant as RP. (IBBI confirmation received on 12 January 2018)	The Applicant / RP takes charge of the Corporate Debtor. IBBI confirmation was recorded on 09 January 2018 (certified copy received on 12 January 2018 – day 164).	Day 164	--
28.04.2018	270 th day - Last day of CIRP	Since the Resolution Plan submitted by the erstwhile suspended Directors was rejected. CoC passed a resolution for filing liquidation application	Day 270	--

Date	Particulars	Resolution Applicant's submissions	Count of Days	No. of days claimed for exclusion from CIRP
		on (filed on 04 May 2018).		
04.05.2018	Date on which liquidation application was filed before Hon'ble NCLT	Since the 270 th day was 28 April 2018 and application was filed on 04 May 2018. Accordingly, 6 days out of the balance 62 days, are utilised.	---	6 days utilised out of 62 days = Balance 56 days available in the conclusion of CIRP.
05.12.2018	Hon'ble NCLT passes an order allowing the MA filed by suspended Directors for reconsideration of their Resolution Plan by CoC.	CoC reconsiders the Resolution Plan filed by the suspended Directors. CoC votes 100% in favour of the plan. The period from 28 April 2018 (270 th Day) till 05 December 2018 (Hon'ble NCLT order directing CoC to reconsider the Resolution Plan) to be excluded for computing CIRP.	Total of 220 days being the period covered under litigation to be ignored/excluded.	--
17.12.2018	Application for approval of Resolution Plan filed with the Hon'ble NCLT.	Under the Hon'ble NCLT's order dated 05 December 2018 for reconsideration of the Resolution Plan.	12 Days utilised from 05 December 2018	56 - 12 = 44 days available for the conclus

Date	Particulars	Resolution Applicant's submissions	Count of Days	No. of days claimed for exclusion from CIRP
			to 17 December 2018.	ion of CIRP (Application for approval of Resolution plan is filed within the balance period available in the process.

3. The Resolution Professional has placed reliance on the decision of the Hon'ble Appellate Tribunal in the matter of ***Quinn Logistics India Pvt. Ltd. V/s. Mack Soft Tech Pvt. Ltd. in Company Appeal (AT) (Insolvency) No. 185 of 2018***, wherein the Hon'ble NCLAT held that:

"From the decisions aforesaid, it is clear that if an application is filed by the 'Resolution Professional' or the 'Committee of Creditors' or 'any aggrieved person' for justified reasons, it is always open to the Adjudicating Authority/Appellate Tribunal to 'exclude certain period' for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances."

4. The Resolution Professional has also placed reliance on
- Bhushan Power & Steel Ltd, (C.A. No.152 (PB)/2018 in C.P. (IB)-202(PB)/2017), wherein it was held "In any case, the period which is consumed in the litigation would not prima facie be part of the period prescribed for CIRP under IBC".*
 - MBL Infrastructure Ltd (RBL Bank Limited Vs MBL Infrastructure Ltd (CA (IB) Nos. 238, 270 & 280 in CP(IB) No.170-KB-2017).*

c) *Adhunik Alloys & Power Limited* (CA (IB) 1086/KB/2018).

5. The admission order was passed on 1.8.2017. However, the interim resolution professional, Mr Akshay R. Shah, was appointed *vide* order dated 3.10.2017. There was a gap of 62 days in the appointment of the Interim Resolution Professional.
6. Given the judgments cited, we at this moment allow the M.A. no. 9 of 2019 of the Resolution Professional for the exclusion of 62 days from the CIRP. We also take on record form H, i.e. compliance certificate submitted by the Resolution Professional.
7. MA No. 1613/2018 has been filed by the Resolution Professional of the Corporate Debtor, Say India Jewellers Pvt. Ltd. under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), 2016 (hereinafter 'CIRP Regulations') for approval of the Resolution Plan by this Adjudicating Authority under Section 31(1) of the IBC.
8. The Original Applicant namely D. Chhaganlal & Co. had filed a petition for winding up u/s 433 of the Companies Act, 1956 against Say India Jewellers Pvt. Ltd. before the Hon'ble High Court of Bombay bearing Company Petition No. 1058/2015. This petition was transferred to this Tribunal for adjudication under section 9, IBC and renumbered as Transfer Company Petition No. 600 of 2017. The transfer petition under section 9, IBC was admitted *vide* order dated 1.8.2017 by this Tribunal. Since the insolvency petition filed by Operational Creditor did not provide a specific name of interim resolution professional, directions were passed to refer the IBBI to seek the name of interim resolution professional for the Corporate Debtor. Accordingly, Mr Akshay R. Shah, an insolvency professional was appointed as the interim resolution professional *vide* order dated 3.10.2017.
9. Under the public announcements made, the Interim Resolution Professional received and admitted the following claims. The CoC comprises of the two financial creditors, Andhra Bank and State Bank of India.

S.	Name of Financial	Admitted claim	Voting %
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No.	Creditor		
1.	Andhra Bank	Rs. 58.83 crores	42.66%
2.	State Bank of India	Rs. 43.39 crores (secured) Rs. 35.70 crore (unsecured)	31.46% 25.88%

10. The Interim Resolution Professional was replaced by the Resolution Professional Mr Ram Ratan Kanoongo *vide* order dated 9.1.2018.
11. A miscellaneous application, MA No. 57/2018 seeking an extension of 90 more days w.e.f 29.1.2018, under the resolution of the Committee of Creditors, was allowed *vide* order dated 1.2.2018.
12. Mr Jay D. Parekh and Mr S.D. Thakare was appointed as valuers to conduct a valuation of jewellery assets and M/s. Thite Valuers & Engineers, M/s. R.K. Associates and M/s Amol Bora & Co. were appointed to conduct a valuation of the real estate assets. The average fair market value and Liquidation value are:

(Amount in Rs.)

	Fair Market Value	Liquidation Value
Jewellery	2,98,85,939	2,68,94,344
Real Estate Project	19,27,50,000	14,01,17,500
Total	22,26,35,939	16,70,14,844

13. Under the request for submission of EOI, the Resolution Professional received interest from only one Resolution Applicant, Shri Babulal Motawat jointly with Shri Rohit Motawat. After few revisions, the plan was put to voting in the 8th CoC meeting held on 26.4.2018, wherein the State Bank of India (57.34%) voted in favour of the resolution plan and Andhra Bank (42.66%) voted against the plan. Since the resolution plan did not receive approval from the 75% majority as was envisaged in Section 30(4), IBC at that point in time, the Resolution Professional filed a miscellaneous application bearing MA No. 464 of 2018 u/s 33(1), IBC for initiating liquidation proceedings against the Corporate Debtor.
14. However, the Resolution Applicant, Mr Babulal Motawat jointly with Mr Rohit Motawat, filed a Miscellaneous Application bearing no. 486 of 2018 u/s 60(5), IBC *inter-alia* challenging the rejection of the resolution plan submitted by them because CoC did not provide for reasons for rejecting the plan and stay the operation of the

rejection of the resolution plan. This application was allowed *vide* order dated 5.12.2018, directing the Resolution Professional to hold the CoC meeting to reconsider the resolution plan submitted by the Resolution Applicant and decide it within 10 days from the date of the order.

15. It is pertinent to mention the object of the IBC is :

'An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.'

16. It is also pertinent to mention that the Hon'ble NCLAT in the matter of *Binani Industries Limited v. Bank of Baroda & Anr.*¹ has stated,

1. The objective of the 'I&B Code.'

As evident from the long title of the 'I&B Code', it is for reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of the value of assets of such persons to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders. The recent Ordinance explicitly aims to promote resolution over liquidation.

2. The objective of the 'I&B Code' is Resolution.

*The Purpose of Resolution is for **maximisation of value of assets of the 'Corporate Debtor'** and thereby for all creditors. It is not maximisation of value for a 'stakeholder' or 'a set of stakeholders' such as Creditors and **to promote entrepreneurship, availability of credit and balance the interests.** The first order objective is "resolution". The second order objective is "maximisation of value of assets of the 'Corporate Debtor'" and the third order objective is "promoting entrepreneurship, availability of credit and balancing the interests". This order of objective is sacrosanct.*

In the matter of "Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta and Ors.", the Hon'ble Supreme Court observed that "the 'Corporate Debtor' consists of several employees and workmen whose daily bread is dependent on the outcome of the CIRP. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible".

...

c. The 'I&B Code' is for reorganisation and insolvency resolution of corporate persons,for maximisation of value of assets of such persons to.... balance

¹ Company Appeal (AT) (Insolvency) No. 82 of 2018.

interests of all stakeholders. It is possible to balance interests of all stakeholders if the resolution maximises the value of assets of the 'Corporate Debtor'. One cannot balance interest of all stakeholders, if resolution maximises the value for a or a set of stakeholder such as 'Financial Creditors'. One or a set of stakeholders cannot benefit unduly stakeholder at the cost of another."

17. From the object of the IBC and the ruling of the Hon'ble NCLAT, it is clear that resolution is preferred over liquidation.
18. Under the order dated 5.12.2018, the Resolution Professional requested the Resolution Applicant, Mr Babulal Motawat jointly with Mr Rohit Motawat, to resubmit the Resolution Plan incorporating the amendments as mentioned under Regulation 39 of the CIRP, Regulations, 2016 vide IBBI Fourth Amendment No. IBBI/2018-19/GN/REG032 dated 5th October 2018. The Resolution Applicant submitted the amended and updated resolution plan dated 7.12.2018.
19. After that, a CoC meeting was conducted on 11.12.2018. The Resolution Applicant presented the Resolution Plan along with the business model to be adopted by him highlighting the feasibility and viability of the Resolution Plan. Tentative cash flow was also provided in the Resolution Plan. The CoC did deliberation and discussion with Resolution Applicant and after the discussion requested the Resolution Applicant to submit his Final Resolution Plan by the end of the day to the Resolution Professional, after incorporating necessary amendments towards increase in quantum of payment and right of recovery to the Financial Creditors from the proceeds arising out of MA 378 / 2018 filed u/s 43, IBC for preferential transactions amounting to Rs. 4.67 crores and u/s 66, IBC for fraudulent transaction amounting to Rs. 141.96 crores. Further, CoC requested Resolution Professional to submit the Final Resolution Plan for e-voting, and it was resolved in the meeting that the e-voting facility for the resolution item - approval of the resolution plan will commence on 12.12.2018 at 6 pm and will end on 14.12.2018 at 7 pm. The Resolution Professional received the Final Resolution Plan dated 11.12.2018 and after verification of the plan regarding the IBC submitted it to the CoC.
20. The Resolution Professional has annexed the report on the result of voting through electronic means of the final resolution plan dated 11.12.2018. The report states that

the resolution of the 11th CoC meeting regarding the approval of the resolution plan submitted by Shri Babulal Motawat jointly with Shri Rohit Motawat has received 100% votes in favour.

21. The plan proposes payment of Rs. 37,75,00,000/- in the following manner:

In Rs. Crores

S. No.	Description of Source/ payment	Amount Admitted	Amount provided in the plan
Source			
1.	Equity Capital	NA	10.00
2.	Pref. Share/ Unsecured Loans from Promoters & Friends/ ICD/ Secured Borrowings	NA	27.75
	Total	NA	37.75

Application			
3.	CIRP Costs	Nil (explained in Para 7.1 at Page 57 of MA No. 1613/2018)	Nil (explained in Para 7.1 at Page 57 of MA No. 1613/2018)
4.	Workmen's priority dues	Nil	Nil
5.	Secured Financial Creditors	102.22	26.75
6.	Unsecured Financial Creditors	35.70	1.00
7.	Wages and unpaid dues of employees other than Workmen	Nil	Nil
8.	Operational Creditor	1.82	Nil
9.	Employees & Retirement benefits	Nil	Since no claim has been filed, the matter will be addressed as and when any statutory liabilities arises under the provisions of IBC and other related laws/ regulations.
10.	Contingent liabilities	Nil	Nil
11.	Towards Working Capital/ Promoter's Contribution	Nil	10.00
	Total	139.74	37.75

22. The Resolution Professional has outlined the following compliances envisaged within the IBC and the CIRP Regulations in respect of a Resolution Plan.

<i>Sub-clause of S. 30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
(a)	The plan must provide for the payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board	<p>Para 7.1 at Page 57 of MA 1613/2018:</p> <p>The Resolution Applicant states that since CIRP expenses of approx. Rs.46 lacs are met through the resources of the Corporate Debtor, the same shall not form part of CIRP Expenses in terms with the IBBI Circular No. IBBI/IP/013/2018 dated 12 June 2018, and accordingly, the Resolution Applicants have allotted NIL amount towards CIRP Costs.</p>
(b)	The plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53	<p>Para 7.6 at page 63 of MA 1613/2018 :</p> <p>The plan states that though the operational creditors as verified by the Resolution Professional stands at Rs. 1.82 crores, however, if the Corporate Debtor were to be liquidated then the amount payable to the Operational Creditors would have been NIL. Accordingly, no payment has been proposed to the Operational Creditors in the plan.</p> <p><u>However, during the hearing on 8.1.2019, based on the suggestion of the Bench, the Resolution Applicant proposed a payment of Rs. Fifty lakhs to the Operational Creditors. This amount shall be in addition to the amount proposed in the resolution plan. In furtherance of the</u></p>

		<u>same, the Resolution Applicant has filed an affidavit-cum-undertaking on 10.1.2019.</u>
(c)	Management of the affairs of the CD after approval of the resolution plan	Part G at page 82 of MA 1613/2018, The plan provides for control and management of the Corporate Debtor. The Resolution Applicant would appoint professionals/persons to manage the affairs of the Corporate Debtor upon approval of the said resolution plan.
(d)	Implementation and Supervision	Para 21 On page 82 of MA 1613/2018 & Part H on page 83 of MA 1613/2018 The plan provides for Monitoring Agency for the implementation and supervision of the Plan
(e)	The plan does not contravene any of the provisions of the law for the time being in force.	Clauses not in compliances have been directed to be modified.
(f)	Conforms to such other requirements as may be specified by the Board	Details regarding regulations are discussed below.

(b) Measures required for the implementation of the Resolution Plan regarding Regulation 37 of CIRP Regulations:

<i>Particulars</i>	<i>Relevant Para of the Revised Resolution Plan dealing compliance above with Regulation</i>
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of the value of its	

<i>Particulars</i>	<i>Relevant Para of the Revised Resolution Plan dealing compliance above with Regulation</i>
assets, including but not limited to the following:-	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	The plan does not provide for the transfer of assets.
(b) the sale of all or part of the assets whether subject to any security interest or not;	The plan does not provide for the sale of assets.
(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Not proposed by RA.
(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Para C at page 77-78 of MA 1613/2018 The plan provides for cancellation of existing capital. The CD is a private limited unlisted Co.
(d) satisfaction or modification of any security interest;	Para E at page 79 of MA 1613/2018
(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not proposed by RA
(f) reduction in the amount payable to the creditors;	Para 7.6 at page 63 of MA 1613/2018 & Para 7.7 at Page 65 of MA 1613/2018
(g) extension of maturity date or a	Not proposed by RA

<i>Particulars</i>	<i>Relevant Para of the Revised Resolution Plan dealing compliance above with Regulation</i>
change in interest rate or other terms of a debt due from the corporate debtor;	
(h) amendment of the constitutional documents of the corporate debtor;	Not proposed by RA
(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Not proposed by RA
(j) change in the portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed by RA
(k) change in technology used by the corporate debtor; and	Not proposed by RA
(l) obtaining necessary approvals from the Central and State Governments and other authorities.	Not proposed by RA

(c) Mandatory contents of Resolution Plan regarding Regulation 38 of CIRP**Regulations:**

Reference to relevant Regulation	Requirement	How dealt with in the Plan
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	The undertaking by affidavit proposes to pay the Operational Creditors within 30 days of the approval order of the Adjudicating Authority. However, the schedule of payment listed on page 58 of MA 1613/2018 provides for a payment of Rs. 2 crores to the secured financial creditor on the day of approval order of the Adjudicating Authority.
38(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.	Para 14.4 at page 69 of MA 1613/2018 The plan deals with the interests of all stakeholders
38(2)	A resolution plan shall provide: (a) the term of the plan and its implementation schedule;	Para 7 on page 57- 58 of MA 1613/2018 The plan provides <i>inter-alia</i> , for the term of the plan.

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
	(b) the management and control of the business of the corporate debtor during its term; and	Part G at page 82 of MA 1613/2018 The plan provides for control and management of the Corporate Debtor.
	(c) adequate means for supervising its implementation.	Part H on page 83 of MA 1613/2018 & Para 21 at page 76 of MA 1613/2018 The plan provides for the means of supervising and implementation by way of creating a Monitoring Agency.
38(3)	A resolution plan shall demonstrate that – (a) it addresses the cause of default; (b) it is feasible and viable; (c) it has provisions for its effective implementation; (d) it has provisions for approvals required and the timeline for the same; and (e) the resolution applicant can implement the	Part C at Page 55 of MA 1613/2018 & Schedule 6 at Page 91 of MA 1613/2018 The plan provides for the requisite details.

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
	resolution plan.	

(d) A joint affidavit dated 8.12.2018 has been filed by the Resolution Applicant, Mr Babu Lal Motawat and Mr Rohit Motawat, that they are not disqualified u/s 29A, IBC. Further, stated that the promoters and connected persons of the Resolution Applicant are also not disqualified u/s 29A, IBC.

(e) A joint declaration-cum-undertaking dated 8.12.2018 has been filed by the Resolution Applicant, Mr Babu Lal Motawat and Mr Rohit Motawat, stating, *inter-alia*,

- i) that they are not wilful defaulters
- ii) that they are not convicted of any offence
- iii) that there is no disqualification to act as a director under the Companies Act, 2013
- iv) that they are not debarred in trading and securities market under the order of SEBI.
- v) that they have not indulged in any preferential transaction or undervalued transaction or fraudulent transaction in the Corporate Debtor concerning which order has been made by the Adjudicating Authority under IBC.
- vi) Do not have any connected persons who are ineligible under the abovementioned clauses.

23. Regulation 38 of the CIRP Regulations requires disclosure of transactions, if any, with the Corporate Debtor in the preceding two years. Given this, the resolution plan discloses that the Resolution Applicant had entered into an unregistered agreement with the Corporate Debtor for development of the real-estate project. The resolution plan further states that this fact is mentioned in para 1.1 of the Information Memorandum. It has also been stated that due to default on the part of

the Corporate Debtor, legal notices were issued to the Corporate Debtor by the Resolution Applicant in the year 2016 & 2017.

24. The resolution plan states that since the Corporate Debtor is not functional since the year 2015-16 and its assets are substantially impaired, the Resolution Applicant would be required to invest substantial amounts towards working capital and capital expenditure and ensure that all resources for the revival of the Corporate Debtor are *de-novo*. The Resolution Applicant estimates a requirement of approximately Rs. 6.00 crore to complete Corporate Debtor's real estate project at Goregaon (East), Mumbai. Further with an attempt to revive the core business of the Corporate Debtor, Resolution Applicant estimates a further infusion of approximately Rs. 4.00 crore for the trading & manufacturing of diamond jewellery.
25. **During the hearing on 8.1.2019, on the persuasion of the Bench, the Resolution Applicant proposed a payment of Rs. Fifty lakhs to the Operational Creditors over and above the proposed payment of Rs. 27,75,00,000/- to the financial creditors. In furtherance of the same, the Resolution Applicant has filed on 10.1.2019 an affidavit-cum-undertaking notarised on 9.1.2019 to pay to the Operational Creditors on a pro rata basis a sum of Rs. 50,00,000/- within 30 days from the date of an order of approval of the resolution plan. This amount shall be in addition to the amount proposed in the resolution plan.** Therefore, the references in the resolution plan, *inter-alia*, regarding nil payment to Operational Creditors, time-frame for payment to the Operational Creditors and maximum limit of liability of the Resolution Applicant shall stand modified.
26. The following clauses shall be modified in the resolution plan:
- a) Para 8.3, page 67 of MA 1613/2018 shall be modified to the extent that the receivables will go to the Committee of Creditors of the Corporate Debtor. The receivables will not go to the Corporate Debtor.
 - b) Para 8.2, page 67 of MA 1613/2018, the trade receivables of Rs. 158,94,00,000/- shall go to the Committee of Creditors of the Corporate Debtor.
 - c) All references of NIL liquidation value to the Operational Creditors stand modified given the affidavit-cum-undertaking filed by the Resolution Applicant.

- d) Given additional Rs. 50,00,000/- to Operational Creditors, all clauses regarding the maximum limit of liability of the Resolution Applicant shall stand modified.
 - e) Para 24 page 82 of MA 1613/2018 provides "The Resolution Applicant reserves the right to replace/ remove existing employees to bring in operational efficiencies in the operations of the Company." Any replacement/ removal of the employees shall be governed by the Industrial Disputes Act and applicable laws.
 - f) Para 7.2 (c) page 57 of MA No. 1613/2018 extinguishing the rights and entitlements of claims/demands/liabilities/obligations concerning workmen shall comply with the Industrial Disputes Act and applicable laws.
 - g) Para 17.2 page 70 of MA No. 1613/2018 regarding licenses and approvals shall be modified. The licenses, approvals shall be by the respective laws/ regulations.
 - h) Para 11.3 page 68 of MA No. 1613/2018 stating that the dues arising under any law for the time being in force and payable shall be subject to payments enumerated in the plan.
27. The following clauses shall be deleted from the Resolution Plan since neither the Adjudicating Authority is empowered to grant such reliefs nor are the clauses in compliance with other laws in existence:
- i) Para 4.1 (III) on page 54 of MA No. 1613/2018 "*The Resolution Applicant may nominate in its place an entity forming part of the Group after the Completion date.*"
 - ii) Para 5.3 page 56 of MA No. 1613/2018 reserving, *inter-alia*, the right of the Resolution Applicant to nominate someone group entity in its place.
 - iii) Para 7.6 (b) page 63 of MA No. 1613/2018 seeking, *inter-alia*, exemptions from dues under the Income Tax Act, 1961 .
 - iv) Para 17.6 page 72 of MA No. 1613/2018 seeking, *inter-alia*, tax and stamp duty exemptions.
 - v) Para 7.6 (c) page 64 of MA No. 1613/2018 seeking, *inter-alia*, exemptions and extinguishment from dues under the Indirect taxes.
 - vi) Para 7.6 (d) page 64 of MA No. 1613/2018 seeking, *inter-alia*, extinguishment/ writing off of investigations/ inquiry/ show cause, obligations arising out of non-compliance of provisions of laws etc.

- vii) Para 7.6 (e) page 64 of MA No. 1613/2018 seeking, *inter-alia*, extinguishment of rights and entitlements of the Central Government, State Government, any regulatory or local authority or body.
- viii) Para 17.5 page 72 of MA No. 1613/2018 seeking, *inter-alia*, withdrawal or dismissal of inquiries, investigations etc.
- ix) Para 7.6 (e) page 65 of MA No. 1613/2018 seeking, *inter-alia*, extinguishment of rights & entitlements of Govt agencies on account of acquisition.
- x) Para 11.3 page 68 of MA No. 1613/2018 seeking, *inter-alia*, extinguishment of dues to any person/ Government.
- xi) Para 17.7 page 73 of MA No. 1613/2018 seeking deemed immunity for non-compliance of laws.
- xii) Para 18 page 74 of MA No. 1613/2018 stating that this Adjudicating Authority acts as a single window clearance and any action undertaken under a resolution plan does not require compliance with procedural requirements under other laws.
- xiii) Para 19.2 page 74 of MA No. 1613/2018 stating “The measures and declarations set-out in this Resolution Plan, and the order of the NCLT approving this Resolution Plan shall take effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”
- xiv) Para 28.3 page 84 of MA No. 1613/2018 stating “If this Resolution Plan cannot be implemented for any reason not attributable to the Resolution Applicant, then the Resolution Applicant shall have no liability on this account. If the Resolution Applicant has issued any guarantees, then such guarantees shall not be invoked on this account and shall be returned forthwith to the Resolution Applicant.”
- xv) Para 17.4 page 71 of MA 1613/2018 seeking, *inter-alia*, immunity from liability of past actions or omissions.
- xvi) Para 23(b) page 82 of MA 1613/2018 stating “It is at this moment clarified that the managerial personnel appointed by the Resolution Applicant under this clause 23 shall not be liable for any past non-compliances with the provisions of applicable laws by the erstwhile key managerial personnel of the Company.”
- xvii) Para 12.2 page 68 of MA 1613/2018 stating that the resolution applicant will not be liable for Associate Companies.

- xviii) Para 28.4 page 84 of MA 1613/2018 regarding severability and right to modify.
- xix) All clauses regarding extinguishment of contingent, uncrystallised, unknown or future liabilities.
- xx) All clauses/ sentences relating to the above mentioned clauses.
28. It is clarified that only crystallised dues shall stand extinguished on approval of this plan.
29. The Hon'ble NCLAT in *Tarini Steel Company Pvt. Ltd. v. Trinity Auto Components Ltd. & Anr.*², in its order dated 9.3.2018, gave liberty to the resolution applicant to withdraw resolution plan modified by the Adjudicating Authority, if it is not satisfied with the amendments made therein.
30. Since we have approved the Resolution Plan with certain modifications, it further requires the acceptance by the Resolution Applicant, therefore we are of the considered view that the modified resolution plan may be sent to the Resolution Professional for seeking acceptance from the Resolution Applicant.
31. The acceptance report is to be filed by 6.2.2019. If the modified resolution plan is not approved, we shall proceed with the liquidation.
32. List on 7.2.2019 for further orders.
33. The Registry is directed to immediately communicate this order to the Resolution Professional and the Resolution Applicant and corporate debtor by speed post and email.

Sd/-
Ravikumar Duraisamy
Member (Technical)

Sd/-
V.P. Singh
Member (Judicial)

DT. 29th January, 2019

² Company Appeal (AT) (Insolvency) No. 75 of 2018.