

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

**MA 529/2019, MA 761/2019 and MA 1147/2019**

**In**

**CP 1382/I&BP/NCLT/MAH/2017**

Under Section 31 of the I&B Code, 2016

In the matter of

**IMICL Dighi Maritime Limited**

...Applicant

**DBM Geotechnics and Constructions Private Limited**

...Petitioner

v/s.

**Dighi Port Limited**

...Corporate Debtor/Respondent

**Order Delivered on 08.05.2019**

**Coram:** Hon'ble Member (Judicial) Mr V.P. Singh

Hon'ble Member (Technical) Mr Ravikumar Duraisamy

**For Adani:** Sr. Counsel Mr. Janak Dwarkadas, Mr. Ashish Kamat, Adv. Rohan Dakshini, Ms Nikita and Ms Kinjal Shah.

**For DBM Geotechnics & Cons. Pvt Ltd. :** Adv. Prakhar Maheshwari

**For Applicant in MA 1147/2019:** Sr. Counsel Mr Gaurav Joshi, MS Jyoti Singh, Ms Smiti Verma and Mr Sanjeev

**For Suspended Directors:** Mr Shyam Kapadiya, Mr Deepak Deshmukh, Ms Nisha Kaba

**For JNPT:** Sr. Counsel Mr Soli Cooper, Ms Pooja Mahajan, Ms Mahime Singh, Mr Mustafa Kachwala, Ms Netki Pansare

**For CoC:** Adv. Monika Varma A/w Mr B.D Bhandary

**For E.D.:** Adv. Gautam Sampad Dongre

**For Resolution Professional:** Mr J.P. Sen, Senior Advocate, Adv. Mr Nirav Shah, Mr Ryan, Adv Mr Viran Gami

**Resolution Professional:** Mr Shailesh Shah

**Others:** Adv. Sodhesh. S. Shetye (Applicant in MA 1560/2019)  
Adv. Rohit Sharma, for Gannon Dunkerly

Per V.P. Singh, Member (Judicial)

**ORDER**

1. The Miscellaneous Application (**MA**) No. 529 of 2019 is filed under section 31 of Insolvency and Bankruptcy Code, 2016 (**I&B Code**) in the C.P.No. 1382 of 2017 which was admitted u/s 9 of I&B Code vide order of this Tribunal dated 06.04.2018 initiating Corporate Insolvency Resolution Process (**CIRP**) against the Dighi Port Limited, the Corporate Debtor.
2. The MA 529/2019 is filed by the Resolution Professional (**RP**) of the Corporate Debtor appointed vide order dated 06.08.2018. The Applicant has filed this Application under Section 31 of the I&B Code, seeking orders for approval of the resolution plan for the Corporate Debtor as approved by the members of Committee of Creditors (**CoC**).
3. After the initiation of the CIRP, the Interim Resolution Professional published Public Announcement on 09.04.2018 calling upon the creditors of the Corporate Debtor to lodge their claims in the requisite form by 20.04.2018. Based on the claims admitted up to 20.04.2018, the IRP constituted the CoCon 25.04.2018. The composition of the CoC was later revised on 16.05.2018.
4. The Information Memorandum was issued on 29.08.2018, and the Expression of Interest was called on 06.09.2018. The last date for submission of EoI was 21.09.2018. 14 EoI's were received from prospective resolution applicants. As per the process document, the last date for submission of binding Resolution Plan was October 26, 2018, which was later modified and amended to November 02, 2018, November 19, 2018, November 21, 2018, and November 22, 2018, by issuing various addenda to the process document dated October 12, 2018.
5. The Jawaharlal Nehru Port Trust ("**JNPT**"), Adani Ports Special Economic Zone Limited ('**APSEZ**') and Veritas (India) Limited along with UV Asset Reconstruction Company Limited ('**Veritas**

**Consortium'**) submitted their Resolution Plan for the Corporate Debtor till November 22, 2018.

6. The 180 days of CIRP was extended for further 90 days under section 12 of I&B Code vide order of this Tribunal dated 12.09.2018. Further, 12 days period, from the date of admission till the date of communication of the order to IRP, was excluded vide order dated 26.10.2018.
7. The Hon'ble NCLAT vide its order dated 20.12.2018 excluded a period of 35 days from date of filing of an application by the members of CoC for approval of the appointment of the Applicant as the Resolution Professional to the date of communication of order to the RP (i.e. from July 13, 2018, to August 16, 2018). Considering the exclusion of time as per the Order of this Tribunal as well as the order of Hon'ble NCLAT, February 04, 2019 was the last date for completion of CIRP of the Corporate Debtor.
8. At the 15<sup>th</sup> CoC meeting, the plan submitted by JNPT, APSEZ and Veritas Consortium were considered by the members of CoC in detail. Since the resolution plan submitted by APSEZ was declared as the Highest Evaluated Compliant Resolution Plan, the same was put to the vote on 31.01.2019 and was rejected by 99.38% of votes by the CoC. Subsequently, the JNPT Resolution Plan, being the H2 Resolution Plan as per the scoring, was put to the vote on 01.02.2019. The resolution plan submitted by JNPT was approved by 99.38% of the requisite majority from the members of CoC.
9. It is pertinent to note the following submission of RP as salient features of the resolution plan:

	<b>Stakeholder</b>	<b>Admitted Claim (in ₹)</b>	<b>Total Payment</b>	<b>Timing of Payments</b>
<b>Upfront Payment</b>				
<b>A</b>	CIRP Costs	As per Actuals	As per Actuals	In priority to any other payments
<b>B</b>	Employee & Workmen	0.02 Crore	10% of Admitted Amount or Liquidation value, whichever is higher	Within 30 days from the effective date
<b>C</b>	Operational Creditors (Other than Employees and Workmen)	26.36 Crore (Excl. MMB claim)	10% of Admitted Amount	Within 30 days from Effective Date (in priority to FCs)
<b>D</b>	Form F Creditors (Other than Operational or Financial)	NIL	NIL	NA
<b>E</b>	Financial Creditors (FC's)	3074.51 Crore	₹651.12 Crore Less A, B, C and D	Within 30 days from the Effective Date

<b>Payment under the concession agreement</b>				
<b>F</b>	Maharashtra Maritime Board (MMB)	15.38 Crore	₹11.38 Crore	Within 30 days of verification by JNPT
<b>Capex Funds</b>				
<b>G</b>	Equity Infusion for Improving Operations	-	₹190.78 Crore	Within six months from Effective Date

10. The Plan states that as on 20.11.2018, the total amount claimed by Form F Creditors (Who are neither Operational Creditor nor Financial Creditors) is ₹7,11,15,012/- all of which is still under verification and thus their claim is neither admitted by the Resolution Professional nor provided in the Resolution Plan. However, it is provided in the plan that in the event any additional debt is admitted or directed by any Relevant Judicial Authority to be admitted as a debt owed to Form F creditor, then 10% of such admitted debt would be paid. The break-up of the same is set out below:

S.No.	Vendors (who filed Form F)	Claim filed and under verification (in ₹)
1.	Veritas (India) Limited	1,18,03,016/-
2.	Veritas Infra & Logistic Private Limited	1,74,42,458/-
3.	VeritasPolychem Private Limited	4,18,69,538/-
<b>Total</b>		<b>7,11,15,012/-</b>

11. The Resolution Professional in his affidavit in reply to MA 1147/2019 has submitted that the claims above filed on Form F have been

withdrawn by the claimants vide their e-mail dated 15.12.2018. A copy of the said e-mail is placed on record.

12. The Plan proposes that all the funds for payment to stakeholders and capital expenditure would be brought in by JNPT through its resources. It is stated that the same will be funded through a mix of equity and preference shares and shareholders' funds. Any quasi-equity/loan into DPL by JNPT should be considered as equity, as no external debt is envisaged. Such an infusion of funds shall be made in line with the capex requirements. JNPT has sufficient cash accruals and funds available to demonstrate the same. During the financial year 2017, JNPT had earned a gross cash accrual of ₹948crore and a cash and cash equivalent balance as on 31.03.2017 was ₹4,684crore.
13. As on the 20.11.2018, the total amount claimed by the Operational Creditors was ₹216,43,71,104/- out of which ₹5,94,68,063/- has been admitted, and ₹142,68,22,584/- is still under verification. The plan proposes that the Operational Creditors be paid 10% of their admitted outstanding claim. The entire proposed amount will be paid within 30 days from the Effective Date and in priority to Financial Creditors. It is also provided that in the event any additional debt is admitted or directed by any Relevant Judicial Authority to be admitted as an operational debt, then 10% of such admitted debt would be paid.
14. It is stated that the term of the Resolution Plan shall continue till such time the dues of the Banks/FIs and Operational Creditors, as specified, are paid. The Effective date for the Resolution Plan is defined as either the date of receipt of a certified copy of the NCLT Approval order or the date of receipt of approval from MMB under the Concession Agreement, whichever is later.
15. It is stated in the Resolution Plan that the Resolution Applicant shall constitute the monitoring committee comprising of the Resolution Professional, the representative of the Resolution Applicant, representative of the Financial Creditors and such other persons as

may be nominated by the Adjudicating Authority. The term of the monitoring committee is provided from the date of approval of the Plan until the date of payment to the financial and operational creditors.

16. The resolution professional and resolution applicant is directed to appoint Mr O.P. Gahrotra, IAS(Retd.) (M. 9867504890) as the person nominated by this Tribunal to the monitoring committee as proposed under the approved resolution plan.

17. The Plan provides that the Resolution Applicant together with its nominees shall hold 100% shareholding in the restructured share capital of Corporate Debtor. On and from the capital restructuring date, the resolution applicant shall be in control and management of affairs of Corporate Debtor and the business of the Corporate Debtor shall be carried on by the new management as appointed by the Resolution Applicant.

18. The JNPT will reconstitute the entire Board of the Corporate Debtor by appointing professional and experienced persons as per the government norms for an appointment of professionally qualified persons on the board of the Corporate Debtor. All the existing directors shall be deemed to have vacated their offices on approval of the resolution plan. The Corporate Debtor shall control and manage its subsidiaries and investments subject to the applicable laws.

19. It is submitted that the appointed Registered Valuers have determined the fair value and liquidation value as per Regulation 35 of the CIRP Regulations. The average of the value determined by the Registered Valuers is as stated below:

Registered Valuer	Fair Value (in ₹crores)	Liquidation Value (in ₹crores)
GAA Advisory LLP	636.46	356.19

KantiKaramsey& Co	675.70	356.40
Average	656.08	356.30

20. About the eligibility under section 29A of I&B Code, the Resolution Applicant has submitted an affidavit stating that the Resolution Applicant or any of its connected person is not ineligible under any provision of section 29A of I&B Code.

21. About section 30 (2), the RP has stated that the plan complies, as required under section 30(2). The Compliance of section 30(2) is summarised in the following table:

<b>Section 30 (2) clause</b>	<b>Whether the Resolution Plan:</b>	<b>The clause of Resolution Plan</b>
(a)	Provides for the payment of insolvency resolution process costs?	As per Clause 2 of Chapter VII of the Plan, the Resolution Applicant has specified that the CIRP Cost shall be paid on actuals and in priority to all other debts.
(b)	Provides for the payment or the debts of Operational Creditors?	Operational Creditors: Admitted claim - ₹26.36crores. Liquidation Value - Nil.

		<p>Payment of 10% of the admitted claims (within 30 days from Effective date)</p> <p>Employee/Workmen:</p> <p>Admitted claim – ₹0.02 crores</p> <p>Payment of 10% of the admitted claims (within 30 days from Effective date)</p>
(c)	Provides for the management of the affairs of the Corporate debtor?	<p>The plan proposes to replace and reconstitute the existing Board of Directors and appointment of professionally qualified persons on the board of the Corporate Debtor as per the government norms.</p>
(d)	Provides for the implementation and supervision of the resolution plan?	<p>The plan proposes for the appointment of Monitoring Committee comprising of the representative of Resolution Applicant, representative of</p>

		Financial Creditors, Resolution Professional and such other persons as may be nominated by the Adjudicating Authority.
(e)	Contravenes any of the provisions of the law for the time being in force?	The Resolution Plan does not contravene with any of the provisions of the law for the time being in force.

22. The Resolution Plan was put to the vote on 01.02.2019-02.02.2019 pursuant to the decision in 15<sup>th</sup> CoC meeting and rejection of the resolution plan of Adani Ports & SEZ on 30.01.2019-31.01.2019. As per section 30(4), this resolution plan of JNPT was approved by 99.38% of the CoC as per details below:

No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan
1.	Bank of India	16.31	Assented
2.	Indian Overseas Bank	12.24	Assented
3.	Punjab National Bank	10.45	Assented
4.	Canara Bank	08.95	Assented

5.	United Bank	08.73	Assented
6.	IL&FS MICL	07.80	Assented
7.	IIFCL	06.90	Assented
8.	Indian Bank	06.05	Assented
9.	Dena Bank	05.86	Assented
10.	Vijaya Bank	05.75	Assented
11.	HUDCO	04.44	Assented
12.	LIC	02.97	Assented
13.	IL&FS FSL	0.95	Assented
14.	Central Bank of India	0.75	Assented
15.	UCO Bank	0.63	Abstained
16.	Oriental Bank of Commerce	0.48	Assented
17.	Corporation Bank	0.38	Assented
18.	Bank of Maharashtra	0.37	Assented
<b>Total</b>		99.37	

23. The RP vide its certificate, as required under regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 certified that the contents of the resolution plan meets with the requirements of the IBC and the regulations thereto and that the resolution plan has been approved by the CoC in the manner prescribed under the IBC.

24. It is stated in the resolution plan that in order to enable the smooth transition of the Company from the present management and shareholders to the new management and JNPT. It may be noted that the plan provides for 30 days from the date of approval of the resolution plan for the issuance of equity shares, cancellation of the share capital of existing shareholders and reconstitution of the Board of Corporate Debtor.
25. The bench has observed that the Resolution Plan of JNPT is more than 85% of the average liquidation value and is also higher than the average fair value arrived at by the two registered valuers. It is also further observed that this is one rare Resolution Plan, wherein the plan outlay is more than the fair value.
26. The plan also provided that in case any additional claims admitted or directed by the Judicial Authority as an operational debt, then 10% of such admitted debt would be paid, i.e. **the plan also provides for, sufficient safeguard even for admitted claims, which may arise in future.** We have also noted that the group company of the APSEZ namely Adani Wilmar had withdrawn from its Resolution Plan even though it was the highest bidder in the case of Ruchi Soya Industries Limited. It is pertinent to mention that in the earlier CoC approved Resolution Plan of Adani, under the head source of funds "the upfront Cash was to be funded out of the internal accruals of the Resolution Applicant or any other source post the Acquisition".

#### **MA 1147/2019**

27. The MA 1147/2019 is filed by Veritas (India) Limited (**VIL**), Veritas Infra & Logistics Private Limited (**VILPL**) and Veritas Polychem Private Limited (**VPPL**), collectively referred to as Veritas. The Veritas part of Groupe Veritas and are sub-lessees and sub-concessionaires of the Corporate Debtor. The relief sought in the present application are to allow the Veritas to receive a copy of the resolution plan and intervene in the proceedings for approval of the resolution plan of JNPT and to

reject the resolution plan of JNPT or alternatively to direct modifications in the resolution plan to ensure that the rights, title and interest of the Veritas on the insolvency commencement date in relation to the 'Mega Project' and as sub-lessees and sub-concessionaires is maintained.

28. The Veritas aggrieved by the actions of the Resolution Professional of Dighi Port Limited insofar as he has refused to share with the Veritas copy of the resolution plan or the relevant excerpts thereof submitted by JNPT and approved by the CoCo of the Corporate Debtor.
29. The brief facts leading to the present MA are that the Corporate Debtor is a special purpose public company incorporated by Balaji Infra Projects Limited (**BIPL**), vide Concession Agreement dated 17.03.2002, BIPL was granted certain exclusive rights, by Maharashtra Maritime Board (**MMB**), over a multipurpose, common-user port at Dighi on a Build, Own, Operate, Share and Transfer basis for 50 years. Vide a novation agreement dated 07.12.2006, the exclusive rights under concession agreement granted to BIPL were assigned in favour of corporate Debtor.
30. On 17.12.2015, the Corporate Debtor executed a memorandum of understanding with VIL (**MoU-I**) for establishment and development of the PVC plant that was further amended vide addendums dated 17.10.2016, 26.12.2016 and 11.05.2017. Another Memorandum of Understanding, dated 15.04.2016 (**MoU-II**) was executed between the MMB and the Corporate Debtor.
31. On 25.11.2016, the Corporate Debtor executed three sub-lease deeds with each of the Veritas. Each of the said Sub-Lease Deeds further stipulated that they would stand extended in the event the term of the Concession Agreement was extended/ renewed. A reading of the terms of the November 2016 Sub-Lease Deeds makes it amply clear that the understanding between the Corporate Debtor and the Veritas all times was that the rights and interests of the Corporate Debtor would be co-

- terminus with the rights of the Corporate Debtor under the Concession Agreement. After that, a memorandum of understanding dated 14.12.2016 (**MoU-III**) was executed between the Corporate Debtor and VIL, among other things, for importing, trading, manufacturing and exporting liquefied natural gas cargo. On the same date, i.e., 14.12.2016, a sub-concession agreement was also executed between the Corporate Debtor and VILPL which stipulates that it shall continue to remain valid and binding even if the Concession Agreement is revoked.
32. On 20.05.2017, the Corporate Debtor and VILPL executed an addendum to the Sub-Concession Agreement which provides that all existing contracts, sub-contracts, sub-lessees, sub-concessions, agreements shall continue to be valid upon termination of the Concession Agreement, and the contractors, sub-contractors, sub-lessees and sub-concessionaires will be in the same position as regards to their rights, duties and obligations as they were before.
33. On 11.05.2017, VILPL entered into a Supplementary Sub-concession Agreement (Supplementary Sub-concession Agreement-I) with the Corporate Debtor to finance, develop, operate and maintain the berth/waterfront of 800m maximum, alongside on the berth of the Dighi side or as the case may be, of Dighi Port.
34. On 25.05.2017 VILPL and VPPL entered into an Assignment Agreement (Assignment Agreement) wherein VILPL assigned its rights under the Sub-concession Agreement and the Supplementary Sub-concession Agreement-I to VPPL. On 11.04.2017, taking into account the fact that the Veritas' project at the Dighi Port would be generating substantial revenue for the exchequer, the Industries, Energy and Labour Department of Maharashtra granted the status of "Mega Project" to the Veritas' project.
35. On 23.10.2017, the Corporate Debtor executed three sub-lease deeds, two with VIL one with VILPL (October 2017 Sub-Lease Deeds). Each of

- the October 2017 Sub-Lease Deeds contained clauses that provisions of the MoUs between the Corporate Debtor and the Veritas and/ or its addendums, contracts, subcontracts, sub-leases, sub-concessions and agreements shall continue to be valid upon termination of the Concession Agreement and the Contractors, Sub-Contractors, Sub-Lessees and Sub-Concessionaires will be in the same position as regards their rights, duties and obligations, as they were before such termination.
36. The said October 2017 Sub-Lease Deeds further stipulated that they would stand extended in the event the term of the Concession Agreement was extended/ renewed. It is submitted that terms of the October 2017 Sub-Lease Deeds make it amply clear that the understanding between the Corporate Debtor and the Veritas all times was that the rights and interests of the Veritas would be co-terminus with the rights of the Corporate Debtor under the Concession Agreement.
37. On 28.10.2018, VILPL entered into another Supplementary Sub-Concession Agreement (Supplementary Sub-Concession Agreement-II) with the Corporate Debtor.
38. It is stated that the PVC plant arrived (imported) at the Dighi Port under the agreements above executed between the Corporate Debtor and the Veritas. Till date, the Veritas has expended approximately ₹350,00,00,000/- (Indian Rupees Three Hundred and Fifty Crores) in importing the PVC Plant that is currently stored at the Dighi Port.
39. The Veritas has submitted that the I&B Code does not envisage curtailment, extinguishment, modification or amendment of the rights and interests of bona fide third parties. The Veritas has sought to place reliance upon Regulation 37 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) which is said to not in any manner provide for or approve of the unilateral alteration of

obligations of the Corporate Debtor under a contract with a third-party.

40. A similar situation is said to be decided in *Indian Shaving Products Limited v. Delhi Development Authority*, ILR (2001) II Delhi 611, wherein the Hon'ble Delhi High Court was looking into the validity of a clause in a rehabilitation scheme approved by the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). The impugned rehabilitation scheme provided for the amalgamation of the sick company with another company on the date of the approval, "without any further act or deed on the part of any party". The scheme further provided that the consequent to the amalgamation, the property of the sick company would start vesting in the transferee company and the concerned statutory authorities would affect the necessary changes in the licenses, permissions, approvals.

41. The Delhi Development Authority (DDA) challenged the rehabilitation scheme by raising demand for "unearned increase" upon being requested to effect change in its records. The question before the Hon'ble Delhi High Court was whether the rehabilitation scheme approved by the BIFR would have an overriding effect to take away the rights of the DDA to recover unearned increase. Holding that the DDA was entitled to charge unearned increase before effecting the change in its records, the Delhi High Court observed as under:

"We fail to appreciate as to how by a deed of amalgamation the terms of the perpetual lease deed can be said to have been altered. Since the DDA was not a party to the scheme its rights cannot be affected, and the order passed by the BIFR does not bind the DDA (emphasis supplied)."

42. It is submitted that having entered into contractual and property transactions with the Veritas, it is not permissible for the Corporate Debtor to renege from its obligations by the mere incorporation of

such clauses in the Resolution Plan. More particularly given Indian Shaving Products (supra), the approval of the Resolution Plan cannot have the effect of extinguishing or curtailing the rights of the Veritas herein, who are third parties as far as the CIRP of the Corporate Debtor is concerned.

43. The Veritas has further submitted that the Code specifies all the instances in which a transaction of the corporate debtor with a third party may be avoided by the Adjudicating Authority viz. instances when the transaction is preferential (Section 43 of the Code), undervalued (Section 45 of the Code), transactions defrauding creditors (Section 48 of the Code) and extortionate credit transactions (Section 50 of the Code) and the transactions between the Veritas and the Corporate Debtor do not fall within the categories of transactions that can be avoided under the Code.
44. It is submitted that the agreements executed between the Corporate Debtor and the Veritas are bona fide agreements that do not fall within the ambit of any of the categories above of transactions which may be avoided by this Adjudicating Authority. It is submitted that the RP has completely disregarded the fact that the Veritas admittedly anchor customers which have undertaken the massive project of setting up an integrated complex including a PVC plant at the Dighi Port and the said integrated complex, once established, would attract several other ancillary businesses to the port, and the lease rentals payable by the Veritas the Corporate Debtor was arrived at keeping the same in mind.
45. It is submitted that the RP has filed an application being Miscellaneous Application No. 608 of 2019 (Avoidance Application) in the captioned company petition in which he has among other things contended that the October 2017 Sub-Lease Deeds executed by the Corporate Debtor in favour of the Veritas are undervalued. Without prejudice to the fact that the said agreements are bona fide transactions, and the RP's contentions in this regard are completely unfounded. It is emphasised

by the Veritas that they have not even been made parties to the Avoidance Application even though the Avoidance Application seeks the avoidance of the October 2017 Sub-Lease Deeds in favour of the Veritas.

46. It is further submitted that the contents of the Avoidance Application reveal existence of other entities, in particular, one Dighi Oil Storage Pvt. Ltd. (a wholly owned subsidiary of IMC Limited having lease rental of ₹8 per square meter per year), which pay lease rentals and premiums that are considerably less than the lease rentals and premiums paid by the Veritas the Corporate Debtor. In the circumstances, it is difficult to fathom why the RP is seeking avoidance of only the Sub-Lease Deeds in favour of the Veritas.
47. The Veritas has thirdly contended that they have incurred considerable expenses under the various agreements executed between them and the Corporate Debtor, and they cannot be modified at this juncture. It is submitted that the proposed setting up of the integrated complex including the PVC Plant has also been given the status of "Mega Project" by the Government of Maharashtra, and it would generate employment for approximately 5000 persons and import close to 2.85 million metric tonnes of cargo annually which would result in significant revenue gain for the Public Exchequer.
48. Therefore, it is submitted that having acted upon the representations made by the Corporate Debtor and having expended substantial monies towards the envisaged project, the rights and interests of the Veritas cannot be obliterated at this juncture under the pretext of insolvency resolution of the Corporate Debtor.
49. The Veritas has further contended that they have a legal right to property as Sub-concessionaires and Sub-lessees and any provision in the resolution plan that seeks to extinguish/ alter the Veritas' rights as Sub-lessees or Sub-Concessionaire is contrary to the applicable provision of law. Reliance is placed on Harshad Govardhan Sondagar v.

International Asset Reconstruction Company Limited, (2014) 6 SCC 1, the Hon'ble Supreme Court observed that "so long as a lease of an immovable property does not get determined, the lessee has a right to enjoy the property, and this right is a right to property and this right cannot be taken away without the authority of law as provided in Article 300-A of the Constitution". It is submitted that in view thereof, any clause of a resolution plan that has the effect of curtailing or extinguishing a party's property rights cannot be approved or given effect as the same would be contrary to law.

50. In *Harshad Shantilal Mehta v. Custodian* (1998) 5 SCC 1, the Supreme Court while dealing with the question as to whether the Custodian under the Special Courts Act had the power to attach properties that formed the subject matter of security in favour of banks, held:

"If in the property 'belonging to' a notified person, another person has a share or interest, that share or interest is not extinguished....The interest of a third party in the attached property cannot be sold or distributed to discharge the liabilities of a notified person."

51. Similarly, in *Harshad Govardhan Sondagar v. International Asset Reconstruction Company Limited* (supra), the Supreme Court had to determine, among other things, whether the leases executed by borrowers in respect of premises which were the subject matter of security to banks could survive even after the banks initiated action under Section 13 of the SARFAESI Act. In deciding the said issue, the Hon'ble Supreme Court opined as under:

"One of the measures mentioned in clause (a) in sub-section (4) of Section 13 of the SARFAESI Act is to take possession of the secured assets of the borrower including the right to transfer by way of a lease. Whereas, the lawful possession of the secured asset is not with the borrower, but with the lessee under a valid lease, the secured creditor cannot take over

possession of the secured asset, until the lawful possession of the lessee gets determined.”

52. The Hon'ble Supreme Court reiterated the stand above in **Vishal Kalsariya v. Bank of India, (2016) 2 SCC 762**, in which it was once again dealing with the validity of leases created before the mortgage in favour of the borrower's secured creditors. In the said case, lenders of the borrower had sought to evict the tenants of the borrower when they were protected by the relevant Rent Control Acts. The lender banks relied upon the non-obstante clause of the SARFAESI Act, 2002 to contend that the tenants of the borrower could not avail of any protection under the Rent Control laws. Relying upon the HarshadGovardhan judgment (supra), the Hon'ble Supreme Court opined that:

**“A tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the statutory rights of protection given to the tenant. A non-obstante clause (Section 35 of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested in the tenants under the Rent Control Act.”**

53. The Veritas submits that the aforesaid cases establish that upon the execution of the Sub-Concession Agreement, Sub-Lease Deeds and MoUs with the Veritas, the Corporate Debtor has parted with the subject rights and interests, and the same have come to vest in the Veritas on the term of the aforesaid agreements, and all that remains with the Corporate Debtor are the reversionary rights. In the circumstances, the Resolution Plan cannot seek to modify, curtail or extinguish the rights and interests that have come to vest in the Veritas during the term of the agreements above.

54. It is also contended by the Veritas that the various agreements between the Corporate Debtor and the Veritas stipulate that the rights

and interests of the Veritas thereunder shall continue to subsist. The November 2016 Sub-Lease Deeds and the October 2017 Sub-Lease Deeds provide that the rights of the Veritas Sub-lessees shall subsist irrespective of a change of management of the Corporate Debtor. The clauses set out in the evidence of the agreement that the Corporate Debtor and the Veritas intended that the rights and interests of the Veritas would be for the entire term of the Concession Agreement, and it is acting upon these terms/ safeguards that the Veritas made such substantial investments in their project. It is submitted that the extinguishment of the Veritas' rights would not only be contrary to principles of law and equity but also be in complete contravention of the explicit agreements entered into by the Corporate Debtor and the Veritas.

55. The last contention of the Veritas is that under the addendum dated 17.10.2016 to MoU-I, the Corporate Debtor is obligated to safeguard and ensure that the Veritas' rights of the easement, right to access and right to operate facilities at the Port are not adversely affected. The relevant clause is reproduced hereunder:

**"2(h) In any eventuality whether financial or otherwise at DPL or MMB, DPL and MMB shall safeguard and ensure that GV's right of easement, right to access and operate facilities at DIGHI PORT is not hampered/ adversely affected."**

56. The Sub-Lease deeds executed between the Corporate Debtor and the Veritas stipulate that the Veritas shall hold the premises without any eviction, interruption or demand from the Corporate Debtor and any other person claiming thereunder. The said clause is set out hereunder:

**"The said DPL further declares that the said VIL shall at all times during the term peaceably and quietly hold, possess and enjoy the Desired area hereby agreed under the**

**instant sublease with their appurtenances for their own use and benefit without any eviction, interruption, Claim and or demand of whatsoever nature from the DPL and or person/ entity claiming from under or interest under the said DPL...”**

57. The Veritas contends that from the clauses set out hereinabove, it is clear that the transaction between the Corporate Debtor and the Veritas envisaged that the Veritas would continue to enjoy the rights and interests arising out of the MoUs, sub-leases and sub-concessions without any hindrance.

58. It is further submitted that the rights and interest of VILPL as a Sub-concessionaire have been duly permitted and sanctioned by the MMB vide the letters dated 20.02.2016 and 03.10.2017 addressed by MMB to the Corporate Debtor. **The Concession Agreement dated 12.03.2002 (as amended during the 45th Board Meeting of MMB held on January 12, 2006) states that the rights of VILPL as a Sub-concessionaire will continue to be valid even after the termination of the Concession Agreement of the Corporate Debtor itself. The relevant clause is set out hereunder:**

*“Notwithstanding anything contained herein the provisions of all existing contracts, sub-contracts, sub-leases, sub-concessions, agreements shall continue to be valid upon the termination of this Agreement and the contractors, sub-contractors, sub-lessees and sub-concessionaires will be in the same position as regards their rights, duties and obligations as they were before such Termination.”*

59. The rights and interests of the Veritas in their capacity as Sub-lessees have also been duly approved and sanctioned by the MMB. Vide the letter above dated 03.10.2017, the MMB granted ex-post facto sanction to the sub-lease dated 25.09.2017, executed between the Corporate Debtor and VPPL.

60. The Resolution Professional has filed its reply in the MA 1147/2019 opposing the prayers sought in the application stating that all the details regarding the contractual arrangements entered into between the Corporate Debtor and the Veritas have been uploaded to the VDR from time to time in order to enable the resolution applicants to inspect the same. The potential resolution applicants had access to the VDR at all times, and all the resolution applicants have submitted their respective resolution plans after considering all the information disclosed to them in the VDR including the contracts entered into by the Corporate Debtor with the Veritas.
61. The Resolution Professional has submitted that as regards the purported rights of the Veritas pursuant to the various Sub-Lease Deeds, Sub-Concession Agreements, Memoranda of Understanding entered into between the Corporate Debtor and the Veritas concerned, the same will be dealt with as per the contents of the JNPT Resolution Plan, which have been approved by the COC members and the same is subject to the orders of this Hon'ble Tribunal.
62. The Resolution Professional has cited the case of *K. Sashidhar vs Indian Overseas Bank*, 2019 SCC OnLine SC 257, where the Hon'ble Supreme Court of India has clarified the scope of enquiry of the Adjudicating Authority as far as approval of a resolution plan under section 31 of the Code is concerned. Under section 30(6) of the Code, it is imperative for the resolution professional to submit a resolution plan approved by the COC by the requisite percentage of voting share. Further, it states that on receipt of an application under section 31 of the Code, the Adjudicating Authority is to limit itself to examine if the plan approved by the COC meets the requirements of section 30(4) of the Code. Under section 31 (1) of the Code, if the Adjudicating Authority is satisfied that the resolution plan approved by the COC meets the requirements prescribed under Section 30(4) of the Code, the Adjudicating Authority shall approve the plan. Further, the scope of enquiry of the Adjudicating Authority and the grounds on which an

approval granted to a resolution plan by the COC may be interfered with, have been set out in section 31(1) read with section 30(2) of the Code. It is submitted that once a resolution plan is approved, it is binding on all the stakeholders including the Applicant and the prayers as sought for by the Applicant in the captioned application cannot be granted as per the ratio laid down by the Hon'ble Supreme Court of India. In view thereof, the reliefs claimed by the Veritas herein are complete de hors the provisions of the Code.

63. It is further submitted by the Resolution Professional that the concurrent auditor in its report for the period Jan'18 to March'18 had identified that the lease rentals as contemplated under the Sub-Lease Deeds entered into by the Veritas with the Corporate Debtor was substantially lower as compared to the lease rentals of other similarly situated land. Based on the observations made by the concurrent auditor and on the terms of the Sub-Lease Deeds, the Sub-Lease Deeds are apprehended to be an under-valued transaction, thereby causing a loss to the Corporate Debtor. The Resolution Professional has filed an application under section 45 of the I&B Code for setting aside of the transaction above being MA No. 608/2019. Given those above, it is submitted that Sub-Lease Deeds which are among the contracts that the Veritas is seeking continuation of, is under a cloud and pending adjudication of this Hon'ble Tribunal.

64. We have perused the provision made in the Resolution Plan about the Veritas agreement comprising the sub-Concession Agreement, the MoUs and the Sub-Lease Deeds. It is stated in the resolution plan that the construction and development of the berth have not commenced under the sub-concession agreement. The resolution plan lists certain terms and conditions in the Veritas Agreements that are onerous and not in the long-term interest of the Company. It is because of the onerous terms of the agreements that, as per the resolution applicant, make the agreement against the interest of the Corporate Debtor. This is cited as the reason for the proposal of termination of the Veritas

Agreements. It is also stated that the termination shall take place as an integral part of this Resolution plan.

65. Further, it is stated in the resolution plan that the Veritas has paid approximately ₹7crore as upfront premium and lease rentals under its various agreements without providing any consideration to the Corporate Debtor.
66. It is also stated in the resolution plan that, the resolution applicant ready and willing to re-negotiate with Veritas Sub-Lease Deeds in good faith. The resolution applicant shall negotiate with the Veritas within a reasonable period of 3 months from the Effective Date, for the lease of land and grant of certain rights to Veritas. On an arm's length basis on mutually acceptable commercial and other terms. The Resolution Applicant has noted that the rent charged from Veritas is substantially lower than the rent charged by the Company from some other sub-lessees. Hence, the re-negotiated terms shall include a grant of leasehold rights over an area assessed by the Company considering other operational and infrastructure requirement of the company (except waterfront) to Veritas at commercially/market rate lease rent arrived at transparently. In case the said negotiation fails, the resolution applicant proposes to terminate all Veritas agreements as an integral part of the resolution plan and the Veritas shall be treated as Form F creditor/Operational Creditor of the Company and shall be paid accordingly at par with other operational creditors.
67. We are of the considered view that the resolution applicant in its resolution plan, cannot seek to terminate agreements that have created legal rights in third parties without adhering to the due process of law by which those agreements could have been terminated in case there was no CIRP in place. Such termination of legally binding agreements would violate the law under which such contracts are governed and thus in violation of section 30(2)(e). The termination in the present situation is based on the allegations of the terms of the

Contract being onerous and against the interest of the Company. There is an application filed by Resolution Professional under section 45 of the I&B Code for setting aside of the transaction above between the Corporate Debtor and the Veritas being undervalued which is pending final adjudication before this Tribunal. Therefore, the validity of the said transactions is yet to be decided by this Tribunal, and until then these transactions shall not be treated as undervalued transactions. We are happy to see that the resolution applicant has in good faith allowed an opportunity to the Veritas for renegotiation. However, it does not have any right to terminate the legally binding contract unilaterally without following the due process for termination as per applicable law under the garb of a resolution plan. The renegotiations are welcomed, and this Tribunal could not have demanded anything more than an amicable settlement of the dispute within the parties themselves out of these proceedings. However, this Tribunal is not inclined to give any exemptions or unilateral termination of legally binding contracts creating rights of third parties and existing before the initiation of the CIRP. Further, the Veritas does not have any right as sub-concessionaire or sub-lessee to get a copy of the resolution plan so the copy of the resolution plan cannot be given to the Veritas as sought in its application.

68. Given the above observations, the prayer sought in the MA 1147/2019 regarding the rejection of the resolution plan on the grounds mentioned therein or directions to the resolution applicant to safeguard the interest of the Veritas cannot be allowed, and the MA 1147/2019 is rejected.
69. Further, the Resolution Applicant is directed that the unilateral termination of the contracts as mentioned in Chapter VII point 7, or at any other place in the resolution plan, is allowed only as per the due process of law applicable on termination of such contracts except as provided under Explanation to section 30(2) of I&B Code. This Tribunal would not allow any unilateral termination of legally binding contracts

that were entered into by the Corporate Debtor before the CIRP initiation without adhering to the law applicable for termination of any such contract. The resolution applicant is directed to file an affidavit before this tribunal submitting its acceptance or rejection of the said modification in the resolution plan.

70. At the cost of repetition, we clarify that any resolution applicant shall overtake the Corporate Debtor with all its assets and liabilities. This Bench is of the view that the Resolution Applicant has all the rights to either continue or terminate the existing agreements of the Company but only as per due process under applicable laws and this bench would not grant any exemption from liability under any Law.

**MA 761/2019**

71. The MA 761/2019 has been filed by Adani Ports and Special Economic Zone Ltd. (**APSEZ**) among other things challenging the CIRP undertaken by the Resolution Professional and the CoC of the Corporate Debtor under the I&B Code. As the same has been conducted with manifest arbitrariness, irregularities and contrary to and in breach of the I&B Code, the CIRP Regulations and the process note itself, which has led to the wrongful and illegal exclusion of the APSEZ and resulted in the approval of Resolution Plan submitted by the JNPT. Following points have been emphasised by the Ld. Senior Counsel, ShriJanakDwarkadas:-

72. That on 12.10.2018, the Resolution Professional prepared and issued the Process Document under Section 25(2) (h) of the I&B Code. The last date for submission of Resolution Plan was extended to 22.11.2018.

“1.7.12 A Resolution Plan submitted by Resolution Applicant (s) shall be unconditional. It is hereby clarified that any **conditionality of the Resolution Plan shall lead to the rendering of that particular Resolution Plan as non-**

**responsive**, and accordingly, the CoC shall have the right to reject such Resolution Plan.”

“19.1 Within 5 (five) business days of the date of approval of the Successful Plan by the CoC, ***the Successful resolution Applicant(s)*** shall provide a Performance Guarantee of Rs. **100,00,00,000/- ( INR One HundredCrore Only) in favour of Bank of India, (“Performance Guarantee”)**

1.9.5 Non-submission of the Performance Guarantee by the Successful Resolution Applicant (s), as per the provisions of the clause 1.9.1, will lead to the rendering of resolution Plan by such Resolution Applicant(s) as non-responsive and the CoC shall have the right to reject the Resolution Plan” (pg.95)

73. That on 22.11.2018 the APSEZ submitted its Resolution Plan. Two other resolution applicants, JNPT and one Veritas India Limited had also submitted their respective resolution plans.

74. That on 15.12.2018 CoC minutes record that (a) CoC Advisors presented detailed steps of Swiss Challenge process and (b) JNPT expressed its inability to participate in Swiss Challenge process given the current stringent CIRP timelines.

75. That on 20.12.2018, an email informing APSEZ that previously notified Single Round negotiation process stood withdrawn, and revised process note (for Swiss Challenge process) along with corresponding timelines will be intimated in due course. This was done as NCLAT extended CIRP period till 04.02.2019 or thereabouts.

76. That on 29.12.2018 Addendum No. 7 to the process document released, introducing the Swiss Challenge process for the further evaluation and selection of the Resolution Plan and Applicant and Round 1 Bidding Date was notified as 14.01.2019.

77. That on 06.01.2019 Swiss Challenge Round 1 Bidding date kept postponing without explanation.

78. That on 05.01.2019 & 14.01.2019 Maharashtra Maritime Board (MMB) letter dated 05.01.2019 stated that a successful Resolution Applicant would be bound by all laws applicable to major ports.
79. Maharashtra Maritime Board (MMB) letter dt. 14.01.2019 stated that a Resolution Applicant would not be able to take away the rights of the sub-concessionaire and they will continue to subsist even after the Resolution Applicant takes over the Corporate Debtor.
80. That on 19.01.2019 Addendum No. 8 to the Process Document inexplicably withdrew the Swiss Challenge process, and APSEZ requested to file an improved Resolution Plan on or before 23.01.2019.
81. That on 14.01.2019 & 24.01.2019 CoC meetings were held and APSEZ's Resolution Plan was discussed. However, APSEZ was not given notice nor opportunity to attend the CoC meetings. This is said to be in breach of Section 30 of the I&B Code.
82. That on 28.01.2019 CoC meeting was held. APSEZ's Resolution Plan was discussed and evaluated as "H1". However, APSEZ was not given notice nor opportunity to attend the CoC meetings.
83. That on 01.02.2019 APSEZ's resolution plan was voted upon and rejected by CoC. JNPT's Resolution plan was voted and approved. It is submitted that the **reasons for rejection have not been furnished** till date. Therefore, it is in breach of Reg.39 (3), CIRP Regulations. It is also submitted that JNPT's Plan was conditional and therefore nonresponsive and in breach of Process Document.
84. That on 04.02.2019, Section 31 Application filed by RP seeking approval of JNPT's Plan. It is submitted that the said Applicant was incompetent as JNPT had not submitted the Performance Guarantee of ₹100 Crore, as required under the Process Document and amended Reg. 36B (4A), CIRP Regulations. It is further contended that JNPT's Plan was conditional. It is further submitted that JNPT has not furnished the Performance Guarantee to date.

85. The Resolution Professional has submitted its reply in the MA 761/2019 objecting to the reliefs sought in the application on the following reasons:

**A. The Applicant has not been given sufficient opportunity to be heard by the Respondent No. 1 or the COC and that the Applicant was not given the notice to attend the COC meetings where the Applicant's Resolution Plan was discussed:**

**Reply:**

- (i) The Applicant along with the other resolution applicants was given sufficient opportunity of presenting their plans before the COC, addressing the COC's concerns, concerning their plans, providing any clarifications sought for by the COC and therefore the allegation by the Applicant that the principles of natural justice have not complied are baseless.
- (ii) The minutes of the 8<sup>th</sup> and 10<sup>th</sup> meetings of the COC evince the fact that the Applicant was given sufficient opportunity to remain present before the COC and address the concerns/questions/issues raised by the COC concerning the Applicant's Resolution Plan. At the 8<sup>th</sup> COC meeting, the resolution applicants were invited to make a detailed presentation on the respective resolution plans before the COC. Subsequently, at the 10<sup>th</sup> COC meeting, the resolution applicants were invited to address any queries/concerns/issues that the COC may have had regarding their respective plans. Over and above this, as and when required, the resolution applicants were in constant contact with the Evaluation Advisors and the COC by telephone or email, as the case may be, in order to address the questions/queries that may have arisen after the 10<sup>th</sup> COC meeting.
- (iii) At, the 15<sup>th</sup> COC meeting, the Resolution Professional suggested to the COC that they may seek clarification on certain clauses in the Applicant's Resolution Plan concerning the fund infusion

mentioned in the Applicant's Resolution Plan. At the COC's instance, the Evaluation Advisor called the Applicant's representatives while the CoC was ongoing and sought clarification in this regard and based on clarification the Applicant's Resolution Plan was ranked H1, as per the scoring and evaluation mechanism. This makes the above abundantly clear that the Applicant was given sufficient opportunities to answer the queries and concerns raised by the COC.

- (iv) The allegation of the Applicant that they ought to have been given notice of all COC meetings where their resolution plan was discussed is misconceived and erroneous. In this regard, it is submitted that Section 30(5) of the Code which provides that the resolution applicant **may** attend the meeting of the COC in which the resolution plan of the applicant is considered, is only a directory provision and not mandatory. The Applicant has been given adequate notice of the COC meetings whenever their presence was deemed necessary by the COC, and the Applicant has attended the COC meetings accordingly along with other resolution applicants. Over and above the applicant has attended COC meetings, and where the COC wanted to deliberate on the Resolution Plans internally, no notice of such COC meetings could be given to the Applicant or the other resolution applicants, as their presence at such COC meetings was not required. The proceedings that took place in the COC are confidential, and the resolution applicants have no right, statutory or otherwise to remain present at such meetings. Equity demands that the resolution applicant be allowed to clarify the queries and questions raised by the COC about its resolution plan and it is the Applicant's admitted position that the Applicant has been allowed to do so.
- (v) Further, the resolution professional is not obliged to invite all the resolution applicants for all the COC meetings where the

resolution applicant's plan is discussed. There is no vested right in the resolution applicants which entitles them to attend all the COC meetings.

(vi) Further, the Applicant and the other resolution applicants were given equal opportunities, and there was no differential treatment meted out to any of the resolution applicants. It is the Applicant's admitted position that they were given several opportunities to meet the Evaluation Advisors, Resolution Professional and the CoC members about the Applicant's Resolution Plan. Further, the Applicant has taken part in the entire process of negotiation, submission of an improved plan etc. without demur this goes to show that these allegations are nothing but an afterthought.

**B. The JNPT Resolution Plan is a conditional plan and therefore ought to be treated as non-responsive under the various clauses of the Process Document.**

Reply

- (i) At the 8<sup>th</sup> COC meeting, the Resolution Professional had sought a clarification from the JNPT representative on whether re-negotiation of the existing sub-lease and sub-concessionaire agreements entered into by the Corporate Debtor is a pre-condition to the JNPT Resolution Plan and if yes, then the same may not conform with the Process Document.
- (ii) In reply to the above the JNPT representative informed the COC that re-negotiation of the sub-leases and sub-concessionaire agreements will form part of the reliefs, which JNPT will seek from this Tribunal at the time of hearing of the application filed under section 31 of the Code for approval of resolution plan and hence the same does not render the JNPT Resolution Plan as conditional. It may also be added that various other reliefs were sought by the Resolution Applicant, but many requests were rejected, and the same is discussed in the later part of the order.

- (iii) Even if such reliefs are not granted by this Tribunal to JNPT, the JNPT Resolution Plan, as approved by the COC will go through, and the said existing sub-lease and sub-concessionaire agreements would be as per the mutually agreed terms and condition between the parties, i.e. the successful Resolution Applicant and the sub concessioner/ sub lesseedealt with as per the directions of this Tribunal.
- (iv) It is pertinent to mention that in the JNPT Resolution Plan, JNPT has provided for a consideration to be paid to the sub-concessionaires and sub-lessees in the event their sub-concession or sub-lease agreements are terminated by JNPT subject to the approval of this Tribunal.
- (v) Since the APSEZ alleges that the re-negotiation of the sub-lease and sub-concessionaire agreements as contemplated under the JNPT Resolution Plan renders it conditional, it may be noted that clause 3.8.3 of the APSEZ's Resolution Plan also contemplated an extinguishment of all present and future contractual liabilities arising out of the sub-concession and sub-lease agreements entered into by the Corporate Debtor. The said clause affects equivalent to the termination of the sub-lease and sub-concessionaire agreements. Therefore, if the APSEZ's argument that the JNPT Resolution Plan is conditional is accepted, then the same argument would also go against the APSEZ's Resolution Plan which also has the same conditionality. As regards the APSEZ's Resolution Plan, it does not provide for any consideration to be paid to the sub-concessionaires or sub-lessees for termination of their sub-lease or sub-concession as the case may be. It implicitly seeks to dispense with all liabilities arising from the said sub-lease or sub-concession agreements.
- (vi) Further, under clause 1.2 (iii) of the APSEZ's Resolution Plan, they have sought the assignment of the lenders right in the form

of personal guarantees to the APSEZ. Under clause 10.7 (iv) of the APSEZ's Resolution Plan read with clause 49 of the amended resolution plan submitted, the APSEZ has also sought the liberty of withdrawal of APSEZ's Resolution Plan by incorporation of the material adverse effect clause. The APSEZ's allegation that the JNPT Resolution Plan is a conditional plan would in these circumstances apply with equal if not greater force to the APSEZ's Resolution Plan as well. **While on the one hand, the APSEZ seeks to argue that the JNPT Resolution Plan is conditional and ought not to have been accepted, they are overlooking the fact that their plan includes a similar clause among others which may be inferred as conditional if the APSEZ's interpretation were to be adopted.**

- (vii) Given those above, it is clear that the JNPT Resolution Plan is not a conditional plan as alleged by the Respondent and therefore is not in any deviation of the Process Document.

**C. The Swiss Challenge Process, which the CoC had initially adopted as a method to negotiate with the top 3 resolution applicants was unilaterally withdrawn by Respondent No. 1 and without notice:**

- (i) Withdrawal of the Swiss Challenge Process was a decision taken by the CoC after several rounds of discussions and deliberation held during the 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> CoC meetings.
- (ii) At the 9<sup>th</sup> CoC, it emerged that the CoC was keen to adopt the Swiss Challenge Process as a method of negotiation with the top 3 resolution applicants. The Resolution Professional, however, informed the CoC that in view that the NCLAT Proceedings for the exclusion of time have not been decided and considering the Swiss Challenge Process may be time-consuming, the same may not be possible. However, the CoC insisted that the Swiss

Challenge be undertaken in the limited time available in order to maximise the value of the Corporate Debtor.

- (iii) At the 10<sup>th</sup> COC meeting, the Resolution Professional communicated to the COC that JNPT had expressed its inability to take part in the Swiss Challenge Process since it is a government body under the supervision of the Ministry of Shipping, Government of India and therefore obtaining the requisite approvals might be time consuming and that given the strict timelines of the CIRP of the Corporate Debtor, the same may not be possible. Further, at this stage also there was no clarity regarding the NCLAT Proceedings. The COC, therefore, decided to decide on the negotiation process when the NCLAT Proceedings have been decided.
- (iv) At the 11<sup>th</sup> COC meeting, since the NCLAT Proceedings remained undecided the COC decided that the Swiss Challenge Process that was initially adopted, be kept in abeyance.
- (v) Consequently, at the 12<sup>th</sup> COC meeting, the COC passed a resolution approved by 75.84% of the COC, to withdraw the Swiss Challenge Process.
- (vi) Despite the withdrawal of the Swiss Challenge Process by the COC, the resolution applicants were given two opportunities each to improve their resolution plan, i.e. at the 11<sup>th</sup> COC meeting and the 14<sup>th</sup> COC meeting. The same was done by the Resolution Professional to maximise the value of the Corporate Debtor. The APSEZ was the only resolution applicant who submitted an improved offer on January 23, 2019, and the same was duly placed before the COC for its consideration. Further, none of the resolution applicants submitted an improved offer within the timeline as decided at the CoC meeting when the second opportunity to submit an improved plan was given. JNPT had already expressed its inability to participate in the Swiss

Challenge Process, and the Veritas Consortium did not submit any improved resolution plan at either of the two opportunities provided to them. Given those above, it is submitted that in the given circumstances holding of a Swiss Challenge Process would be a futile exercise as the APSEZ would be the only participant in the said process.

**D. No reasons are given for the rejection of the APSEZ's Resolution Plan:**

- (i) The APSEZ has relied on the proviso to regulation 39 (3) of the CIRP Regulations and alleged that the APSEZ had not been given reasons for the rejection of the APSEZ's Resolution Plan as provided therein. It is submitted that Regulation 39 (3) was introduced into the CIRP Regulations by way of an amendment dated July 3, 2018. The amending notification being No. IBBI/2018-19/GN/REG031 clearly states that:

*“(1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018.*

*(2) They shall come into force on the date of their publication in the Official Gazette and shall apply to corporate insolvency resolution processes commencing on or after the said date.”*

- (ii) The notification was published on July 3, 2018, and therefore the applicability of Regulation 39 (3) of the CIRP Regulations is limited to the corporate insolvency resolution processes that have commenced after July 3, 2018. The CIRP of the Corporate Debtor was initiated under an order of this Tribunal Dt. March 25, 2018, and therefore the said regulation has no application in the present case.
- (iii) The APSEZ's Resolution Plan has been duly accepted by the Resolution Professional as a complaint resolution plan and accordingly been put to the vote before the COC. Therefore, there

is no question of the APSEZ's Resolution Plan being rejected by the Resolution Professional. The APSEZ's Resolution Plan has been rejected by the COC members having 99.37% vote share. The approval or rejection given to a resolution plan by the COC is a matter which is in the realm of the commercial wisdom of the COC. Further, given the timeline of the CIRP, it was not possible to convene a meeting of the COC after putting the APSEZ's Resolution Plan to the vote and before the end of the CIRP Period. The APSEZ's Resolution Plan was rejected by the CoC on January 31, 2019, which was just four days before completion of the extended CIRP Period.

(iv) Further, it is submitted that even if the said regulation were to apply to the present case, the non-recording of reasons for rejection of a resolution plan does not vitiate the approval granted to the resolution plan by a majority of the COC. The Hon'ble Supreme Court of India in *K Sashidhar v. Indian Overseas Bank* (supra) has held that:

*"In the first place, an amendment to regulation cannot have retrospective effect to impact the decision of the CoC of the concerned corporate debtor - taken before the amendment of the said regulation. There is no indication in the Code as amended or the regulations to suggest that as a consequence of this amendment the decisions already taken by the concerned CoC prior to 3rd July 2018 be treated as deemed to have been vitiated or for that matter, necessitating reversion of the proposal to CoC for recording reasons, that too beyond the statutory period of 270 days. A new life cannot be infused in the resolution plan which did not fructify within the statutory period, by such circuitous route.*

**Assuming that this provision applied to the cases on hand, 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.** Concededly, if the objection to the resolution plan is on account of infraction of ground(s) specified in Sections 30(2) and 61(3), that must be specifically and expressly raised at the relevant time. For, the approval of the resolution plan by the CoC can be challenged on those grounds. However, if the opposition to the proposed resolution plan is purely a commercial or business decision, the same, being non-justiciable, is not open to challenge before the Adjudicating Authority (NCLT) or for that matter the Appellate Authority (NCLAT). If so, non-recording of any reason for taking such commercial decision will be of no avail. In the recent case, admittedly, the dissenting financial creditors have rejected the resolution plan in the exercise of business/commercial decision and not because of non-compliance of the grounds specified in Section 30(2) or Section 61(3), as such. Resultantly, the amended regulation pressed into service will be of no avail.

...In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC, and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of CoC, the proposed resolution plan is placed for discussion, and after full

*interaction in the presence of all concerned and the resolution professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. **In such a case, non-recording of reasons would not per se vitiate the collective decision of the financial creditors.** The legislature has not envisaged challenge to the "commercial/business decision" of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count".*

**E. The revised offer submitted by the Applicant was not put before the COC:**

- (i) As stated above, the Hon'ble NCLAT by its order dated December 20, 2018, the last date for completion of the CIRP of the Corporate Debtor was extended till February 4, 2019. The JNPT Resolution Plan was approved by the COC on February 2, 2019, viz., before the last date of the CIRP Period. Further, Miscellaneous Application No. 529 of 2019 was filed by the Resolution Professional before this Hon'ble Tribunal on February 05, 2019 seeking the approval of this Hon'ble Tribunal concerning the JNPT Resolution Plan. The APSEZ submitted its revised offer to the resolution professional only on February 15, 2019, which is after the completion of the CIRP Period.
- (v) The revised offer submitted by the APSEZ could not have been put before the COC for two primary reasons viz., first, the revised offer was received by the Resolution Professional after the completion of the CIRP Period and secondly the COC had already approved the JNPT Resolution Plan and a Miscellaneous Application No. 529 of 2019 under section 31 of the Code for approval of the same had been filed before this Tribunal on February 5, 2019. Given the circumstances mentioned above, the

resolution professional could not have put the revised offer submitted by the APSEZ before the CoC. The Resolution Professional addressed an email dated February 19, 2019, intimating the above to the APSEZ. The email dated February 19, 2019, and the copy of the order dated December 20, 2018, is annexed to the Affidavit in Reply on behalf of Respondents, which are Exhibit N & M respectively in the captioned Miscellaneous application.

**F. Other allegations**

- (i) The APSEZ has also alleged that the APSEZ lost out on an opportunity to conduct face to face negotiations with the COC. It is submitted that the Process Document or subsequent amendments did not contain any clause which contemplated face to face negotiations with the members of the COC.
- (ii) The Applicant has further alleged that the process followed by the Resolution Professional was contrary to the procedure prescribed in law.
- (iii) The code was enacted in order to create a comprehensive framework for insolvency and bankruptcy proceedings. The object and purpose of the Code are to ensure an effective legal framework for time-bound resolution, to maximise the value of assets, promote entrepreneurship and balance the interests of all stakeholders and facilitate investment in turn.
- (iv) Further, it may be noted that the Port at Dighi is a national asset and an important national resource. The efficacious and quick rehabilitation of the Port is critical to national interest and effective utilisation of national resources.

86. It is pertinent to mention that Resolution Applicant (JNPT) was developed as an alternative to Mumbai Port of decongesting the latter and commenced operations in 1989. It is the largest container handling port in India, handling 55% of the container cargo across all

major ports in India and is ranked 34th among the top 50 container Ports in the world. Commissioned on 23rd May 1989, JNPT port occupies a prominent place among the most modern ports in India. The total land area in possession of JNPT measures to 2,987 hectares with enough backup area for developing additional facilities for future maritime requirements of the country. Today, JNPT is a fully mechanised port that uses the latest technology in handling cargo at the terminals. The JNPT has chartered India's international trade to the glorious course of success and achievements, breaking all records and creating new benchmarks. It handled 66.0 million tons of total cargo during the financial years 2017-2018. The operating income for FY 2017-2018 amounts to INR, 1,890.88 Crores compared to INR 1,700.97 Crores during FY 2016-17. JNPT has firmly anchored itself as the major catalyst for the trade and commerce in the country and is strongly committed to providing seamless services to the world that docks here.

87. The container traffic handled by JNPT accounts for 53.28% of the total container handling of 8.45 million TEUs by all Major Ports in the country in FY 2017.

88. It is also important to mention that the Resolution Applicant JNPT is the only major port in India to have achieved all the four certifications :

(a) ISO 9001:2008 Standards for Quality Management System

(b) ISO 27001:2013 Standards for Information Security Management System

(c) ISO 14001: 2004 for Environmental Management System

(d) OHSAS 18001:2007 for Occupational Health & Safety Management System.

89. It also over the year, JNPT has won many accolades, awards and recognition for its work. for instance " Best Container Terminal Port

Award” and “Indian Maritime personality of the year” at the Gateway awards (2018)

- Container handling Port of the year and ‘Port Personality of the Year’ as a maritime and Logistics Award (the year 2018).
- “Best Port of the Year (containerised)” at India Maritime Award ( year2018,2016).
- “India maritime Award” for best Port of the Year ( year2017).”
- “Best Container Terminal Port Award” at the Gateway Awards 2017 (year 2017,2016)
- “Mala- maritime & Logistics Award” The Container Terminal The operator of the year 2017.
- Leading Container Port Award at Maritime Nation Award 2017.
- Samudra Manthan Award as a caring organisation of the year 2017.
- Port Operator Award by Lloyd’s List South Asia, Middle East
- moreover, Africa Awards.
- Samudra Marathon Award- Public Port of the Year 2016.
- “mala – maritime & Logistics Award” – The container terminal Operator of the year 2016.

For the FY ended March 31	2015	2016	2017	2018
Total Income	1,809.41	1,984.69	2,162.43	2,249.26

90. In January 2018, CRISIL assigned an external credit rating of "AAA' (stable) to JNPT for long-term tax-free bonds amounting to INR 2,000 Crores and bank loan facilities for INR 2680 Crores.

91. The Resolution Professional itself stated that in line with its future growth plan, JNPT is looking for brownfield expansion opportunities on the West Coast of India. There are clear synergies between JNPT and DPL and the key factors underlying JNPT's decision to present a resolution plan for the company are as follows:

- (a) In line with the core competency of JNPT and availability of in-house expertise, skills, operations and management the scale-up of operation will be faster
- (b) Support JNPT to retain its leadership position
- (c) The acquisition will help JNPT capture a wider hinterland
- (d) Support the coastal cargo movement in the hinterland.

**Non-submission of performance bank guarantee.**

92. **JNPT has submitted that (a) the purpose of performance guarantee, is to ensure that a party is solvent enough; (b) JNPT is a Public Sector Undertaking backed by the Government of India; and (c) it could not submit the performance guarantee as "due to the elections" specific permissions are held up since the last few months. It is submitted that these contentions are untenable and fallacious on facts and in law, for the following reasons:**

93. Submission of Performance Guarantee was an essential provision of the Process Document and had to be scrupulously complied with. The COC considered stipulation for submission of the Performance Guarantee as mandatory, as evident from the use of the terms "shall provide" in Clause 1.9.1 of the Process Document. It is submitted that words used in the Process Document cannot be ignored or treated as

redundant or superfluous – they must be given meaning and necessary significance.

94. A government undertaking involved in everyday trade and commerce and participating in CIRP (such as JNPT) cannot claim a privileged or a favoured position to justify its breach of essential conditions of the Process Document and Regulation 36(B) (4A) of CIRP Regulations.
95. Without prejudice to the Applicants foregoing submissions, it is submitted that the record including the letter dated 4<sup>th</sup> March 2019 (brought on record by JNPT for the first time by tendering in NCLT on 3<sup>rd</sup> May 2019) does not bear the reason (i.e. not obtaining the approvals “due to elections”) stated during oral arguments. Pertinently, the election schedule was notified only in March 2019. From the inception of the CIRP, JNPT was aware of the requirement to submit Performance Guarantee if selected. This being so, the reason stated appears only to be an afterthought, engineered and must be rejected. In any event, there was and is no question of the RP / COC contending that the JNPT resolution plan is considered by the Adjudicating Authority for approval, without a Performance Guarantee. The same would be contrary to be the provision of both the Code and the Process Document.
96. It is contended by the applicant that Clause 1.9.5 of the Process Document conferred a right upon the COC to reject such a plan, but the COC decided not to reject. It is emphasized by the applicant that;
- i. Submission of performance guarantee was and is an essential provision. Non-submission of performance guarantee is a material breach of the terms of the Process Document and JNPT ought to have been disqualified. It is submitted that breach of the material condition cannot be condoned by COC, particularly in the absence of any bona fide reason.
  - ii. This is also borne out by the amendment to the CIRP Regulations, viz. introduction of Regulation 36B (4A). Even the said Regulation

does not give any relaxation to the State/instrumentality of the State. Therefore, the RP / COC could not have given relaxation to JNPT.

- iii. Any purported power to condone (which in any event does not exist in the present case), is exercisable across the board and not in favour of an identified interest. The Process Document did not indicate that the requirement to furnish Performance Guarantee will be waived off for a Government undertaking. The COC, therefore, can not selectively relax/ condone the requirement to the benefit of JNPT. It is submitted that if this is done, the process will stand vitiated because of arbitrariness and capriciousness, and displacement of the level playing field. It is submitted that it does stand so vitiated in the instant case.
- iv. Without prejudice to the above, even assuming COC was empowered to condone the same, there is nothing on record to show that the COC has condoned the non-submission of the Performance Guarantee. Admittedly, the COC has not considered the issue of non-submission of Performance Guarantee by JNPT.
- v. It is pertinent to mention that non-submission of Performance Bank Guarantee by JNPT which is a Government of India undertaking will not render the CoC decision a nullity since JNPT has "**Sovereign Guarantee**", which is at a very higher footing than bank guarantee and there is no reason to question the solvency of Government of India undertaking.
- vi. The process/ the method to be adopted for evaluation of plan matrix/ the method of maximisation of value of the asset of the Corporate Debtor is entirely at the discretion of the CoC who is the member of the Financial Creditors of the Corporate Debtor. Therefore, the continuation/discontinuation of the Swiss challenge method is at the sole discretion of the CoC and the Adjudicating Authority cannot question the wisdom of the same given the

judgment of the Hon'ble Supreme Court in the matter of K. Sashidhar (supra).

97. With regard to the objections filed by the unsuccessful resolution applicant, APSEZ, it is pertinent to note the observations of the Hon'ble Supreme Court in *K. Sashidhars Indian Overseas Bank & Ors., (CIVIL APPEAL NO.10673 OF 2018 judgment dated 05.02.2019)* regarding the mandate of the Adjudicating Authority under section 31 when has already approved or rejected a resolution plan. The observations of the Apex Court are reproduced below:

*"44. ... there is no provision in the I&B Code which empowers the adjudicating authority (NCLT) **to oversee the justness of the approach of the dissenting financial creditors in rejecting the proposed resolution plan or to engage in judicial review thereof.** Concededly, the inquiry by the resolution professional precedes the consideration of the resolution plan by the CoC. The resolution professional is not required to express his opinion on matters within the domain of the financial creditor(s), to approve or reject the resolution plan, under Section 30(4) of the I&B Code. At best, the Adjudicating Authority (NCLT) may cause an enquiry into the "approved" resolution plan on limited grounds referred to in Section 30(2) read with Section 31(1) of the I&B Code. It cannot make any other inquiry nor is competent to issue any direction about the exercise of commercial wisdom of the financial creditors be it for approving, rejecting or abstaining, as the case may be. Even the inquiry before the Appellate Authority (NCLAT) is limited to the grounds under Section 61(3) of the I&B Code. It does not postulate jurisdiction to undertake scrutiny of the justness of the opinion expressed by financial creditors at the time of voting. To take any other view would enable even the minority dissenting financial creditors to question the logic or justness of the commercial opinion expressed by the majority of the financial*

*creditors albeit by requisite percent of voting share to approve the resolution plan; and in the process authorize the adjudicating authority to reject the approved resolution plan upon accepting such a challenge. That is not the scope of jurisdiction vested in the adjudicating authority under Section 31 of the I&B Code dealing with the approval of the resolution plan.*

*45. To put it differently, since none of the grounds available under Section 30(2) or Section 61(3) of the I&B Code are attracted in the fact situation of the present case, the Adjudicating Authority (NCLT), as well as the Appellate Authority (NCLAT), had no other option but to record that the proposed resolution plan concerning the respective corporate debtor (KS&PIPL and IIL) stood rejected."*

98. Thus, this Adjudicating Authority cannot sit in a judicial enquiry into the commercial wisdom of the CoC in dissenting to the resolution plan of the unsuccessful resolution applicant, i.e. APSEZ and that too with a whopping percentage of 99.38%. Instead, when the CoC has approved the resolution plan of the JNPT with a majority of 99.38%, then enquiry into the "approved" resolution plan is only possible on limited grounds referred to in Section 30(2) read with Section 31(1) of the I&B Code.
99. In light of the above observations, MA 761/2019 filed by APSEZ is rejected.
100. The Resolution Applicant has sought certain reliefs and concession in its resolution plan in the following terms:
- a. Waiver from the levy of stamp duty and fees by the stamp authorities and Ministry of Corporate Affairs, applicable about this Resolution Plan and issuance of new Equity Shares to the Resolution applicant (or its nominees). Further, direction to the relevant collector/ department of stamps and the Ministry of Corporate Affairs for waiver from the levy of stamp duty or filing

fees applicable in relation to this Resolution Plan and its implementation including an increase of authorised capital of the company or issuance of new Equity Shares to the Resolution Applicant or its nominees or transfer of any land from third parties required for the operations of the Company.

- b. DPL and the Resolution Applicant shall be granted an exemption from all taxes, levies, fees, transfer charges, transfer premiums, and surcharges that arise from or relate to the implementation of the Resolution Plan, since payment of these amounts may make the Resolution Plan unviable.
- c. Waiver of any income-tax and Minimum Alternate Tax (MAT) liability or consequences ( including interest, fine, penalty, etc) on DPL, Resolution Applicant and its shareholders on account of various steps as proposed in the Resolution Plan, including but not limited to waiver from applicability of Section 50CA and liabilities if any under Section 41(1), Section 56, Section 43, Section 43B, Section 28, Section 115JB and Section 79 of the Income-tax Act, 1961, including, without limitation waiver of MAT and income tax implication arising due to write back/ write off of liabilities in the books of accounts of DPL without any impact on brought forward tax and book loss/ depreciation, pursuant to this Resolution Plan.
- d. Any requirements to obtain waivers from any Tax Authorities including in terms of Section 79 of the IT Act is deemed to have granted upon approval of this Resolution Plan on the Effective Date.
- e. Any approvals that may be required from Governmental Authorities (including tax authorities) in connection with the implementation of the Resolution Plan including on account of change in ownership/ control of DPL shall be deemed to have been granted on the Effective Date.

- f. DPL Shall be granted a (i) 100% reimbursement up to the extent of Central government's share of CGST and IGST for a period of 5 years from the Effective Date: and (II) 100% reimbursement of the Central Government's share of income tax for a period of 5 years from the Effective Date.
- g. Upon approval of the Resolution plan by the Adjudicating Authority, all non-compliances, breaches and defaults of DPL for the period prior to the Effective Date including but not limited to the Companies Act, Environment Protection Act, 1986 and the Coastal Zone Regulation 1991, Water (Prevention & Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 Hazardous Wastes ( Management, Handling and Transboundary Movement) Rules, 2008, Customs Act, 1962 and taxation laws including income Tax Act, 1961. Goods and service Tax, Maharashtra State Tax on Professions, Trade, calling and Employments Act, 1952 Employees' Provident Fund and Miscellaneous Provision Act, 1952, Contract Labour ( Regulation and Abolition) Act, 1970, Foreign Exchange & Management Act, 2010 shall be deemed to be waived by the concerned Government Authorities. Immunity shall be deemed to have been granted to DPL from all proceedings and penalties under all applicable Laws for any non-compliance for the period before the Effective Date, and no interest/penal implications shall arise due to such non-compliance/default/ breach before the Effective Date.
- h. Waiver/extinguishment of any tax (including but not limited to income tax and MAT) and duty (including interest, fine, penalty, etc.) and legal liability pertaining for the period before the Effective date such as any kind of existing and future litigation/ assessment/ scrutiny /contingency.
- i. From the Effective Date, all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes,

proceedings in connection with DPL or affairs of DPL (including those initiated by Governmental Authorities), pending or threatened, present or future in relation to any period prior to the Effective Date, or arising on account of implementation of this Resolution Plan shall stand withdrawn and dismissed and all liabilities and obligations, therefore, whether or not set out in the balance sheets of DPL or the profit and loss account statements of DPL will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to DPL or the Resolution Applicant. Upon approval of this Resolution Plan, all new inquiries, investigations, notices, suits claims, disputes, litigations, arbitrations or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against DPL and /or its new management in relation to any period prior to the Effective Date.

- j. Waiver of the requirements under the Companies Act, 2013 in respect of the removal of the existing or appointment of new statutory or internal auditors of the Company. Further, **Direction to the Ministry of Corporate Affairs to waive the requirements** under the Companies Act, 2013 in respect of the **removal of the existing and appointment** of new statutory and internal **auditors** of the Company.
- k. Permission to the Company to continue to use the licenses, approval, registrations from the Governmental authorities in respect of its business, despite their expiry or lapse, till the same are renewed by the Resolution Applicant. Further, direction to the relevant Governmental Authority to **transfer all licenses**, consents or approvals given in the name of **BIPL** ( for business of the Company) in the name of the Company and direction to the relevant Government Authority to **renew all licenses**, consents or

approvals needed for the business of the Company that have expired prior to the Effective Date.

101. The above reliefs and concessions are not granted. However, it may apply to the relevant regulatory authority for any exemption which it may be allowed as per law. The Resolution Applicant is required to submit on affidavit its approval to the Resolution Plan with modifications as mentioned above within seven days from the date of receipt of this order.
102. Any relief sought for in the Resolution Plan, where the contract/agreement/understanding/proceedings/actions/notice etc. is not specifically identified or is for future and contingent liability, is at this moment rejected.
103. The Resolution Applicant, on taking control of the Corporate Debtor, shall ensure compliance under all applicable law for the time being in force.
104. We shall clarify here that any resolution applicant shall overtake the Corporate Debtor with all its assets and liabilities. If any relief concerning any identified liability of the Corporate Debtor is required, then that needs to be mentioned and sought for in the Resolution Plan. This bench cannot allow any general power to any resolution applicant absolving him of liability of the corporate debtor company without knowing about the liability against which such exemption is sought. In other words, reliefs/exemptions from only existing liabilities which are specifically identified can be sought and allowed in the Resolution Plan.
105. On perusal of the Resolution Plan, we find that the resolution plan has necessary provisions for its effective implementation.
106. The resolution applicant shall obtain the necessary approval required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.

107. Given the above observations, we as a result of this approve the resolution plan with modifications, if any as mentioned above, which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.
108. The moratorium order under section 14 shall cease to have effect from the date of this order.
109. The resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.
110. The Resolution applicant has to adhere to all the applicable law for the time being in force. Since we have approved the resolution plan with certain conditions, therefore, it requires acceptance of the resolution applicant.
111. List on 27.05.2019 for filing acceptance of conditional approval of the resolution plan.
112. The Resolution Plan is at this moment approved under section 31(1) of IBC with observations above. The MA 529/2019 is accordingly allowed and disposed of.

**Sd/-**

**RAVIKUMAR DURAISAMY**

Member (Technical)

08.05.2019

**Sd/-**

**V.P. SINGH**

Member (Judicial)