IN THE NATIONAL COMPANY LAW TRIBUNAL, SINGLE BENCH, CHENNAI

MA/179/2019 filed in CP/39/IB/2018 under Section 30(6) of the Insolvency and Bankruptcy Code, 2016

In the matter of **M/s. Tiffins Barytes Asbestos & Paints Limited**

Mr. Vasudevan

... *Applicant/Resolution Professional*

-vs-

Committee of Creditors

... *Respondents*

Order delivered on 12th June, 2019

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For RP	: Mr. K.Moorthy, Counsel
Resolution Professional	: Mr. Vasudevan, in person
For Committee of Creditors	: Mr. E.Om Prakash, Senior Counsel for Mr. R. Murali, Counsel
For Financial Creditors (Objector)	:Mr. R.Shankaranarayanan, Senior Counsel for Mr. Avinash Krishnan Ravi, Counsel
For Noticee	: Mr. Anand Sashidharan, Counsel
	: Mr. Gautham Venkatesh, Counsel
For Objector	: Mr. P.H.Arvindh Pandian, Senior Counsel

ORDER

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. The Miscellaneous Application No. 179/2019 has been filed in CP/39/IB/2018 by the Resolution Professional viz., Mr. Vasudevan under Section 30(6) r/w. Section 31 of the Insolvency and Bankruptcy Code, 2016, (in short 'I&B Code, 2016').

2. The prayers made by the Resolution Professional are as follows:-

> (i) *approve and give effect to the resolution plan submitted by the successful resolution applicant being* **Embassy Property Developments Private *Limited***, *Bangalore; and / or*
>
> (ii) *pass such other orders or further orders in this regard as this Hon'ble Tribunal may deem fit and proper and thus render justice.*

3. Initially, CP/39/IB/2018 was filed under Section 7 of I&B Code, 2016 read with Rule 4 of the Insolvency Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by M/s. Udhyaman Investments Private Limited (in short, 'Financial Creditor') against *M/s. Tiffins Barytes Asbestos & Paints Limited,* (in short, 'Corporate Debtor'). CP/39/IB/2018 has been admitted on 12.03.2018 under which CIR Process was initiated against the Corporate Debtor, moratorium was declared and the Applicant was appointed as IRP.

4. It is averred that the Corporate Debtor viz., M/s. Tiffins Barytes Asbestos & Paints Limited, has a mining lease

for iron ore in the state of Karnataka at Bellary and mining lease for Baryte mines in the state of Andhra Pradesh at Kadapa. It is further averred that the Corporate Debtor owns inter alia (a) factory for processing iron ore and red oxide near its mines in Bellary, (b) mining equipment, (c) transport vehicles, (d) guest house in Railway Colony, Kadappa, (e) land along railway line in Railway Colony, Kadapa, and (f) Corporate Debtor's headquarter (building) at Chennai.

5. The IRP after taking over the management of the Corporate Debtor had taken steps under Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016, by inviting the claims from the creditors and constituted CoC. In the 1st Meeting of the CoC held on 17.04.2018, the Applicant viz., Mr. Vasudevan has been appointed as Resolution Professional. The Resolution Professional published an advertisement inviting for 'Expression of Interest' ('EoI') from prospective Resolution Applicants for submitting Resolution Plans for the Corporate Debtor.

6. It is stated that the Resolution Professional has conducted the Meetings of the CoC from time to time by complying with the statutory requirements for receiving claims, collating the same, conducting the CIR Process by taking possession of the assets, valuing the assets, re-verification of the claims, protecting and preserving the assets of the Corporate Debtor.

7. It is further stated that pursuant to the publication dated 24.12.2018, the Applicant received 'EoI' from three prospective Resolution Applicants with documents including the financial statements. The details of Resolution Applicants are as follows:

Particulars	***Net Worth***	***Turnover***
Eligibility Criteria (As fixed by the CoC for Prospective Resolution Applicants as per EoI as per the last audited financials)	Rs.125 Crores	Rs.75 Crores
Embassy Property Developments Private Limited, Bangalore	Rs.1507.32 Crores	Rs.805.08 Crores
Noble Tech Industries Private Limited, Chennai	Rs.175.70 Crores	Rs.597.09 Crores
Valency International Trading Pte Limited, Singapore	USD 44,476,133 (Rs.316.67 Crores)	USD 429,104,018 (Rs.3,055 Crores)

8. It is stated that out of the three "EoI", the Resolution Professional received two Resolution Plans viz., from M/s. Embassy Property Developments Private Limited ("EPDPL") and M/s. Valency International Trading Private Limited, Singapore ("VITPL").

9. It is further stated that the Applicant had filed MA/149/2019 in CP/39/(IB)/CB/2018 before this Authority and raised an apprehension about the chaos at the time of convening the meetings of the CoC for approval of the Resolution Plan owing to fact that certain Applications were pending before this Authority for deciding the status of some of the financial creditors and voting rights. This Authority vide Order dated 19.02.2019 directed to conduct the CoC meeting for approval of the Resolution Plan by 2 sets of votings – the 1st set excluding 5 members of the CoC and the 2nd set with all CoC members and this Authority directed the CoC not give effect to the decisions without the leave of this Authority.

10. It is averred that during the CoC meeting held on 27.02.2019, the Resolution Professional had circulated a

copy of the Resolution Plan along with Resolution Professional's certificate of compliance of Section 30 (2) of the I&B Code, 2016. It is further averred that the Resolution Professional had placed both the Plans before the CoC for their deliberations and each of the Resolution Applicants was given an opportunity to present their respective plans before the CoC. The CoC members after detailed discussions with the representatives of ~~the~~ both the Resolution Applicants reviewed and noted the scores obtained by both the Resolution Plans. The Resolution Plan submitted by VITPL scored 12.69 while the Resolution Plan submitted by EPDPL scored 29.83. After the CoC has completed their evaluation of both the Resolution Plans, the Applicant/resolution professional put both the Resolution Plans for Vote.

11. It is further averred that the Resolution Professional has conducted 2 sets of voting for the approval of the Resolution Plan, one excluding 5 members of CoC and the other with all the CoC members. The result of the voting is as follows:-

i. *1st set (excluding the 5 members of the CoC) of the CoC members voted in favour of the Resolution Plan submitted by EPDPL with 91.91% of voting share and 100% of voting share of the CoC members voted against the Resolution Plan submitted by VITPL; and*

ii. *2nd set (with all the CoC members) of the CoC members voted in favour of the Resolution Plan submitted by EPDPL with 98.09% of voting share and 100% of voting share of the CoC members voted against the Resolution Plan submitted by VITPL.*

12. The Resolution Professional has stated that the Resolution Plans received by him were duly evaluated by the CoC members and on 27.02.2019 the Resolution Plan submitted by EPDPL was elected as the successful Resolution Plan as per the voting share mentioned above. The financial snapshot of the Resolution Plan submitted by EPDPL in a tabular column is as follows:

Sr. No.	**Particulars**	**Amounts Admitted (in Rs)**	**Amounts Proposed (in Rs)**
1	CIRP Costs (upto the approval date)		Upto and not exceeding 5,00,00,000

2	Workmen Dues and Employees Dues	8,38,16,991	4,75,68,505
2 (a)	Workmen Dues	4,24,38,149	3,23,84,899
2 (b)	Employees Dues	4,13,78,842	1,51,83,606
3	Financial Creditors		
3 (a)	Indian Overseas Bank	14,20,25,914	14,20,25,914
3 (b)	Other Financial Creditors	195,10,13,277	48,77,53,319
4	Operational Creditors (Other than employees, workmen, statutory authorities)	94,63,86,409	14,19,57,961
5	Other than Financial Creditors and Operational Creditors (including statutory authorities)	14,00,38,563	Nil
6	Working Capital		2,50,00,000
	Total	**326,32,81,154**	**89,43,05,699**

13. It is noted that the Resolution Professional has filed Form **H** at the time of approval of the Resolution Plan. However, due to the subsequent development, a revised Form **H** has been filed by the Resolution Professional. The ground for filing the revised Form H is that three Financial Creditors have been declared as Operational Creditors by this

Authority due to which the total voting percentage became 96.45%.

14. During the course of hearing one of the shareholders and a dissenting financial creditor have filed the objections to the resolution plan. The gist of the objections and findings thereon are noted below:-

I. The objections filed by shareholder viz., Mr. Ravi Shankar Vedam:

The Objector viz., Mr. Ravi Shankar Vedam is the shareholder of the Corporate Debtor viz., *M/s. Tiffins Barytes Asbestos and Paints Ltd.,* and is the absolute owner of 35,590 shares and upon his father's intestate demise in April 2013, he and his brother viz., Mr.Sriram Vedam, inherited the 12,938 shares and therefore has a substantial interest in the Corporate Debtor. The objector has alleged that the Resolution Professional has not shared the documents with him which is in violation of the Principles of Natural Justice. The decision of the Committee of Creditors is not in accordance with law as the constitution of the committee is invalid. The Resolution Professional and other persons will get illegal benefit from the approval of the Resolution Plan. The Objector has also stated that the pending MAs were to be decided first and then the Resolution Plan should have been taken into consideration. He has questioned the quantity of the material lying on the spot and seeks forensic audit of various transactions in relation to the Corporate Debtor. It is also alleged that the Resolution Plan is discriminatory.

In connection with the objections noted above, there does not appear any provision in the IBC to prescribe any role for the shareholders of the Corporate Debtor during the CIR Process, as there require no approval of the shareholders to implement actions under the 'Resolution Plan'. A reference may be made to an *Explanation* to Sub-Section (2) of the Section 30 of IBC, 2016 which provides that if any approval of shareholders is required under the Companies Act 2013 or any other Law for the time being inforce for the implementation of the action under the Resolution Plan, such approval shall deemed to have been given and it shall not be a contravention of that Act or Law. Thus, it becomes clear that the legislature did not mandate for seeking approval of shareholder in relation to the Resolution Plan. Therefore, any objection raised by the shareholder cannot be considered by this Authority while approving or rejecting the Resolution Plan. In this connection reliance is placed on the judgement given by Hon'ble NCLAT in *JM Financial Asset Reconstruction Company Limited vs. Well-Do Holding and Exports Pvt. Ltd. and Ors.,* reported in MANU/NL/0141/2019, wherein, it has been held that the Shareholders and Promoters being ineligible to file the Resolution Plan under Section 29A, has no right to raise their grievances. In view of it this Authority is not legally required to entertain any kind of objection pertaining to the Resolution Plan approved by the CoC. Therefore, the objections raised by the shareholder are hereby rejected.

II. <u>The Objections filed by Dissenting Financial Creditor viz., Mrs. Sujathaa Mehta:-</u>

The dissenting objector has raised the issue~~s~~ that Applications of other creditors whose claims have been rejected by the Resolution Professional involving huge amount are pending, so the resolution plan must be deferred till the disposal of pending Applications. It is further stated that the issues that were raised in the meeting of the COC have neither been clarified by the Resolution Professional or the Resolution Applicant and the Resolution Applicant is a related party, who has played different roles in the past in relation to the Corporate Debtor. The objector alleged that the Resolution Applicant lacks mining industry experience and the prayer for extinguishing and abating of claims as set out in the Resolution Plan is contrary to the Provisions of the applicable Law.

It is noted that the Objector is a dissenting Financial Creditor having 1.82% voting right in the meetings of the CoC in which the Resolution Plan was approved with 96.45% voting share of the Financial Creditors. The dissenting Financial Creditor being the part of the CoC has availed sufficient opportunities to raise the issues, which did not find favour with majority of the Financial Creditors and they proceeded to approve the Resolution Plan. Therefore, this authority is not required to go into such details of the objections raised, as this Authority is not possessed with the powers of the judicial review to review the *'commercial decision'* of the CoC. In this connection the reliance is placed on the judgement of the Hon'ble Apex Court given in ***K. Sashidhar Vs. Indian Overseas Bank and Ors.,*** reported in MANU/SC/0189/2019, wherein, it has been held that the legislature while enacting the IBC has given a paramount status to the CoC and its commercial decisions cannot be interfered with by the Adjudicating Authority or the Appellate authority. In view of this, the objections, except the matters pending relating to the claims rejected by the resolution professional, raised by the dissenting Financial Creditor stand rejected. The issue relating to the pending matter is being dealt in the subsequent paras.

Analysis of Resolution Plan:

15. The perusal of the 'Resolution Plan' shows that as per the list of the claimants provided by the Resolution Applicant viz., M/s. Embassy Property Developments Private Limited (EPDPL), the status of claims is as follows:

S. No.	Nature of Claimant	Amounts Claimed (INR)	Amounts Admitted (INR)
1	Workmen dues & Employee dues	12,81,73,835	8,38,16,991
2	Secured and Unsecured financial Creditors	262,19,29,207	209,30,39,191
3	Operational Creditor	438,56,75,465	94,63,86,409
4	Claimants other than those set out above	14,00,38,563	14,00,38,563

16. The Plan further provides that the Resolution Applicant shall operate the company on a going concern basis in accordance with Section 5(26) of the I&B Code (including all the amendments and modifications for the time being in force). The Plan meets the requirements as referred to in Sub-Section (2) of Section 30 of the Code read with Regulations 37, 38, 38(1A) & 39 of the CIRP Regulations, 2016 as amended from time to time and it deals with the interests of all stakeholders (including the Financial Creditors, Operational Creditors, Workmen, other Creditors, and other stakeholders) of the Company.

17. The 'Resolution Plan' also provides for the key financial proposals made by the Resolution Applicant as follows:

S. No.	Particulars	Amount proposed (INR)
1.	CIRP Costs (Upto the Approval Date)	Up to and not exceeding 5,00,00,000
2.	Workmen Dues & Employees Dues	4,75,68,505
2.	Workman Dues	3,23,84,899

(a)		
2. (b)	Employees Dues	1,51,83,606
3.	Financial Creditors	
3. (a)	Indian Overseas Bank	14,20,25,914
3. (b)	Other Financial Creditors	48,77,53,319
4.	Operational Creditors (Other than Employees, Workmen, Statutory Authorities)	14,19,57,961
5.	Other than Financial Creditors and Operational Creditors (including Statutory Authorities)	Nil
6.	Working Capital	2,50,00,000
Grand Total		89,43,05,699

18. The "Resolution Plan' offered by the Resolution Applicant viz., M/s. EPDPL provides for the management of the business and operations of the Corporate Debtor from the 'Approval Date' till the 'Effective Date' and on or after 'Effective Date', in the manner set out as under.:

- *A Monitoring Committee is to be formed comprising of existing Resolution Professional, 1 representative of Financial Creditors and 2 representatives of Resolution Applicant*

*(“**Monitoring Committee**”). The Resolution Professional shall be paid the Resolution Professional’ Costs as mutually agreeable in consideration of fulfilling his obligations under this Plan. The constitution of the Monitoring Committee, including its reconstitution from time to time, shall be at mutually agreed terms with CoC Members for the period with effect from the Approval date to the Effective date. It is clarified that such reconstitution shall, at all times until the Effective Date, ensure that the Monitoring Committee shall have at least 1 representative of Financial Creditors and 2 representatives of Resolution Applicant. If required, the Monitoring Committee will appoint an interim board for the Corporate Debtor comprising of such Persons as may be deemed appropriate by the Monitoring Committee.*

- *The Resolution Professional's Cost and the cost incurred by Monitoring Committee for running the business of the Corporate Debtor shall be met by internal accruals of the Corporate Debtor in the first instance and if not then by the Resolution Applicant.*

- *The Monitoring Committee shall supervise the implementation of the Plan and shall be required and entitled to do all such acts, deeds, matters and things as may be necessary, desirable or expedient in order to implement and give effect to this Plan in accordance with its terms and shall act under the supervision of the Adjudicating Authority. The CoC, the Monitoring Committee, the Corporate Debtor, its existing Management, Employees and Creditors shall provide all the necessary cooperation as shall be required for the implementation of the Plan.*

- *The scope of work of the Monitoring Committee would be (1) coordination amongst the stakeholders for smooth implementation of Plan; (2) looking into various compliances as per this Plan during implementation period; (3) providing specified information to stakeholders regarding implementation of this Plan. Key Actions to be carried out by the Monitoring Committee pursuant to this Plan. The taking of any action by the Monitoring Committee, including in relation to matters (consent matters), shall require the prior written consent of the Resolution Applicant. In furtherance thereof, the Resolution Applicant shall be entitled to ask, and the Monitoring Committee to promptly provide, any information in relation to the Corporate Debtor that any member of the CoC, board of directors of the Corporate Debtor would ordinarily be entitled to ask whether during or prior to the CIRP.*

- *As of the Approval Date, all powers of attorney and/ or other corporate authorizations or mandates issued by the Corporate Debtor to any person to enable such person to carry out various functions of the Corporate Debtor, to sign and execute various documents and/ or represent the Corporate Debtor, and to operate the bank accounts of the Corporate Debtor shall stand revoked with immediate effect, and the Monitoring Committee shall be entitled to authorize such persons as it deems fit to carry out such functions of the Corporate Debtor, sign and execute various documents and/ or represent the Corporate Debtor, and to operate the bank accounts of the Corporate Debtor.*

- *The powers of the Board of Directors of the Corporate Debtor shall remain suspended until the Effective Date and shall be exercised by the Monitoring Committee. All existing directors of the Corporate Debtor as of the Insolvency*

Commencement Date would be deemed to have vacated office.

- *The Resolution Applicant has submitted INR 5,00,000 (Rupees Five Lakhs only) as process participation deposit as per requirement of the Process Note. The aforesaid amount shall be refunded to the Resolution Applicant on Approval Date as per the terms of the Process Note.*

- *On the Effective Date, the Resolution Applicant shall assume Control of the management of the Corporate Debtor including* to *re-constitute the Board of the Corporate Debtor and the reconstituted Board of the Corporate Debtor shall manage the business and operations of the Corporate Debtor. The Resolution Applicant will be entitled to file appropriate forms with the Registrar of Companies and such directors shall provide all necessary support, including* *by providing forms, undertaking as may be required, to the Resolution Applicant to achieve the foregoing.*

- *As of the Effective Date, all powers of attorney and/ or other corporate authorizations or mandates issued by the Corporate Debtor to any person to enable such person to carry out various functions of the Corporate Debtor, to sign and execute various documents and/ or represent the Corporate Debtor, and to operate the bank accounts of the Corporate Debtor shall stand revoked with immediate effect, and the re-constituted board of directors of the Corporate Debtor shall be entitled to authorize such persons as it deems fit to carry out such functions of the Corporate Debtor, sign and execute various documents and/ or represent the Corporate Debtor, and to operate the bank accounts of the Corporate Debtor.*

- *As of the Effective Date, Resolution Applicant shall* ***reserve the right*** *to retain the employees/ key management personnel of the Company or terminate their services or renegotiate their contracts*

- *As of the Effective Date, the auditor (Statutory and Internal) of the Company may be asked to vacate its office, and, a person nominated by the Resolution Applicant shall be designated and appointed as the (Statutory and Internal) auditor of the Company.*

- *On the Effective Date, any and all documents pertaining to the business of the Corporate Debtor (including without limitation all the title documents, approvals obtained by the Corporate Debtor including without limitation in relation to the construction, development, management and operation, cheque books in relation to all the bank accounts of the Corporate Debtor, all* *reports required to be maintained by the Corporate Debtor in accordance with the provision of the Companies Act, 1956 or Companies Act, 2013, user name and password for permanent account number (PAN), tax deduction account number (TAN), value added tax (VAT), service tax (if applicable), goods and services tax, income tax, and for any other aspect as provided by a Governmental Authority or any third party and the passwords for all the bank accounts of the Corporate Debtor, etc.) shall be handed over to the Resolution Applicant for safe-keeping on behalf of the Corporate Debtor and shall be maintained at the registered office of the Corporate Debtor.*

- *As of the Effective Date, in the event any transaction is avoided/ set aside by the NCLT in terms of Sections 43, 45, 47, 49, 50 or 66 of the Insolvency and Bankruptcy*

Code, 2016 and any amount is received by the Resolution Professional or the Corporate Debtor in furtherance thereof, such sum shall be deemed to have been received for the benefit of Resolution Applicant. The Resolution Applicant shall cause the Corporate Debtor to render reasonable co-operation to the Resolution Professional or any Person pursuing the remedies contemplated herein, without inhibiting or interfering with the functioning of the Corporate Debtor in any manner.

19. The 'Resolution Plan' further offers the declarations of the Resolution Applicant i.e., i) the Plan is not in contravention of the provisions of the Process Note, the Code, the CIRP Regulations and other Applicable Law; ii) The Resolution Applicant has not been declared as a wilful defaulter by RBI and the names of none of its directors appear in the list of wilful defaulters issued by RBI; iii) The Resolution Applicant has dealt with the interests of all

Stakeholders under this Plan, in a manner compliant with the provisions of the Code; iv) *The Resolution Applicant has the necessary financial resources available for supporting the Plan and any further infusion / contribution of additional funds into Corporate Debtor, as indicated in the Plan;* v) The Resolution Applicant is not disqualified from submitting a Plan under Section 29A and other applicable provisions of the Code and any other Applicable Law.

20. The 'Resolution Plan' also provides for the payment and settlement of claims by offering that the Resolution Applicant shall within a period of 5 business days of 'Approval Date' fund the Corporate Debtor for a sum of INR 26,50,00,000 (Rupees Twenty Six Crores and Fifty Lakhs). The Plan further provides the utilisation of the said sums as follows:-

i. The CIRP Costs not to exceed INR 5,00,00,000 (**"Estimated CIRP Costs"**) up to the Approval Date shall be paid towards full and final payment of the insolvency resolution process costs payable in terms of Section 30(2)(a) of the Code and Regulation 38(1)(a) of the CIRP Regulations. However, if Actual CIRP cost exceeds the Estimated CIRP Costs, the Resolution Applicant shall pay the entire amount of CIRP Costs and the amount by which CIRP Costs exceeds the estimated CIRP Costs ("**Excess CIRP Costs**") shall be paid by the Resolution Applicant from its own funds provided such Excess CIRP Cost is not more than INR 1,00,00,000 (Indian Rupees One Crore).

ii. The workmen claim(s) aggregating to an amount of INR 8,38,16,991 (Rupees Eight Crores Thirty Eight Lakhs Sixteen Thousand Nine Hundred and Ninety One) as admitted by the Resolution Professional. Workmen Dues for the period of twenty-four months preceding the Insolvency Commencement Date aggregates to INR 3,23,84,899 and Employees Dues for the period of twelve months preceding the Insolvency Commencement Date aggregate to INR 1,51,83,606. The Resolution Applicant shall pay the above said sums of INR 3,23,84,899 in favour of the Workmen and INR 1,51,83,606 in favour of Employees towards full and final payment of all Workmen Dues and Employees Dues respectively. Any Workmen Dues in excess of twenty-four months preceding the Insolvency Commencement Date and Employee Dues in excess of twelve months preceding the Insolvency Commencement Date shall be written off and the Corporate Debtor shall not be liable to meet any such payments whether such payments are in form of arrears of pay or bonuses or statutory deductions. The Workmen Dues and Employees Dues shall be paid within a period of 20 days from the 'Approval Date'.

iii. The admitted claim of the Financial Creditor viz., Indian Overseas Bank (IOB) aggregates to INR 14,20,25,914 shall be paid towards full and final payment within a period of 15 days from the Approval Date. Upon payment, the security created in favour of IOB shall stand released and free from all encumbrances and no further charge shall attach on the same.

As regards the other Financial Creditors, the claim admitted aggregates to INR 1,95,10,13,277, the Resolution Applicant proposes to proportionately settle upto 25% of the said claim aggregating to 48,77,53,319 as full and final settlement of all claims by operating the iron ore and barytes mines of the Corporate Debtor as a going concern and by sale of existing stock. In this manner, the Resolution Applicant proposes to generate sufficient cash flows to enable the Corporate Debtor to settle the other Financial Creditors. The payments to the other Financial Creditors shall be proportionately disbursed to each of the other Financial Creditor as full and final settlement of the said Financial Creditors' claims on the first anniversary of the Approval Date.

iv. The claims of the Operational Creditors are aggregating to INR 94,63,86,409 (Rupees Ninety Four Crores Sixty Three Lakhs Eighty Six Thousand Four Hundred and Nine). The repayment of Operational Creditors (other than workmen and employees) of the Corporate Debtor shall be in a manner such that the amounts received by such Operational Creditors shall not be less than the amounts which would have been otherwise received by them in the event of liquidation of the Corporate Debtor. Considering the order of priority as per the waterfall mechanism provided under Section 53 of the I&B, Code, 2016 and based on the Resolution Applicant's estimation of the liquidation value of the Corporate Debtor in the event of liquidation of the Corporate Debtor, after settlement of the insolvency resolution process cost and claims of the Financial Creditor, Workmen and Employees, the Operational Creditors (other than Workmen and Employees) will not receive any amount against their claims. [Note:- ~~however~~, the condition i.e., "the Operational Creditors will not receive any amount against their claims" is subject to the observation made by this authority under para no 24 of this order]. However, after having considered the nature of the business and the critical role of the Operational Creditors in ensuring that the business of the Corporate Debtor is being run as a going concern, the Resolution Applicant proposes to settle up to 15% of the total outstanding dues of the Operational Creditors aggregating to INR 14,19,57,961 (Rupees Fourteen Crores Nineteen Lakhs Fifty Seven Thousand Nine Hundred and Sixty One). The said sum shall be full and final settlement of the said Operational Creditors' claims against the Corporate Debtor. The source of funds would be by generating sufficient cash flows through operation of its iron ore and barytes mines and from sale of iron ore stock and the payments to the said Operational Creditors shall be proportionately disbursed to each of the said

Operational Creditors as full and final settlement of the said Operational Creditors' claims on the first anniversary of the Approval Date.

21. The Plan also provides the key actions by monitoring committee during implementation of the plan as follows:-

Particulars	**Action by Monitoring Committee**
Execution of definitive agreements with CoC/RP on approval of Plan by NCLT to implement the Plan	The Monitoring Committee will assist the Resolution Applicant in executing all requisite agreements with CoC/RP on approval of the Plan by NCLT
Continuation of the Business Operations	The Monitoring Committee should ensure continuation of the Business Operations on a going concern basis
Intimation to the MCA, CoC, IBBI, RBI, Tax Authorities and various other Statutory Authorities (as applicable)	The Monitoring Committee will be responsible for intimating the Statutory Authorities (as applicable) regarding the Approval of the Plan and effects of the same on implementation.
Intimation to all Creditors, Existing Security Holders and other stakeholders of the Company	The Monitoring Committee will be responsible for intimating the various stakeholder of the Corporate Debtor regarding the Approval of the Plan and effects of the same on implementation.
Other Approvals/Filings required under the Plan - RBI - Filing of various documents with MCA - Other Authorities	The Monitoring Committee is responsible for filing the requisite Forms which is necessary and mandatory in nature to be filed
Infusion of Funds by	The Monitoring Committee will

Resolution Applicant either directly or through its wholly owned subsidiary	be responsible to monitor the payment to all Creditors as set forth in Schedule 11 (Financial Plan)
Payment of CIRP Costs	The Monitoring Committee will be responsible for Payment of the CIRP Costs to the Resolution Professional for settlement of expenses/dues under the CIRP
Payment to Operational Creditors	The Monitoring Committee will ensure payment of Operational Creditors Dues under the Proposed Plan. The Monitoring Committee will ensure that the Operational Creditors shall issue "No Dues Certificate" on Payment of agreed amount under this Plan.
To renew/ renegotiate expired lease/license agreements	In order to continue the operations of the Corporate Debtor as a Going Concern, the Monitoring Committee shall renew/ renegotiate the expired lease/license agreements as identified by the Resolution Applicant. Also in case the Monitoring Committee is unable to renew/ renegotiate the expired lease/license agreements, it shall take appropriate steps to entering into new lease/license with such parties approved by the Resolution Applicant.
Miscellaneous Acts	The Monitoring Committee also has the responsibility and power to do all such acts during its tenor to ensure that the Corporate Debtor's business is run without issues

22. This Authority during the course of hearing, vide Order dated 06.06.2019, has directed the Resolution Applicant to file an Affidavit to clarify, i) as to how in the event, the claim(s) is/are admitted in the matter(s) pending adjudication filed by the Creditors before this Authority, are to be dealt with under the 'Resolution Plan' approved by the CoC and ii) to state the timeline within which the Resolution Applicant proposes to infuse Rs.89 Crores in the Corporate Debtor to satisfy the claims of the Creditors as provided in the Resolution Plan. In this regard, the Resolution Applicant has filed an Affidavit clarifying *issue No.**i*** as follows:-

> *"...........If any of the claims of the said claimants are allowed, their respective claims will stand satisfied within that category of the claimant, namely Financial Creditors upto 25% and Operational Creditors upto 15% and the total Resolution Plan cost is provided as Rs.89,43,05,699/-. As such, we hereby confirm and reiterate that <u>no claims on being allowed to be included by the orders of the Hon'ble Tribunal will remain left out or unsatisfied within the Resolution Plan</u>. If the admitted amount increases in terms of any such order the amount shall be <u>shared proportionately among the respective class of creditors based on the percentage of the admitted claim amount</u>. Any surplus available will satisfy the claims in another class."* ***(Emphasis supplied)***

23. On issue No.***ii***, the clarification given by the Resolution Applicant through the said Affidavit is as follows:-

> *"that our Resolution Plan contains a detailed financial proposal in schedule 10 and a snapshot of the key financial proposal is extracted at para 4.2, page 7 of the plan and accordingly we reiterate that the value of the resolution plan stands at Rs. 89,43,05,699/-, which shall not exceed or fall short as envisaged in the resolution plan. We hereby undertake to adhere to schedule 10 of the plan without any deviations, subject to approval of the Resolution Plan, wherein we have provided and payment of dues of financial creditors, operational creditors, CIRP Cost, workmen and Employees dues as per the code and working capital requirements to keep the corporate Debtor as a going concern."*

24. It is noted that the clarifications mentioned above, shall form part and parcel of the Resolution Plan [to the extent of pending matters as on the date] submitted by the Resolution Applicant and any provision inconsistent contained in the Resolution Plan shall be deemed to be omitted by virtue of this order. Further, the Plan provides that from its approval date, all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, proceedings in connection with the Corporate

Debtor or affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the Plan approval date, or arising on account of implementation of this Resolution Plan shall stand withdrawn and dismissed.

25. In short, the 'Resolution Plan' approved by the CoCs with 96.45% voting share and placed before this Authority appears to be in line with the object and purport of I&B Code, 2016, as it provides for insolvency resolution in a time bound manner for maximization of value of assets, viability of credit and balancing the interest of the stakeholders.

26. Thus, 'Resolution Plan' filed meets the requirements of Section 30(2) of I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A. The Resolution Professional has also certified that the "Resolution Plan" approved by the CoCs does not contravene any of the provisions of the law for the time being in force. The Compliance Certificate is placed

at pages 102 to 109 of the typed set filed with the Application. The 'Resolution Plan' annexed with MA/179/IB/2019 filed in CP/39/IB/2018 is hereby approved, [subject to the observations made herein above] which will become effective from the date of passing of this Order and is binding on the Corporate Debtor and its shareholders, employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan including Resolution Applicant.

27. The Resolution Applicant shall, pursuant to the Resolution Plan approved under Sub-section (1) of Section 31 of the I&B Coded, 2016, obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan by this Authority or within such period as provided for in such law.

28. The order of moratorium dated 12.03.2018 passed by this Adjudicating Authority under Section 14 of I&B Code,

2016 shall ceased to have effect from the date of passing this Order.

29. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI, so that the Board may record the same on its data-base.

30. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.

31. Accordingly, MA/179/2019 filed in CP/39/IB/2018 stands disposed of.

32. The Order is pronounced in the open court.

[CH.MOHD SHARIEF TARIQ]
MEMBER (JUDICIAL)

P. ATHISTAMANI