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

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 08.03.2019

Name of the Parties :

1) **IA No. 259 of 2018 in CP(IB) 48 of 2017**
Ajay Joshi Resolution Professional V/s. Alok Industries Ltd.
[Section 30(6) r.w. 31(1) of the Insolvency & Bankruptcy Code]

2) **IA No. 425 of 2018 in CP(IB) 48 of 2017**
Kotak Mahindra Bank Ltd. V/s. Ajay Joshi & Ors.
[Section 60(5)of the Insolvency & Bankruptcy Code]

3) **IA No. 20 of 2019 in CP(IB) 48 of 2017**
Shri Balaji Auxi-Chem Pvt. Ltd. V/s. Ajay Joshi RP of Alok Industries Ltd.
[Section 7 of the Insolvency & Bankruptcy Code]

4) **IA No. 87 of 2019 in CP(IB) 48 of 2017**
Okosu Ceraterch Pvt. Ltd. & Anr. V/s. Ajay Joshi RP of Alok Industries Ltd.
[Section 60(5)of the Insolvency & Bankruptcy Code]

5) **IA No. 88 of 2019 in CP(IB) 48 of 2017**
Okosu Ceraterch Pvt. Ltd. & Anr. V/s. Ajay Joshi RP of Alok Industries Ltd. & Ors.
[Section 60(5)of the Insolvency & Bankruptcy Code]

6) **IA No. 282 of 2018 in CP(IB) 48 of 2017**
Omkara Assets Reconstruction Pvt. Ltd. V/s. Ajay Joshi RP of Alok Industries Ltd. & Anr.
[Section 60(5) & 29(2) of the Insolvency & Bankruptcy Code]

7) **Inv. P 67 of 2018 in IA 135 of 2018 in CP(IB) 48 of 2017**
SICOM Ltd. V/s. Alok Employees Benefit and Welfare Trust & Ors.
[Section 7 of the Insolvency & Bankruptcy Code]

8) **IA No. 326 of 2018 in CP(IB) 48 of 2017**
Shah Rajul Devidas & Anr. V/s. Alok Industries Ltd. & Ors.
[Section 30(6)of the Insolvency & Bankruptcy Code]

9) **IA 41 of 2019 in IA 259 of 2018 in CP(IB) 48 of 2017**
Gail India Ltd. V/s. Ajay Joshi RP of Alok Industries Ltd.
[Section 60(5)of the Insolvency & Bankruptcy Code]

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Mr. Naveen Pahwa with	Sr. Adv	For COC	
2.	Ms. Himani Chhabra	Adv		
	Mr. Ravi Pahwa for Thakkar & Pahwa	Adv		
2.	MR. MIHIR THAKORE MR. MANISH BHATT	SR. ADVOCATE	FOR RP	
	MR. SAPAN GUPTA MS. VEENA SIVARAMAKRISHNAN MS. GRISHMA AHUJA MS. MRIDA LAKHMANI MR SHALIN JANI MR. NISHANT DOSHI	ADVOCATE		
	FOR, SHARDUL AMARCHAND MANGALDAS & CO [APPEARANCE IN ALL MATTERS EXCEPT SR.No.2 – IA 425/18]			
3.	Appearance for matter at Serial No. 2 Mr. Mihir Thakore, Senior Advocate Mr. H.R. Bhatt, Senior Advocate with Mr. Nirag Pathak, Advocate		RP/ Resp. No. 1	
4.	Mr. Sandeep Singhi, Adv Mr. Siddharth Joshi, Adv. i/b. Singhi & Co		For Kotak Mahindra Bank (IA/425/2018 Sr. No. 2)	
5.	Saurabh Amin	Adv.	For Resolution Applicant	

IA 259/2018, IA 425/2018, IA 20/2019, IA 87/2019, IA 88/2019, IA 282/2018, Inv. P 67 of 2018, IA 326/2018, IA 41/2019

COMMON ORDER

The Parties are represented through their respective Learned Counsel(s).

The Common Order is pronounced in the open court, vide separate sheet

MANORAMA KUMARI
MEMBER (JUDICIAL)

HARIHAR PRAKASH CHATURVEDI
MEMBER (JUDICIAL)

Dated this the 8th day of March, 2019.

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

I.A. No. 259 of 2018
with
Inv. P. No. 67 of 2018 in IA No. 135 of 2018
with
I.A. No. 282 of 2018
with
I.A. No. 326 of 2018
with
I.A. No. 425 of 2018
with
I.A. No. 20 of 2019
with
I.A. No. 41 of 2019 in I.A. No. 259 of 2018
with
I.A. No. 87 of 2019
with
I.A. No. 88 of 2019
in
CP(IB) No. 48 of 2017

In the matter of:

IA 259 of 2018

1. State Bank of India
Surat – 394 230 .....Petitioner
[Financial Creditor]

Versus

1. Alok Industries Limited ..... Corporate Debtor

2. Ajay Joshi, Resolution Professional
for the Corporate Debtor .....Applicant

3. J.M. Financial Asset Reconstruction Company Limited
having its address at:
7th Floor, Cnergy,
Appasaheb marathe marg,
Prabhadevi,
Mumbai – 400025 .....Respondent No. 1

4. J.M. Financial Asset Reconstruction Company Limited
(as trustee to JMF ARC – MARCH 2018 – TRUST)
having its address at:
7th Floor, Cnergy,
Appasaheb Marathe Marg,
Prabhadevi,
Mumbai – 400 025 .....Respondent No. 2

5. Reliance Industries Limited
having its address at:
3rd Floor, Maker Chambers IV,
222, Nariman Point,
Mumbai – 400 021 .....Respondent No. 3

Inv P 67 of 2018 in IA 135 of 2018

SICOM Limited
Ms. Vishakhaj. Tambe,
Authorized vide Power of Attorney
dated 9th February, 2007 .....Applicant

Versus

1. Alok Employees Benefit and Welfare Trust
Acting through SudipRungta, Trustee
Having its office at Gala No. 244,
2nd Floor, Kewal Industrial Estate,
SenapatiBapat Marg,
Lower Parel, Mumbai – 400 013

2. Mr. ReshabhRaizada,
Having its office at B-5, 1st Floor,
Safdarjung Enclave,
New Delhi – 110 029

3. Mr. Michael Mesmer Melren,
having its office at B' Wing,
302, Lakshchandi heights,
Gokuldham, Krishna Vatika Marg,
Gurgaon (East), Mumbai – 400 063

4. Mr. JayeshChunilal Mehta,
504/A, Ruby Apartment,
Mahavirnagar,
Kandivali – West,
Mumbai – 400 067

5. State Bank of India,
On behalf of Committee of Creditors,
State Bank Bhavan, Madame Cama Road,
Nariman Point,
Mumbai, Maharashtra – 400 021
And a Branch at State Bank of India
Backbay Reclamation Branch,
Tulsian Chambers,
Nariman Point,
Mumbai – 400 021

6. Mr. Ajay Joshi,
Resolution Professional,
Alok Industries Limited
Having its registered office at:
17/5/1, 521/1, Village Rakholi,
Saily,
Silvassa – 396 230
Union Territory of Dadra & Nagar Haveli .... Respondents

IA 282 of 2018

1. M/s. Omkara Assets Reconstruction Pvt. Ltd.
9, MP Nagar First / Street,
Kongunagar Extension,
P.O. Tirupur 64/607
Tamil Nadu ....Applicant

Versus

1. Ajay Joshi, Resolution Professional of
Alok Industries Limited
Having its registered office at:
17/5/1, 521/1, Village Rakholi,
Saily, Silvassa – 396 230
Union Territory of Dadra & Nagar Haveli .... Respondent No. 1

2. State Bank of India,
having its corporate office at:
State Bank Bhavan, Madame Cama Road,
Mumbai – 400 021
Acting through its Branch office at
Backbay Reclamation Branch,
Tulsian Chambers,
Nariman Point,
Mumbai – 400 021 ...Respondent No. 2

IA No. 326 of 2018

1. Shah Rajul Devidas & Another,
C-73, Sentossa Greenland.
S.P. Ring Road,
Post :Rakanpur,
Tal: Kalol,
Dist. Gandhina
Gujarat

2. Anil Subhashchandra Agrawal,
2, Charudatta Chambers,
Karhewadi,
C.B.S.
Nasik – 422 003 .....Applicants
[Shareholders]

Versus

1. Alok Industries Limited,
Having its registered office at:
17/5/1 & 521/1, Rakholi/Saily,
Silvassa – 396 230
Union Territory of Dadra and Nagar Haveli

And having its Corporate Office at:
2nd and 3rd Floor, Tower B,
Peninsula Business Park,
G.K. Marg, Lower Parel,
Mumbai – 400 013

2. Ajay Joshi, Resolution Professional,
Dwarka, A/2, PhatakBaug Society,
199, NaviPeth,
Pune – 411 030

3. Reliance Industries Limited,
Having its registered office at:
3rd Floor, 222, Maker Chambers IV,
Nariman Point,
Mumbai – 400 021

4. JM Financial Assets Reconstruction Company,
Having its registered office at:
7th Floor, Cnergy,
AppasahebMarathe Marg,
Prabhadevi,
Mumbai – 400 025 ....Respondent

IA 425 of 2018

Kotak Mahindra Bank Limited
A banking company incorporated under
The provisions of the Companies Act, 1956
And having its registered office at
27 BKC, Plot No. C-27, G Block,
BandraKurla Complex, Bandra (East)
Mumbai – 400 051 [Financial Creditor] .....Applicant

Versus

1. Ajay Joshi,
Resolution Professional,
Alok Industries Limited
17/5/1 & 521/1, Rakholi/Saily,
Silvassa – 396 230
Union Territory of Dadra and Nagar Haveli

2. State Bank of India
On behalf of Committee of Creditors
State Bank Bhavan,
Madame Cama Road,
Nariman Point,
Mumbai – 400 021
Maharashtra

And a Branch office at

State Bank of India,
Backbay Reclamation Branch,
Tulsiani Chambers,
Nariman Point,
Mumbai – 400 021

3. JM Financial Assets Reconstruction Company,
Having its registered office at:
7th Floor, Cnergy,
AppasahebMarathe Marg,
Prabhadevi,
Mumbai – 400 025

4. JM Finance Asset Reconstruction Company,
(as Trustee to JMF ARC Trust)
Having its registered office at:
7th Floor, Cnergy,
AppasahebMarathe Marg,
Prabhadevi,
Mumbai – 400 025

5. Reliance Industries Limited,
Having its registered office at:
3rd Floor, 222, Maker Chambers IV,
Nariman Point,
Mumbai – 400 021 .....Respondents

IA 20 of 2019

Shri BalajiAuxi-Chem Private Limited
Having its registered office at:
O/13, Kanaknidhi Complex,
Opp. Gandhi SmrutiBhawan,
Nanpura,
Surat – 395 001 .....Applicant
District: Surat [Operational Creditor]

Versus

Ajay Joshi,
Resolution Professional,
Alok Industries Limited
17/5/1 & 521/1, Rakholi/Saily,
Silvassa – 396 230
Union Territory of Dadra and Nagar Haveli .....Respondent

IA 41 of 2019

Gail India Limited
Gail Bhawan,
Plot No. 73, Road, No. 3,
Sector 15, CBD Belapur,
Navi Mumbai – 400614 .....Applicant
[Operational Creditor]

Versus

Ajay Joshi,
Resolution Professional,
Alok Industries Limited
17/5/1 & 521/1, Rakholi/Saily,
Silvassa – 396 230
Union Territory of Dadra and Nagar Haveli .....Respondent

IA 87 of 2019

1. OkosuCeratech Pvt. Ltd.
Shop No. 1, Shiv Krupa Apartments,
Near AmbanagarNaher,
Bamroli Road,
Surat – 395 002

2. Sahawa Technology,
Plot No. 925 – 926, 3rd Floor, Road No. 3,
GIDC – Sachin,
Opp. GEB Sub Station,
Surat – 394 230 .....Applicants
[Operational Creditors]

Versus

1. Ajay Joshi, Resolution Professional of
Alok Industries Ltd,
Having its address at:
Dwarka, A/2, PhatakBaug Society,
999, NaviPeth,
Pune – 411 030

2. State Bank of India
On behalf of Committee of Creditors
State Bank Bhavan,
Madame Cama Road,
Nariman Point,
Mumbai – 400 021
Maharashtra

3. Reliance Industries Limited,
Having its registered office at:
3rd Floor, 222, Maker Chambers IV,
Nariman Point,
Mumbai – 400 021

4. JM Financial Assets Reconstruction Company,
Having its registered office at:
7th Floor, Cnergy,
AppasahebMarathe Marg,
Prabhadevi,
Mumbai – 400 025 ....Respondents

IA 88 of 2019

1. OkosuCeratech Pvt. Ltd.
Shop No. 1, Shiv Krupa Apartments,
Near AmbanagarNaher,
Bamroli Road,
Surat – 395 002

2. Sahawa Technology,
Plot No. 925 – 926, 3rd Floor, Road No. 3,
GIDC – Sachin,
Opp. GEB Sub Station, ...Applicants
Surat – 394 230 [Operational Creditors

Versus

1. Ajay Joshi, Resolution Professional of
Alok Industries Ltd,
Having its address at:
Dwarka, A/2, PhatakBaug Society,
999, NaviPeth,
Pune – 411 030

2. State Bank of India
On behalf of Committee of Creditors
State Bank Bhavan,
Madame Cama Road,
Nariman Point,
Mumbai – 400 021
Maharashtra

3. Reliance Industries Limited,
Having its registered office at:
3rd Floor, 222, Maker Chambers IV,
Nariman Point,
Mumbai – 400 021

4. JM Financial Assets Reconstruction Company,
Having its registered office at:
7th Floor, Cnergy,
AppasahebMarathe Marg,
Prabhadevi,
Mumbai – 400 025 ....Respondents

Order delivered on 8thMarch, 2019

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Ms. ManoramaKumari, Member (Judicial)

Appearance in I.A. No. 259 of 2018

Mr. Mihir Thakore, Mr. Manish Bhatt, Sr. Advocates, Mr. Sapan Gupta, Ms. Veena Sivaramakrishnan, Ms. Grishma Ahuja, Mr. Siddhant Kant, Mr. Shalin Jani, Mr. Nishant Doshi, and Ms. Mrida Lakhmani, Advocates for Shardul Amarchand Mangaldas & Co. for the RP.

Mr. Navin K Pahwa, Sr. Advocate with Mr. Prateek Kumar, Ms. Sneha Janakiraman, Mr. Ravi Pahwa and Ms. Himani Chhabra, Advocates for CoC

Mr. Saurabh Amin, Advocate for the R.A.

Appearance in Inv. P. No. 67 of 2018 in IA No. 135 of 2018

Mr. Kunal P Vaishnav, Advocate for SICOM/Applicant

Mr. Raheel Patel, Advocate i/b Nanavati Associates, for Respondent No. 1 in IA 135

Mr. Mihir Thakore, Mr. Manish Bhatt, Sr. Advocates, Mr. Sapan Gupta, Ms. Veena Sivaramakrishnan, Ms. Grishma Ahuja, Mr. Siddhant Kant, Mr. Shalin Jani, Mr. Nishant Doshi, and Ms. Mrida Lakhmani, Advocates for Shardul Amarchand Mangaldas & Co. for the RP.

Mr. Navin K Pahwa, Sr. Advocate with Mr. Prateek Kumar, Ms. Sneha Janakiraman, Mr. Ravi Pahwa and Ms. Himani Chhabra, Advocates for CoC

Appearance in I.A. No. 282 of 2018

CA (Dr. Hiten Parikh) PCA for the Petitioner.

Mr. Mihir Thakore, Mr. Manish Bhatt, Sr. Advocates, Mr. Sapan Gupta, Ms. Veena Sivaramakrishnan, Ms. Grishma Ahuja, Mr. Siddhant Kant, Mr. Shalin Jani, Mr. Nishant Doshi, and Ms. Mrida Lakhmani, Advocates for Shardul Amarchand Mangaldas & Co. for the RP.

Mr. Navin K Pahwa, Sr. Advocate with Mr. Prateek Kumar, Ms. Sneha Janakiraman, Mr. Ravi Pahwa and Ms. Himani Chhabra, Advocates for CoC

Appearance in I.A. No. 326 of 2018

Mr. Aditya D. Davda, Advocate for Bhargav Karia & Associates for the Applicant.

Mr. Mihir Thakore, Mr. Manish Bhatt, Sr. Advocates, Mr. Sapan Gupta, Ms. Veena Sivaramakrishnan, Ms. Grishma Ahuja, Mr. Siddhant Kant, Mr. Shalin Jani, Mr. Nishant Doshi, and Ms. Mrida Lakhmani, Advocates for Shardul Amarchand Mangaldas & Co. for the RP.

Mr. Navin K Pahwa, Sr. Advocate with Mr. Prateek Kumar, Ms. Sneha Janakiraman, Mr. Ravi Pahwa and Ms. Himani Chhabra, Advocates for CoC

Appearance in I.A. No. 425 of 2018

Mr. Sandeep Singhi, and Ms. Trisha Baxi for Singhi & Co. for the Applicant

Mr. Nirag Pathak, Advocate for Respondent No. 1/RP.

Mr. Mihir Thakore, Mr. Manish Bhatt, Sr. Advocates, Mr. Sapan Gupta, Ms. Veena Sivaramakrishnan, Ms. Grishma Ahuja, Mr. Siddhant Kant, Mr. Shalin Jani, Mr. Nishant Doshi, and Ms. Mrida Lakhmani, Advocates for Shardul Amarchand Mangaldas & Co. for the RP.

Mr. Navin K Pahwa, Sr. Advocate with Mr. Prateek Kumar, Ms. Sneha Janakiraman, Mr. Ravi Pahwa and Ms. Himani Chhabra, Advocates for CoC

Mr. Saurabh Amin, Advocate for the RA.

Appearance in I.A. No. 20 of 2019

Mr. Mihir Thakore, Mr. Manish Bhatt, Sr. Advocates, Mr. Sapan Gupta, Ms. Veena Sivaramakrishnan, Ms. Grishma Ahuja, Mr. Siddhant Kant, Mr. Shalin Jani, Mr. Nishant Doshi, and Ms. Mrida Lakhmani, Advocates for Shardul Amarchand Mangaldas & Co. for the RP.

Mr. Navin K Pahwa, Sr. Advocate with Mr. Prateek Kumar, Ms. Sneha Janakiraman, Mr. Ravi Pahwa and Ms. Himani Chhabra, Advocates for CoC

Mr. Kumaresh K Trivedi, Advocate for the R.A.

Appearance in I.A. No. 41 of 2019 in I.A. No. 259 of 2018

Mr. Suman Khare with Akshat Khare, Advocates for Mason Le exparts for the Applicant.

Mr. Mihir Thakore, Mr. Manish Bhatt, Sr. Advocates, Mr. Sapan Gupta, Ms. Veena Sivaramakrishnan, Ms. Grishma Ahuja, Mr. Siddhant Kant, Mr. Shalin Jani, Mr. Nishant Doshi, and Ms. Mrida Lakhmani, Advocates for Shardul Amarchand Mangaldas & Co. for the RP.

Mr. Navin K Pahwa, Sr. Advocate with Mr. Prateek Kumar, Ms. Sneha Janakiraman, Mr. Ravi Pahwa and Ms. Himani Chhabra, Advocates for CoC

Mr. Saurabh Amin, Advocate for the R.A.

Appearance in I.A. No. 87 of 2019

Mr. Mohit Gupta, Advocate for the Applicant.

Mr. Mihir Thakore, Mr. Manish Bhatt, Sr. Advocates, Mr. Sapan Gupta, Ms. Veena Sivaramakrishnan, Ms. Grishma Ahuja, Mr. Siddhant Kant, Mr. Shalin Jani, Mr. Nishant Doshi, and Ms. Mrida Lakhmani, Advocates for Shardul Amarchand Mangaldas & Co. for the RP.

Mr. Navin K Pahwa, Sr. Advocate with Mr. Prateek Kumar, Ms. Sneha Janakiraman, Mr. Ravi Pahwa and Ms. Himani Chhabra, Advocates for CoC

Appearance in I.A. No. 88 of 2019

Mr. Mohit Gupta, Advocate for the Applicant.

Mr. Mihir Thakore, Mr. Manish Bhatt, Sr. Advocates, Mr. Sapan Gupta, Ms. Veena Sivaramakrishnan, Ms. Grishma Ahuja, Mr. Siddhant Kant, Mr. Shalin Jani, Mr. Nishant Doshi, and Ms. Mrida Lakhmani, Advocates for Shardul Amarchand Mangaldas & Co. for the RP.

Mr. Navin K Pahwa, Sr. Advocate with Mr. Prateek Kumar, Ms. Sneha Janakiraman, Mr. Ravi Pahwa and Ms. Himani Chhabra, Advocates for CoC

COMMON ORDER

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

1. The instant application (IA) No. 259 of 2018 in CP(IB)No. 48/2017, is filed by the applicant, the Resolution Professional of Corporate Debtor M/s. Alok Industries Limited, under Section 30(6) read with 31(1) of the Insolvency and Bankruptcy Code, 2016 (as amended), read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (as amended), for submission and approval of the Resolution Plan submitted by Respondents No. 1 to 3 in respect of the Corporate Debtor with the following prayers:

(a) Pass an order approving the Resolution Plan submitted by the Resolution Applicants in respect of the Corporate Debtor under Section 31(1) of the Code and declare that the same be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan;

(b) Pass an order directing that, pending the disposal of the present application by this Tribunal, the Resolution Professional shall

continue to conduct its role as the Resolution Professional of the Corporate Debtor and during such period shall have all powers, duties and protections as are available to him as a Resolution Professional under the Code and regulations thereunder.

(c) Pass an order directing that the moratorium declared under Section 14 of the Code shall continue until such date that the Resolution Applicants acquire control of the Corporate Debtor (i.e. Closing date) in accordance with the Resolution Plan;

(d) Pass an order directing the Resolution Applicants to implement the Resolution Plan in the manner set out under the Resolution Plan;

(e) Pass an order approving the appointment of the monitoring committee ("MC") from the date of the approval of the Resolution Plan by this Tribunal until the date on which the Resolution Applicants acquire control of the Corporate Debtor i.e. the Closing Date under the Resolution Plan, and during such period extend protection to the MC (including extension of the protection of moratorium against any suit, legal proceedings, investigations or have any liability with respect to anything which is done or intended to be done or omitted in good faith and in compliance with the Code, CIR Regulations or any other applicable law) to enable it to monitor the Corporate Debtor as going concern.

(f) Pass an appropriate order in relation to the grant of the concessions, reliefs and dispensations sought in terms of Clause 11 of the resolution Plan which have been reproduced as part of Paragraph 33(n) of this application and annexed as **Annexure I**

(g) Pass an order directing all stakeholders to cooperate with the Resolution Applicants and the MC to keep the Corporate Debtor a going concern and to implement the Resolution Plan in the manner approved by this Tribunal.

(h) Pass an order directing that the powers of the suspended board of directors of the Corporate Debtor shall remain suspended till the

Resolution Applicants acquire control of the Corporate Debtor (i.e. Closing Date) in the manner set out in the Resolution Plan; and/or

(i) Pass such other order/orders as it may deem fit and proper in the facts and circumstances of the case.

2. For the sake of convenience, it is mentioned herein that:

2.1 CP(IB)No. 48/2017 was filed by State Bank of India, the Financial Creditor (Applicant) under section 7 of the Code read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authorities) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process against Alok Industries Limited (hereinafter referred to as "Corporate Debtor" having registered office at 17/5/1 & 521/1, Rakholi/Saily, Silvassa – 396 230 in the Union Territory of Dadra and Nagar Haveli and having its corporate office at 2nd and 3rd Floor, Tower B, Peninsula Business Park, G.K. Marg, Lower Parel, Mumbai – 400 013.

2.2 The said CP(IB) No. 48/2017 was admitted on 18.07.2017 by this Adjudicating Authority and appointed Shri Ajay Joshi, as the Interim Resolution Professional (hereinafter referred to as "IRP").

2.3 The Resolution Professional, so appointed, made public announcement on 19.07.2017 as per the provisions of section 15 of the Code calling upon the claims from the creditors in view of the order dated 18.07.2017 of this Adjudicating Authority. Consequent upon public announcement, IRP received claims from different creditors, members, stakeholders, employees, the workmen etc. However, on verification and doing all deliberations, the admitted claim of the Corporate Debtor stood at Rs. 29,523.86 crores, as on the date of filing of this application.

3. It is stated that on confirmation of IRP as Resolution Professional (hereinafter referred to as "RP") in the first meeting of CoC dated 16.08.2017, Expression of Interest (In short EoI) were invited from the prospective resolution applicants, fixing 9th March, 2018 as last date for submission of resolution plan. On 09.03.2018, one resolution plan was received but the same was found not in accordance with the Code, as such in the 9th meeting of the CoC dated 21.03.2018, it was declared as non-

responsive. Pursuant to the deliberations at the said meeting, CoC further extended the last date for submission of Resolution Plan till 27.03.2018. Copy of the minutes of the 9th meeting of the CoC is annexed with the application as **Annexure 2** with the application.

4. It is stated that in pursuant to the extension of time up to March 27, 2018 RP received Resolution Plan jointly from JM Financial Asset Reconstruction Company Limited, JMFARC – March 2018 – Trust which was represented by JM Financial Asset Reconstruction Limited as the trustee (collectively, "JM Financial Asset Reconstruction Company Limited") and Reliance Industries Limited ("RIL").

4.1 The said Resolution Plan, based on the verification conducted by the RP and his advisors, the Resolution Applicants were found to be eligible under Section 29A and Section 30(2) of the Code as well as the other requirements of the Code and regulations thereunder.

4.2 The said Resolution Plan dated March 27, 2018(as updated on April 09, 2018) was put up for consideration and voting by the CoC on April 10, 2018 in the thirteenth meeting of CoC. However, the said Resolution Plan was not approved by the CoC as the requisite percentage i.e. 75% of the voting share (as per the then required criteria) for approval of the resolution plan as per Section 30(4) of the Code was not received. The Resolution Plan received only 70.28% assenting voting shares of the CoC. The said fact was informed to the Resolution Applicants vide letter dated 12th April, 2018. On receipt of the letter of RP, the Resolution Applicants on the very date i.e. on 12.04.2018 requested RP by way of email, to allow them to submit another resolution plan for the Corporate Debtor. Accordingly, RP, looking to the time constraint as CIRP was due to expire on 14.04.2018, allowed the Resolution Applicants to submit a resolution plan subject to ratification by the CoC.

4.3 It is stated that the Resolution Applicants submitted Resolution Plan dated April 12, 2018, on April 13, 2018. Considering the paucity of time with respect to the CIR process of the Corporate Debtor, the RP requested the members of CoC to consider and waive the requirement of inviting fresh Expressions of Interest and ratify the negotiations concluded by the RP,

its advisors and the CoC's advisors with the Resolution Applicants with respect to the Resolution Plan.

4.4 The CoC in its fourteenth meeting held on April 13, 2018 agreed to consider the Resolution Plan subject to vote by the CoC. However, the said Resolution Plan put to vote, could not garner 75 per cent of the voting share (as required under the then required criteria prescribed under Section 30(4) of the Code) on the date of the voting for approval of the Resolution Plan). The Resolution Plan received only 70.01 per cent assenting voting share of the CoC.

5. Since CIR period expired on April 14, 2018 and no resolution plan was approved by CoC during that period, the RP filed an application under section 33(1) of the Code before this Adjudicating Authority with a prayer for passing an order of liquidation of Corporate Debtor bearing **IA number 136 of 2018** in CP (IB) No. 48/7/NCLT/AHM/2017 before this Adjudicating Authority.

6. It is pertinent to mention herein that when Resolution Plan failed to get the approval of the then requirement of voting of 75% of the CoC in favor of the Resolution Plan, then Alok Employees Benefits and Welfare Trusts & Ors., tribal workers of the Corporate Debtor preferred an application being **IA No. 135 of 2018** before this Adjudicating Authority to consider the Resolution Plan with having only 70% of voting in the interest of employees, workers and other stakeholders etc.

7. That as the CIRP period expired and liquidation application was pending for adjudication, RP moved an application before this Adjudicating Authority being **IA No. 145 of 2018** under section 60(5) of the Code, praying to allow RP to continue in the role of RP till the order of liquidation is passed. Accordingly, this Adjudicating Authority vide its order dated 26.04.2018 allowed the RP to continue with the interim arrangement.

8. That while **IA 135 of 2018** and **136 of 2018** were pending for adjudication, the Ministry of Law and Justice (Legislative Department), on June 06, 2018 promulgated the Insolvency and Bankruptcy (Amendment) Ordinance, 2018 in terms of which it inter alia introduced amendment to sub section (4) of Section 30 of the Code by way of which the voting

threshold of the CoC for approval of a resolution plan was reduced from 75 per cent to 66 per cent of voting share of the financial creditors of the Corporate Debtor.

9. It is stated that in pursuance of the said amendment, the RP received a letter dated June 08, 2018 from the Resolution Applicants, stating inter alia, that since the Resolution Plan was voted in favour by the CoC in its fourteenth meeting in excess of the threshold of sixty six percent (66%) as stipulated in the Ordinance 2018, the RP should withdraw the Liquidation Application and file an application under Section 30(6) of the Code before this Adjudicating Authority for the approval of the Resolution Plan as the matter is pending for necessary orders on Liquidation Application. As such on the date of hearing, RP apprised this Adjudicating Authority, of the latest position consequent upon which, this Adjudicating Authority vide its order dated 11th June 2018, held, that Ordinance 2018 will apply to all the cases pending adjudication which includes the matter of Corporate Debtor and directed the RP to convene a meeting of CoC and present the Resolution Plan submitted by the Resolution Applicants before the CoC for its re-look and proper consideration, in light of the Ordinance 2018 on the same parameters as it were earlier considered. This Adjudicating Authority further held that no further issues will be incorporated, considered or involved which were not taken into account while the Resolution Plan was submitted by the Resolution Applicants.

10. Accordingly, in view of the order so passed by this Adjudicating Authority on June 11, 2018 Resolution Applicants were asked to furnish Earnest Money Deposit of Rs. 25,00,00,000 (Rupees Twenty-Five crores only) in accordance with Clause 1.3.5 (read with Clause 1.8) of the Process Memorandum to enable the CoC to consider the Resolution Plan submitted by the Resolution Applicants.

11. It is stated /further submitted that pursuant to the order dated 11.06.2018 passed by this Adjudicating Authority, the RP, convened the fifteenth meeting of the CoC on June 18, 2018 to apprise the CoC of the order so passed by this Adjudicating Authority and in light of the same, consider the revised voting threshold in terms of the Ordinance dated 06.06.2018 for approval of the Resolution Plan. In the sixteenth meeting of CoC on June 20, 2018 the Resolution Plan was approved with a vote of

72.192 percent of the voting share of the CoC in favor of the Resolution Plan.

12. Accordingly, the RP filed a report on June 22, 2018 before this Adjudicating Authority apprising about the fifteenth and the sixteenth CoC meeting and the voting results of the sixteenth meeting, wherein the Resolution Plan received 72.192 per cent of the voting share of the CoC in favor of the Resolution Plan in excess of the sixty-six per cent voting share of the CoC, as prescribed under the Code (as amended by the Ordinance, 2018)

13. Pursuant to the approval of the Resolution Plan by the CoC under Section 30(4) of the Code (as amended on June 06, 2018) as the successful Resolution Plan, the RP filed the instant application being **IA No. 259 of 2018** under Section 30(6) of the Code before this Adjudicating Authority seeking its approval for the same in terms of Section 31(1) of the Code and regulation 39(4) of the CIR Regulations.

14. The RP submitted a detailed Table showing the compliances of the Resolution Plan with the mandatory requirements under the Code and CIR Regulations to support his contention that the Resolution Plan has also been approved by the CoC having 72.192 per cent of voting in favor of the Resolution Plan. The Table showing the compliances is given hereunder:

#	Section/ Regulation	Requirement of the Code and CIR Regulations	Clause of the Resolution Plan
1	Section 29A of the Code	The disqualification under Section 29A of the Code should not apply.	In terms of Clause 12.1 (v) of the Resolution Plan, the Resolution Applicant has confirmed that they are in compliance with Section 29A of the Code. Further, to confirm the eligibility of the Resolution Applicants under Section 29A of the Code, reference has been placed on the following documents;

			(i) an affidavit from the authorized signatory of JM Financial Asset Reconstruction Company Limited dated march 26, 2018 in the prescribed format, confirming its eligibility under Section 29A; (ii) an affidavit from the authorized signatory of Reliance Industries Limited dated March 26, 2018 in the prescribed format, confirming its eligibility under Section 29A; (iii) certificates provided by the board of directors of JM Financial Asset Reconstruction Company Limited dated March 23, 2018 certifying (a) the latest shareholding pattern of promoters filed with Securities Exchange Board of India ("SEBI"); (b) the composition of the board of directors of JM Financial Asset Reconstruction Company Limited, along with details of independent and non-independent directors of JM Financial Asset reconstruction Company Limited; (c) the list of persons who are in 'control' of JM Financial Asset reconstruction Company Limited (other than persons already covered in point (iii) above) along with the details of the nature and means of control; (d) the list of 'key managerial personnel of JM Financial Asset Reconstruction Company Limited; (e) the shareholding pattern of JM Financial Asset Reconstruction Company Limited, its holding

			company (directly and indirectly, including the ultimate parent as defined in the Process memorandum), subsidiary companies and its associate companies along with a group structure chart; (f) the list of all shareholders holding more than 5% or more of the paid up and issued share capital of JM Financial Asset reconstruction Company Limited or voting rights in JM Financial Asset Reconstruction Company Limited; and (g) the list of 'related parties' of JM Financial Asset Reconstruction Company Limited along with the details of the manner in which a party has been classified as a related party of JM Financial Asset Reconstruction Company Limited. (iv) certificates provided by the board of directors of RIL certifying (a) the latest shareholding pattern of promoters filed with SEBI; (b) the composition of the board of directors of RIL, along with details of independent and non-independent directors of RIL; (c) the list of persons who are in 'control' of RIL (other than persons already covered above) along with the details of the nature and means of control; (d) the list of 'key managerial personnel of RIL; (e) the shareholding pattern of RIL, its holding company (directly and

			indirectly, including the ultimate parent as defined in the Process Memorandum), subsidiary companies and its associate companies along with a group structure chart; (f) the list of all shareholders holding more than 5% or more of the paid up and issued share capital of RIL or voting rights in RIL; and (g) the list of 'related parties' of RIL along with the details of the manner in which a party has been classified as a related party of RIL. (v) Annexure 3 of the resolution Plan, wherein JM Financial Asset Reconstruction Company Limited and RIL have confirmed that neither JM Financial Asset Reconstruction Company Limited, RIL nor any of its connected persons have been convicted of any criminal offences during the preceding 5 years. (vi) Annexure 3 of the Resolution Plan read with the Affidavits submitted by JM Financial Asset Reconstruction Company Limited and RIL wherein, JM Financial Asset Reconstruction Company Limited and RIL have confirmed that neither JM Financial Asset Reconstruction Company Limited, RIL nor any of its connected persons are disqualified to act as a director under the Companies Act, 2013.

			(vii) Annexure 3 of the Resolution Plan read with the Affidavits submitted by JM Financial Asset Reconstruction Company Limited and RIL wherein, JM Financial Asset Reconstruction Company Limited and RIL have confirmed that neither JM Financial Asset Reconstruction Company Limited, RIL nor any of its connected persons are a willful defaulter identified by any bank/financial institution or consortium under the Reserve Bank of India guidelines. (viii) Annexure 3 of the Resolution Plan read with the Affidavits submitted by JM Financial Asset Reconstruction Company Limited and RIL, JM Financial Asset Reconstruction Company Limited and RIL, where it is confirmed that neither JM Financial Asset Reconstruction Company Limited, RIL nor any of its connected persons are debarred from accessing or trading in the securities market under any order or directions of SEBI. (ix) Annexure 3 of the Resolution Plan, where RIL and connected persons have listed out the transactions undertaken with the Company in the preceding 2 years. (x) The report dated April 06, 2018 submitted by Grant Thornton India LLP that the furnished information relating to eligibility of

			the resolution applicants and their connected persons under Section 29A of the Code through a review of public records. (xi) The legal opinions procured from legal experts with respect to the eligibility of JM Financial Asset Reconstruction Company Limited and RIL under Section 29A of Code.
2.	Section 30(2)(a) of the Code	(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan--- (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.	Clause 1.2(v), Clause 3.2 and Clause 2 of Annexure 2 of the Resolution Plan provides for the payment of the insolvency resolution process costs. Such payment will be made in full and in priority to any other creditor of the Corporate Debtor.
3.	Section 30(2)(b) of the Code	(b) provides for the 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	As per Clause 3.3.1 of the Resolution Plan, since the liquidation value that is estimated for the Corporate Debtor (i.e. Rs. 4,433 crores) is insufficient to cover the financial creditors in full, the liquidation value that is due to the operational creditors including the government dues ("OC"), is calculated as NIL. Resultantly, no payments are proposed to be made

		event of a liquidation of the corporate debtor under Section 53;	to the OCs (except for workmen and employees of the Corporate Debtor in accordance with Clause 3.4 of the Resolution Plan and the dues owed by the Corporate Debtor to certain OCs (to each of whom the Corporate Debtor, as on the Insolvency Commencement Date, owes up to Rs. 3,00,000 (Rupees Three Lakhs) and whose details are set out in Annexure 9 of the Resolution Plan), which dues aggregates to Rs. 4,83,47,321 (Rupees Four Crores Eighty-Three Lakhs Forty-Seven Thousand Three Hundred Twenty-One) under the Resolution Plan. Apart from the above, no source of funds has been identified for any payment to such OCs as no other payments are proposed to be made to any other operational creditor.
4.	Section 30(2)© of the Code	(c) provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan.	Clause 7 of the Resolution Plan provides for the management of the Corporate Debtor for (a) the period between the NCLT approval date and Closing Date; and (b) the period following the Closing Date. In terms of Clause 7.1.1 of the Resolution Plan, from the date of approval from the NCLT till the receipt of approval from the Competition Commission of India ("CCI"), the Corporate Debtor will be managed by a monitoring committee ("MC"), which is comprised of the erstwhile resolution professional (as he will

			become after the Resolution Plan) and 4 representatives of the financial creditors. During the period following the approval of the CCI until the Closing Date, the Corporate Debtor will be managed by a reconstituted MC comprising of 4 representatives of the Resolution Applicants and the erstwhile resolution professional. After the Closing Date, a new board of directors constituted by the Resolution Applicants will replace the MC and it will have adequate representation from the members of the resolution applicants and as per requirements under applicable law.
5.	Section 30(2)(d) of the Code	(d) the implementation and supervision of the resolution plan;	Same as above
6.	Section 30(2)€ of the Code	(e) does not contravene any of the provisions of the law for the time being in force;	In Clause 2.1(viii) and Clause 12.1 (iii) of the Resolution Plan, the Resolution Applicants declare and confirm that the Resolution Plan is not in contravention of the provisions of any applicable laws. Further, the Resolution Professional confirms that the Resolution Plan is not in contravention with any law for the time being in force.
7.	Regulation 38(1)(a) of the CIR Regulations	(1) A resolution plan shall identify specific sources of	In terms of Clause 1.3(v) of the Resolution Plan, it is stated that a loan from Yes Bank Limited shall be utilized and will be sufficient to

		funds that will be used to pay the – (a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor.	pay the insolvency resolution process costs and any excess insolvency resolution process costs upto an aggregate amount of Rs. 284,00,00,000 (Rupees Two Hundred Eighty Four Crores)
8.	Regulation 38(1)(b) of the CIR Regulations	A resolution plan shall identify the specific source of funds that will be used to pay the – (b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority.	As stated above, as per Clause 3.3.1 of the Resolution Plan, since the liquidation value that is estimated for the Corporate Debtor (i.e. Rs. 4,433 crores) is insufficient to cover the financial creditors of the Corporate Debtor in full, the liquidation value that is due to the OCs, which includes the government dues is calculated as NIL. Resultantly, no payments are proposed to be made to the OCs (except for workmen and employees of the Corporate debtor in accordance with Clause 3.4 of the Resolution Plan and the dues owed by the Corporate Debtor to certain operations creditors (to each of whom the Corporate Debtor, as on the Insolvency Commencement Date, owes up to Rs. 3,00,000 (Rupees Three Lakhs) and whose details are set out in Annexure 9 of the Resolution Plan), which dues aggregates to Rs. 4,83,47,321 (Rupees Four Crores Eighty-Three Lakhs Forty-Seven Thousand

			Three Hundred Twenty-One) under the Resolution Plan. The source of funds for the payment to certain operational creditors will be out of a loan from Yes Bank Limited.
9.	Regulation 38(1)(c) of the CIR Regulations	(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favor of the resolution plan.	As per Clause 3.21 of the Resolution Plan, if there are any dissenting financial creditors, the liquidation value payable to such dissenting financial creditors will be paid out of the settlement amount payable to the assenting financial creditors. Such amounts will be paid in priority to the payments made to assenting financial creditors.
10.	Regulation 38(1A) of the CIR Regulations	(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."	The Resolution Plan (under Clauses 3.1 to 3.8) specifies how the Resolution Applicants propose to deal with the liabilities and interests of all financial creditors, OCs, employees and workmen, governmental authorities, insolvency resolution process costs, existing shareholders and other stakeholders of the Corporate Debtor. Resolution Applicants have also provided a confirmation under Clause 12.1 (iv) of the Resolution Plan that it has dealt with the interest of the stakeholders (including all the financial creditors, OCs, other creditors and other stakeholders of the Corporate Debtor).

11.	Regulation 38(2)(a) of the CIR Regulations	(2) A resolution plan shall provide: (a) the term of the plan and its implementation schedule;	Clause 6.1 states the term of the resolution Plan and Annexure 2 of the Resolution Plan provides the implementation schedule along with an indicative timeline.
12.	Regulation 23(2)(b) of the CIR Regulations	(b) the management and control of the business of the corporate debtor during its term; and	Reference is made to Point 4 of this table above.
13.	Regulation 38(3) of the CIR Regulations	"(3) A resolution plan shall contain details of the resolution applicant and other connected persons to enable the committee to assess the credibility of such applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval. Explanation: For the purposes of this sub-regulation, - (i)'details' shall include the following in respect of the resolution applicant and other connected person, namely:- (a) identity; (b)	Annexure 3 of the Resolution Plan read with the affidavit submitted by JM Financial Asset Reconstruction Company Limited and RIL respectively, for Section 29A of the Code, sets out the details of JM Financial Asset Reconstruction Company Limited and RIL respectively, along with its connected persons. Annexure 3 of the Resolution Plan read with the undertaking submitted by JM Financial Asset Reconstruction Company Limited and RIL respectively further sets out the details as regards the (a) identity; (b) conviction for any offence, if any, during the preceding 5 years: (c) criminal proceedings pending, if any; (d) disqualification, if any, under Companies Act, 2013, to act as a director; (e) identification as a willful defaulter, if any, by any bank or financial institution or consortium thereof in accordance

		conviction for any offence, if any, during the preceding five years; (c) criminal proceedings pending, if any; (d) disqualification, if any, under Companies Act, 2013, to act as a director; (e) identification as a willful defaulter, if any, by any bank or financial institution or consortium thereof in accordance with the guidelines of the Reserve Bank of India; (f) debarment, if any, from accessing to, or trading in, securities markets under any order or directions of the Securities and Exchange Board of India; and (g) transactions, if any, with the corporate debtor in the preceding two years."; (ii) the expression 'connected persons'	with the guidelines of the reserve Bank of India; (f) debarment, if any, from accessing to, or trading in, securities markets under any order or directions of the SEBI; and (g) transactions, if any, with the corporate debtor in the preceding 2 years. Further, as per Clause 7.1.2 of Resolution Plan the promoter group will not participate in the management of the Corporate Debtor during the period between the NCLT approval date and Closing Date.

		means- (a) persons who are promoters or in the management or control of the resolution applicant; (b) persons who will be promoters or in management or control of the business the corporate debtor during the implementation of the resolution plan; (c) holding company, subsidiary company, associate company and related party of the persons referred to in items (a) and (b)."	

15. On filing of the instant application i.e. **IA 259 of 2018** for approval of Resolution Plan and during its pendency, following IAs were filed which are as under:

IA P-067 of 2018 in IA 135 of 2018 in CP(IB) No. 48 of 2017
IA 282 of 2018 in CP(IB) No. 48 of 2017
IA 326 of 2018 in CP(IB) No. 48 of 2017
IA 425 of 2018 in CP(IB) No. 48 of 2017
IA 20 of 2019 in CP(IB) No. 48 of 2017
IA 41 of 2019 in IA 259 of 2018
IA 87 of 2019 in CP(IB) No. 48 of 2017
IA 88 of 2019 in CP(IB) No. 48 of 2017

16. Facts of each IA are as under:

16.1 **IA No. P-67 of 2018 in IA No. 135 of 2018**

The instant application is filed by SICOM Ltd., with prayer to be impleaded as party respondent in **IA No. 135 of 2018** by Respondent No. 1 Alok Employees Benefits and Welfare Trust.

On perusal of the records, it is found that the applicant is one of the financial institutions/bank (Financial Creditor) who have voted against the Resolution Plan having both major and minor stake in the Corporate Debtor. The applicant filed **IA P-67 of 2018** for impleading him as party to **IA 135 of 2018.** It is pertinent to mention that **IA 135 of 2018** is preferred by the Alok Employees Benefits and Welfare Trust with a prayer to approve to the Resolution Plan, even if, the Plan is voted by less than the requisite criteria (then requisite criteria) of voting percentage i.e. 75 per cent in the interest of the company as well its employees and workers etc.

Apart from the prayer for impleading to party in **IA 135 of 2018**, the applicant has also alleged some fraudulent transactions and prayed for directing the RP to file FIR before the Economic Offences Wing of CBI for investigation of the matter.

16.2 **IA No. 282 of 2018**

The instant appeal is filed by M/s. Omkara Assets Reconstruction Private Limited, inter alia, stating that it has acquired debt of M/s. Alok Industries Ltd. from New India Co-operative Bank Ltd which is a multi-state co-operative society, registered and incorporated under the Multi State Co-operative Societies Act, with a prayer that the decision of the CoC is illegal, arbitrary, discriminatory and violative of Article 14 of the Constitution of India and deserves to be quashed and set aside. It is further stated that resolution No. 8C and decision taken by the CoC in the meeting held on 16.08.2017 as well as the resolution No. 1 passed in the meeting of CoC held on 04.10.2017 are required to be quashed apart from other prayers

16.3 **IA 326 of 2018**

It is stated that the applicants herein are the shareholders of the Corporate Debtor of Alok Industries Limited and having following shares. The Applicant No. 1 is holding 65,60,000 shares and the Applicant No. 2 is holding 10,00,000 shares of Alok Industries Limited as on 28.08.2018.

It is submitted by the applicants that applicants carried out the inspection of the records of the matter and on perusal of the Resolution Plan submitted by the RP, it is observed that, Resolution Plan is nothing but an eyewash by making the sustainable financial debt as unsustainable financial debt.

It is stated by the applicants that Resolution Plan proposes reduction of the Corporate Debtor's share capital from Rs. 1377,31,78,950/- to Rs. 137,73,17,895/- without any payout to the shareholders of the Corporate Debtor company by reducing the face value of each issued and outstanding equity share of the Corporate Debtor from Rs. 10/- to Rs. 1/- (Face Value Reduction). The said Resolution Plan is against the public and hence required to be rejected.

16.4 **IA 425 of 2018**

It is stated that the applicant is a Financial Creditor of the Corporate Debtor. The Corporate Debtor had availed credit facilities from ING Vysya Bank Limited and by an order dated 31.03.2015 of the Reserve Bank of India, ING Vysya Bank Limited was merged with the applicant with effect from 01.04.2015 with the borrowings from other lenders. The claim of the applicant as verified by the RP is about Rs. 117.66 crores.

The applicant further states that for due repayment of the credit facilities, the Corporate Debtor created securities over its assets in favor of the applicant. For due repayment of the credit facilities availed by the Corporate Debtor, the existing promoters of the Corporate Debtor, namely (i) Alok Infrastructure Limited, (ii) Surendra B Jiwrjka, (iii) Dilip B. Jiwrajka, (iv) Ashok B. Jiwrajka, and (v) Alok Knit Exports Private Limited executed separate deeds of guarantee in favor of the applicant **(the Promoter Guarantees).**

16.5 **IA 20 of 2019**

It is stated that the applicants had supplied chemicals to Alok Industries Ltd., for an amount of Rs. 74,12,973/- which remained unpaid and as on date, the amount receivable from Alok Industries Ltd., is Rs. 89,91,023/- which includes Rs. 15,78, 050/- towards interest receivable by them from the Alok Industries Ltd. The applicant has made this application before this Adjudicating Authority to allow them to join as party in the CP((IB) 48 of 2017.

16.6 **IA 41 of 2019**

It is stated by the applicant that a Gas Sale Agreement (further referred to as "the GSA") dated 27.05.2013 was executed between the applicant and M/s. Alok Industries Ltd. (further referred to as "Corporate Debtor") for the supply of RLNG (Re-liquified Natural Gas) for a period of 15 years expiring in the year 2028. Subsequently, the Gas Transmission Agreement dated 27.05.2013 was also executed along with all Capacity Trench Agreement between the applicant and the Corporate Debtor for transportation of the said RLNG. Under the said executed GSA, the provisions of annual contracted quantity between the parties has been specified in Article No. 6 and the provisions of "Take or Pay" obligation have been specified in Article no. 14. As per said Article no. 6, the Corporate Debtor was required to take minimum quantity of gas being 0.185 MMSCMD being approximate average daily volume and against which the applicant would raise the gas supply bills to the Corporate Debtor which was required to be repaid within 15 days by the Corporate Debtor. The Payment due date is defined in Article 12.3 of GSA.

It is further stated that under the said guaranteed demand by the Corporate Debtor in GSA, the applicant would have to ensure the supply of the said guaranteed quantity of gas at any point of time to the Corporate Debtor. A copy of the Gas Sale Agreement dated 27.05.2013 is annexed with IA as **Annexure A.**

The applicant has further stated that as the said natural gas being rare natural resource, there has been regular industry practice across the world to incorporate "Take or Pay" obligation / charges (further referred as "TOP" obligation / charges) which is required to be paid by the buyer of

the gas to the seller of the gas if the buyer fails to take or receive minimum guaranteed demanded quantity of gas. In other words, in the instant case, the Corporate Debtor has guaranteed a minimum demand of 0.185 MMSCMD approximate average daily volume quantity of gas per day from the applicant under the Article No. 6.1 of the GSA. If the Corporate Debtor fails to consume / receive the said minimum guaranteed demanded Natural Gas then he would be required to pay charges for the said minimum guaranteed gas quantity which he has failed to consume/receive. Therefore, in terms of Article 14 of GSA, the applicant has raised its claim letters/bills towards the TOP charges or claiming the payment of gas which was made available by the applicant as a guaranteed demand to the Corporate Debtor, but the Corporate Debtor has not consumed/received it. The applicant has already raised its claim towards the said unpaid contractual dues by the Corporate Debtor in the year 2014, 2015 and 2016. As the Corporate Debtor has failed to respond to the said demand of the applicant, the applicant has approached the ld. Civil Court of Dadra and Nagar Haveli under Section 9 of the Arbitration & Conciliation Act, 1996 against the Corporate Debtor under the executed GSA. Subsequently, the applicant by letter dated 16.05.2017 has also invoked arbitration Clause against the Corporate Debtor for adjudication of disputes under the GSA towards its all claims including TOP charges.

It is submitted by the applicant that pursuant to the provisions under Sections 13 and 14 of the Code regarding moratorium period during the CIRP, the applicant has filed its claim dated 23.11.2017 before the RP for Rs. 506.60 crores. It is stated by the applicant that the RP has rejected the claim of the applicant by its letter dated 23.08.2018 on the ground that the claim of GAIL was regarding bills raised under the GSA towards "Take or Pay Obligations" (TOP Obligations) and the RP has held that as per Section 5(21) of the Code, the said obligation cannot be said to be "Operational Debt" as the said obligation is not for the "goods and services used for production or output produced by the Corporate Debtor. It is also stated that RP has also held that any claim submitted after the expiry of CIRP period cannot be considered.

16.7 **IA 87 of 2019**

It is stated in the application that applicants are operational creditors of the Corporate Debtor Company and their outstanding dues are Rs. 38,49,915/-. The applicants have come to know that in Resolution Plan, the trade creditors have been allotted only Rs. 4.83 crores. Further, only trade creditors with outstanding of less than 3 lakhs are being paid 100% of their verified claims while the rest of the trade creditors have been assigned **NIL** value. Therefore, the applicants had requested the Respondent to provide a copy of the Resolution Plan. The Respondent vide email dated 24.01.2019 refused to provide details of the Resolution Plan.

It is stated by the applicants that as per Section 31 of the Code, once the Resolution Plan is approved by the Adjudicating Authority, it becomes binding on the operational creditors of the Corporate Debtor Company. And since the applicants are vitally interested in the Resolution Plan, as it is binding upon them and therefore, if the applicants' interests are overlooked in the Resolution Plan, it will seriously affect the interests of the operational creditors. Further, it is submitted by them that Section 60(5) confers upon them the statutory right by way of which they can challenge the terms of a proposed Resolution Plan and Section 61 statutory right of appeal on the applicants.

16.8 **IA 88 of 2019**

It is stated by the applicants that they are operational creditors of the Corporate Debtor Company and their outstanding dues are Rs. 38,49,915/- It is stated by the applicants that applicants have come to know that in Resolution Plan, the trade creditors i.e. operational creditors have been allotted only 4.83 crores. Further, only trade creditors with outstanding of less than 3 lakhs are being paid 100% of their verified claims while the rest of the trade creditors have been assigned **NIL** value.

In support of their contention, the applicants have stated that Bankruptcy Law Reforms Committee, which conceptualized the Code, used inter alia two design principles, namely (1) the liabilities of all creditors, who are not part of the process, must also be met; and (2) the rights of all creditors shall be respected equally. The Code, accordingly, envisages resolution for maximizing the value of the assets of the firm to promote entrepreneurship, and availability of credit, and balance the interests of

all the stakeholders. Therefore, the Resolution Plan is clearly in violation of these objects of the Code and it is in contravention of Section 30(2)(e).

17. **The composite reply of the RP, CoC, and the Resolution Applicants against the aforesaid IAs, in short:**

17.1 **Reply of Respondents in IA No. P-067 of 2018 in IA No. 135 of 2018**

The RP, during the course of arguments, submitted that the applicant could not specify the fraudulent transactions as alleged in the application. The RP further submitted that, if at all, the applicant is aggrieved, this cannot be the competent forum to file any FIR or complaint. Further, the prayer so made in the application, is vague and no specific documents and/or evidences are filed so as to substantiate the allegations made in the application with regard to the fraudulent transactions. It is further stated that even if the applicant dissented, then even, he is entitled to get not less than the liquidation value.

17.2 **Reply of Respondents in IA 282 of 2018**

In respect of **IA No. 282 of 2018**, learned lawyer appearing on behalf of the RP submitted that pursuant to an assignment agreement dated 31.03.2018, the outstanding debt of approximately Rs. 23,27,86,377/- held by New India Co-operative Bank (assignor) was assigned to the applicant (assignment agreement). Accordingly, pursuant to the verification of claim under the provisions of the Code, the RP admitted the applicant as a member of the CoC with 0.079 per cent of voting share in the CoC and consequently the first meeting of the CoC that the applicant attended as a member was the 15th meeting held on 18.06.2018. It is pertinent to note that as per Regulation 12 (3) of the CIRP Regulations, a financial creditor is included as a member of the CoC on and from the date of admission of its claim by the RP and such inclusion shall not affect the validity of any decision taken by the CoC prior to such inclusion. Consequently, the applicant has been included as a part of the member of the CoC, under Regulation 28 of the CIRP

Regulations, and therefore, any decisions taken by the CoC prior to such date of admission will be valid and binding on the applicant.

It is evident from the documents relied upon by the applicant itself in the Interlocutory Application **IA 282 of 2018**, the question of reclassification of the short term loan facility extended by the assignor to the Corporate Debtor was duly deliberated upon and considered at two separate meetings of the CoC on 16.08.2017 and 04.10.2017 (**annexed as Annexure "G" and "H" to the Interlocutory Application**). That, the allegation made by the applicant that he has been discriminated against the benefit of other lenders is not tenable, in as much as, the same is evident from the email dated 16.06.2018 addressed by the respondent No.1 to the applicant (**annexed as Annexure "J" to the Interlocutory Application).**

17.3 **Reply of Respondents in IA No. 326 of 2018**

The instant application is filed by Shah Rajul Devidas and Another. Learned lawyer appearing on behalf of the RP submitted that the applicants being equity shareholders of Alok Industries Limited (Corporate Debtor) have no *locus standi* to intervene in the present proceedings either in terms of the Insolvency and Bankruptcy Code, 2016 (Code) or under any other law in force. It is further submitted that the Resolution Applicants have taken care of all the stakeholders, members, creditors, employees, workmen etc as per liquidation value in compliance with the Code, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations).

It is further submitted that the decision of CoC in respect of structure of the Resolution Plan is based on the commercial wisdom and judgment of the members of the CoC. It is established principle that the commercial wisdom of CoC cannot be questioned with commercial decisions unless the same are found to be contrary to express provision(s) of the law. In the instant case, the petitioner has failed to bring on record that the Draft Resolution Plan is contrary to or violative of the express provisions of any law.

17.4 **Reply of Respondents in IA No. 425 of 2018**

Ld. Lawyer appearing on behalf of the RP has submitted that application so filed under Section 60 (5) of IBC is not maintainable and the same can be preferred only against the Corporate Debtor and not against the Resolution Applicants. That, Application filed under Section 60 (5)(C) of the Code can be filed on the question of facts or law in relation to the insolvency resolution of the Corporate Debtor under this Code. That means questions of facts or law that are resolved as part of the Resolution Plan filed in relation to insolvency resolution of the Corporate Debtor can only be raised. It is apparent that the promoter guarantees are not part of the Resolution Plan and the same is reflected in para No. 10 of the application that the promoter guarantees have remained unaltered by the Resolution Plan. That, in view of above facts, the petition is not maintainable.

17.5 **Reply of Respondents in IA No. 20 of 2019**

In the instant application Ld. Lawyer appearing on behalf of the RP categorically submitted that in the Resolution Plan all the members/shareholders as well as stakeholders are taken care of. However, while making distribution of the assets, Resolution Applicants have followed Section 53 (1) of the Code. Further, it is established principle of law that Resolution Applicants and or RP while distributing the assets amongst the shareholders/members, promoters has to follow the methodology as given under section 53 (1) of the Code only. More so, in view of the recent judgement given by Hon'ble Supreme Court in K. Sasidhar v. Indian Overseas Bank, decision of the COC has to be given primacy.

17.6 **Reply of Respondents in IA No. 41 of 2019**

In the instant application, Ld. Lawyer appearing on behalf of the RP submitted that the application is filed at extremely belated stage i.e. on 24th January 2019 whereas the Resolution Plan is of dated April, 2018 and the same was approved by the CoC in the month of June 2018. That, allegations with regard to the discrimination of the creditors are not maintainable in as much as the CoC or the Resolution Applicants

have to follow the Rules and Provisions of IB Code. Further, the Resolution Applicant has taken care of all the member/shareholder/ stakeholder as per the liquidation value and as per section 53 (1) of the Code. In this regard, it is stated that Legislature in his wisdom has categorically elaborated jurisdiction of RP and the Appellate Authority has only to review the compliance of the Resolution Plan per Section 30 (2) of the Code and Regulations.

It is further stated by the respondent(s) that above applicant(s) has/have failed to make out any case as to why the present interlocutory application(s) has/have been filed at such belated stage in the proceedings whereas the Resolution Plan dated 12th April, 2018 was approved by the CoC on 20th June, 2018. It is further stated that applicant(s) never raised or highlighted their purported grievances with Resolution Plan at any point of time during the Corporate Insolvency Resolution Process of the Corporate Debtor.

It is further clarified by the Ld. Lawyer of the Resolution Applicant that there would be no demand for gas from the applicant arising out of any prior obligation under the Gas Sale Agreement dated 27th May, 2013 ('GSA') until closing date. It is further submitted that no gas has been availed of by the Corporate Debtor under GSA after January, 2014.

It is further submitted that the applicant, if wishes to continue supply to the Corporate Debtor, it may negotiate on the same, with the Resolution Applicant as the same does not fall within the ambit of the Resolution Plan.

17.7 It is further submitted that Hon'ble Appellate Authority has also held in various decisions that the CoC has the discretion to approve any resolution plan and its decision to approve the same cannot be interfered by the Adjudicating Authority or the Appellate Authority except that in terms of Section 31 (1) to examine the compliance with Section 30 (2) read with relevant regulations. Hence, commercial decision made by the CoC in approving the Resolution Plan dated 12.04.2018 is a part of Corporate Insolvency Resolution Process and that cannot be interfered at this belated stage when the very objective of the Code is time-bound.

Under such circumstances, the applicant has waived his right to put forward any interference or make any objection when the resolution plan is approved by the CoC in compliance of the Code.

18. The Ld. Lawyer of the RP further submitted and made a reliance upon the decision of Hon'ble National Company Law Appellate Tribunal in ***Kannan Tiruvengandam v. M.K. Shah Exports Ltd. & Ors.*** wherein it is held that commercial aspects of a resolution plan are to be dealt with by an expert body such as the Committee of Creditors. It was held that the Hon'ble NCLT had no jurisdiction to sit in appeal over the same, unless such decision of the Committee of Creditors is perverse or contrary to the provisions of the Code or any other existing law. In this regard, it is also pertinent to refer to the recent decision given by the Hon'ble Supreme Court in Civil Appeal No. 10673 of 2018 in ***K. Sasidhar v. Indian Overseas Bank & Ors.*** It is held that supremacy of CoC and their commercial wisdom cannot be questioned. It is also observed that National Company Law Tribunal has no jurisdiction and authority to analyze or evaluate the commercial decision of the CoC to enquire into the justness of the rejection of the Resolution Plan by the dissenting financial creditors. While giving the decision, the Hon'ble Supreme Court has further observed that "…. Non-recording of reasons for approving or rejecting the Resolution Plan by the concerned financial creditor during the voting in the meeting of CoC would not render the final collective decision of CoC nullity per se…."

19. As far as differential treatments to different classes of creditors under the terms of the Resolution Plan are concerned, RP has cited the judgment of the Hon'ble Supreme Court in the matter of **Swiss Ribbons Pvt. Ltd. & Ors. V. Union of India & Ors.**

The above said replies put forward by the Ld. Lawyer of the RP has not only been supported by the Ld. Lawyer of the CoC and the Resolution Applicants, but they have also put forward their replies on the same line relying upon the various decisions of the NCLAT as well as the Hon'ble Supreme Court as stated hereinabove.

20. **Notwithstanding above**, in the interest of justice, it is expedient to deal with the Interlocutory application(s) mentioned hereinabove, in accordance with the law before disposing of **IA No. 259 of 2018** filed under Section 30(6) read with 31(1) of the Insolvency and Bankruptcy Code, 2016 (as amended), read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (as amended) for submission and approval of the Resolution Plan submitted by the Respondents No. 1 to 3 in respect of the Corporate Debtor.

Accordingly, heard the arguments in respect of above IAs by their respective Lawyers and also heard the Ld. Lawyer of the RP, CoC as well as Resolution Applicants at length. Also seen the documents annexed with the pleadings and with the IAs and replies/objections of the parties.

20.1. During the pendency of **IA 259 of 2018** (filed for approval of Resolution Plan by the Resolution Professional), number of Intervention /Interlocutory applications are filed with various grievances, some of those are disposed of and some of those which have remained pending, are/were heard collectively for deciding **IA No. 259 of 2018**.

20.2. While proceeding further, it is pertinent to note that the Interlocutory applications are filed at much belated stage i.e. after the filing of IA No. 259 of 2018. The Resolution Plan was of dated 12th April, 2018 was approved by the CoC on 20th June, 2018, which goes on to show that Corporate Resolution Process was completed on 20th June, 2018. The applicants (Interveners) are/were well aware of their fate and position, as admitted in their applications but none of them approached this Adjudicating Authority on approval of Plan by CoC i.e. on 20.06.2018 for redressal of their grievances, if any, and/or with any allegation(s) against the Resolution Applicant or against the CoC for not considering their claim while approving the Resolution Plan knowing fully that CIRP is a time bound process.

20.3 The moment **IA No. 259 of 2018** is filed, all the above applicants have come as intervener, opposing the Plan. The applicants (Intervener

Applicants) are not only delayed one but the conduct of the applicants goes on to show that they want to stall the proceedings for the reasons best known to them. Had there been any bonafide action/claim, they would have approached the Adjudicating Authority on the very threshold of rejection of their claim either by the RP or by CoC. There would have been no reason to sit on the fence such conduct itself shows the lack of bonafide on the part of the applicants (interveners).

20.4 Further, it is specifically provided in the Code under section 30(2) (e) of the Insolvency and Bankruptcy that Resolution Plan should not contravene any of the provisions of law for the time being in force. As per Explanation Clause to section 30(2) of the Insolvency Code (inserted w.e.f. 06.06.2018) which read as under *"For the purpose of Clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or Law".*

Under such circumstances, when the Code has provided that an act has to be performed in a particular manner, in that event, any deviation will attract illegality in approval of the Plan by the CoC so submitted by the Resolution Applicant. The Plan which has been approved by CoC in its commercial wisdom, looking to the viability and feasibility of the business of Corporate Debtor cannot be interfered with. As per the Code, the Interveners/Applicants are entitled for liquidation value only and not more than that. But in the instant plan, petty operational creditors are considered, even otherwise, as per liquidation value, their claims fall under the category of **'NIL'**.

20.5 Further, with regard to the allegation of discrimination between the creditors and their position, has also been clarified by the Hon'ble Supreme Court, in its judgment, in the matter of Swiss Ribbons Pvt. Ltd. & Ors. vs. Union of India & Ors., wherein Hon'ble Apex Court, set out the distinction between "financial creditors' and "operational creditors" by observing that since the financial creditors are in the business of money lending, banks and financial institutions are best equipped to

assess the viability and feasibility of the business of the corporate debtor. On the other hand, the operational creditors, who provide goods and services, are involved only in recovering amounts that are paid for selling goods and services and are typically unable to assess viability and feasibility of business.

In this regard, it is also appropriate to refer the Bankruptcy Law Reforms Committee (BLRC) which conceptualized the 'I&B Code as under: "The Committee deliberated on who should be on the creditors committee, given the power of the creditors committee to ultimately keep the entity as a going concern or liquidate it. The Committee reasoned that members of the creditors committee have to be creditors both with the capability to assess viability, as well as to be willing to modify terms of existing liabilities in negotiations. Typically, 'Operational Creditors are neither able to decide on matters regarding the insolvency of the entity, nor willing to take the risk of postponing payments for better future prospects for the entity. The Committee concluded that for the process to be rapid and efficient, the 'I&B Code' will provide that the creditors committee should be restricted only the 'Financial Creditors'.

20.6 That with regard to **IA No. 41 of 2019** filed by the Gail India Limited, their status has already been considered as Operational Creditor in **IA 413 of 2018.** Thus, in the event, only liquidation value is payable to the operational creditors and such amount shall be paid in priority to the amount payable to the financial creditors.

Further, Resolution Applicant has already clarified before the Adjudicating Authority, that there would be no demand for gas from the applicant of **IA 41 of 2019** arising out of any prior obligation under Gas Sale Agreement dated 27.05.2013 (GSA) until the closing date. It is further categorically submitted by the Resolution Applicant that no gas has been availed of by the Corporate Debtor under GSA after January, 2014. However, if applicant wishes to continue supply to the Corporate Debtor, it may separately negotiate on the same with the Resolution Applicant and the same does not fall within the ambit of the Resolution Plan. The Resolution Applicant had already clarified the position.

20.7 It is pertinent to mention that as per the total financial outlay, the liquidation value payable/due to the operational creditors (other than workmen) is **'NIL'**. Accordingly, the question of any priority payments being due to operational creditors does not arise at all. Hence, the question of discrimination in the Resolution Plan also does not arise at all. However, the dues owed by the Company to certain Operational Creditors (to each of whom the Company, as on the insolvency Commencement Date, owes up to Rs. 3,00,000/- (Rupees Three lakhs) and whose details are set out in (Annexure 9) shall be discharged.

20.8 On perusal of the records and the aforesaid reasons, we do not find that operational creditors are discriminated or there is any violation of Article 14 either on the grounds of equals being treated unequally or on the grounds of manifest arbitration.

20.9 It is a matter of record that before the amendment of Section 30(4) came into force, the Resolution Plan was approved, only with the majority of the CoC i.e. 72.192 per cent of voting in favor of the Resolution Applicant by the CoC, whereas the then requisite percentage of vote of CoC was 75 per cent. It is also a matter of record that the Alok Employees Benefit and Welfare Trust filed an **IA being No. 135 of 2018** seeking approval of the Resolution Plan which was approved by 72.192 per cent only, when requisite criteria for approval of the Plan was 75 per cent i.e. prior to amendment, on the ground of the interest of employees, workers and other stakeholders, opposing the application filed by RP vide **IA 136 of 2018** under section 33(1) of the Code with prayer for passing an order for liquidation. At that point of time, SICOM Ltd, by filing **P-67 of 2018** made a prayer to get himself impleaded in the **IA 135 of 2018,** so as to object the prayer of Alok Employees Benefits and Welfare Trust made in **IA 135 of 2018** which was made for approval of the Resolution Plan, even if it was voted by 72.192 per cent only which was less than the required percentage of voting of 75 per cent as against the then requisite criteria of voting.

However, when an amendment came in Section 30(4) w.e.f. 06.06.2018, where percentage of voting of CoC was reduced from 75 per cent threshold to 66 per cent, Resolution Plan was again sent for re-look to CoC vide order dated 11.06.2018 in view of the Ordinance 2018, consequent upon which

IA 135 of 2018 and IA 136 of 2018 became infructuous. But the Applicant's rights in **P-67 of 2018** were kept reserved for final hearing.

However, a provision has been made in the Total Financial Outlay of the Resolution Plan that in the event there are dissenting financial creditors, then the liquidation value due to the such dissenting financial creditors will be discharged out of the financial creditors settlement amount, in priority to any payments being made to the other financial creditors who voted in favor of the Resolution Plan.

On perusal of the entire Resolution Plan, we, hereby notice that though there are/were heavy haircut, however, the Resolution Plan provides for payment of insolvency resolution process costs in the manner specified by the Code, in priority to the repayment of the other debts of the Corporate Debtor and also provided for the payment of debts of operational creditors as per the waterfall mechanism mentioned under section 53 of the Code.

21 The present application i.e. **IA No 259 of 2018** has been filed for approval of the Resolution Plan under section 30(6) read with section 31(1) of the Code (as amended) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (as amended for submission and approval of Resolution Plan submitted by JM Financial Reconstruction Company Limited, JMFARAC – March, 2018 – Trust and Reliance Industries Limited in respect of the Corporate Debtor.

21.1 The applicant/RP deliberating the sequence of events right from calling EoI up to approval of the Resolution Plan by the CoC in its sixteenth meeting held on 20.06.2018 submitted the Resolution Plan duly approved by the CoC and affirming that he has verified the contents of the Resolution Plan and confirmed that it complies with the requirements envisaged under Regulation 38 of the CIR Regulations as well as Section 30 of the Code, and sought for approval of the Resolution Plan by this Adjudicating Authority.

21.2 The Resolution Applicants in pursuance to the Public Notice dated July 19, 2017 submitted the Plan relating to the insolvency resolution

process of Alok Industries Limited (Company)/Corporate Debtor under the provisions of Insolvency and Bankruptcy Code, 2016 and the rules and regulations issued thereunder.

21.3 On perusal of the Resolution Plan, it is found:

- that total outstanding financial debt of the Company/Corporate Debtor admitted by the RP towards its financial creditors is Rs. 29614,66,79,258 (Rupees Twenty-nine Thousand Six Hundred and Fourteen Crores Sixty-six Lakhs Seventy-nine Thousand Two Hundred Fifty-eight) as set out in **Annexure D** of the **Information Memorandum**.

- That, the total outstanding operational debt of the Corporate Debtor Company admitted by the RP towards its operational creditors is Rs. 592,00,44,768 (Rupees Five Hundred Ninety-two Crores forty-four thousand seven hundred sixty-eight) as set out in **Annexure D** of the **Information Memorandum**.

- That, the total outstanding towards workmen and Employees Dues of the Company admitted by the Resolution Professional towards its employees and workmen, is Rs. 73,01,06,951/- (Rupees Seventy-three Crores one lakh Six Thousand Nine Hundred Fifty-One) as set out in **Annexure I** as set in the **Information Memorandum**. As per the clarification, vide email dated March 8, 2018 of the Resolution Professional, this amount includes the amount due to the Company's workmen as on the insolvency commencement date (including the liquidation value to the company's workmen) amounting to Rs. 19,33,00,000/- (Nineteen Crores Thirty-three Lakhs).

21.4 The Resolution Applicants have undertaken insolvency resolution of the Company/Corporate Debtor in the manner as stated in Clause 1.2 at Page No. 5 of the Resolution Plan under the head – **"Key steps of the Plan"** which is the part and parcel of the Resolution Plan as well as the application. The said Resolution Plan also includes the distribution of financial outlay in Clause No. 1.3 at Page 14 under the head

"Distribution of Financial Outlay" which gives the details in the order of priority and the payments thereof proposed to be made to the members, shareholders and all stakeholders etc. For the sake of convenience, the same is reproduced herein below:

Clause 1.3 Distribution of the Total Financial Outlay:

The order of priority of distribution using the Total Financial Outlay, is set out below:

Order of Priority	Total Financial Outlay	Amount (in Rs.) (in Crores)
First	Estimated CIRP Costs.	234 or any lower amount
Second	Excess CIRP Costs to be determined in terms of Section 3.2.2	-
Third	Liquidation value and other dues owed to workmen.	19.33
Fourth	Liquidation value due to Operational Creditors (other than workmen) is NIL. Consequently, amount required to be paid to Operational Creditors for Liabilities until the Insolvency Commencement Date is NIL. However, as part of this Plan it is being proposed that the dues owed by the Company to certain Operational Creditors (to each of whom the Company, as on the Insolvency Commencement Date, owes up to Rs. 3,00,000 (Rupees Three lakhs) and whose details are set out in (Annexure 9), shall be discharged.	
Fifth	Liquidation value due to the dissenting Financial Creditors (if any). For the purposes of the financial proposal, we have assumed that there are no dissenting Financial Creditors. Note 1: In the event there are dissenting Financial Creditors then the liquidation value due to such dissenting Financial Creditors will be discharged out of the Financial Creditors Settlement Amount, in priority to any payments being made to the other Financial Creditors who vote in favour of the Plan.	

Sixth	Subject to the adjustments in Section 3.2.2 of this Plan, payment of the Financial Creditors Settlement Amount	5,052
Seventh	Need based working capital of the Company and any payment towards Outstanding Workmen and Employee Dues as per the provisions of this Plan, excluding any amounts paid towards the liquidation value of workmen as stated under the third step above (it being clarified that (i) no payments shall be made to any employee belonging to the Existing promoter Group, and (ii) all accrued but unpaid statutory dues owed by the Company with respect to any of its employees not belonging to the existing Promoter Group shall be paid in accordance with this Plan). Note 2: Please note that payments to and by the Company under any supply and offtake arrangement with RIL will be made to augment and meet the additional working capital requirements of the Company. Note 2: This amount shall stand reduced by an amount determined in accordance with Section 1.2(v)(b)(A) of this Plan towards any Excess CIRP Costs.	441.84
Eighth	Capital expenditure of the Company	500
TOTAL FINANCIAL OUTLAY		**6,252**

Note: In the Resolution Plan, the total financial outlay is written as Rs. 6,252 crores whereas the actual total comes to Rs. 6,247.17 crores.

22. At this juncture, we find it expedient to refer section 53 of the Code i.e. distribution of assets:

Section 53(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely: -

i. The insolvency resolution process costs and the liquidation costs paid in full;

ii. The following debts which shall rank equally between and among the following: -

(i) Workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) Debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

iii. Wages and any unpaid dues owned to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

iv. Financial debts owed to unsecured creditors;

v. The following dues shall rank equally between and among the following: -

(i) Any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

vi. Any remaining debts and dues;

vii. Preference shareholders, if any; and

viii. Equity shareholders or partners, as the case may be.

(2) Any contractual arrangement between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipients shall be distributed after such deduction.

Explanation – For the purpose of this section –

(a)It is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

(b) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

23. Thus, Section 53 of the Code lists the priorities to be given to the beneficiaries, of liquidation value of the assets of the Corporate Debtor. The provisions of Section 53 make it amply clear that Operational Creditors are at the end of the list of beneficiaries as the Secured Financial Creditors have edge over the others.

24. It would also be pertinent to mention here that Operational Creditors have no locus standi as far as approval of the Resolution Plan by the CoC is concerned. As per Section 24(3)(C), they are not eligible to attend and vote at the meetings of CoC if they are holding less than 10% of the total debt.

Section 24(3) of the Code reads as under:

Section 24:

(3) The Resolution Professional shall give notice of each meeting of the committee of creditors to –

(a) member of [Committee of creditors, including the authorized representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)];

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) **operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt.**

25. To decide the issue, it will be pertinent to notice the very object of the 'IB Code', 'Resolution' and Role of CoC.

The objective of the 'I&B Code'

"The objective of the Insolvency and Bankruptcy Code, 2016 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in time bound manner for maximization of the value of assets of such persons, to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders including alteration in the priority of the payments of the government dues, to establish an Insolvency and Bankruptcy Fund and matters connected therewith or incidental thereto.

Thus, the preamble of the I&B Code aims to promote resolution over liquidation.

The purpose of resolution is maximization of value of assets of the 'Corporate Debtor' and thereby for all creditors. It is not maximization of value for a 'stakeholder' or 'assets of a stakeholder' such as creditors and to promote entrepreneurship, availability of credit and balance the interests. The first objective is 'resolution'. The second objective is 'maximization of the value of assets of the 'Corporate Debtor' and third objective is 'promoting entrepreneurship, availability of credit and balancing the interests'. This objective of the I&B Code is sacrosanct.

The said objective of the I&B Code is also affirmed by the **Hon'ble Supreme Court in Arcelor Mittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors** wherein 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 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.

The 'I&B Code' defines 'Resolution Plan' as a plan for insolvency resolution of the 'Corporate Debtor' as a going concern. It does not spell out the shape, color and texture of 'Resolution Plan', which is left to imagination of stakeholders. Read with long title of the 'I&B Code', functionally, the 'Resolution Plan' must resolve insolvency (rescue a failing, but viable business); should maximize the value of assets of the 'Corporate Debtor', and should promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.

Looking to the object of IBC as well as the Legislative intent, it is amply clear that the **"Resolution is Rule and the Liquidation is an Exception".** Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. 'The IB Code', therefore, does not allow liquidation of a corporate debtor' directly. It allows liquidation only on

failure of corporate insolvency resolution process'. It rather facilitates and encourages resolution in several ways.

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

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

The Hon'ble Supreme Court in its recent judgment in Civil Appeal No. 10673 of 2018 in **K. Sashidhar Vs. Indian Overseas Bank & Ors.** Comprising of Hon'ble Justice A.M. Khanwilkar and Hon'ble Justice Ajay Rastogi observed that:

"33. As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under section 33(1) of the I&B Code. The Legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyze or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies."

"39. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that is only an opinion of the minority financial creditors. The fact that substantial or majority percent of financial creditors have accorded approval to the resolution plan would be of no avail, unless the approval is by a vote of not less than 75% (after amendment of 2018 w.e.f. 06.06.2018, 66%) of voting share of the financial creditors. To put it differently, the action of liquidation process postulated in Chapter-III of the I&B Code, is avoidable, only if approval of the resolution plan is by a vote of not less than 75% (as in October, 2017) of voting share of the financial creditors. Conversely, the legislative intent is to uphold the opinion or hypothesis of the minority dissenting financial creditors. That must prevail, if it is not less than the specified percent (25% in October, 2017; and now after the amendment w.e.f. 06.06.2018, 44%). The inevitable outcome of voting by not less than requisite percent of voting share of financial creditors to disapprove the proposed resolution plan, de jure, entails in its deemed rejection.

"35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not confirm to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of Insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under section 188 of the I&B Code. The powers and

functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under section 30(4) of the I&B Code.

26. In the backdrop of the settled position of law and the decision of the Apex Court in Swiss Ribbons Pvt. Ltd., and Ors. v. Union of India & Ors and K Sasidhar V. Indian Overseas Bank & Ors, as discussed herein above in the preceding paragraphs, Interlocutory Applications as referred and discussed above are not maintainable.

On perusal of the Resolution Plan, it is found that it meets the requirement of Section 31 r/w Section 30(2) of the Code. Therefore, the present application **IA 259 of 2018** is allowed subject to certain observation with regard to the Clause No. 3.2.3(iii) and clause No. 11 of Resolution Plan and sub para (n) of paragraph 33 along with the prayers (f) of paragraph 35 of **IA 259 of 2018** which cannot be allowed as these are the subject matter of the various Competent Authorities having their own jurisdiction.

27. In this regard, this Adjudicating Authority is of the view that **Clause No. 3.2.3(iii) at Page No. 19 of the Resolution Plan** viz. all legal proceedings initiated before any forum by or on behalf of the financial creditors to enforce any rights or claims against the Company/Corporate Debtor or enforce or invoke any security, interest and/or guarantee, over the assets of the Company/Corporate Debtor, shall immediately, irrevocably and unconditionally stand withdrawn, abetted, settled and/or extinguished. Provided however any rights or claims of the financial creditors with respect to Existing Promoters Guarantees shall continue against such

guarantors". Approval of the Resolution Plan does not mean automatic waiver or abetment of any legal proceedings which are pending by or against the Company/Corporate Debtor as those are the subject matter of the concerned Competent authorities having their proper/own jurisdiction to pass any appropriate order as the case may be. The Resolution Applicants on approval of the Plan may approach the Competent Authorities/Courts/Legal Forums/Offices – Govt. or Semi Govt. / State or Central Govt. for appropriate relief(s) sought for in Clause No. 3.2.3 (iii) of the Resolution Plan at Page No. 19.

28. Further with regard to Clause No. 11.1, 11.1.1 to 11.1.20 of the Resolution Plan, and the prayer (f) of the Clause No. 35 and pleadings, sub clause (n) of Clause No. 33 of application **IA 259 of 2018**, wherein, the Resolution Applicant(s) pray(s) for passing of an appropriate order/direction by this Adjudicating Authority for grant of relief, concession or dispensation or exemption, as the case may be, required for implementation of the transactions contemplated under the Resolution Plan in accordance with its terms and conditions detailed in Clause No. 11.1, 11.1.1 to 11.1.20 cannot be allowed, as those are the subject matter of the various concerned Competent Authorities and the jurisdiction lies upon them to make any concession, waiver, exemption and grant any relief. The Resolution Applicant(s) may approach to the Competent Authorities/ Government/ Semi Government/ Central and State Governments and other statutory bodies, as the case may be, as per the need and requirement for exemption, waiver and/or concession for the effective implementation of the Resolution Plan. This Resolution Plan cannot purportedly be used for getting any concession, waiver/relief or exemption which is against the provisions of the existing laws of the land in force. The instant Resolution Plan cannot be used for the purpose which is against the Public Policy or contrary to the laws or in contravention of Sub Section 2(e) of Section 30.

28.1 Further, it is pertinent to mention herein that Resolution Applicant(s) itself in Clause No. 11.2 of the Resolution Plan has clarified that reliefs and the waivers as being sought for by the Resolution Applicant(s) as prayed for from the Adjudicating Authority, are not conditions to implementation of the Resolution Plan. The same are subject to the satisfaction of the conditions as set out in Section 9 of the Resolution Plan, even if, any of

the waivers and reliefs sought under this Clause 11 of the Plan are not received or granted, the Resolution Applicant(s) will implement the Plan in accordance with its terms. Hence, Clause No. 9 of the Resolution Plan is also subject matter of the various Competent Authorities to whom Resolution Applicant(s) may approach.

28.2 Thus, not allowing the above said Clause No. 3.2.3 (iii) and Clause No. 11.1, 11.1.1 to 11.1.20 of the Resolution Plan, along with the prayers vide sub para (f) of Paragraph No. 35 and pleadings made thereon in sub clause(n) of Paragraph No. 33 of application being **IA No. 259 of 2018**, is not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant(s) has/have liberty to approach Competent authorities for any concession, relief, exemption or dispensation as the case may be.

28.3 It is further directed that:

i. The approved Resolution Plan shall come into force with immediate effect.

ii. The Resolution Plan shall be subject to the various existing laws in force and shall also confirms to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.

iii. The Resolution Applicant(s) pursuant to the Resolution Plan approved under section 31(1) of the Code, shall obtain the necessary approvals required under any laws for the time being in force within a period of one year from the date of approval of the Resolution Plan by this Adjudicating Authority under section 31(1) of the Code or within such period as provided for in such law, whichever is later or as the case may be.

iv. The RP shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.

29. As discussed hereinabove, and as also the view taken by the Hon'ble Supreme Court from time to time in Swiss Ribbons Pvt. Ltd & Ors vs. Union of India & Ors as well as K. Sashidhar Vs. Indian Overseas Bank &

Ors, **IA 259 of 2018** is allowed with above observations and the IAs mentioned herein below are not maintainable and dismissed.

i. Inv. P. No. 67 of 2018 in I.A. No. 135 of 2018
ii. I.A. No. 282 of 2018
iii. I.A. No. 326 of 2018
iv. I.A. No. 425 of 2018
v. I.A. No. 20 of 2019
vi. I.A. No. 41 of 2019 in I.A. No. 259 of 2018
vii. I.A. No. 87 of 2019
viii. I.A. No. 88 of 2019

30. Any other IA(s), if pending, also stand(s) infructuous and disposed of in view of the above order. No order as to cost.

Ms. ManoramaKumari,
Adjudicating Authority
Member (Judicial)

Harihar Prakash Chaturvedi,
Adjudicating Authority
Member (Judicial)

LCT