

**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE, KOLKATA  
ORIGINAL APPLICATION NO. 188/2023**

IN THE MATTER OF:

Rajkumar Das

...Applicant

Versus

MoEFCC & Ors.

...Respondent(s)



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Place: Kolkata

Date: 10<sup>th</sup> July, 2025

Respondent No. 1

*Amrita Pandey*

Through

Amrita Pandey  
Advocate

**11 0 JUL 2025**

SL. NO. 265 974  
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**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE, KOLKATA  
ORIGINAL APPLICATION NO. 188/2023**

IN THE MATTER OF:

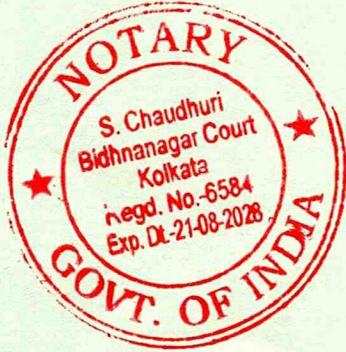
Rajkumar Das

...Applicant

Versus

MoEFCC & Ors.

...Respondent(s)



**BEFORE THE NOTARY PUBLIC  
AT BIDHANNAGAR  
DIST-NORTH 24 PARGANAS**

**REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1, MINISTRY  
OF ENVIRONMENT, FOREST, AND CLIMATE CHANGE**

I Dr. Shahida Parvin Quazi, daughter of Late Quazi Sirazul Haque, aged about 47 years, presently working as 'Scientist - E' at the Sub Office Kolkata, Regional Office Bhubaneswar under the Ministry of Environment, Forest and Climate Change, having its office at IB-198, Sector- III, Salt Lake City, Kolkata - 700 106, do hereby, in my official capacity, solemnly affirm and state as under-

1. That, I am acquainted with the facts and circumstances of this Original Application and duly competent to swear the present affidavit on behalf of Respondent No.1 i.e., the Ministry of Environment, Forest & Climate Change based the official records maintained therein.

2. It is humbly submitted that, all the averments made in the instant application are denied except those which are specifically admitted herein in this reply affidavit.

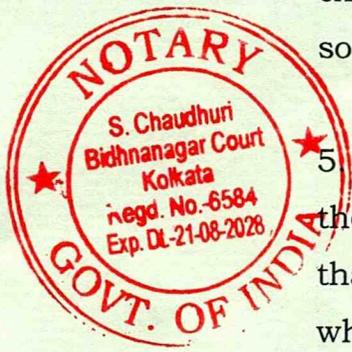
3. It is humbly submitted that the present affidavit is being filed in compliance with the directions of this Hon'ble Tribunal dated 28.11.2024 and may be read in continuation of the earlier affidavit submitted by the Answering Respondent in the instant matter.

4. It is humbly submitted that on contextualize, a complaint was received in the Ministry alleging non-compliance with the conditions

**10 JUL 2025**

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of the Environmental Clearance (hereinafter referred to as "EC") by the Project Proponent, M/s Ramsarup Loh Udyog Limited. Considering the persistent non-compliance with EC conditions observed during site inspections, in accordance with the Standard Operating Procedure (SoP) dated 25.11.2022, a personal hearing was convened by the Ministry on 11.07.2024. One of the outcomes of the said personal hearing, inter alia, included the following: "with respect to interpretation of the Resolution Plan and the Hon'ble Supreme Court order regarding the validity of EC and CTO, views of the Legal Monitoring Cell (LMC) are to be sought." Subsequently, this Hon'ble Tribunal, vide order dated 28.11.2024, was pleased to direct the Answering Respondent to file a status report on affidavit explaining whether the views of the LMC have been obtained and, if so, to place the same on record. Hence, this affidavit.



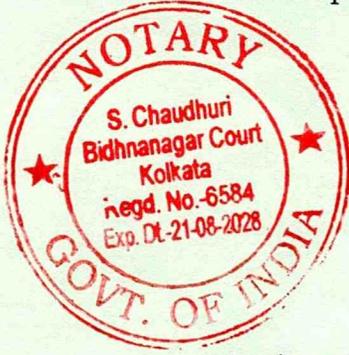
5. It is humbly submitted that the matter was examined in detail by the Legal Monitoring Cell (LMC) of the Ministry. The LMC opined that in light of Clauses 15.13 and 15.14 of the Resolution Plan, which has been upheld by the Hon'ble Supreme Court vide order dated 04.05.2021, it is submitted that the EC dated 03.06.2009 with a validity for five years was valid until 02.06.2014. As per the Suspension Certificate, the project was shut down in May 2010, the residual period of validity after shut down was 4 years. Considering Clause 15.14(ii) (c) of the Resolution Plan, the said EC dated 03.06.2009 will be valid for its residual period of 4 years as on date of shut down w.e.f. the effective date i.e. 04<sup>th</sup> May, 2021 (date when the Hon'ble Supreme Court upheld the order of the Hon'ble NCLT, Kolkata Bench).

6. It is humbly submitted that concluded by LMC, it was interpreted that EC dated 03.06.2009 will be valid for 4 years. Based on this observation, the Answering Respondent vide letter no. IA-Z-12011/16/2023-IA-I dated 20.09.2024 informed the Project Proponent that the EC shall be deemed valid until 03.05.2025 and directed the PP to initiate appropriate action for proposing amendments to the conditions of ECs dated 2006 and 2009, which are now applicable to the project. Copy of the Resolution Plan, Hon'ble Supreme Court's order dated 04.05.2021, Hon'ble NCLT order dated 04.09.2012, and letter dated 20.09.2024 have been annexed herewith as **Annexure-1, Annexure-2, Annexure-3, and Annexure-4**, respectively.

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7. It is humbly submitted that the present Additional Affidavit may kindly be taken on record and into consideration and the Hon'ble Tribunal may pass appropriate Order(s)/direction(s) as deemed fit and proper under the facts and circumstances of the present case.

8. It is humbly submitted that the Answering Respondent seeks leave to make additional submissions, if required, during the course of the proceedings.



*S. Shahida Pasuin*

**DEPONENT**

**VERIFICATION**

I, the above-named Deponent, do hereby verify that the contents of the above affidavit are true and correct to my knowledge as per the records of the answering respondents. No part of it is false and nothing material has been concealed there from. Verified at Kolkata on this <sup>10<sup>th</sup></sup> day of July 2025.

*S. Shahida Pasuin*

**DEPONENT**

*S. Chaudhuri*  
**S. CHAUDHURI**  
 ★ NOTARY ★  
 GOVT. OF INDIA  
 Regd. No.-6584/08  
 Bidhannagar Court  
 Dist.-North 24 Pgs.

**10 JUL 2025**



Consortium of S. S. Natural Resources Pvt Ltd and Shyam SEL & Power Limited

**Resolution Plan**

for

**Ramsarup Industries Limited**

(pursuant to the Insolvency and Bankruptcy Code, 2016 as amended)

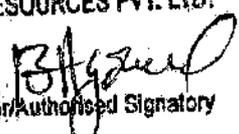
by

**Consortium of SS Natural Resources Private Limited  
and Shyam SEL & Power Limited**

**(Resolution Applicants)**

**March 11, 2019**

**For S. S. NATURAL RESOURCES PVT. LTD.**

  
Director/Authorised Signatory

**PART A: EXECUTIVE SUMMARY****DEFINITIONS AND INTERPRETATIONS:**

The (i) rules of construction; and (ii) defined terms used in this Plan (other than those defined in the Plan itself) are set out in **Annexure 1 (Definitions and Rules of Interpretation)**.

**OVERVIEW:**

The consortium of SS Natural Resources Private Limited (“SSNRPL”), a special purpose vehicle (“SPV”) and Shyam SEL & Power Limited are the resolution applicants under this Plan (SSNRPL and Shyam SEL & Power Limited are herein after collectively referred to as “**Resolution Applicants**” or “**RAs**”).

SSNRPL being a part of Shyam SEL & Power group, is a private company incorporated under the provisions of the Companies Act, 1956 under the corporate identity number U10300WB2015PTC204962 and having its Registered Office at **S. S. Chambers, 5, C. R. Avenue, 2nd Floor, Kolkata, West Bengal 700072**.

Shyam SEL & Power Limited is a company incorporated under the provisions of the Companies Act, 1956, under the corporate identity number U27109WB1991PLC052962 and having its registered office at 5 C.R. Avenue, Princep Street, Kolkata 700072.

The Resolution Applicants are submitting the Resolution Plan for the Corporate Debtor under the Code. The RAs propose to implement the Resolution Plan in accordance with the Process Memorandum, the CIRP Regulations and in the manner described in detail in **Annexure 2** of the Resolution Plan and seek the support of all the stakeholders of the Company in this regard.

The National Company Law Tribunal, Kolkata Bench (“**Adjudicating Authority**”), through its order (“**Order**”) dated January 08, 2018 (“**Insolvency Commencement Date**”), admitted the application for initiation of corporate insolvency resolution process (“**CIRP**”) filed by the corporate applicant in respect of the Corporate Debtor in accordance with Section 10 of the Code.

Pursuant to the Order, Mr. Nilesh Sharma was appointed as the interim resolution professional (“**Interim Resolution Professional**”). Further pursuant to order dated May 2, 2018, Mr. Kshitiz Chhawaharia was appointed as the resolution professional (“**Resolution Professional**”) for the Company by the Adjudicating Authority on the advice of CoC.

The Resolution Professional has provided an Information Memorandum on June 30, 2018 containing certain information relating to the Company (as amended from time to time). We thank the Resolution Professional and the COC for inviting the Resolution Applicant to submit a resolution plan for the Company.

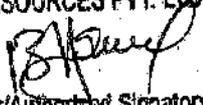
The Information Memorandum and Data Room do not contain all necessary information or the information sought by the Resolution Applicant. This Resolution Plan has been proposed based on the limited information given in the Information Memorandum and Data Room and on the assumptions and other terms and conditions stated in this Resolution Plan. The Resolution Applicant is submitting a resolution plan for the insolvency resolution of the

Company as a going concern.

The Resolution Plan has been proposed based on the limited information given in the Information Memorandum, the Data Room, on the assumption and on other terms and conditions stated in the Resolution Plan.

The Resolution Applicant has taken into account the interest of all the stakeholders based on the information provided in the Information Memorandum and Data Room and therefore believes that the Resolution Plan will create a sustainable capital structure that will enable the Company to run as a "going concern". Accordingly, the Resolution Applicant is very keen to work with the stakeholders of the Company and are confident of delivering on this Resolution Plan in an expeditious and time-bound manner after receiving necessary approvals.

For S. S. NATURAL RESOURCES PVT. LTD.

  
Director/Authorised Signatory

**PART B: BACKGROUND****1. The Corporate Debtor**

- (a) The Corporate Debtor is a company registered under the Companies Act, 1956 with its registered office and corporate office at 7C, **Kiran Shankar Roy Road, Hasting Chambers, 2nd Floor, Room No. 1, Kolkata - 700 001, India**, with corporate identification number **L65993WB1979PLC032113**.
- (b) The Corporate Debtor was incorporated on 9<sup>th</sup> July, 1979 and is involved in the business of manufacturing of Steel, TMT Bars and Steel Wires. The Company's manufacturing units are summarized as follows:

Location	Area	Land Title	Product
Kharagpur	Approximately 315 Acres	99 year lease with West Bengal Industrial Development Corporation (WBIDC)	Integrated Steel Plant
Durgapur	54 Acres	Freehold land admeasuring 52.29 Acre owned by Vanguard Credit Holdings Pvt Ltd. ("Vanguard") where Mr Aashish Jhunjhunwala (erstwhile promoter of the Corporate Debtor) is holding >99% stake.	Steel Wire
Shyamnagar	8.7 Acres	Freehold	TMT & wire
Kalyani	8 Acres	999 year lease with the Government of West Bengal <sup>1</sup>	Steel Wire
<b>Non-Core Asset</b>			
Windmill located at Dhule	6 Acres	Freehold	Wind power

**(c) Snapshot of the Corporate Debtor**

Particulars	Description
Constitution	Publicly Listed Company (Listed in BSE & NSE)
Incorporation	9 <sup>th</sup> July, 1979
Promoters	Mr. Aashish Jhunjhunwala & Family
Key Business	Manufacturing of Wire, Pig Iron, Sponge Iron, TMT bars, Wind Power generation
Registered Office	7C, Kiran Shankar Roy Road, Hasting Chambers,

<sup>1</sup>Out of the total land, land admeasuring 1 Bigha 1 Cottah 14 Chittaks & 26 Sqft is leased to Efficient Engineering (EE), a Proprietorship firm owned by Mr. Ashish Jhunjhunwala (erstwhile promoter of the Corporate Debtor) by the Government of West Bengal

2nd Floor, Room No. 1, Kolkata - 700 001.
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(d) **Classes of Shareholders of the Corporate Debtor**

Category of shareholders	No of Shares*	Percentage
<b>Promoter and Promoter group</b>	<b>1,31,88,896</b>	<b>37.60%</b>
<b>Public Shareholders</b>	<b>2,18,88,305</b>	<b>62.40%</b>
<i>Financial Institutions</i>	<i>15,21,542</i>	<i>4.34%</i>
<i>Bodies Corporate</i>	<i>27,69,573</i>	<i>7.90%</i>
<i>NRIs</i>	<i>2,95,411</i>	<i>0.84%</i>
<i>Individual Shareholders</i>	<i>1,55,00,174</i>	<i>44.19%</i>
<i>Others</i>	<i>18,01,605</i>	<i>5.14%</i>
<b>Total</b>	<b>3,50,77,201</b>	<b>100.00%</b>

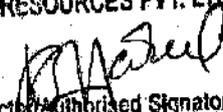
Classes of Shareholders	No of shares	Face Value	Share Capital Rs. in cr
Equity Share	3,50,78,480	10	35.08
5 % Redeemable Cumulative Preference Shares	13,00,000	10	1.30
4 % Redeemable Cumulative Preference Shares	31,60,000	10	3.16
5 % Redeemable Non-Cumulative Preference Shares	2,24,99,920	10	22.50
<b>Total</b>	<b>6,20,38,400</b>		<b>62.0384</b>

(e) **Liabilities and Creditors Analysis**

According to the Provisional Balance Sheet, the liabilities of the Company are as below:

Description	Amount (Rs. in Cr)
Short-Term Borrowings	2048.50
Trade Payables	17.58

For S. S. NATURAL RESOURCES PVT. LTD.


  
Director/Authorized Signatory

Other Current Liabilities	1358.88
Short Term Provision	5.42
<b>Total Liabilities</b>	<b>3430.37</b>

- (f) The following is the list of claims received and admitted by the Resolution Professional based on the last updated List of Creditors:

Creditor Claims* (INR Crore)	Amount Claimed (Rs. in crore)	Claim Admitted (Rs. in crore)
Financial Creditors	6046.77	5853.09
Operational Creditors (other than Workmen and employee)	284.23	216.17
Operational Creditors (only Workmen and employees)	20.31	7.88
<b>Total Claims</b>	<b>6351.31</b>	<b>6077.14</b>

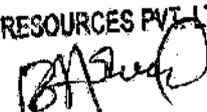
\* Shall be subject to change if any till the Cut-Off Date.

## 2 PROPOSAL FOR CREDITORS AND OTHER PAYMENTS

- 2.1 The Resolution Applicants' financial proposal ("**Financial Proposal**") is based on the statement of assets and liabilities of the Corporate Debtor as set out in the Provisional Balance Sheet of the Corporate Debtor and as uploaded in the Data Room and the List of Creditors of the Corporate Debtor as uploaded on the Corporate Debtor's website [www.ramsarup.com](http://www.ramsarup.com) as of November 11, 2018 and as updated from time to time ("**List of Creditors**").
- 2.2 As per the Information Memorandum and List of Creditors, total claim filed amounting to Rs. 6,046.77 Cr. (Rupees Six Thousand Forty Six Crores and Seventy Seven Lakhs), out of which claims aggregating to Rs. 5853.09 crores (Rupees Five Thousand Eight Hundred Fifty Three Crores and Nine Lakhs) have been verified and admitted ("**Admitted Debt**") till date for the purpose of CIRP by the Resolution Professional.
- 2.3 The following table summarises the proposed offer as a part of the Resolution Plan to the financial creditors of the Corporate Debtor ("**Financial Creditors**") as well as other creditors specified under the Code:

Particulars	Amount (in Rs Crores)
CIRP Process Cost*	[•]
Sustainable Debt to be paid upfront to the Financial Creditors	351.0

For S. S. NATURAL RESOURCES PVT. LTD.

  
Director/Authorised Signatory

Payment to Operational Creditors	3.50
Payment to Workmen	7.00
Payment towards Statutory Liabilities	3.00
Capex / Working Capital	306.00

\* To be paid at actuals

### 3 PARTICULARS OF THE RESOLUTION APPLICANT

The Resolution Applicant is a consortium comprising SSNRPL and Shyam SEL & Power Limited. SSNRPL is the lead partner of the consortium. The particulars of the consortium members are provided in Annexure 5.

#### 3.1 Promoters, persons in management and control and connected Persons

The particulars of promoters, persons in management/control and connected persons of the Resolution Applicant, as referred to in Section 29A of the Code, and Regulation 38(3) of the CIRP Regulations ("Connected Persons") has been separately provided in the formats provided in the Process Memorandum.

#### 3.2 Credibility of the Resolution Applicant, the Shyam SEL Group and Connected Persons

The particulars regarding credibility of the Resolution Applicant, the Shyam SEL Group and the Connected Persons have been separately provided in the format provided in the Process Memorandum.

#### 3.3 Details of the Resolution Applicant and Connected Persons

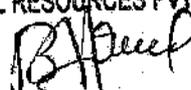
*No conviction for any offence, if any, during the preceding five years:* The Resolution Applicant or the Connected Persons have NOT been convicted of any offence during preceding five years.

*No criminal proceedings pending:* There are no criminal proceedings pending against the Resolution Applicant or the Connected Persons.

*No disqualification, if any, under the Companies Act, 2013, to act as a director:* The Resolution Applicant is not a natural person, and it cannot be appointed as a director under the Companies Act. Accordingly, the provisions regarding disqualification do not apply to the Resolution Applicant. The Connected Persons who are natural persons are not disqualified to become a director under the Companies Act.

*Not identified as a wilful defaulter, if any, by any bank or financial institution or consortium thereof in accordance with the guidelines of the RBI:* The Resolution Applicant or the Connected Persons have NOT been recognised as a wilful defaulter by any bank of financial institution or consortium thereof in accordance with the guidelines of the RBI.

For S. S. NATURAL RESOURCES PVT. LTD.

  
Director/Authorised Signatory

*No debarment, if any, from accessing to, or trading in, securities markets under any order or directions of the Securities and Exchange Board of India:* The Resolution Applicant or the Connected Persons have NOT been debarred from accessing to or trading in securities market under any order or directions of the Securities and Exchange Board of India.

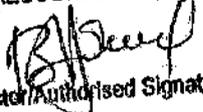
*Transactions with the corporate debtor in the preceding two years:* The Resolution Applicant or the Connected Persons did NOT have any dealings with the Corporate Debtor.

#### 3.4 **No disqualification under section 29A of the Code**

The Resolution Applicant confirms that it is eligible to submit a resolution plan in accordance with Section 29A of the Code. A copy of the affidavit stating eligibility of the Resolution Applicant under section 29A of the Code (in Format XIII) and the undertaking under regulation 39(1)(c) of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in Format VI) has already been submitted as while submitting the Plan. In addition, to the best of the knowledge of the Resolution Applicant, this Resolution Plan is not in contravention of provisions of the Applicable Law.

The Resolution Applicant states that Narantak Dealcomm Limited, a non-banking financial company registered with the RBI being the assignee of the Admitted Debt (as defined herein after), is not ineligible under the provisions of section 29A of the Code. A copy of the affidavit confirming its eligibility under section 29A of the Code is attached hereto and marked as exhibit A.

For S. S. NATURAL RESOURCES PVT. LTD.

  
Director/Authorised Signatory

**PART C: RESOLUTION PLAN****MANDATORY CONTENTS OF THE RESOLUTION PLAN****1. Insolvency resolution process cost**

- i. As per the Code, the CIRP Costs are to be paid in priority over payments to be made of any other debt and the CIRP Costs shall, amongst other things, include the costs, fees and charges incurred by the Resolution Professional, in running the operations of the Corporate Debtor as a going concern.
- ii. Within 1 (one) day after the Effective Date, the Resolution Professional shall provide a statement, containing details of the CIRP Costs as approved by the CoC from time to time, to the Resolution Applicant, and the same will be paid in full as per the Code and as elaborated in Annexure 2. The Resolution Applicant will infuse additional funds (if needed), by way of equity or any other appropriate means, to meet the CIRP Costs.
- iii. The Resolution Applicant and its group companies have sufficient funds and do not envisage any challenge in terms of source for the payments.
- iv. In any event, the Resolution Applicant may utilize their investments to fund the upfront payment for CIRP Costs by liquidating investments held by Resolution Applicant group, internal accruals or borrowed funds or such other means as deemed fit by the Resolution Applicant.

**2. Payment to Operational Creditors**

- i. As per the List of Creditors, total claims filed by operational creditors (excluding employees and Workmen) aggregate to **Rs. 284.23 Cr** (Rupees Two Hundred and Eighty Crores and Twenty Three Lakhs) out of which claims aggregating to **Rs. 216.17 Cr** (Rupees Two Hundred and Sixteen Crore and Seventeen Lakhs) have been verified and admitted for the purposes of CIRP by the Resolution Professional. Accordingly, the total claim of the operational creditors (excluding employees and Workmen) may only be partly covered in the Provisional Balance Sheet and that the entire Claims that have been received from the operational creditors (excluding employees and Workmen) may not have been included therein.
- ii. In terms of the Code, the payment due to operational creditors should not be less than the liquidation value payable to the operational creditors in the event of a liquidation of the corporate debtor under Section 53 of the Code. This would imply that the operational creditors have the right to demand amounts that would be payable to them under a liquidation scenario.
- iii. As per the Information Memorandum and Provisional Balance Sheet, the net worth of the Company is completely eroded. Further, the Corporate Debtor has not been in operations for more than 10 (ten) years. Therefore, the assets of the Corporate Debtor, including the plant and machinery are not in a working condition and considerable investment would be required to be made

before the factory and the plant and machinery of the Corporate Debtor can be made operational. Accordingly, the estimated realisable value of the assets of the Corporate Debtor shall not be significant. Therefore, based on the estimates made by the Resolution Applicant, the liquidation value of the Company will not be sufficient to cover the debt of Financial Creditors of the Company in full. Therefore, the Liquidation Value to the Operational Creditors or the other creditors or stakeholders (including dues to employees other than Workmen and statutory creditors), government dues, taxes etc. and other creditors and stakeholders shall be NIL and therefore they will not be entitled to receive any payment. Accordingly, the Resolution Applicant seeks a waiver of all the sum due towards payment of Operational Creditors.

- iv. However, the RA proposes to bring in a payment of Rs. 3.5 crores (Rupees Three Crores Fifty Lakhs Only) to meet payment to any Operational Creditor on a pro rata basis based on the amount admitted.
- v. As per regulation 38(1) of the CIRP Regulations, liquidation value due to the operational creditors should be paid in priority to the Financial Creditors. So, the aforesaid amount shall be paid within 30 (thirty) days from the Effective Date and in any event 1(one) day prior to the payment to the Financial Creditors.
- vi. All Claims made by any Existing Promoters/Promoter and Promoter Group or related party (as defined in section 5(24) of the Code), whether admitted or not and whether actual, conditional, contingent, crystallised or uncrystallised, known or unknown, whether existing or arises in the future, whether included in the Provisional Balance Sheet or financial statements of the Corporate Debtor or not, shall stand written off, waived/extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and no amounts shall be payable in respect of such Claims. The Existing Promoters/Promoter and Promoter Group were in control and management of the Corporate Debtor and their actions have resulted in the insolvency of the Corporate Debtor and any payment to them as a part of the CIRP, will adversely affect the credibility of the process, Hence on principles of equity, it is imperative that the Claims of the Existing Promoters/Promoter and Promoter Group and related parties should be/stand extinguished/written off in the manner contemplated herein.
- vii. Any and all other Claims or demands made by, or liabilities or obligations owed or payable to any actual or potential creditor, vendor, contracting counterparty, Governmental Authority, claimant, group companies or any other person whatsoever (including but not limited to the Operational Creditors) (referred to in singular as "**Third Party**" and collectively as "**Third Parties**"), whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Provisional Balance Sheet, the balance sheet of the Company or the profit and loss account statements of the Company or in the List of Creditors, in relation to any period prior to the Effective Date or arising on account of the

acquisition of control by the Resolution Applicant over the Company pursuant to this Resolution Plan, will be written off in full and shall be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

- viii. Any Encumbrance, or any other form of collateral (whether over immovable, movable assets, fixed deposits or cash or any other rights or privileges and including without limitation, any guarantee, security, letter of credit or pledge provided by the Corporate Debtor) that was created/granted/arranged by the Corporate Debtor in connection with any operational debt or any other debt or obligation of the Company, at any time prior to the Effective Date, shall automatically be released and all liabilities and obligations of the Corporate Debtor in relation to such Encumbrance or other form of collateral shall stand permanently extinguished on the approval of this Resolution Plan by the Adjudicating Authority, without the requirement of any further action on part of any party. All title deeds and other documents (including charge documents, if any) held by the Operational Creditors or on their behalf shall be immediately returned to the Corporate Debtor.

### 3. Payment of workmen's dues

- i. As per the List of Creditors, **Rs. 20.31 Crores** (Rupees Twenty Crores Thirty-One Lakhs), has been claimed by employees and Workmen and **Rs. 7.88 Crores** (Rupees Seven Crores Eighty Eight Lakhs) has been admitted by the Resolution Professional for the purpose of CIRP. In the event, any additional claim is admitted before the date of approval of the Plan by the CoC, the same shall be paid by the Resolution Applicant by infusing such additional funds as may be required subject to a maximum of Rs 7.00 Cr ("**Admitted Workmen and Employees Dues**"). In the event any further due is admitted under this category, all the Workmen and employees shall be paid pro rata based on the admitted claims by the RP.
- ii. Other than Admitted Workmen and Employees Dues all the potential obligations and rights and entitlements owed or payable to, (including any demand for any losses or damages, or interest, back wages, compensation, penal interest, liquidated damages already accrued/ accruing or in connection with any claims) any present or past, direct or indirect, permanent or temporary, employees and/or Workmen of the Company, whether admitted or not, due or contingent, asserted or unasserted, crystalized or uncrystalized, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Provisional Balance Sheet or the balance sheet of the Company or the profit and loss account statements of the Company or the List of Creditors, in relation to any prior period to the Effective Date or arising on account of acquisition of control by the Resolution Applicant over the Company pursuant to the Resolution Plan, will be written off in full and shall be deemed to be permanently extinguished by virtue of the order of Adjudicating Authority approving the Resolution Plan

and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

**4. Proposal for Statutory Liabilities including outstanding Governmental Authority Dues, Tax, etc.:**

- i. As per the Code, since the statutory liabilities are operational debt, the Resolution Applicant is required to ensure that it pays at least the liquidation value in respect of the statutory liabilities. For the reasons mentioned in Clause 2(iii) above, the Liquidation Value is **assumed to be Nil**. Therefore, **NIL** payment has been proposed under the Resolution Plan towards payment of statutory liabilities including but not limited to any outstanding government dues, Taxes, provident fund and other liabilities of the Company and no source has been identified for such payment under this Resolution Plan. However, RA proposes to infuse a sum of Rs 3 Cr (Rupees Three Crores) to meet statutory liabilities at its sole discretion on business consideration basis.
- ii. Accordingly, all Claims or demands made by, or liabilities or obligations owed or payable to or assessed by, the Governmental Authorities including but not limited to the central government, the state governments, any regulatory or local authority or body or any agency or instrumentality thereof, including all such dues, duties, penalties, fees, interest, fines, levies, cesses, assessments or additions or any other charges or payments whatsoever (including without limitation, the Claims of Operational Creditor, the Tax liabilities, direct and indirect and any liabilities in relation to any consent, permission, privilege, entitlement, exemption, benefit, license or approval granted to the Company or in relation to the Company, whether or not such consent, permission, privilege, entitlement, exemption, benefit, license or approval is subsisting, lapsed or expired), whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor or the List of Creditors, in relation to any period prior to the Effective Date or arising on account of the acquisition of control by the Resolution Applicant over the Company pursuant to this Resolution Plan, will be written off in full and will be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. It is also proposed that no interest or penalty should be levied on the crystallised statutory liabilities of the Company existing prior to the Effective Date.
- iii. Specifically, all dues under the provisions of Applicable Laws relating to Taxes (including without limitation, the Taxes, Claims and liabilities dues) whether admitted or not, due or contingent, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the List of Creditors, whether

asserted or unasserted, crystallized or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Effective Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, shall stand extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company shall not be liable to pay any amount against such dues. All notices, assessments, appellate or other proceedings pending or threatened in relation to the Company, in relation to any period prior to the Effective Date or arising on account of the acquisition of control by the Resolution Applicant over the Company pursuant to this Resolution Plan, shall stand terminated and withdrawn and all consequential liabilities, if any, shall stand extinguished and be considered as not payable by the Company by virtue of the order of the Adjudicating Authority approving this Resolution Plan and any reassessment, revision or other proceedings under the provisions of the Applicable Laws relating to Taxes would be deemed to be barred in relation to any period prior to the Effective Date, by virtue of the order of the Adjudicating Authority approving this Resolution Plan. No order of distraint or attachment shall be passed or any proceeding commenced against the Corporate Debtor or any of its assets in respect of any liability relating to the period prior to the Effective Date and any such order/proceeding shall be null and void ab initio.

- iv. Any and all rights and entitlements of the Governmental Authorities including but not limited to the Central government, the State governments, any regulatory or local authority or body or any agency or instrumentality thereof (or any other party or entity (under any agreement, lease, license, approval, consent or permission), whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the Effective Date or arising on account of the acquisition of control by the Resolution Applicant over the Company pursuant to this Resolution Plan, shall be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company or the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.

## 5. Debt owed to Financial Creditors

- i. As per the Information Memorandum and the List of Creditors, total claims filed by the Financial Creditors amount to Rs. 6046.77 Crores (Rupees Six Thousand Forty Six Crores and Seventy Seven Lakhs), out of which claims aggregating to Rs. 5853.09 Crores (Rupees Five Thousand Eight Hundred and Fifty Three Crores and Nine Lakhs) have been verified and admitted by the Resolution Professional and the same forms the part of Admitted Debt including any invoked / uninvoked corporate guarantee extended by the Corporate Debtor.
- ii. The maximum liability of the Resolution Applicant towards all financial creditors of the Corporate Debtor, irrespective of whether they have filed claim or not shall not exceed Rs. 351 crore (Rupees three hundred and fifty

one crore) and the Resolution Applicant shall not be required to make any payment beyond the aforesaid amount to the Financial Creditors.

iii. Financial Creditors shall, however, be free to proceed against guarantee issued by Existing Promoters/ Promoter or Promoter Group of the Company. In any such event, the Existing Promoter(s) / Promoter or Promoter Group shall not be entitled to any subrogation rights for the amounts paid under such guarantee obligations.

iv. Payment Terms:

(a) **Payment to Financial Creditors:** The Resolution Applicant shall deposit the Upfront Amount as outlined in the Financial Proposal in the Controlled Account within 30 (thirty) days from the Effective Date. Notwithstanding anything provided in this Resolution Plan, subject however to there being no stay against the order approving the Plan as detailed in Annexure 2, the Upfront Amount shall be debited from the Controlled Account on the 90<sup>th</sup> day from the Effective Date in the manner provided in Annexure 2 of the Plan. Such payment shall be made after payment of CIRP Process Cost, Workmen dues, statutory liabilities and payment to Operational Creditors.

(b) **Source of Funds:** The Resolution Applicant has submitted a comfort letter dated October 12, 2018, wherein Resolution Applicant has stated that it shall have sufficient funds to fund the Upfront Amount payable to the Financial Creditors.

#### 6. **Proposal for other Stakeholders (including other creditors):**

i. In relation to any other actual or potential third parties (including creditors, existing shareholders and/or other stakeholders) whose Claims have not been covered above, there will be no funds available for payment to them as the Liquidation Value for the reasons mentioned in Clause 2(iii) above, is insufficient to satisfy the claims of even the Financial Creditors in full. Therefore, NIL payment has been proposed under the Resolution Plan towards payment to such creditors and/or stakeholders and no source has been identified for such payment under this Resolution Plan.

ii. Any and all Claims or demands in connection with or against the Company (including any demand for any losses or damages or in connection with any third party Claims or any investigations by any governmental bodies or authorities such as the Securities and Exchange Board of India, Central Bureau of Investigation, Enforcement Directorate, Enforcement Directorate (PMLA)) whether under Applicable Law, equity or contract, whether admitted or not, due or contingent, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the List of Creditors,

and all inquiries, investigations or proceedings in relation to the foregoing, whether civil or criminal, in relation to any period prior to the Effective Date or arising on account of the acquisition of control by the Resolution Applicant over the Company pursuant to this Resolution Plan, shall be settled at NIL value.

- iii. All liabilities in relation to any letters of credit, letters of undertaking, guarantees, counter guarantees, corporate guarantees, bank guarantees, performance guarantees or other contingent or future Claims, liabilities and/or commitments of any nature whatsoever (including without limitation, Tax, Operational Creditor Claims and liabilities), issued by, or on behalf of, or at the behest of, the Company, or incurred or undertaken by the Company (as the case maybe), in relation to any period prior to the Effective Date or arising on account of the acquisition of control by the Resolution Applicant over the Company pursuant to this Resolution Plan, whether asserted or unasserted, whether admitted or not, crystallized or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Company or the profit and loss account statements of the Company or List of Creditors, will be written off in full and will be deemed to be permanently extinguished, by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

**7. Treatment of amounts claimed under ongoing litigations:**

- i. All litigations, prosecutions, legal proceedings, suits, claims (including claims for damages), notices, showcause notices, demand notices, actions, arbitration by any administrative, judicial, quasi-judicial, regulatory, government or any enforcement agencies, pending or threatened against the company or whose outcome adversely affects the Company (including but not limited to the proceedings set out in the Process Memorandum) arising prior to or after the Effective Date, other than the rights of the Financial Creditors to proceed against the guarantees issued for the loans to the Company, in the manner set out in this Resolution Plan, shall be deemed to have been withdrawn or dismissed and will be deemed
- ii. d to have been barred with effect from the Effective Date. Pursuant to the order of the Adjudicating Authority approving this Plan, all liabilities, obligations, demands, actions or penalties made or imposed in relation to any proceedings, whether or not claimed, whether or not filed, whether or not assessed, whether or not crystalized, whether or not accrued, whether or not admitted, whether or not notional, whether or not known, whether due or contingent, whether or not disputed, present or future, whether or not being adjudicated in any proceedings, whether or not decreed, whether or not reflected in any record, document, statement, statutory or otherwise, arising prior to or after the Effective Date, and pertaining to a period prior to the Effective Date, in relation to the Corporate Debtor, shall be deemed to have been irrecoverably waived and permanently extinguished and written off in full and settled at Nil value with effect from the Effective Date by virtue of the order of the Adjudicating Authority approving this Plan. No fresh

proceedings shall be instituted against the Corporate Debtor and no notice shall be issued or Claim or demand or investigation shall be made against the Corporate Debtor or interest, penalty, fine or liability imposed by any Governmental Authority or any person whether under any Applicable Law or contract or otherwise arising out of any act or omission relating to a period prior to the Effective Date.

- iii. No proceedings shall lie against the Corporate Debtor or the Resolution Applicant or against the directors of the reconstituted board of directors for any Claim, obligation, liability, damage or due relating to the period prior to the Effective Date. It is clarified that the Existing Promoters and existing shareholders, managers, directors, officers, employees, Workmen or other personnel of the Company shall continue to be liable for all the Claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the Adjudicating Authority pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code), whether civil or criminal, pending before any authority, court, tribunal or any other forum prior to the Effective Date or (ii) that may arise out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc (including any orders that may be passed by the Adjudicating Authority pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code), whether civil or criminal, that may be initiated or instituted post the approval of the Resolution Plan by the Adjudicating Authority on account of any transactions entered into, or decisions or actions taken by, such Existing Promoters and existing shareholders, managers, directors, officers, employees, Workmen or other personnel of the Company, and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

## 8. Subsidiaries

- i. The issued equity in all subsidiaries and associate companies of the Corporate Debtor as on the Insolvency Commencement Date or even thereafter shall continue under the title and ownership of the Corporate Debtor and shall remain the property of the Corporate Debtor without any other liability devolving upon the reconstituted Board or the Corporate Debtor.
- ii. The Resolution Applicant and the Corporate Debtor shall not be liable towards any claims or obligations (present or future, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, disputed or undisputed) towards or relating to the subsidiaries or associate companies of the Corporate Debtor, domestic or foreign, that relate to a period prior to the Completion Date, including in relation to any undertakings or guarantees issued by the Corporate Debtor for such subsidiaries and associate companies, in any manner whatsoever.

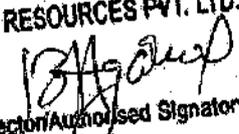
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- iii. The Corporate Debtor shall be entitled to exercise control on the subsidiaries of the Corporate Debtor, including by way of appointment of directors or otherwise. The Corporate Debtor shall be entitled to substitute and alter the board of directors of its subsidiary companies, or associate companies, as the case may be, without requiring any resignation of the previous directors or nominees of the Corporate Debtor on the board of such companies.
- iv. The Corporate Debtor shall continue as the proprietor of all the proprietorship concerns (including Ramsarup Industrial Corporation) owned by it prior to the Effective Date and shall be entitled to use all the assets including immovable properties owned/leased by such proprietorship concerns.

## 9. Limit On Liability

- i. Notwithstanding anything contained in this Resolution Plan, in no event the total cash payments by the Resolution Applicant or the Corporate Debtor to its stakeholders, for claims relating to a period prior to the Completion Date (including claims recognised in this Resolution Plan and for claims that may arise in future), shall exceed Rs. 400 Crores (Rupees Four Hundred Crores) (which is other than Capex / Working Capital but inclusive of CIRP Cost and any other requirement at the sole discretion of the Resolution Applicant). However, the RA shall be responsible for all claims relating to the period after the Completion Date.
- ii. (ii) Upon the approval of this Resolution Plan by the Adjudicating Authority, and in the case of creditors proposed to be paid pursuant to this Plan, upon the receipt by such creditors of such amounts, any and all rights and entitlements of any actual or potential creditors of the Corporate Debtor, or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, shall stand permanently extinguished and the Corporate Debtor and the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.
- iii. All claims that may arise in the future, including any claims from dues arising under any law for the time being in force and payable to any person, including a counterparty to a contract or to the Central Government, any State Government or any local authority, resulting from a contract, statute, judicial proceeding or otherwise, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the Completion Date, including any claims with respect to any litigation or other proceedings of the Corporate Debtor, shall be subject to the limit specified in this Clause in so far as they relate to the period prior to the Completion Date.
- iv. Notwithstanding anything contained in the Resolution Plan, it is hereby clarified that the Resolution Applicant shall be responsible to bear all such

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costs, charges, imposts by whatever name called post approval of the Resolution Plan.

#### 10. Further funding

The Resolution Applicants may at its discretion infuse funds by way of fresh equity and quasi equity or in any other manner for funding the capital expenditure/ working capital requirements and to settle the dues of existing creditors as well as stakeholders of the Company.

### VALIDITY AND IMPLEMENTATION OF THE RESOLUTION PLAN

#### 11. Validity Of The Plan

- i. The Resolution Plan shall upon submission to the Resolution Professional remain valid in line with paragraph 7.5.1 of the Process Memorandum.
- ii. Notwithstanding anything contained in this Resolution Plan, no part of this Resolution Plan shall become effective or enforceable until either (i) the Resolution Plan is approved by the CoC and the Adjudicating Authority in its entirety; or (ii) if approved by the Adjudicating Authority with any variance, then in the form and substance acceptable to the CoC and the Resolution Applicant. Upon approval of the Resolution Plan by the Adjudicating Authority, this Resolution Plan shall *ipso facto* form part of the Adjudicating Authority order approving the Resolution Plan.

#### 12. Implementation Schedule

The implementation schedule for this Resolution Plan is set-out below:

Activity	Days
Receipt of Letter of Intent from the CoC	Y
Issuance of Performance Bank Guarantee	Y + 5
Approval of the Plan by the Adjudicating Authority	X
Application to CCI	Not Required
Appointment of Monitoring Agency	X+1
Payment of CIRP Cost	Within X + 29 days
Payment in Controlled Account	Within X+30 days
Assignment of the outstanding loan of Rs. 100 crores ("Assigned Debt") by the Financial Creditors as detailed in Annexure 6 along with the underlying security interest in the manner provided herein.	Within X + 30 days
Infusion of Equity	Within 15 days of above (i.e. payment into Controlled Account)
Conversion of Debt into Equity	Within 45 days of above
Capital Reduction	Within 45 days of the above
Payment of Workmen Dues, Statutory	Within X + 30 days, however, prior

Creditors and Operational Creditors	to deposit of Upfront Amount in the Controlled Account i.e. within X+29 days
Financial Creditors to release Encumbrances (including making filings with ROC/ sub-registrar of assurances and other governmental agencies for recording such release), execute re-conveyance deeds, issuance of no-dues certificates and redeliver documents in relation to the Resolution Plan.	Promptly upon receipt of Upfront Amount by the Financial Creditors and in any event within 30 days of receipt of the Upfront Amount.

Notwithstanding anything contained in the Resolution Plan, including the process of implementation and the timelines thereof, the payment of Upfront Amount in the Controlled Account shall be made within a period of 30 (thirty) days from the Effective Date, and no delay in the timelines will result in a delay in the payment of the Upfront Amount in the Controlled Account.

The RA shall endeavour to complete all the approvals within 1(one) year as envisaged under Sec 31(4) of the Code.

Based on the information provided in the Information Memorandum and in the Data Room, it appears that the turnover of the Corporate Debtor does not satisfy the threshold specified in the Notification No. S.O. 988(E) dated March 27, 2017 issued by the Ministry of Company Affairs. Hence, the proposed acquisition is exempt under the provisions of the Competition Act, 2002.

## MANAGEMENT OF THE COMPANY BY RESOLUTION APPLICANT

### 13. Management of The Company

#### 13.1 Management and control of the Company post approval of the Resolution Plan by the Adjudicating Authority

- i. During the Interim Period, the Company will be monitored by a Monitoring Agency comprising the Resolution Professional, two members of the Resolution Applicant and three representatives of the CoC. The Monitoring Agency shall facilitate and supervise the implementation of the Resolution Plan during the Interim Period.
- ii. Upon approval of the Plan by the Adjudicating Authority, it shall be deemed that the Adjudicating Authority has approved the constitution of the Monitoring Agency in the manner aforesaid.
- iii. The existing directors of the Company shall vacate the office on the Effective Date. The day to day operations and the management of the Company shall be carried out by the MA, as appointed. The MA may appoint a professional agency to manage day to day operations of the Company.

- iv. MA shall be vested with all the power of the Board of Directors as envisaged under Companies Act, 2013 (amended from time to time)
- v. The Resolution Applicant and Financial Creditors reserve the right to change their nominees to the aforesaid MA, if required for better and effective management of the assets.
- vi. All fees payable to the MA and expenses incurred by the MA (including any legal costs which have arisen or may arise out of or in connection with the CIRP of the Company) shall be met out of the accruals of the Company and to the extent the internal accruals are not sufficient to meet the aforesaid costs and expenses, the same shall be paid by the Resolution Applicant.
- vii. Notwithstanding the aforesaid, it is stated that all costs incurred by the MA in connection with the day today operation of the Corporate Debtor post approval of the Plan shall be at the behest of the Resolution Applicant.

### 13.2 Management by experienced professionals

#### 13.2.1 Implementation and Supervision of the Resolution Plan after the Completion Date

After the Completion Date, the implementation of the Resolution Plan will be supervised by a suitable management team deployed by the Resolution Applicant.

#### 13.2.2 Formation of Board

It is proposed that upon the Resolution Applicant acquiring control over the Company i.e. after selective capital reduction in accordance with Annexure 2 of the Plan, the existing Board will be replaced by new Board of Directors constituted with adequate representation from the Resolution Applicant and independent directors in compliance with Applicable Laws.

#### 13.2.3 Appointment of CEO, CFO, COO and CS

- i. The appointment of Chief Executive Officer, Chief Operating Officer and Chief Financial Officer and Other Key personnel shall be decided at the appropriate time. The Resolution Applicant reserves the right to replace the key management personnel of the Company with the appropriate persons of its choice. The profile and experience statement of the proposed key management positions is set-out in Annexure 4.
- ii. It is hereby clarified that the managerial personnel appointed by the Resolution Applicant pursuant to this Clause shall not be liable for any past non-compliances with the provisions of applicable laws by the erstwhile key managerial personnel of the Corporate Debtor.

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**13.3 Managerial Competence and technical abilities****13.3.1 Appointment of Auditors (Statutory and Internal)**

The Resolution Applicant shall have the right to replace the existing auditors (Statutory and Internal) of the Company and appoint new auditors as deemed fit by the Resolution Applicant upon acquisition of control over the Company by the Resolution Applicant pursuant to the Resolution Plan.

**13.3.2 Retention of employee**

Upon acquisition of control over the Company by the Resolution Applicant in the manner set out in **Annexure 2** of the Resolution Plan, the Resolution Applicant proposes that the existing employee of the Company, if any, will continue to be employed by the Company if so required by the Resolution Applicant. Suitable augmentation of human resources to implement the Resolution Plan will be undertaken by the Resolution Applicant. The Resolution Applicant reserves the right to replace/remove existing employees to bring in operational efficiencies in the Company.

**13.3.3 Appointment of Turnaround experts**

- i. The Resolution Applicant has an experienced technical team to restore the Corporate Debtor to operational viability. The Resolution Applicant plans to use its in-house turnaround experts, as set out in **Annexure 4**. In addition to the above, the Resolution Applicant also plans to induct few more Technical experts from the industry, if necessary.
- ii. For the time being, the Resolution Applicant intends to continue with the existing sales arrangements/policy of the Company and over a period of time, would review the same and implement necessary changes in consonance with this Resolution Plan. The Resolution Applicant intends to continue with their own customer base as there is enough demand from them which the Resolution Applicant is not able to fulfil currently due to capacity constraint. The Resolution Applicant shall endeavour that the Company successfully taps in to the international market. Resolution Applicant with his established operations in the region is confident to give a thrust in marketing the products of the Corporate Debtor which will result in domestic and export market share gain.

**13.3.4 Action Plan for Building the Capability Required (Technical, Financial, Manpower, etc.) to ramp up the Scale of Operations**

- i. The operations of the Company are currently shut down on account of Lock out for more than 8 years. Thus, there are no funds at all with the Corporate Debtor to enable day to day operations. To address the aforesaid constraints, the Resolution Applicant proposes to infuse equity / arrange funds for working capital/startup expenses and capex. The Resolution Applicant also plans to use its current experienced technical team to help revive and turnaround the operations and complete the installation of the plant and machinery and Capex.

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- ii. Apart from retaining the existing strong technical team, the Resolution Applicant also plans to induct senior technical experts as per requirement and have long standing experience in Steel industry. This will help to revive and turnaround the operations. Further, the Resolution Applicant shall identify the training requirements of employees and impart necessary training to upgrade their skills.

#### 14. FINANCIAL PROPOSAL

As set out in Annexure 2 of the Resolution Plan, below is the summary of the Resolution Applicant's financial proposal relating to the Corporate Debtor:

Particulars	Amount Rs Cr	Remarks
Payment of CIRP Process Cost	[.]	Will be paid on actuals
Payment towards Workmen Dues	7.00	Will be paid on actuals
Payment to Financial Creditors	351.0	
Payment to Operational Creditors (Other than Statutory Dues and Workmen Dues)	3.50	
Payment towards Statutory Dues	3.00	
Capex / Working Capital	306.00	
<b>Total</b>	<b>670.5</b>	

- i. Out of the Admitted Debt of Rs.5853.09crores (Rupees Five Thousand Eight Hundred and Fifty Three Crores and Nine Lakhs), an amount of Rs. 100 crores along with all the underlying securities including the guarantees of Vanguard and EES to the extent of the Assigned Debt and mortgages over the Durgapur Land and EES Kalyani Land, shall be assigned by the Financial Creditors specified in Annexure 6, to NarantakDealcomm Limited, which is eligible under section 29A of the Code, for a consideration of Rs. 100. Out of the proportionate amount payable towards the balance Admitted Debt, an amount of **Rs. 351.0 Crores (Rupees Three Hundred and Fifty One Crores)** is proposed to be carved out as sustainable debt ("Sustainable Debt") and proposed to be paid upfront, from the funds brought by the Resolution Applicant. The Sustainable Debt shall be paid within 30 days from the Effective Date by transfer of the amount to the Controlled Account.
- ii. Balance amount of Rs. 5402.09 Crores (Rupees Five Thousand Four Hundred and Two Crores and Nine Lakhs) (arrived at by subtracting Upfront Payment and the Assigned Debt from the Admitted Debt), is proposed to be converted into equity shares which shall be held by the Financial Creditors ("Unsustainable Debt"). This will be followed by capital reduction in the manner set out in Annexure 2.

- iii. The Resolution Applicant may further infuse fund of **Rs. 306.00 crores (Rupees Three Hundred Six Crores)** towards capex / working capital/ any other requirement at the sole discretion of Resolution Applicant, in the manner set out in **Annexure 2**.
- iv. The Resolution Applicant proposed NIL payment under the Resolution Plan towards claims of the Operational Creditors or the other creditors or stakeholders of the Corporate Debtor (including dues to employees (other than Workmen), government dues, taxes, etc. and other creditors and stakeholders), other than as specified in the table above. Such payments shall be brought in prior to payment of the Financial Creditors in the manner provided in Clause 12 of Part C: Resolution Plan.
- v. CIRP Costs shall be paid on actuals as per the timeline specified in the implementation schedule in Clause 12 above. In the event any insolvency resolution process costs are incurred after the Effective Date, such costs shall first be met out of the funds available with the Corporate Debtor (other than funds earmarked for specific payouts under the Plan). In the event the funds available with the Corporate Debtor are not sufficient to pay such costs, the payment for the balance cost shall be required to be made by the Resolution Applicant. Such payment by the Resolution Applicant shall be made within 15 (fifteen) days from the date of demand by the Monitoring Agency.

## 15. ADDITIONAL TERMS

### 15.1 Severability and right to modify

- i. In the event it is determined that any provision of the Resolution Plan is unenforceable per se or as applied to any claims or transaction and/or in the event any provision of the Resolution Plan becomes invalid for reasons other than by breach of any party, the new management of the Corporate Debtor may apply to the Adjudicating Authority for appropriate modification of such provisions of the Resolution Plan, to the satisfaction of the Adjudicating Authority and such invalidity and/or unenforceability of the provision of the Resolution Plan shall not render the whole Resolution Plan ineffective, unless otherwise directed by the Adjudicating Authority by order.
- ii. In case any such modification is required in the Resolution Plan after the receipt of approval of the Adjudicating Authority to comply with any laws currently in force or to apply for certain approvals as required under the Resolution Plan or for any other requirements, not jeopardising the rights of the creditors under the current plan, the new management of the Corporate Debtor can do so only after approval of NCLT.

**15.2 Validity**

Unless this Resolution Plan is submitted for an approval by the Adjudicating Authority, this Resolution Plan shall expire on expiry of the time for the corporate insolvency resolution process.

**15.3 Implementation**

Upon approval of the Resolution Plan by the Adjudicating Authority, the Resolution Applicant shall ensure its effective implementation. However, if this Resolution Plan cannot be implemented for any reason not attributable to the Resolution Applicant, then the Resolution Applicant shall have no liability on this account. Provided however, as specified in Clause 12 of the Additional Terms, if the approvals, extinguishments and waivers sought under Annexure 3 are not granted, it will not in any way jeopardize the implementation of the Resolution Plan, and the Resolution Applicant shall remain responsible for such implementation of the Resolution Plan.

**15.4 Co-operation for handover**

In the event there is any impediment in handing over any of the assets as captured in the Information Memorandum and the Resolution Plan, the Resolution Applicant shall be entitled to make an application to the Adjudicating Authority for necessary directions on the way forward.

**15.5 Co-operation by Financial Creditors**

In the event that any proceedings are instituted against the Corporate Debtor or the Resolution Applicant or the CoC or the Resolution Professional opposing the approval of the Resolution Plan or seeking to prevent its implementation, the Financial Creditors of the Corporate Debtor who approved the Resolution Plan shall support the Resolution Applicant for the approval of the Resolution Plan.

Financial Creditors shall promptly provide for satisfaction of all the charges and issuance of No Objection Certificate to the RA after due payment to the Financial Creditors in the manner contemplated herein, subject to the Financial Creditors' right to proceed against the guarantors, any other entity as part of the Existing Promotors or any of their assets in the manner contemplated herein.

**15.6 Effect of the order of Adjudicating Authority**

- i. A certified copy of the approved Resolution Plan shall constitute conclusive evidence of the rights and entitlements of the Corporate Debtor as provided in the Resolution Plan and subject to making the payments as contemplated in the Resolution Plan, evidence of the settlement of claims with the Financial Creditors proposed to be paid and discharged and extinguishment of all other claims and obligations, rights and entitlements of the creditors in accordance with the Resolution Plan by deemed satisfaction, discharge or extinguishment. A certified copy of the approved Resolution Plan shall, where applicable,

constitute conclusive evidence of any creation, modifications or cancellation or abandonment of contractual arrangements or agreements or leases or licenses as recorded in the Resolution Plan. The mere production and delivery of a certified copy of the approved Resolution Plan shall constitute proof of amendment of any constitutional documents of the Corporate Debtor, proof of the authority to create security over the assets of the Corporate Debtor in favour of any refinancing creditor, proof of change in the shareholding of the Corporate Debtor or its loan capital, or of change in the management of the Corporate Debtor, or of appointment of key managerial personnel of the Corporate Debtor, or of removal of the statutory auditor of the Corporate Debtor or of revisions in agreements or arrangements by modification or cancellation or abandonment thereof, without any further act or deed.

- ii. The mere production and lodgement of a certified copy of the approved Resolution Plan or a notarially certified copy of the approved Resolution Plan before any court or tribunal or regulator or government or arbitral tribunal or any administrative authority or any other authority shall be adequate and sufficient for such authorities (or the counter parties to the Corporate Debtor to constitute the revised agreements or arrangements or deemed modification or cancellation or abandonment thereof ) to cause the abatement of any cause of action against the Corporate Debtor, or for discharge or abatement of any suit or action or claim made in arbitration against the Corporate Debtor, or in any other judicial, quasi-judicial, regulatory, administrative or government proceedings of whatsoever nature in accordance with the approved Resolution Plan. Any pending or future proceedings against the Corporate Debtor which are contrary to or inconsistent with the terms of the Resolution Plan shall be deemed to be not maintainable or to have been terminated and closed upon the production and lodgement of the certified copy of the approved Resolution Plan or a notarially certified copy of the approved Resolution Plan.

### 15.7 Removal of difficulties

In the event that any difficulty arises in the implementation of this Resolution Plan, the Corporate Debtor or the Resolution Applicant shall be entitled to move an application before the Adjudicating Authority and the Adjudicating Authority shall consider passing such orders or modifications of the Resolution Plan as removes the difficulty in its implementation without the requirement of any further decision or vote of the CoC who shall stand discharged in accordance with the Resolution Plan, and whose rights under the current Resolution Plan shall not be jeopardized in any manner whatsoever.

### 15.8 Declaration to the effect that the Resolution Plan is not in contravention of provisions of any Applicable Law:

The Resolution Applicant declares that this Resolution Plan is not in contravention of the provisions of any applicable laws.

### 15.9 Statement in relation to how the Resolution Plan has dealt with interests of all stakeholders, including financial and operational creditors of the Company:

As set out above in the Resolution Plan, the Resolution Plan for the Company has

dealt with the interests of all the stakeholders in the Company, including the Financial Creditors and operational creditors of the Company.

Unless otherwise expressly stated in this Resolution Plan, no creditor, existing shareholder or any other stakeholder of the Company shall be entitled to receive any settlement more than the proportionate settlement payable to a similarly placed class of creditors, shareholders or stakeholders, as stated in this Resolution Plan.

#### 15.10 Payments of Contingent Liabilities

Any claims not received by Cut-off Date shall be extinguished and will not be payable and shall stand to be extinguished and NIL. The Financial Creditor shall not be entitled to any charges, penal interest or any other claim other than those provided for under this resolution plan.

#### 15.11 Statement in Compliance of Section 29A of the Code

The Resolution Applicant confirms that, as on the date of this Resolution Plan and on the basis of the records of the Resolution Applicant, the Resolution Applicant is eligible under Section 29A of the Code to submit the Resolution Plan.

#### 15.12 Concessions, Reliefs and Dispensation Sought:

The Resolution Applicant requests for the reliefs, concessions and dispensations set out in Annexure 3. Upon approval of the Plan by the Adjudicating Authority it shall be deemed that the reliefs, concessions and dispensations set out in Annexure 3 have been granted. The Resolution Applicant clarifies that in the event the aforesaid reliefs, concessions and dispensations are not granted, the same will not have a bearing on the successful implementation of the Resolution Plan.

#### 15.13 Retention of All Investments / Rights/Licenses/Registration / Agreements

Upon approval of this Resolution Plan, all investments (including but not limited to the investment in key infrastructure facilities), statutory rights, licenses, agreements, registrations or any similar approval by whatever name called and fundamental for running the business on going concern shall be in complete force and valid.

#### 15.14 Assumptions

The Resolution Applicant has prepared this Resolution Plan on the basis of certain assumptions set out below, and has assumed that upon approval of this Resolution Plan by the Adjudicating Authority, the Corporate Debtor and the Resolution Applicant, as the case may be, shall be entitled to the following and the same shall be deemed to form a part of the order of the NCLT:

- i. Consents and approvals, authorizations etc.  
Upon approval of this Resolution Plan by the Adjudicating Authority, all actions stated in this Resolution Plan shall be deemed to be approved. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any consents, approvals, concessions,



authorizations, permits or the like that has been granted to the Corporate Debtor or for which the Corporate Debtor has made an application for renewal or grant.

ii. Licenses/ Approvals/Contractual Rights and Benefits

- (a) The Resolution Applicant is praying that upon approval of this Resolution Plan by the Adjudicating Authority and since the Resolution Applicant will acquire the Corporate Debtor on a going concern basis, all subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to shall, notwithstanding any provision to the contrary in their terms, be deemed to continue without disruption for the benefit of the Corporate Debtor.
- (b) For the avoidance of doubt, it is hereby clarified that all consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to, which were in place on the date of shut down of the plant pursuant to lock-out ("**Shut Down Date**"), shall be deemed to continue without disruption for the benefit of the Corporate Debtor for a period of 12 months from the Completion Date or until renewed by the relevant authorities, whichever is later. Without any liability for the non-compliance during the time specified above, the Resolution Applicant undertakes to cause the Corporate Debtor to expeditiously identify such expired consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to, evaluate the steps required to address the same and take steps to remedy the same to the extent practically possible.
- (c) The period of non-operation i.e. from the Shut Down Date to the Effective Date shall not be counted upon i.e. any approval, grant, license, etc shall be treated to be in effect as the same was in effect on the Shut Down Date and shall remain valid for their residual tenor as on the Shut Down Date with effect from the Effective Date.;
- (d) Upon approval of this Resolution Plan by the Adjudicating Authority, any claims by any person (whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future) against the Corporate Debtor accruing due to the commencement or pendency of insolvency proceedings against the Corporate Debtor, whether arising under the terms of subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or any contractual arrangements entered into by the Corporate Debtor, shall, notwithstanding any

provision to the contrary in their terms, stand extinguished without any recourse.

- (e) During the Interim Period, neither the Resolution Professional nor any creditor (including any Financial Creditor and government agency) or any stakeholder involved in this Resolution Plan or otherwise connected with this Resolution Plan, the CoC, the Monitoring Agency nor the Corporate Debtor shall:
- (f) take any action or omission that could reasonably be expected to have a material adverse impact, directly or indirectly, on the Resolution Plan or its successful implementation; or
- (g) institute or continue any proceedings against the Corporate Debtor or transfer, encumber, alienate or dispose of any of the assets or interests of the Corporate Debtor or enforce any encumbrance or security interest created by the Corporate Debtor or on the securities of the Corporate Debtor.

iii. Liability for past actions or omissions

- (a) The Resolution Applicant will acquire control over the Corporate Debtor in accordance with the Plan approved by the Adjudicating Authority and not pursuant to the usual acquisition process which would ordinarily include a detailed due diligence and representation, warranties and indemnities in relation to the affairs of the Corporate Debtor from its Existing Promoters. Therefore, the Resolution Applicant may take some time to discover any non-compliances that may exist in relation to the Corporate Debtor on the date of acquisition of control by the Resolution Applicant over the Corporate Debtor. As such the Resolution Applicant may take some time to identify such non-compliances and to address them.
- (b) In light of this, the Resolution Applicant, the Corporate Debtor and its directors, officers and employees shall have immunity from any actions and penalties (of any nature) under any laws for any non-compliance of laws in relation to the Corporate Debtor or by the Corporate Debtor, as well as with the terms of any agreement or arrangement entered into by the Corporate Debtor, which was existing as on the Completion Date and such immunity shall continue for a period of up to 12 months from the Completion Date. Without any liability for the non-compliance during the time specified above, the Resolution Applicant undertakes to cause the Corporate Debtor to expeditiously identify such non-compliances, evaluate the steps required to address such non-compliances and take steps to remedy such non-compliances to the extent practically possible. The Resolution Applicant and the Corporate Debtor shall be entitled to apply to and approach the Adjudicating Authority for relief for continued implementation of the approved Resolution Plan before or

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after any coercive action is taken against the Corporate Debtor or the Resolution Applicant.

- (c) This Resolution Plan will be implemented pursuant to an order of the Adjudicating Authority, and all actions stated in this Resolution Plan shall be deemed to be approved by the Adjudicating Authority. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any contracts entered into by the Corporate Debtor.

iv. Inquiries, investigations etc.

- (a) Upon approval of this Resolution Plan by the Adjudicating Authority, all inquiries, investigations and proceedings, whether civil or criminal, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future, (including without limitation, any investigation, action, proceeding, prosecution, whether civil or criminal, by the Central Bureau of Investigation, the Enforcement Directorate or any other regulatory or enforcement agency), in relation to any period prior to the Completion Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan shall stand withdrawn or dismissed and all liabilities or obligations in relation thereto, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, will be deemed to have been written off in full and permanently extinguished and the Corporate Debtor and the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto notwithstanding any adverse order that may be passed in respect of the same by any authority prior to or after the Completion Date. Upon approval of this Resolution Plan by the Adjudicating Authority, all new inquiries, investigations, whether civil or criminal, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor in relation to any period prior to the acquisition of control by the Resolution Applicant over the Corporate Debtor or on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan. In any event the Resolution Applicant, the Corporate Debtor or the reconstituted board of directors shall not be responsible for any non-compliances relating to the period prior to the Completion Date.

v. Tax exemptions

- (a) With the approval of this Resolution Plan by the Adjudicating Authority, it is assumed that an exemption shall be deemed to have

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been granted to the Corporate Debtor from the obligation to pay taxes in accordance with the exemptions granted under the Finance Act 2018.

- (b) The Corporate Debtor shall be entitled to carry forward the unabsorbed depreciation and accumulated losses under Income tax and minimum alternate tax and to utilize such amounts to set off future tax obligations.
- (c) Any tax demand whether from Income Tax or any indirect tax authority relating to the period prior to the Effective Date shall be permanently extinguished on and from Effective Date, upon approval of the Plan by Adjudicating Authority.
- (d) The Resolution Applicant requests the State Government of West Bengal to grant it suitable tax and financial incentives as per the prevailing policy of the State Government or any other policy for revival of distressed companies, considering the revival of the Corporate Debtor in order to achieve financial viability of the Corporate Debtor.

vi. Contracts

- (a) For a period of 6 months from the Completion Date, all subsisting contracts and arrangements entered into by the Corporate Debtor shall continue to be in subsistence.
- (b) For a period of 6 months from the Completion Date, the Corporate Debtor shall have a right to review and terminate any contract that was entered into prior to the Completion Date.
- (c) If during such review, the Corporate Debtor terminates any contracts then the Corporate Debtor shall not be liable towards any claims with respect to termination of such contracts, including but not limited to any claims, penalty, damages (liquidated or otherwise), arbitration claims or claims for specific performance.
- (d) All contracts between the Corporate Debtor and related parties (as defined in Section 5(24) of the Code) other than to the extent provided otherwise in the Plan, shall stand terminated with effect from the Completion Date unless otherwise notified by the Resolution Applicant by the Completion Date, and the Corporate Debtor shall not be liable towards any claims with respect to termination of such contracts, including but not limited to, any claims, penalty, damages (liquidated or otherwise), arbitration claims, claims for specific performance or claims for interim relief.
- (e) All financial obligations under any contract to which the Corporate Debtor is a party, relating to a period prior to the Completion Date, if not provided for under this Resolution Plan, shall stand extinguished.

- (f) The Resolution Applicant has assumed that since the Plan will be approved by the Adjudicating Authority under a statutory process and is binding on all stakeholders under Sections 31(1) and 238 of the Code, all concerned regulators, including RBI, shall give expeditious approvals to facilitate the Resolution Plan of the Corporate Debtor and its implementation.
- (g) Notwithstanding anything contained in the Resolution Plan, if any of the assumptions specified in this Clause are not true or correct, it shall not have a bearing on the successful implementation of the Resolution Plan, and the Resolution Applicant shall remain responsible for implementation of the Resolution Plan.

### 15.15 Transfer of Durgapur Land and Kalyani Land

Upon sanction of the Plan by the NCLT, the following directions shall be deemed to have been incorporated as a part of the order of the NCLT sanctioning the Plan:

#### 15.15.1 Durgapur Land

- i. Vanguard has inter alia provided corporate guarantees dated April 23, 2009 to Axis Bank Limited and corporate guarantees dated July 30, 2009 and May 27, 2009 to Punjab National Bank. The corporate guarantees referred to herein above are collectively referred to as Vanguard Guarantee Deeds. Vanguard has also mortgaged the land owned by it in Durgapur measuring approximately 54 acres ("**Durgapur Land**") by way of equitable mortgage in favour of the Punjab National Bank Limited to secure the indebtedness of the Corporate Debtor which has subsequently been transferred to Asset Reconstruction Company (India) Limited on a paripassu basis with Axis Bank Limited.
- ii. Upon approval of the Plan by the Adjudicating Authority, the Durgapur Land shall stand transferred to the Corporate Debtor such that the Corporate Debtor shall be vested to be in possession and have absolute and good and marketable title, rights and interest in the Durgapur Land, and without any further documentary, filing, registration, permissions, approvals, or other requirements to be effected by any of the Corporate Debtor, Vanguard, any Financial Creditor or any Government Authorities in order for the Durgapur Land to be transferred to the Corporate Debtor.
- iii. The Financial Creditors as specified in Annexure 6 shall assign certain loans (to the extent stipulated by the Monitoring Agency) in favour of Narantak Dealcomm Limited along with the underlying security over the Durgapur Lands. The Financial Creditors will promptly provide all original documents (as available with them) and adequate details of all available agreements and property related documents (including original title deeds), copies of the Vanguard Guarantee Deeds, title deeds pertaining to the Durgapur Land and all other documents in respect of the Durgapur Lands to

the Monitoring Agency, Corporate Debtor and/or Resolution Applicant, as required to effect transfer and all Encumbrances in favour of the Financial Creditors in respect of the Durgapur Lands shall stand released. In any event upon assignment of the Assigned Debt, NarantakDealcomm Limited shall alone be entitled to the mortgage and security interest over the Durgapur Land and all the subsisting security interest of the Financial Creditors over the Durgapur Land shall stand extinguished. All the title sale deeds, maps, khatians to the Durgapur Lands shall be vested in the Corporate Debtor and all original title sale deeds, maps, khatians, allotment letters, permissions and any other documents required for valid transfer of title under all Applicable Laws for the Durgapur Lands shall be provided to the Corporate Debtor and/or Resolution Applicant. The Financial Creditors shall hold the original Vanguard Guarantee Deeds also on behalf of the Resolution Applicant and shall hand over the originals as and when required by the Resolution Applicant. The Financial Creditors shall provide all assistance as may be required by the Resolution Applicant for transfer of the Durgapur Land to the Corporate Debtor.

- iv. The approval of this Resolution Plan by the NCLT will be binding on Vanguard pursuant to section 31 of the Code, and Vanguard as a stakeholder in the Corporate Debtor pursuant to the Code is directed to promptly (i) pass the necessary corporate resolutions; (ii) provide all approvals, execute all documents, documents, deed, instruments, notices, certificates or powers of attorney in the formats provided by the Resolution Applicant/Corporate Debtor; (iii) do all filings and take all actions and do all registrations and/or other requirements to be effected for transfer of the Durgapur Land under Applicable Laws to the Corporate Debtor; and (iv) take all actions and do all deeds as may be required by or as directed by the Resolution Applicant to transfer all the Durgapur Land to the Corporate Debtor or to such person as Resolution Applicant may direct, within 30 (thirty) days of the date of NCLT Order. Transfer of the Durgapur Lands to the Corporate Debtor shall be for a consideration of Rs. 90,000 (Rupees ninety thousand only) payable by the Resolution Applicant or Corporate Debtor to Vanguard upon conveyance of the Durgapur Lands being effective to the Corporate Debtor. The Resolution Applicant shall pay the stamp duty and the relevant registrar of sub-assurances fees to effect all registration requirements in relation to the transfer of the Durgapur Land under Applicable Laws.

#### 15.15.2 EES Kalyani Land

- i. Efficient Engineering Services ("EES") had entered into a 999 (nine hundred and ninety nine) years leasehold interest under an indenture of lease dated January 21, 2004 ("Lease Deed") between the Governor of the State of West Bengal and Efficient Engineering in respect of land measuring 1 Bigha, 1 Cottahs, 14 Chittaks and 26 square feet lying at plot no. 7 (A) sub block, Industrial Area in Block D in the township of Kalyani Sub-Division, Kalyani Thana, Kalyani ("EES Kalyani Land"). EES has provided guarantee in favour of certain Financial Creditors. The EES Kalyani Land is mortgaged in favour of the Financial Creditors as detailed in Annexure 6 as security for the

financial indebtedness of the Corporate Debtor by way of equitable mortgage. Upon sanction of the Plan, the leasehold interest of EES in the EES Kalyani Land will be transferred on the Effective Date to the Corporate Debtor such that the West Bengal Government assigns the leasehold interest of EES in the EES Kalyani Land to the Corporate Debtor in favour of the Corporate Debtor, on the same terms as contained in the existing Lease Deed so that the Corporate Debtor is vested to be in possession and shall have absolute lease interest rights in the EES Kalyani Land. Neither the Resolution Applicant nor the Corporate Debtor shall be required to pay any consideration/premium to the Government of West Bengal or EES or any other person for the assignment. Further the Resolution Applicant/Corporate Debtor shall not be responsible for any arrears of rent or interest thereon and all the arrears/interest on arrears, if any, shall stand waived/extinguished. On and from the date of sanction of the Plan, the Corporate Debtor shall be vested to be in possession and have absolute and good and marketable title, rights and interest on the EES Kalyani Land. No further documentary, filing, registration, permissions, approvals, stamp duty or other requirements to be effected by any of the Corporate Debtor, EES, any Financial Creditor or any Government Authorities in order for the EES Kalyani Land to be transferred to the Corporate Debtor. Upon sanction of the Plan, the Government Authorities shall be deemed to have granted their approval for the transfer of the EES Kalyani Land and no further approval shall be required for transfer of the EES Kalyani Land.

- ii. The Financial Creditors as specified in Annexure 6 shall assign certain loans (to the extent stipulated by the Monitoring Agency) in favour of NarantakDealcomm Limited along with the underlying security over the EES Kalyani Lands. The Financial Creditors will promptly provide all original documents (as available with them) and adequate details of all available agreements and property related documents (including original title deeds), copies of the guarantee deeds executed by EES, title deeds pertaining to the EES Kalyani Land and all other documents in respect of the EES Kalyani Lands to the Monitoring Agency, Corporate Debtor and/or Resolution Applicant, as required to effect transfer and all Encumbrances in favour of the Financial Creditors in respect of the EES Kalyani Lands shall stand released. In any event upon assignment of the Assigned Debt, NarantakDealcomm Limited shall alone be entitled to the mortgage and security interest over the EES Kalyani Land and all the subsisting security interest of the Financial Creditors over the Durgapur Land shall stand extinguished. All the title sale deeds, maps, khatians to the EES Kalyani Lands shall be vested in the Corporate Debtor and all original title sale deeds, maps, khatians, allotment letters, permissions and any other documents required for valid transfer of title under all Applicable Laws for the EES Kalyani Lands shall be provided to the Corporate Debtor and/or Resolution Applicant. The Financial Creditors shall hold the original deed of guarantee executed by EES also on behalf of the Resolution Applicant and shall hand over the originals as and when required by the Resolution Applicant. The Financial Creditors shall provide all assistance as may be required by the Resolution Applicant for transfer of the EES Kalyani Land to the Corporate Debtor.

- iii. The approval of this Resolution Plan by the NCLT will be binding on EES pursuant to Section 31 of the Code and as a stakeholder in the Corporate Debtor pursuant to the Code and EES is directed to promptly (i) pass the necessary resolutions; (ii) provide all approvals, execute all documents, documents, deed, instruments, notices, certificates or powers of attorney in the formats provided by the Resolution Applicant; (iii) do all filings and take all actions and do all registrations and/or other requirements to be effected for transfer of the EES Kalyani Land by way of a new lease under Applicable Laws to the Corporate Debtor; and (iv) take all actions and do all deeds as may be required by or as directed by the Resolution Applicant to create the leasehold interest in favour of the Corporate Debtor under Applicable Laws over the EES Kalyani Land, within 15 (fifteen) days of the date of NCLT Order. The Resolution Applicant shall pay the stamp duty and the relevant registrar of sub-assurances fees for the assignment of the lease in relation to the EES Kalyani Land as required under Applicable Laws.
- iv. Nothing in the Plan shall prevent NarantakDealcomm Limited, being the assignee of the Assigned Debt from enforcing its security interest over the Durgapur Land and the EES Kalyani Land and Vanguard and EES shall as stakeholders of the Corporate Debtor shall be bound by such enforcement and shall without any challenge, protest or demur unconditionally convey the Durgapur Land and their interest in the Kalyani Land in favour of the Corporate Debtor or such person as the Resolution Applicant may direct. Vanguard and EES shall not be entitled to challenge the enforcement and such enforcement shall be a mandatory direction on them to transfer the aforesaid lands in favour of the Corporate Debtor. The restructuring of the debt of the Financial Creditors in the manner contemplated in the Plan, shall not release Vanguard and EES of its obligations under the guarantees provided by them to the Financial Creditors nor shall it constitute a release of the mortgage over the Durgapur Land and the EES Kalyani Land. The security interest created over the Durgapur Land and the EES Kalyani Land shall continue and remain in full force and effect in favour of NarantakDealcomm Limited. Vanguard and EES shall not be entitled to any right of subrogation against the Corporate Debtor pursuant to such enforcement of security interest by NarantakDealcomm Limited and such right of subrogation shall be deemed to be waived/extinguished.

#### 15.15.3 Other Kalyani Lease Land

Ramsarup Industrial Corporation ("RIC"), a unit of the Corporate Debtor has obtained a 999 years leasehold interest over the following:

- (a) property situated at Plot No. 6 & 7, Block D in the township of Kalyani Sub Division, PS Ranaghat, District Nadia, measuring about 267 Cottah 10 Chittak and 44 Sq ft., pursuant to a registered indenture of lease dated September 1, 1975 with the Governor of West Bengal;

- (b) Property situated at Plot No. 6 & 7, Block D in the township of Kalyani Sub Division, P.S Ranaghat, District Nadia measuring about 194 Cottah 4 Chittak and 37 Sq ft pursuant to a registered indenture of lease dated September 1, 1975 with the Governor of West Bengal.

Pursuant to the order of the NCLT approving the Plan, it shall be deemed that the grant of the lease to RIC shall accrue in favour of the Corporate Debtor and the leases shall continue on the same terms and conditions as contained in the respective deed and the Corporate Debtor shall continue to enjoy and be entitled to use the leasehold lands described above for the purposes of its operations in accordance with the terms of the said lease deeds. It is further clarified that RIC shall continue to remain a unit of Corporate Debtor even after sanction of the Plan. The Financial Creditors shall upon receipt of the Upfront Amount promptly release all their charges over the Other Kalyani Lease Land and hand over all the original title deeds, maps, khatians, allotment letters, permissions and any other documents pertaining to the Other Kalyani Lease Land in accordance with Annexure 2. In any event upon sanction of the Plan and payment of Upfront Amount, all the security interest of the Financial Creditors over the Other Kalyani Lease Land shall stand released.

#### 15.15.4 Other Kalyani Land

All that piece and parcel of land measuring 2cottah 4 chittacks and 15 sqft. situated at plot no. 6488, Khatian No.353, Kalyani Mouza No.28, owned by RIC and land measuring about 2 cottah 7 chittacks and 15 Sq ft under plot no. 6488, Khatian No.353 Kalyani mouza, Block D, PO & PS Kalyani, Dist. Nadia also owned by RIC shall continue to remain in the ownership of RIC. RIC shall be an integral part of the Corporate Debtor and thus the ownership rights over the Other Kalyani Land shall accrue in favour of the Corporate Debtor. The Financial Creditors shall promptly upon receipt of the Upfront Amount, release all their charges over the Other Kalyani Land and hand over all the original title deeds, maps, khatians, allotment letters, permissions and any other documents pertaining to the Other Kalyani Land in accordance with Annexure 2. In any event upon sanction of the Plan and payment of the Upfront Amount, all the security interest of the Financial Creditors over the Other Kalyani Land shall stand extinguished/released.

#### 15.15.5 Kharagpur Land

Upon sanction of the Plan, the lease granted by WBIDC in favour of Ramsarup Loh Udyog over approximately 315 acres of land in Kharagpur ("Kharagpur Land") shall stand transferred to the Corporate Debtor from the Effective Date in a manner such that the Corporate Debtor is vested to be in possession and shall have absolute lease interest rights in the Kharagpur Land. Sanction of the Plan by the NCLT shall constitute a direction on WBIDC to expeditiously ensure transfer of the lease in favour of the Corporate Debtor on the same terms and conditions as contained in the existing lease agreement and without the requirement of payment of any fee, consideration or premium.

WBIDC shall not be entitled to any penalty, arrear lease rent or any interest on arrears and all such amounts shall stand extinguished/waived upon approval of the Plan. On and from the date of sanction of the Plan, the Corporate Debtor shall be vested to be in possession and have absolute and good and marketable title, rights and interest on the Kharagpur Land. Further sanction of the Plan shall also constitute a direction on WBIDC to accord expeditious approval for creation of mortgage over the leasehold interest by the Corporate Debtor in favour of its lenders.

## 16. OTHER TERMS

### i. Binding, Further Assurance

Upon approval of this Resolution Plan by the Adjudicating Authority, this Resolution Plan shall be binding on the Company employees, members, creditors, guarantors, contracting parties, Governmental Authorities and all other stakeholders who are involved in the Resolution Plan and/or otherwise concerned or connected with the Company.

As the Resolution Plan shall be binding on each of the stakeholders mentioned above, all such Persons including but not limited to the MA, employees, guarantors, creditors and shareholders/members shall use their best efforts to do or cause to be done, such further acts, deeds, matters and things and execute such further documents as may be reasonably required by the Resolution Applicant to give full effect to the terms of this Resolution Plan in accordance with its terms and conditions. If required by the Resolution Applicant as the evidence of discharge, the creditors of the Resolution Plan shall provide all documentation and/or execute documents evidencing the full and final discharge of their Claims.

### ii. Confidentiality

By the receipt and deliberation of this Resolution Plan, the Resolution Professional and the Financial Creditors of the Company agree and undertake that they shall not reveal, and shall ensure that their directors, officers, managers, employees (including those on secondment), affiliates, legal, financial and professional advisors and bankers (collectively, "Representatives") to whom Confidential Information is made available do not reveal, to any third party, any Confidential Information, without the prior written consent of the Resolution Applicant provided however that the provisions shall not be applicable to any disclosure pursuant to Applicable Law subject to any practicable arrangements to protect confidentiality. The Resolution Applicant shall be entitled to injunctive relief, specific performance and other remedies to enforce this Clause.

### iii. Conflict

In the event of any repugnancy or inconsistency between this Resolution Plan and any other documents, the provisions contained in this Resolution Plan shall prevail for all purposes and to all intents.

iv. **Entire Resolution Plan**

The Resolution Plan along with its Annexures constitutes the entire resolution plan of the Resolution Applicant within the meaning of Section 30 of the Code and Regulation 38 of the CIRP Regulations and supersedes and cancels any prior oral or written plan, agreement or understanding in this regard.

v. **Going Concern**

The Resolution Applicant would take over the Company as a going concern as per the provisions of the Code. The operations and management of the company will be continued in the normal course of the business upon implementation of the proposed Plan.

Should the Adjudicating Authority or the Appellate Authority finally reject the Resolution Plan as proposed by the Resolution Applicant, then the Resolution Plan shall fail. In such a scenario the amount infused by the Resolution Applicant shall be refunded within 30 days from the date of such rejection. Occurrence of a *force majeure* event may also lead to failure of this Resolution Plan. It is clarified that force majeure event shall be an event after the Effective Date.

**ANNEXURE 1: DEFINITIONS AND INTERPRETATIONS**

1. **Definitions**

In addition to the definitions provided elsewhere, the following words used in the Resolution Plan shall have the meaning ascribed to it hereunder:

“**Adjudicating Authority**” means the NCLT, Kolkata;

“**Admitted Debt**” is defined in Part B, Clause 2.2;

“**Admitted Workmen and Employees dues**” is defined in Clause 3 in Part C: Resolution Plan, this Resolution Plan;

“**Annexures**” shall mean annexures to the Resolution Plan;

“**Appellate Authority**” shall mean the National Company Law Appellate Tribunal and the Supreme Court;

“**Applicable Law**” means all applicable statutes, enactments or acts of any legislative body in India, laws, ordinances, rules, bye-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any Governmental Authority or any licenses, consents or approvals granted by any Governmental Authority, and any modifications or re-enactments of each thereof;

“**Board / Board of Directors**” means board of directors of the Company as constituted by the Resolution Applicant in accordance with this Resolution Plan;

“BSE” means BSE Limited;

“CCP” means Competition Commission of India;

“CEO, CFO, COO” means the Chief Executive Officer, the Chief Financial Officer and the Chief Operating Officer respectively;

**CIRP Cost** shall mean the insolvency resolution process cost as defined under Section 5(13) of the Code read with Chapter IX of the CIRP Regulations;

“**CIRP Regulations**” means the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process against Corporate Persons) Regulations, 2016 (as amended from time to time);

“**Claims(s)**” means a right to payment, right to remedy arising pursuant to a contract, under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, matured, unmatured, secured or unsecured, contingent, crystallised or fructified, of any nature whatsoever including any indemnity, losses, interest, damages, sanctions, penalties, penal interest, cost, charges, fines and any other sums whether claimed by any Governmental Authority, supplier, creditor or any other Person;

“**Clause**” means a clause in this Plan;

“**CoC**” means the committee of financial creditors of the Corporate Debtor that has been constituted pursuant to section 21 of the Code;

“**Code**” means the Insolvency and Bankruptcy Code, 2016, as amended from time to time;

“**Companies Act**” means the Companies Act, 2013, as amended or the Companies Act, 1956 to the extent applicable, as the case may be;

“**Competition Act**” means the Competition Act, 2002 and the rules, notifications and clarifications issued thereunder;

“**Completion Date**” means the date by which all measures specified in **Annexure 2** will be completed;

“**Corporate Debtor / Company**” means Ramsarup Industries Limited, incorporated under the Companies Act, 1956, with corporate identity number: L65993WB1979PLC032113;

“**Cr**” means crore;

“**Cut Off Date**” shall mean the date on which the Plan is approved by the CoC;

“**Data Room**” means the virtual data room hosted on the relativity datasite, where

information pertaining to the Company was made available to the Resolution Applicant and its representatives;

**"Delisting Regulations"** means the Securities and Exchange Board of India (Delisting and Equity Shares) Regulations 2009;

**"Earnest Money"** means Rs. 5,00,00,000.00 (Rupees Five Crores only) provided by the Resolution Applicant pursuant to the request for resolution plan submission;

**"EBITDA"** means the earnings of the Corporate Debtor, before exceptional and extra ordinary items, interest expense, taxes, depreciation and amortization, calculated as per Indian generally accepted accounting principles;

**"Effective Date"** means the date on which the Resolution Plan is approved by the Adjudicating Authority;

**"Encumbrance"** means any mortgage, pledge, options, equitable interest, assignment by way of security, hypothecation, right of other person, claim security interest, encumbrance, title defect, title retention agreement, voting trust agreement, interest lien, charge restriction or limitation of any nature whatsoever, encroachment, right of way, easementary rights, including restriction on use, voting rights, transfer, receipt of income or exercise of any other right related to ownership, or any other security interest of any kind whatsoever, or any arrangement, whether conditional or otherwise, to create any of the above and includes any arrangement that has the commercial effect of an encumbrance or security interest;

**"Existing Promoters"** means the persons mentioned as promoters and promoter group of the Company in the regulatory or stock exchange filings at any point of time, prior to the Effective Date, including but not limited to each member of Ashish Jhunjhunwala family;

**"Financial Creditors"** shall have the meaning ascribed to such term under Part B, Clause 2.3 of the Resolution Plan;

**"Financial Proposal"** means the financial proposal proposed by the Resolution Applicant under Part B, Clause 2.1 of the Resolution Plan and under the heading Financial Proposal in Part C of the Plan;

**"Force Majeure"** means any circumstance or event not within the reasonable control of the Resolution Applicant, but if and only to the extent that: (i) such circumstance, despite the exercise of reasonable diligence and the observance of best practices cannot be or be caused to be prevented, avoided or removed, and (ii) such circumstance materially and adversely affects the ability of the Resolution Applicant to perform its obligations. Force Majeure shall include but not be limited to:

- (a) An act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods);
- (b) War, hostilities (whether war be declared or not), invasion, act of foreign;
- (c) enemies, mobilisation, requisition or embargo;

- (d) Rebellion, revolution, insurrection, or military or usurped power or civil war;
- (e) Riot, commotion, strikes, lock outs or disorder;
- (f) Acts or threats of terrorism;
- (g) Any change in law arising after the Effective Date which renders the implementation of the Plan void.

“FY” means a Financial Year;

“**Governmental Authority**” means the President of India, the GOI, the Governor and the Government of any state in India, any Ministry or department of the same, any municipal or local government authority, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any agency, department, board, commission or instrumentality, any court, tribunal, arbitrator, commission or other judicial or quasi-judicial body, and shall include, without limitation, any stock exchange, depository and any regulatory body;

“**ICDR Regulations**” means the Securities Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (as amended from time to time);

“**Information Memorandum / IM**” means the information memorandum dated June 28, 2018 prepared by the Resolution Professional and made available to the Resolution Applicant in the Data Room and shall include the List of Creditors;

“**Insolvency Commencement Date**” shall mean January 8, 2018;

“**Interim Period**” means the period between the Effective Date and the Completion Date;

“**List of Creditors**” means the list of creditors of the Company as provided in the Data Room and as updated from time to time;

“**Liquidation Value**” shall have the meaning ascribed to it in regulation 2(1)(k) of the CIRP Regulations;

“**LODR Regulations**” means the Securities Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (as amended from time to time);

“**LOI**” means the letter of intent issued by the CoC to the successful resolution applicant;

“**MCA**” means the Ministry of Corporate Affairs;

“**Monitoring Agency (MA)**” shall have the meaning as ascribed in Part C, Clause 13;

“**MT**” means Million Tonnes;

“**MTPA**” means Million Tonnes Per Annum;



“**New Equity Shares**” is defined under Step 6 of **Annexure 2**;

“**NCLT**” means the National Company Law Tribunal;

“**NCLAT**” means the National Company Law Appellate Tribunal;

“**NSE**” means the National Stock Exchange of India Limited;

“**Non-Compliance**” means any delay, default, non-compliance, breach, violation, contravention by the Company, any member or shareholder of the company or by any Person associated with the Company in any manner under the terms of Applicable Law or any agreement or arrangement binding on the Company and any imposition of fines, penalties, default interest, damages, and any amounts of whatsoever nature in relation thereto.

“**Operational Creditors**” shall mean all operational creditors of the Corporate Debtor other than employees and workmen and statutory creditors;

“**Permits**” means all consents, licenses, permits, permissions, authorizations, rights, clarifications, approvals, clearances, confirmations, declarations, waivers, exemptions, registrations, filings from or relating to any Governmental Authority under Applicable Law including but not limited to the permits listed in **Annexure 3**;

“**Person**” shall mean a proprietorship enterprise (whether incorporated or not), Hindu undivided family, union, association, government (central, state or otherwise) or any agency, authority or political subdivision thereof; and where relevant, shall be deemed to include, as appropriate, that person’s respective successors, permitted assigns;

“**Promoter and Promoter Group**” shall have the meaning ascribed to it in regulation 2(1)(oo) and 2(1)(pp) of Securities and Exchange Board of India (Issue and Capital Disclosure Requirements) Regulations, 2018;

“**Provisional Balance Sheet**” means the statement of assets and liabilities of the Company as of January 1, 2018 and as uploaded in the Data Room;

“**RBI**” means the Reserve Bank of India;

“**Resolution Applicant/RA**” shall mean the consortium of SSNRPL and SSPL, with SSNRPL being the lead partner;

“**Resolution Plan**” or “**Plan**” means this resolution plan submitted by the Resolution Applicant to the Resolution Professional for the proposed corporate insolvency resolution of the Corporate Debtor in accordance with the Code, as amended from time to time, and shall include all the Annexures;

“**Resolution Professional/RP**” means Mr. Kshitiz Chhawehharia, an insolvency professional with IBBI Reg No. IBBI/IPA-001/IPP00358/2017-2018/10616, who has been appointed and confirmed as the resolution professional for the Corporate Debtor;

“**ROC**” means the Registrar of Companies;

“**Rs.**” means the Indian Rupee, the lawful currency of the Republic of India;

“**SEBI**” means the Securities and Exchange Board of India;

“**SSNRPL**” means SS Natural Resources Private Limited, a private company incorporated under the provisions of the Companies Act, 1956 under the corporate identity number U10300WB2015PTC204962 and having its registered office at S. S. Chambers, 5, C. R. Avenue, 2nd Floor Kolkata, West Bengal 700072;

“**SSPL**” shall mean Shyam SEL and Power Limited, a company incorporated under the provisions of the Companies Act, 1956 under the corporate identity number U27109WB1991PLC052962 and having its registered office at S. S. Chambers, 5, C. R. Avenue, 2nd Floor Kolkata, West Bengal 700072;

“**Stock Exchanges**” means NSE and BSE;

“**Sustainable Debt**” shall have the meaning ascribed to it in Financial Proposal of this Resolution Plan;

“**Takeover Regulations**” means the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (as amended from time to time);

“**Taxation of Tax or Taxes**” means all forms of taxes and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions and levels and whether levied by reference to income, profits, book profits, gains, net wealth, asset values, turnover, goods, services, stamp duty, added value or otherwise and shall further include payments in respect of or on account of Tax, whether by way of deduction at source, advance tax, minimum alternate tax or otherwise and shall include all penalties, charges, costs and interest relating thereto;

“**TPA**” means Tonnes Per Annum;

“**WBIDC**” means West Bengal Industrial Development Corporation Limited;

“**Workmen**” shall have the meaning ascribed to them in the Industrial Disputes Act, 1947.

## 2. Interpretation and Construction:

Unless a contrary intention appears and unless inconsistent with the Subject or context thereof, any reference in this Resolution Plan to:

- (a) Words denoting singular number only shall include the plural number and vice-versa;
- (b) Any agreement or instrument referred to in this Resolution Plan is a reference to that agreement or instrument as amended, novated, supplemented, restated

- (however fundamentally and whether or not more onerously) or replaced from time to time;
- (c) Reference to any legislation or Applicable Law shall include references to any such legislation or Applicable Law as it may, after the date thereof, from time to time, be amended, supplemented or re-enacted and any successor legislation or Applicable Law, and any reference to a statutory provision shall include any subordinate's legislation made from time to time under that provision;
- (d) Unless otherwise stated, (i) all references in this Resolution Plan to Sections, Schedules, Annexures and Appendices shall be construed as a reference to the Sections, Schedules, Annexures and Appendices of this Resolution Plan. And (ii) any reference to Paragraphs in an Annexure shall be construed as a reference to the Paragraphs of that Annexure;
- (e) All references to the term "**Person**" shall include an individual, natural person, corporation, partnership, limited liability partnership, joint venture, a trust, body corporate, association company, Governmental Authority and in case of a company and a body corporate shall include their respective successors and assigns and in case of any individual his or her respective legal representative, administrators, executors and heirs and in case of trust shall include the trustee(s) for the time being and from time to time. The term "persons" shall be construed accordingly;
- (f) Capitalised terms defined by inclusion in quotations and / or parenthesis have the meanings so ascribed; and
- (g) All terms and words not defined in this Resolution Plan shall, unless repugnant or contrary to the context or meaning thereof, have the same meaning ascribed to them in the Code, the CIRP Regulations, the Companies Act, the Securities Contracts (Regulation) Act, 1956, The Depositories Act, 1996, the Income -tax Act, 1961 ("**IT Act**"), SEBI Act and other Applicable Law, rules, regulations, bye laws, as the case may be, including any statutory modification or re-enactment thereof from time to time;
- (h) Any statement in the Resolution Plan in relation to RA's financial information (including but not limited to EBITDA, revenues, sales turnover, cash, cash equivalents, bank balance and Net Debt) shall be considered on a consolidated basis;
- (i) A reference to "**in writing**" includes any communication made by letter or fax but not e mail (unless otherwise expressly provided in this Resolution Plan.);
- (j) Unless otherwise specified, any reference to a time of day is to Indian Standard Time;
- (k) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those

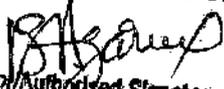


Consortium of S. S. Natural Resources Pvt Ltd and Shyam SEL & Power Limited

terms;

- (1) Where the context permits, other and otherwise are illustrative and shall not limit the sense of the words preceding them.

For S. S. NATURAL RESOURCES PVT. LTD.

  
Director/Authorised Signatory



## ANNEXURE 2: STRUCTURE FOR ACQUISITION OF CONTROL OVER THE COMPANY

### 1. Shareholding pattern of the Company as on 30th December, 2017

Category of shareholders	No of Shares*	Percentage
<b>Promoter and Promoter group</b>	<b>1,31,88,896</b>	<b>37.60%</b>
<b>Public Shareholders</b>	<b>2,18,88,305</b>	<b>62.40%</b>
<i>Financial Institutions</i>	<i>15,21,542</i>	<i>4.34%</i>
<i>Bodies Corporate</i>	<i>27,69,573</i>	<i>7.90%</i>
<i>NRIs</i>	<i>2,95,411</i>	<i>0.84%</i>
<i>Individual Shareholders</i>	<i>1,55,00,174</i>	<i>44.19%</i>
<i>Others</i>	<i>18,01,605</i>	<i>5.14%%</i>
<b>Total</b>	<b>3,50,77,201</b>	<b>100.00%</b>

### 2. Genesis of Resolution Plan

As an integral part of the Resolution Plan, the Resolution Applicant proposes to acquire a controlling stake in the Company in the manner set out in the Resolution Plan and upon implementation of each of the following steps in the sequence set out hereunder:

#### Date of Resolution Plan 'taking effect' and 'becoming operative'

The Resolution Plan as set out herein in its present form or with any modification(s), as may be approved or imposed or directed by the Adjudicating Authority, shall become effective from the Effective Date.

### 3. Pre-Requisite for Implementation of the Plan

Before Plan implementation and upon approval of the Plan on Effective Date, the trading in the shares of Corporate Debtor shall be immediately suspended and the Order by Adjudicating Authority approving the Plan shall be deemed to be a directive order upon stock exchanges to suspend the trading in equity shares of the Corporate Debtor

### 4. Detailed Steps of Financial Proposal

Following steps shall take place in the order of sequence (except otherwise mentioned in any step or any part of the step) mentioned below as an integral part of the Resolution Plan, within the timelines mentioned in the implementation schedule in Clause 12 of Part C of the Resolution Plan. It is intended that all the transactions mentioned below shall be consummated in the manner stipulated herein and shall be effective in the manner contemplated in the Plan. It is provided that the procedure, timeline and the sequence of steps listed below are only indicative and that they may be rearranged as may be required based on discussion between the parties or with

necessary Governmental Authorities, and at all times in compliance with Applicable Law.

**Step 1: Payment of CIRP Cost, Operational Debt and Workmen's Dues**

- (a) The Resolution Professional shall certify the CIRP Cost in writing within 1(one) day from the Effective Date. The Resolution Applicant shall pay the CIRP Cost as per the timeline specified in Clause 12 of Part C: Resolution Plan.
- (b) The Resolution Applicant shall thereafter infuse the following sums in the Corporate Debtor:
- Sum of Rs. 3,50,00,000 (Rupees three crore fifty lakhs) towards payment to Operational Creditors (other than Workmen and statutory liabilities);
  - sum of Rs. 3,00,00,000 (Rupees three crore) towards payment of statutory liabilities; and
  - a sum of Rs. 7,00,00,000 (Rupees seven crore) towards payment of Admitted Workmen and Employees Dues.

The aforesaid sums aggregating to Rs. 13,50,00,000 (Rupees thirteen crores fifty lakhs) shall be transferred to a separate bank account from where payments shall be released by the Monitoring Agency from time to time, in accordance with the Plan.

All such amounts shall be brought in within a maximum period of 30 (thirty) days from the Effective Date and in any event 1 (one) day before the Upfront Payment is made into the Controlled Account.

**Step 2: Payment of Consideration in Controlled Account:**

- (a) The Resolution Applicant shall bring in Rs. 351 crores payable upfront to the Financial Creditors ("**Upfront Amount**") within 30 (thirty) days from the Effective Date (Date of Approval of the plan by Adjudicating Authority) as unsecured loan in the Corporate Debtor.
- (b) The Upfront Amount shall be deposited in a controlled account ("**Controlled Account**"). The Controlled Account will be operated in accordance with the account operating agreement entered into by the authorized representative of the Monitoring Agency and the Resolution Applicant, along with the account bank. The Upfront Amount shall be released from the Controlled Account to the Financial Creditors upon a written confirmation being provided by the Monitoring Agency to the effect that all the steps contemplated herein i.e. cancellation of Preference Shares, conversion of Unsustainable Debt into Equity Shares, issuance of New Equity Shares (as defined herein after) and completion of selective capital reduction have been completed or on the 90<sup>th</sup> day from the Effective Date, whichever is earlier.
- (c) If some of the steps contemplated herein have not been completed by the 90<sup>th</sup> day from the Effective Date, the Financial Creditors shall provide all support and

take all actions and measures as may be required to be provided or taken by them to implement such steps in the manner contemplated herein, notwithstanding the release of the Upfront Amount to the Financial Creditors.

- (d) The Financial Creditors shall promptly on release of the Upfront Amount, provide a no dues certificate in full and complete satisfaction of all debts owed to the Financial Creditors by the Corporate Debtor, including all guarantees/indemnities/undertakings which may have been provided by the Corporate Debtor to the Financial Creditors, for credit facilities availed by any third party or the Corporate Debtor, as the case may be, shall also stand satisfied. Provided however, the Financial Creditors shall retain their right to proceed against the guarantors (save and except the guarantee provided by Vanguard and EES to the extent of Assigned Debt), the Existing Promoters and their assets other than the EES Kalyani Land and Durgapur Land. The Financial Creditors shall release all Encumbrances over all the assets of the Corporate Debtor and sign all documents required in this regard, including all forms and documents for filing of satisfaction of charge with the RoC or for recording the release at the registrar of assurances in such form and manner as required by the Resolution Applicant. In any event upon release of the Upfront Amount to the Financial Creditors, the security interest of the Financial Creditors over the assets of the Corporate Debtor shall stand extinguished and all the assets shall become free of all Encumbrances.
- (e) It is however clarified that if any appeal is preferred against the order approving the Plan before any Appellate Authority and any stay is granted by the Appellate Authority, the timeline for deposit of the Upfront Amount or release of the Upfront Amount to the Financial Creditors, as the case may be, shall stand extended till the vacation of the stay or disposal of the appeal, whichever is earlier. Where the Appellate Authority is the NCLAT, in calculating the period of extension, the time available (including any extension thereof) under section 62 of the Code, for filing an appeal against the order of NCLAT before the Supreme Court shall also be added.

### Step 3: Assignment of Admitted Debt of Rs. 100 crores to the Corporate Debtor

- (a) The EES Kalyani Land is mortgaged in favour of the Financial Creditors mentioned in Part I of Annexure 6. Further, EES has also provided a guarantee to the Financial Creditors as set out in Part I of Annexure 6. The Durgapur Land is mortgaged in favour of the Financial Creditors set out in Part II of Annexure 6 of the Plan. Vanguard has provided a deed of guarantee in this regard to the Financial Creditors set out in Part II of Annexure 6. The Financial Creditors mentioned in Annexure 6 shall simultaneously with the deposit of the Upfront Amount in the Controlled Account and in any event on the same day, assign the Admitted Debt of Rs. 100 crore to NarantakDealcomm Limited for a consideration of Rs. 100, as per the proportion agreed upon by the Monitoring Agency, along with the guarantee of Vanguard and EES to the extent of Rs. 100,00,00,000 (Rupees one hundred crores) and the equitable mortgage over the EES Kalyani Land and Durgapur Land. Upon such assignment, the Financial

Creditors shall promptly handover the original title deeds, maps, plans, record of rights, allotment letters, permissions and any other documents as available and as required for valid transfer and other title documents in their possession and all the rights/security interest of the said Financial Creditors over the said EES Kalyani Land and Durgapur Land shall stand extinguished/released. It is hereinafter clarified that the assignment of the guarantees provided by Vanguard and EES will be only to the extent of the Assigned Debt and the relevant Financial Creditors will have a right to claim against Vanguard and EES for the remaining amount.

#### Step 4: Cancellation of Preference Shares

- (a) The Resolution Applicant proposes to cancel the entire preference shares capital without any consideration paid to the Preference Shares holders of the Corporate Debtor along with any preference dividend whether due or not.
- (b) As on date, the following Preference Shares of the Company are outstanding:

Category	Nos of Shares	Face Value	Share Capital
5 % Redeemable Cumulative Preference Shares	13,00,000	10	1,30,00,000
4 % Redeemable Cumulative Preference Shares	31,60,000	10	3,16,00,000
5 % Redeemable Non - Cumulative Preference Shares	2,24,99,920	10	22,49,99,200
<b>Total</b>	<b>2,69,59,920</b>		<b>26,95,99,200</b>

Upon the approval of the Plan, it shall be deemed that all the applicable provisions of the Companies Act, regulations of SEBI and other Applicable Law relating to cancellation of preference shares have been complied with and separate approvals from the shareholders and preference shareholders including approvals under section 61 or 66 of the Companies Act shall not be required to be taken under the Applicable Laws.

#### Step 5: Conversion of Debt into Equity:

- (a) The Financial Creditors shall convert at par, the nonsustainable debt (i.e. the amount arrived by subtracting the Assigned Debt and the Upfront Amount from the Admitted Debts of the Financial Creditors) into equity shares of the Corporate Debtor ("**Converted Equity Shares**"). The Converted Equity Shares shall be issued to the security trustee appointed pursuant to a security trustee agreement entered into between the Corporate Debtor, the Financial Creditors and the Resolution Applicant who shall hold the shares for and on behalf of the Lenders

and for the benefit of the Resolution Applicant. In case it is not possible for any reason to issue shares in favour of the security trustee, the Monitoring Agency will decide an alternative. It is hereinafter clarified that the Financial Creditors are agreeing to allow the Corporate Debtor to convert the amount lying as debt in the Corporate Debtor's books into equity at par, only in pursuance to the process of resolution and in order to maximize the value of the Corporate Debtor during the resolution process. The conversion is only to provide a legal nature of release of dues and claims under the debt and settlement of debt due qua the Corporate Debtor. Therefore, it is emphasized, that the implication of conversion at par shall not in any way be considered to be a complete write-off of the debt due, in relation to the guarantors and other obligors.

- (b) The authorized share capital of the Corporate Debtor shall stand increased to such an amount so as to accommodate the issuance of the Converted Equity Shares and the capital clause of the memorandum of association of the Corporate Debtor shall stand accordingly amended.
- (c) The Converted Equity Shares so issued to the security trustee for and on behalf of the Financial Creditors shall be held for the benefit of the Resolution Applicant till such shares are dealt with in accordance with the Resolution Plan. Any compliance of provisions of the Banking Regulations Act or any other statute prohibiting Financial Creditors to hold such shares shall be deemed to be waived upon approval of the Resolution Plan.
- (d) Notwithstanding anything contained in this Resolution Plan, no payments over and above the payments set out above shall be made by the Resolution Applicant towards any charges, imposts or amount called in whatever name save and except the fees payable to the security trustee.
- (e) Notwithstanding anything contained in this Resolution Plan or any other document including the guarantee deeds in favor of the Financial Creditors, the act of conversion of debt into equity shall not tantamount to release of the guarantors against whom the Financial Creditors have taken / may take appropriate legal proceedings to recover the remainder of the debt. The legal effect of the conversion of debt into equity would be merely to extinguish the right of the Financial Creditors to recover debt from the Corporate Debtor without affecting the liability of the guarantors to repay the debt to the Financial Creditors.
- (f) Upon the approval of the Plan, it shall be deemed that all the applicable provisions of the Act, regulations of SEBI and other Applicable Law relating to conversion of debt into equity shares have been complied with and separate approvals shall not be required to be taken under the Applicable Laws including approvals under section 62 and other applicable provisions of the Companies Act.
- (g) If the Plan is finally set aside by the Supreme Court, all actions taken including conversion of debt to equity shall be nullified and the original status shall be restored and the Financial Creditors shall refund all amounts paid by the

Resolution Applicant within 30 (thirty) days from the date of the order of the Supreme Court setting aside the Plan. Further, the Resolution Professional and the operational creditors shall also be refund all sums received pursuant to the Plan within the said period of 30 (thirty) days.

**Step 6: Infusion of funds by the Resolution Applicant:**

- (a) The Resolution Applicant shall infuse nominal fund of Rs. 5,00,00,000.00 (Rupees Five Crores Only) to acquire a shareholding interest in the Corporate Debtor. The Corporate Debtor will issue these shares to the Resolution Applicant. The same shall be used towards payment of capex / refurbishment / working capital / investments or any other purpose at the sole discretion of the Resolution Applicant.
- (b) The authorized share capital of the Corporate Debtor shall stand increased to such an amount so as to accommodate the issuance of new equity shares to the Resolution Applicant ("New Equity Shares") and the capital clause of the memorandum of association of the Corporate Debtor shall stand accordingly amended. No separate approval under section 61 and other applicable sections of the Companies Act shall be required.
- (c) Approval of shareholders' if any for issuance of the New Equity Shares shall be deemed to have been granted pursuant to approval of the Plan by the Adjudicating Authority and no separate approval shall be required to be taken. Further, compliances under SEBI - ICDR Regulations and Takeover Regulations shall not apply to such issuance of New Equity Shares.

**Step 7: Selective Capital Reduction:**

- (a) The entire shareholding of the existing shareholders (Other than the New Equity Shares but including Converted Equity Shares) of the Corporate Debtor shall be subject to a capital reduction process and shall be reduced to nil and no consideration shall be paid for the same. The security trustee shall take all actions as may be required to be taken for extinguishment of the Converted Equity Shares.
- (b) Accounting Treatment: The equity share capital held by the existing shareholders shall be reduced the balance shall be adjusted with accumulated losses and assets of the company shall be suitably impaired to reflect the current value.
- (c) Subsequent to the cancellation of the existing share capital, the entire share capital of the Corporate Debtor will be held by the Resolution Applicant. The Corporate Debtor being a public limited company is required to have a minimum of 7 shareholders and therefore, the Resolution Applicant along with its respective nominees shall subscribe to the New Equity Shares. The nominees proposed to subscribe to the New Equity Shares will be eligible under Section 29A of the Code.
- (d) The approval of the Resolution Plan by the Adjudicating Authority shall be

deemed to constitute compliance with all the procedural requirements in terms of Section 66 of the Companies Act and NCLT (Procedure for Reduction of Share Capital), Rules 2016 and no separate compliance shall be required under the Act or the regulations of SEBI or under any other Applicable Law including filing of application for reduction is required. The capital reduction shall not require the consent of any of the creditors of the Corporate Debtor or approval of the shareholders of the Corporate Debtor as the Plan upon being approved by the NCLT shall be binding on the Corporate Debtor and its stakeholders (including its creditors and shareholders). Further, the requirement of adding the words "and reduced" in the name of the Corporate Debtor shall be dispensed with.

- (e) For avoidance of doubt, the approval by the CoC of the Resolution Plan shall be deemed to be consent of the Financial Creditors such Capital Reduction. Without prejudice to what has been stated herein, in the event any consent is required each of the Financial Creditors shall provide its consent in the form that is required by the Adjudicating Authority under the Applicable Laws.

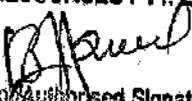
#### **Step 8: Delisting of Equity Shares**

- (a) As an integral part of the Plan and simultaneously with the capital reduction, the equity shares of the Company shall stand delisted. The liquidation value of the Corporate Debtor is insufficient to make any payment to the existing shareholders of the Company therefore, no consideration shall be payable by the Corporate Debtor to the shareholders.

#### **Step 9: Capex**

- (a) Post completion of the aforesaid steps, Resolution Applicant shall bring in funds as required, in the manner at the discretion of the RA, towards capital expenditure to run the Company on going concern. The Financial Proposal contemplates that a sum of Rs. 306 crores shall be brought in towards capex/working capital.

For S. S. NATURAL RESOURCES PVT. LTD.

  
Director/Authorised Signatory

**ANNEXURE 3 – APPROVALS, EXTINGUISHMENTS AND WAIVERS**

1. The Resolution Applicant requests that the approvals / directions / clarifications stated below be granted so as to enable implementation of the Resolution Plan and to effect a turn-around of the business of RIL with a view to provide maximum value to all the stake holders concerned. All the approvals/directions/clarifications shall be deemed to form a part of the order sanctioning the Plan.
2. The approval of the Adjudicating Authority and the CoC shall constitute adequate approval for cancellation of the existing share capital and accordingly, no approval/consent shall be necessary from any other Person/Governmental Authority in relation to either of these actions under any agreement, the constitutional documents or under any Applicable Law.
3. In case of capital reduction, the requirement of adding “and reduced” in the name of the Corporate Debtor to be dispensed with (on account of reduction of share capital of the Corporate Debtor).
4. The approval of this Plan by the Adjudicating Authority shall be deemed to have waived all the procedural requirements under the Companies Act, 2013, LODR Regulations, the NCLT (Procedure for Reduction of Share Capital) Rules, 2016 and other Applicable Laws for reduction of share capital and issuance of equity shares to the Resolution Applicant and/or the Financial Creditors.
5. Approval of the Resolution Plan shall be deemed to be a waiver of any case initiated, by the Securities & Exchange Board of India (SEBI), Stock Exchanges or any such authority, for any violation, by the Existing Promoter Group or the Corporate Debtor and any property attached towards recovery of the same shall be deemed to be released on approval of the Resolution Plan.
6. Waiver of any fee payable to any stock exchange or any such regulatory body towards any past dues or towards fee dues pursuant to any of the steps as contemplated in the Resolution Plan including but not limited to any delisting fee, etc
7. An order directing that the right, title and interest of the Company over any land owned by the Promoter/Promoter Group or any person related to the Corporate Debtor or Promoter/Promoter Group (“Third Party Owner”) shall not cease and the Company shall continue to remain in possession and occupation of such land and such Third Party Owner shall enter into valid lease agreements at nominal rent with the Corporate Debtor.
8. Directions that all the statutory liabilities be permitted to be written off / cancelled.
9. Direction to authorities for providing key infrastructure facilities and approvals like Consent to Establish, Consent to Operate, Water approval, Railways approval, etc. expeditiously without insisting on payment of arrear payments

- including any dues/penalties, fines etc.
10. Waiver of all the Operational Creditors due as specified in the Information Memorandum as the Liquidation Value payable to them is NIL.
  11. Waiver of any dues of whatsoever nature towards Railways, Water authorities or any such infrastructure provider and waiver of all statutory liabilities as the Liquidation Value is nil.
  12. Withdrawal of litigations initiated by the Financial Creditors against the Corporate Debtor.
  13. Extinguishment and waiver of all dues to the Existing Promoter group by Corporate Debtor.
  14. The trading on the shares of the Corporate Debtor shall stand suspended in all the stock exchanges where the shares are listed on and from the Effective Date without any further act or deed.
  15. SEBI and the stock exchanges shall delist the Corporate Debtor with effect from the Effective Date in accordance with the Resolution Plan and pursuant to the order of the Adjudicating Authority approving the Resolution Plan.
  16. Relinquishment of all / any promise to pay towards any obligation including corporate guarantee, pledge on any shares, mortgage or charge on any specific asset, etc. issued by Corporate Debtor in favour of or on behalf of any of its subsidiaries, associates, group companies or any third party.
  17. Specific waiver of transaction costs related leading to implementation of the Resolution Plan including but not limited to any incidence of stamp duty, ROC fees, Income Tax, any statutory levy, renewal charges, etc. The Resolution Plan envisages increase in the authorised capital for implementation. The ROC fees towards the same shall be specifically waived.
  18. To direct / grant all approvals required for undertaking the capital reduction envisaged in Annexure 2 of the Resolution Plan without the requirement of filing any separate application for reduction and the Plan so submitted shall be treated as an application for reduction.
  19. Permitting waiver of all liabilities and taxes arising out of implementation of the transactions contemplated in the Resolution Plan and instructing the relevant authorities concerned accordingly.
  20. Directions from Adjudicating Authority that other than actions by the CoC / Resolution Professional against the guarantees extended by the Existing Promoters, all legal suits, proceedings, certificate proceedings and/or quasi-legal proceedings that have been initiated against the Corporate Debtor or the Existing Promoter Group, subsidiaries / associates / related party(ies) of the Existing Promoter Group, which may have an adverse impact on the Corporate Debtor of any nature whatsoever, shall stand quashed, including but not limited to:

- (a) for recovery of any debts and dues (including but not limited to statutory dues like Central/State Sales Tax/value added tax/Central Excise/Service Tax/ Goods and Services Tax, Income Tax, Custom Duty, etc. or any other statutory dues) pending against the Corporate Debtor and 100% waiver of all such claims/dues thereunder;
- (b) those related to taxation, related to environment and forest laws, railway claims/disputes, proceedings under the Foreign Exchange Management Act 1999, Prevention of Money Laundering Act 2002, criminal matters, etc.
21. Directions from Adjudicating Authority to the relevant parties concerned to ensure continuity of critical infrastructure contracts/arrangements.
22. Directions to the concerned ROC and State Governments to waive stamp duty and fees applicable to the implementation of the Resolution Plan.
23. Directions from Adjudicating Authority to Resolution Professional / MA to ensure all the assets shall be fully insured till the time their possession is handed over to the new management.
24. Directions from Adjudicating Authority allowing Corporate Debtor to use the brought forward losses for the purpose of the Income Tax Act, 1961.

For S. S. NATURAL RESOURCES PVT. LTD.

  
Director/Authorized Signatory

**ANNEXURE 4: PROFILES OF TURNAROUND EXPERT**

The Resolution Applicant proposes to use its in-house technical team namely Mr. V.V. Rao & Mr. K.V. Rao who has substantial turnaround & operational expertise in steel industry.

**Mr. V. Veerabhadra Rao** is an Engineering Graduate in Mechanical from Nagarjuna University with rich experience of about 23 years in the field of Manufacturing Sector. He started his career with GMR Vasavi Industries Limited, had a brief stint in Information Technology Industry for 2 years. Presently working as General Manager at Durgapur Plant of Shyam Group and managing the overall operations of the plant. He has proved his capabilities in achieving the Business Objectives of the organization by optimal utilisation of available resources and increasing Operational Efficiency at the plant level. Under his leadership Durgapur Plant is producing niche products in Ferro Alloys, which are well known for its unique quality parameters valued by the customers.

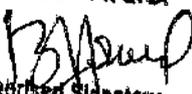
Following are the various positions held by Mr. V.V Rao in various organizations:

Shyam Group	General Manager	2003 to till date
Srimata Cyber Services Limited	Project Manager	2001 – 2003
GMR Vasavi Industries Limited	Manager – Engineering	1993 -2001

**K VenkateswararaRao**, an Engineering Graduate in Metallurgical Engineering from Indian Institute Of Metals, Kolkata, an astute professional with over 29 years of executive, leadership & management expertise in manufacturing industries. He has been proficient in translating business results into Operating Parameters in uniquely challenging situation directed towards sustainable profits and growth of organizations. He started his career with Nava Bharat Ferro Alloys Ltd. After that, he has been part of various esteemed organisations at a senior level.

- Maithan alloys Ltd
- Sri Vasavi Industries Ltd
- Shyam Group.

For S. S. NATURAL RESOURCES PVT. LTD.

  
Director/Authorised Signatory



## ANNEXURE5: PREVIOUS EXPERIENCE, CREDITWORTHINESS AND FINANCIAL CAPABILITY

### 1. Background of Resolution Applicant(s)

#### 1.1. Background of SSNRPL

1.1.1 SSNRPL is a Shyam SEL group entity. It was incorporated in 1991. It has registered office at 5 C.R. Avenue, Princep Street, Kolkata 700072. The corporate identity number of SSNRPL is \_U10300WB2015PTCWB204962.

1.1.2 **Shareholders:** The shareholders of SSNRPL as on date is as set out below:

S. No.	Name of Equity Holder	Number of Equity Shares	% of Holding
1.	Sheetij Agarwal Family Trust	150000	25%
2.	Mittu Agarwal	150000	25%
3.	Sumitra Devi Agarwal	66000	11%
4.	Dilipp Agarwal	80000	13%
5.	Sitaram Agarwal	84000	14%
6.	Deepak Kumar Agarwal	80000	13%

1.1.3 **Directors:** Bajrang Lal Agarwal and Dilipp Agarwal.

1.1.4 **Business:** SSNRPL is a special purpose vehicle of Shyam Group formed for the purpose of acquiring new business / assets in the steel industry and related activities

#### 1.2. Background of SSPL

1.2.1 Shyam SEL & Power Limited ("SSPL"), a Shyam SEL group entity, is a closely-held company, incorporated in 1991. The corporate identity number of SSPL is U10300WB2015PTC204962, and its registered address is at S S Chambers, 5 C R Avenue, 2<sup>nd</sup> Floor, Kolkata 700072.

1.2.2 **Shareholders:** SSPL, is a subsidiary of Shyam Metallics & Energy Limited ("SMEL") with SMEL holding 100% shareholding in SSPL. SSPL was incorporated on 05 September 1991.

The shareholding pattern of SSPL as on date is as set out below:

For S. S. NATURAL RESOURCES PVT. LTD.

  
Director/Authorized Signatory

1.2.3 **Business**  
: SSPL is an inte

S. No.	Shareholders' name	Number of Shares	% shareholding
1	ShyamMetalics& Energy Ltd.	44125044	99.9986
2	Brij Bhushan Agarwal (nominee)	100	0.0002
3	Mahabir Prasad Agarwal (Nominee)	100	0.0002
4	Sanjay Agarwal (Nominee)	100	0.0002
5	Mahabir Prasad Agarwal (Nominee)	100	0.0002
6	Bajrang Lal Agarwal (Nominee)	100	0.0002
7	Mittu Agarwal (Nominee)	100	0.0002
<b>TOTAL</b>		<b>44,125,644</b>	<b>100</b>

grated TMT/Rolled/Structural products manufacturer. The manufacturing operations of SSPL are located at RanigunjandJamuria in West Bengal. SSPL manages semi-integrated operations for manufacturing iron and steel products and generating power for captive consumption.

#### 1.2.4 Capacity

The manufacturing capacity SSPL across various products is as tabulated below:

Products	UOM	Capacity
Pellet Plant	TPA	6,00,000
Sponge Iron (DRI)	TPA	3,85,800
Steel Melting Shop (SMS)	TPA	2,01,600
Rolling Mill	TPA	60,000
Structural Rolling Mill	TPA	53,000
Ferro Alloys	TPA	94,320
Captive Power Plant	MW	89

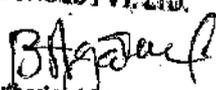
#### 1.2.5 Financials

The brief financials of SSPL are as under:

Particulars(Rs Cr)	FY 16 (A)	FY 17 (A)	FY 18 (A)
Revenue from Operations	892.13	1288.11	2034.63
Other Income	15.86	20.72	39.29
EBITDA	111.20	170.37	436.01
PBT	-13.15	34.79	306.16
Debt	345.53	333.37	179.86
Cash Balance	1.95	18.08	2.81
Net Worth	1011.65	954.70	1189.83

4

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### 1.2.6 Credit Rating of SSPL

Based on the rating undertaken by CARE in March, 2018, SSPL received long term debt rating of A+ and short-term debt rating as A1+. This was an improvement to the earlier ratings of the company on account of improved financial and operational parameters.

### 1.2.7 Group Companies

SSPL is part of the Shyam group, with the group being a leading manufacturer of Iron & Steel products in Eastern India with turnover of around INR 70 billion and employing more than 9,000 employees in its production chain. The major companies under Shyam group are as under:

- Shyam SEL & Power Limited (being a part of the consortium submitting the Resolution Plan)
- ShyamMetals and Energy Limited

### 1.2.8 Detailed Financials

Particulars (Rs Crore)	FY 15 (A)	FY 16 (A)	FY 17 (A)	FY 18 (A)
<b>Profit &amp; Loss Statement</b>				
Revenue from Operations	1148.38	892.13	1288.11	2034.63
Other Income	10.95	15.86	20.72	39.29
EBITDA	147.40	111.20	170.37	436.01
Finance Cost	38.74	28.41	26.09	23.10
PBT	23.54	(13.15)	34.79	306.16
PAT	30.80	(5.82)	19.78	238.13
<b>Balance Sheet</b>				
Total Equity	38.75	40.91	44.13	44.13
Long term borrowing	267.34	199.88	128.57	74.13
Short term borrowing	200.02	145.65	204.80	105.73
Cash Balance	117.87	1.95	18.08	2.81
Total Current liability	483.19	470.72	517.69	520.41
Fixed Asset (Incl. CWIP)	882.45	1283.48	1104.09	1038.75
Total current Asset	622.12	511.70	603.35	848.56
Net Working Capital	138.92	40.98	85.66	328.15
<b>Ratios</b>				
Net Worth	695.89	1011.65	954.70	1189.83
Current Ratio	1.29	1.09	1.17	1.63
Long term Debt/ Equity	6.90	4.89	2.91	1.68
Interest Coverage	1.61	0.54	2.33	14.24
EBITDA Margin	12.84%	12.25%	13.02%	21.02%
Net Profit Margin	2.68%	-0.64%	1.51%	11.48%

- The Company has continued to focus on developing new markets for their products which have a growing domestic & international market.

- Cost efficiencies, product mix, sales mix and optimum utilization of available resources have helped the Resolution Applicant improve its performance notwithstanding competition and recession in the sector.
- The capacity utilization of most products manufactured by SSPL has improved over past few years on account of increase in demand in domestic and export markets. The export sale of SSPL has also increased correspondingly. This has helped the Company in attaining a CAGR of ~ 14% in its turnover.
- The EBITDA margins improved on account of increased capacity utilization and optimization of various costs overheads. EBITDA increased 2.5 times in FY18 over corresponding figures in FY17.
- As against EBITDA of Rs 436.01 Cr in FY18, the total debt is Rs 230.26 Cr. the company's leverage ratios are comfortably placed viz-a-viz most mid-sized and big peers in the Steel industry.
- Interest costs of SSPL has gradually declined on account of gradual reduction in debt.
- PAT improved from Rs. 30.80 Cr in FY 2015 to Rs. 238.13 Cr in FY 2018 mainly on account of improved sales realization, better EBITDA margins and reduction in financial cost. Also the Net Profit Margin has improved in FY 18 as compared to FY 15 due to cost optimization measures taken by the Company over the years.
- Improvement in operational efficiencies and operating leverage helped SSPL to record good financial performance over past few years.
- Shyam Group has an established position in the ferro-alloy industry with a track record of around two decades. In the recent past, Shyam Group has forayed into the production of niche products, like medium carbon and low carbon ferro alloys, which earn a significant premium over high-carbon ferro alloys, thereby providing some cushion against volatility in prices.

### 1.2.9 Promoters & Key Managerial Persons

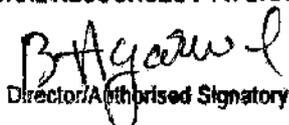
#### Promoter Details

SSPL is promoted by Mr. Mahabir Prasad Agarwal & Mr. Brij Bhushan Agarwal.

The day-to-day affairs of SSPL are looked after by Mr. Brij Bhushan Agarwal, son of Mr. Mahabir Prasad Agarwal with adequate support from a team of experienced professionals. Brief profiles of the Key Promoters and Management are as below:

**Mr. Mahabir Prasad Agarwal**, a B.Com Graduate from Calcutta University, is the founder of the Shyam group and has more than 35 years of experience in the steel business. The overall administration and strategic planning is executed under his able leadership. Under his guidance and dynamic leadership, the group has become one of the major players in the iron and steel industry in eastern India and is amongst the largest manufacturers of ferro alloys in India.

For S. S. NATURAL RESOURCES PVT. LTD.

  
Director/Authorised Signatory

**Mr. Brij Bhushan Agarwal-** Having done his Bachelor of Commerce from Calcutta University, Mr Bhushan Agarwal has also participated in various strategy programs at Harvard University. Under his guidance and dynamic leadership, the group has achieved many milestones. His vision, foresight and ability to execute projects in a timely and cost effective manner has been instrumental in SSPL achieving a dominant position in the Industry.

#### Details of Directors

DIN	FULL NAME	PRESENT RESIDENTIAL ADDRESS	DESIGNATION
00235978 ACWPA3142 K	BAJRANG LAL AGARWAL	SECTOR-I, CA-54, SALT LAKE CITY, KOLKATA- 700064	WHOLE-TIME DIRECTOR
01125056 ACGPA0365 A	BRIJ BHUSHAN AGRAWAL	3B, ASHOKA ROAD, 2ND FLOOR, ALIPORE, KOLKATA - 700027	MANAGING DIRECTOR
00232938 ACVPA5953H	SANJAY KUMAR AGARWAL	CA 54, BIDHNAGAR, SALT LAKE, 700064, West Bengal, INDIA	MANAGING DIRECTOR
00424400 ADFP A5631 B	KIRAN VIMAL AGARWAL	VIMAL SADAN, OPP. KETAV AUTO SERVICE STATION, DR V S ROAD, AMBAWADI, AHMEDABAD, 380015, Gujarat,	DIRECTOR
07035891 AGCPM4470 G	VENKATA KRISHNA NAGESWARA RAO MAJJI	SHREE RAM NAGAR, GARIVIDI VIZIANAGARAM, VISAKHAPATNAM, 535101, Andhra Pradesh, INDIA	INDEPENDENT DIRECTOR

For S. S. NATURAL RESOURCES PVT. LTD.

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06507365 AAOPJ4526C	YUDHVIR SINGH JAIN	P-13, MIG FLATS, PRASAD NAGAR, NEW DELHI 110005	INDEPENDENT DIRECTOR
00040825 ACDPC4040P	AJAY CHOUDHURY	375 PRINCE ANWAR SHAH ROAD, FLAT- 32C, TOWER 1, SOUTH CITY, PS-JADAVPUR, KOLKATA 700068,	INDEPENDENT DIRECTOR
02705232 ABCPM2518J e	BIKRAM MUNKA	240, S.N. ROY ROAD, METRO TOWERS, 5 <sup>TH</sup> FLOOR, FLAT 17A, SAHAPUR, KOLKATA - 38	WHOLE TIME DIRECTOR

1.2.1)

b

t Outstanding

The debt outstanding of SSPL as on 31-03-2018 is as tabulated under:

(Rs in Cr)

Facility	Outstanding
Long Term Borrowings (including current maturities within one year)	124.53
Short Term Borrowings	105.73
<b>Total</b>	<b>230.26</b>

## 2. Asset Classification of Resolution Applicant

As on date, the account of Resolution applicant is **Standard** with its lending banks

## 3. Overview of Shyam Group

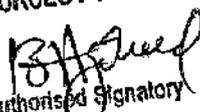
As mentioned earlier, SSPL is part of the Shyam group, which is a leading manufacturer of Iron & Steel products in Eastern India. Shyam Group was promoted by Mr. Mahabir Prasad Agarwal and the group has a turnover of over INR 70 billion employing more than 9,000 individuals in its production chain.

The Group has a track record of around three decades with its manufacturing/operating facilities spread across various states like Raniganj, Durgapur, Burdwan, Siliguri and Howrah in West Bengal; Sambalpur and Barbil in Orissa; Lumshong and Brynihat in Meghalaya, and Vizag in Andhra Pradesh. Further, the group also has strategic investments in various companies spanning diverse sectors like power (biomass, waste heat, thermal and hydel), cement, logistics and industrial parks.

With the confidence gained post serving domestic customers, the group has embarked upon large scale exports of steel and ferroalloys to overseas markets of Italy, Netherlands, Poland as well as Taiwan, Thailand and other South-East Asian countries.

The major companies under the Shyam group are as under:

For S. S. NATURAL RESOURCES PVT. LTD.

  
Director/Authorised Signatory

- o Shyam SEL & Power Limited (being a part of the consortium comprising the Resolution Applicant)
- o ShyamMetalics and Energy Limited

The details of the other companies apart from SSPL is as under:

**a. ShyamMetalics and Energy Limited:**

ShyamMetalics& Energy Limited (SMEL), is an unlisted Public Limited Company incorporated on 10 December 2002. It has its registered office at Trinity Towers, 83 Topsia Road, 7th Floor, Kolkata 700 046.

SMEL manufactures iron and steel products, ferro-alloys and power for captive consumption. Its manufacturing operations are located in Pandloi, Rengali in Sambalpur, Odisha.

The manufacturing capacity of SMEL across various products is as tabulated below:

Product	UoM	SMEL
		Sambalpur
Iron Pellet	TPA	3,00,000
Sponge Iron	TPA	6,27,000
Billet	TPA	3,37,920
TMT and Structural Products	TPA	1,56,000
Ferro Product	TPA	98,000
Captive Power Plant	MWH	85 MW

**Financials**

(Rs. Cr)

Particulars	FY 15 (A)	FY 16 (A)	FY 17 (A)	FY 18 (P)
<b>Profit &amp; Loss Statement</b>				
Revenue from Operations	1168	957	1157	1805
EBITDA	157	57	162	327
PBT	66	(95)	41	203
Debt	279	273	254	300
Cash	5	10	22	2
Net Worth	1197	1220	1279	1531

**Credit Rating of SMEL**

CARE Ratings had undertaken credit rating of SMEL along with the group company Shyam SEL and Power Ltd (SSPL) based on the financial statements as on 31<sup>st</sup> March, 2018. Consolidated financials of SSPL & SMEL were taken in to consideration on account of same promoter group, financial linkages between the company and same line of business.

for S. S. NATURAL RESOURCES PVT. LTD.

Director/Authorised Signatory

Synopsis of the credit rating details of SMEL is as under:

Facilities	Amount (INR Crore)	Rating	Remarks
Term Bank Facilities	67 (reduced from 363)	CARE A+; Stable	Revised from CARE A
Term Bank Facilities	302.00	CARE A1+	Revised from CARE A1
	<b>606.67</b>		

As seen from the above, CARE rating had revised the ratings upwards taking in to consideration improvement in debt protection metrics and improved liquidity position of the company and group. The revision in ratings also took in to consideration successful completion of the ongoing projects in the group

#### 4. Experience in Iron & Steel/ Ferro Alloys Sector

Shyam Group has an established position in the ferro-alloy industry with a track record of around two decades. In the recent past, group has forayed into the production of niche products, like medium carbon and low-carbon ferro alloys, which earn a significant premium over high-carbon ferro alloys, thereby providing some cushion against volatility in prices.

The company has a total of fourteen furnaces, five each at its units at Burdwan and Durgapur and remaining four at Vishakhapatnam, which gives the company substantial flexibility to align the product mix depending on the market demand.

The Shyam group, with its past track record and huge experience of successfully running and scaling up operations.

In terms of current sales arrangement, group undertakes contract manufacturing for Tata Steel for supplying low-carbon ferro alloys, which accounts for a significant share of its installed capacity, and thus partially insulates the company from the volatility in prices due to lack of vertical integration.

The company is primarily dependent on imports for procuring key raw materials like manganese ore, coke, thermal coal, which exposes it to foreign currency fluctuation risk. However, the risk is mitigated to some extent by export sales, which provides a natural hedge, and a defined hedging mechanism followed by the company.

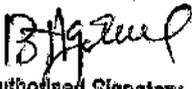
Given the power-intensive nature of operations, the competitive tariff rates enjoyed by group from Durgapur Projects Limited, Andhra Pradesh State Electricity Board and Damodar Valley Corporation result in the company having a favorable cost structure compared to other non-integrated ferro alloy producers.

#### 5. Financial Resourcefulness of Resolution Applicant

##### (i) Credit Rating- Positive

The rating action reflects the steady performance of the company in recent years and its established position in the domestic ferro-alloys industry, particularly

for S. S. NATURAL RESOURCES PVT. LTD.

  
Director/Authorised Signatory

after its successful foray into niche products like medium and low-carbon ferro alloys.

(ii) **Experienced Management team**

The Shyam group ventured in to manufacturing of steel products in 1991 and commenced production of billets in 1996. Over the years, the group has expanded its Steel manufacturing operations by integrating its operations and adding products across the value chain of long steel products. The promoters have a track record of performance across difficult market cycles. Thus the team brings along with a long standing experience of setting up large scale manufacturing facilities and to run and scale up the operations efficiently.

(iii) **Strong Market outreach and distribution network**

- The Shyam group, with its fourdecade old presence in the market has a strong marketing outreach and distribution network spread across India.
- Currently, the Resolution Applicant exports 60% of its products to US, Europe, Middle East and around 40% is sold in the domestic market to large consumers namely Tata Steel, JSW, JSL, etc.
- Thus, the Resolution Applicant has an extensive market presence and a large established network which will help build a pan India presence for SSPL's products.

(iv) **Snapshot of the Consolidated Financials of SSPL and SMEL**

Particulars (Rs Cr)	FY16 (A)	FY17 (A)	FY18 (A)
Sales	19,745.82	25,124.65	38,875.63
EBITDA	1,831.84	3,396.53	7,723.07
PBT	(1,079.28)	755.63	5,092.34
Debt	6,288.43	5,923.21	4,795.95
Cash	121.86	404.43	51.38
Net worth	22,317.24	22,333.17	27,208.00

For S.S. NATURAL RESOURCES PVT. LTD.

*B. Agarwal*  
Director/Authorised Signatory

Consortium of S. S. Natural Resources Pvt Ltd and Shyam SEL & Power Limited

**ANNEXURE 6: DETAILS OF FINANCIAL CREDITORS FOR THE ASSIGNED DEBT**

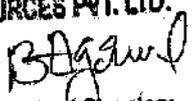
Part 1: Financial Creditors having charge over EES Kalyani Land

SN	Name of Creditor
1.	Asset Reconstruction Company(India) Limited
2.	Vijaya Bank
3.	UCO Bank
4.	Kotak Mahindra Bank Limited
5.	Pegasus Assets Reconstruction Private Limited

Part 2: Financial Creditors having charge over Durgapur Land

SN	Name of Creditor
1.	Asset Reconstruction Company (India) Limited
2.	Axis Bank Limited

For S. S. NATURAL RESOURCES PVT. LTD.

  
Director/Authorised Signatory



**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No 1142 of 2021**

**S S Natural Resources Private Limited**

**.... Appellant(s)**

**Versus**

**Ramsarup Industries Limited & Ors**

**....Respondent(s)**

**ORDER**

1 The National Company Law Tribunal<sup>1</sup>, in the operative directions contained in its order dated 4 September 2019, has, *inter alia*, observed as follows:

- “i) The Resolution Plan of Ramsarup Industries Ltd., which is approved by the CoC with 74.41% voting share, is hereby approved under provisions of sub-section(1) of Section 31 of the Insolvency and Bankruptcy Code, 2016, which shall be binding on the Corporate Debtor, M/s. Ramsarup industries Limited, its employees, members, creditors, guarantors, the Central Government, any State Government or any local authority and other stakeholders involved in the Resolution Plan subject to the below mentioned modification.
- ii) The Resolution Plan approved by the CoC shall include the portion of security expenses incurred by the Financial Creditor/West Bengal Industrial Development Corporation

Limited(WBIDCL) which is admitted by the RP in the upfront amount payable by the Resolution Applicant to the Creditors.

iii) The Resolution Plan, shall come into force from the date of pronouncement of this order.”

2 The above order of the NCLT has been affirmed by the National Company Law Appellate Tribunal.

3 The resolution plan was approved by the Committee of Creditors in their commercial wisdom. The resolution plan has been approved by the NCLT in terms of the above directions (save and except for a minor aspect pertaining to the security expenses of West Bengal Industrial Development Corporation, on which there is no cavil or contest on either side). No substantial question of law has been raised by the appellant.

4 The appeal is accordingly dismissed.

5 Pending applications stand disposed of.

.....J.  
[Dr Dhananjaya Y Chandrachud]

.....J.  
[M R Shah]

**New Delhi;**  
**May 04, 2021**  
**-S-**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No 1652 of 2021**

**Orissa Metaliks Private Limited**

**.... Appellant(s)**

**Versus**

**Kshitiz Chhawchharia and Anr**

**....Respondent(s)**

**ORDER**

- 1 We are not inclined to interfere with the order of the National Company Law Appellate Tribunal dated 4 March 2021 in Company Appeal (AT) (Insolvency) 1159 of 2019.
- 2 The appeal is accordingly dismissed.
- 3 Pending application, if any, stands disposed of.

.....J.  
**[Dr Dhananjaya Y Chandrachud]**

.....J.  
**[M R Shah]**

**New Delhi;  
May 04, 2021  
-S-**

ITEM NO.21+23+24 Court 5 (Video Conferencing) SECTION XVII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s).1142/2021

S.S. NATURAL RESOURCES PRIVATE LIMITED Appellant(s)

VERSUS

RAMSARUP INDUSTRIES LIMITED & ORS. Respondent(s)

(WITH I.R. and IA No.49889/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.49890/2021-STAY APPLICATION and IA No.49891/2021-APPROPRIATE ORDERS/DIRECTIONS)

WITH

C.A. No. 1652/2021 (XVII)

(WITH IA No.57251/2021-EX-PARTE AD-INTERIM RELIEF and IA No.57253/2021-EXEMPTION FROM FILING AFFIDAVIT)

C.A. No. 1693/2021

(WITH IA No.58602/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.58603/2021-STAY APPLICATION)

C.A. No. 1688/2021

(WITH IA No.58304/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.58305/2021-STAY APPLICATION)

Date : 04-05-2021 These appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE M.R. SHAH

For Appellant(s) Dr. Abhishek Manu Singhvi, Sr. Adv.

Mr. Mahesh Agarwal, Adv.

Mr. Sanjay Bhatt, Adv.

Mr. Himanshu Satija, Adv.

Mr. Rohan Talwar, Adv.

Ms. Niharika Sharma, Adv.

Mr. E. C. Agrawala, AOR

Mr. Ranjit Kumar, Sr. Adv.

Mr. Manu Nair, Adv.

Mr. Siddhartha Datta, Adv.

Mr. Nitish Massey, Adv.

Ms. Suhani Dwivedi, Adv.

Mr. Neelabh Shreesh, Adv.

Mr. Deepanjan Dutta Roy, Adv.

Ms. Trisha Mukherjee, Adv.

Mr. S.S. Shroff, AOR

Mr. Rishav Banerjee, Adv.  
 Mr. R.B. Phookan, Adv.  
 Ms. Neha Tandon, Adv.  
 Mr. Shailesh Madiyal, AOR

For Respondent(s) Mr. Shyam Divan, Sr. Adv.  
 Mr. Utsav Mukherjee, Adv.  
 Ms. Smriti Churiwal, Adv.  
 Mr. Vinayak Bhandari, Adv.  
 Mr. Jaiveer Kant, Adv.  
 Ms. Deepti Babel, Adv.  
 Mr. Ankit Swarup, AOR

Dr. Abhishek Manu Singhvi, Sr. Adv.  
 Mr. Mahesh Agarwal, Adv.  
 Mr. Sanjay Bhatt, Adv.  
 Mr. Himanshu Satija, Adv.  
 Mr. Rohan Talwar, Adv.  
 Ms. Niharika Sharma, Adv.  
 Mr. E. C. Agrawala, AOR

Mr. Dinkar Singh, Adv.  
 Mr. Deepak Goel, AOR

Mr. Deep Roy, Adv.  
 Mr. Piyush Swami, Adv.  
 Mr. Arshdeep Singh, Adv.  
 Mr. Rony Oommen John, AOR

Mr. Krishnendu Dutta, Sr. dv.  
 Ms. Sucharita Basu, Adv.  
 Ms. Anshula Vijay Kumar Grover, AOR  
 Mr. Piyush Agrawal, Adv.  
 Mr. Saurobroto Dutta, Adv.  
 Ms. Ranjabati Ray, Adv.

CA D 10737/21 Mr. Shatadru Chakraborty, Adv.  
 Ms. Sonia Dube, Adv.  
 Ms. Kanchan Yadav, Adv.  
 Ms Surbhi Anand, Adv.  
 for M/s. Victor Moses & Associates

UPON hearing the counsel the Court made the following  
 O R D E R

CA Nos 1142/2021 and 1652/2021

- 1 The appeals are dismissed in terms of the signed orders.
- 2 Pending application, if any, stands disposed of.

**CA Nos 1693/2021 and 1688/2021**

- 1 List the appeals on 6 May 2021.
- 2 Permission granted to file an additional compilation of documents.
- 3 Civil Appeal D No 10737 of 2021 be also listed on 6 May 2021 along with the aforesaid appeals.

**(SANJAY KUMAR-I)**  
**AR-CUM-PS**

**(SAROJ KUMARI GAUR)**  
**COURT MASTER**

**(Two signed orders are placed on the file)**

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In

CP(IB) No. 349/KB/2017

Ramsarup Industries Limited

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

CA(IB) NO. 37/KB/2019  
CA(IB) NO. 343/KB/2019  
CA(IB) NO. 349/KB/2019  
CA(IB) NO. 424/KB/2019  
CA(IB) NO. 440/KB/2019  
CA(IB) NO. 460/KB/2019  
CA(IB) NO. 461/KB/2019  
CA(IB) NO. 462/KB/2019  
CA(IB) NO. 497/KB/2019  
CA(IB) NO. 511/KB/2019  
CA(IB) NO. 522/KB/2019  
CA(IB) NO. 523/KB/2019  
CA(IB) NO. 527/KB/2019  
CA(IB) NO. 636/KB/2019  
CA(IB) NO. 637/KB/2019  
CA(IB) NO. 685/KB/2019  
CA(IB) NO. 921/KB/2019  
CA(IB) NO. 1026/KB/2019  
IN  
CA(IB) NO. 352/KB/2019  
IN  
CP(IB) NO. 349/KB/2017

**In the matter of:**

An application under section 30(6) Section 31 read with section 60(5)  
of the Insolvency and Bankruptcy Code, 2016 for submission of  
Resolution Plan.

Sd

Sd

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**In the matter of:**

**Resolution plan dated March 6, 2019** approved by the Committee of Creditors of the Corporate Debtor on 16<sup>th</sup> March, 2019.

**And**

Corporate Insolvency Resolution Process (CIRP) of **Ramsarup Industries Limited**

**And**

Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**And**

**In the matter of:**

**M/S. RAMSARUP INDUSTRIES LTD.**, a Public Limited Company limited by shares registered under the provisions of the Companies Act, 1956 bearing CIN No. L65993WB1979PLC032113 having its registered office at 7C, Kiran Shankar Ray Road, Hastings Chambers, 2<sup>nd</sup> Floor, Kolkata – 700001, West Bengal.

**And**

**In the matter of:**

**MR. KSHITIZ CHHAWCHHARIA**, Son of Shri Sushil Chhawchharia, aged about 43 years, the Resolution Professional having registration number

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Sd

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019  
In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

IBBI/IPA-001/IP-P00358/2017-18/10616 B and residing at 10A, Alipore  
Park Place, Kolkata 700027.

**Applicant/Resolution Professional**

**AND**

**In the matter of:**

**Ramsarup Industries Limited**

**And**

**In the matter of:**

**M/S. VINAR SYSTEMS PRIVATE LIMITED**, having its registered office  
at 9C, lord Sinha Road, Kolkata 700071.

**Applicant/Operational Creditor**

**AND**

**In the matter of:**

**M/S. IFGL REFRACTORIES LIMITED**, a Company incorporated under the  
provisions of the Companies Act, 1956 and existing within the meaning  
of the Companies Act, 2013 and having its head and corporate office at  
3, netaji Subhas Road, Kolkata 700001 in the State of West Bengal under  
the aforesaid jurisdiction and registered office at Sector B, Kalunga  
Industrial Estate, P.O. Kalunga 770 031, District Sundergarh, Odisha  
outside the aforesaid jurisdiction.

**Applicant**

**Versus**

Sd

Sd

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**Ramsarup Industries Limited & Ors**

**Respondents**

**AND**

**In the matter of:**

**M/S. GODAVARI COMMODITIES LIMITED**, a Company within the meaning of Companies Act, 2013 and carrying on business from 18, Netaji Subhash Road, 2<sup>nd</sup> Floor, Kolkata 700001.

**Operational Creditor**

**Versus**

**Ramsarup Industries Ltd.**

**Corporate Debtor**

**AND**

**In the matter of:**

**M/S. SSS LOHA MARKETING PRIVATE LIMITED**, an existing company within the meaning of the Companies Act, 2013 having its Registered Office at 18/1, Maharshi Debendra Road, 7<sup>th</sup> Floor, Room No. 1A, Kolkata 700007

**Applicant/Operational Creditor**

**Versus**

**Mr. Kshitiz Chhawchharia, Resolution Professional**

**Respondent**

Sd

Sd

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**And**

**Ramsarup Industries Limited**

**Corporate Debtor/Corporate Applicant**

**Versus**

**ICICI Bank Limited**

**Applicant Bank/Financial Creditor**

**AND**

**In the matter of:**

**M/S. TRANTER INDIA PRIVATE LIMITED**, a Company incorporated under the Companies Act, 1956 having its registered office at Gat No. 127 & 128, Dingrajwadi, Taluka – Shirur, Pune – 412208, Maharashtra (India).

**Operational Creditor**

**Versus**

**Mr. Kshitiz Chhawchharia, Resolution Professional**

**Respondent**

**Ramsarup Industries Limited**

**Corporate Debtor**

**Versus**

**ICICI Bank Limited**

**Financial Creditor**

Sd -

Sd -

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**AND**

**In the matter of:**

**M/S. GUPTA POWER INFRASTRUCTURE LIMITED**, a Company incorporated under the provisions of the Companies Act, 1956 and a company within the meaning of the provisions of the Companies Act, 2013 having its registered office at EN 62, Sector V, 7<sup>th</sup> Floor, Salt Lake City, Kolkata 700091

**Applicant**

**Versus**

**Mr Kshitiz Chhawchharia, Resolution professional**

**Respondents**

**Ramsarup Industries Limited**

**Corporate Debtor**

**Versus**

**ICICI Bank Limited**

**Financial Creditor**

**AND**

**In the matter of:**

**M/S. FURNACE AND FOUNDRY EQUIPMENT COMPANY**, a partnership firm registered under the provisions of the Indian Partnership Act, 1932, having its office at Plot No. 4, Sub Survey No. 1, Off Saki Vihar Road, Chandvli Farm, Mumbai 400072, India.

**Applicant/Operational Creditor**

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019  
In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**Ramsarup Industries Ltd.**

**Corporate Debtor**

**AND**

In the matter of:

**M/S. FAFECO ENGINEERS PRIVATE LIMITED**, a Company registered under the provisions of the Companies Act, 2013, having its registered office at Plot No. 4, Sub Survey No. 1, Off Saki Vihar Road, Chandvli Farm, Mumbai 400072, India

**Applicant/Operational Creditor**

**Ramsarup Industries Limited**

**Corporate Debtor**

**AND**

In the matter of:

**ECKO Cables Pvt. Ltd.**, a Company incorporated under the Companies Act, 1956 having its registered office at 7B/4, Poorvi Marg, N.E.A. Old Rajinder Nagar, New Delhi – 110060.

**Applicant/Operational Creditor**

**Versus**

**Mr. Kshitiz Chhawchharia, Resolution professional**

**Respondent**

**And**

**Ramsarup Industries Limited**

**Corporate Debtor/ Corporate Applicant**

Sd

Sd

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**Versus**

**ICICI Bank Limited**

**Applicant Bank/Financial Creditor**

**AND**

**In the matter of:**

**S.M. Electric Trading Co. Pvt. Ltd., an existing Company within the  
meaning of the Companies Act, 1956 having its registered office at 54,  
Ezra Street, Kolkata 700001.**

**Applicant/Operational Creditor**

**Versus**

**Mr. Kshitiz Chhawchharia, Resolution Professional**

**Respondent**

**Ramsarup Industries Limited**

**Corporate Debtor/Corporate Applicant**

**Versus**

**ICICI Bank Limited**

**Applicant Bank/Financial Creditor**

Sd

Sd

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**AND**

**In the matter of:**

**ICICI BANK LIMITED**, having its office at ICICI Bank House, 3A, Gurusaday  
Road, Kolkata 700019

**Financial Creditor**

**And**

**Ramsarup Industries Limited**

**Corporate Debtor**

**Bank of India**, having its office at Large Corporate Branch, 5 BTM Sarani,  
Kolkata 700001

**Applicant/Financial Creditor**

**Versus**

**Mr. Kshitiz Chhawchharia & Ors.**

**Respondents**

**AND**

**In the matter of:**

**SBI GLOBAL FACGTORS LIMITED**, having its registered office at  
Metropolitan Building, 6<sup>th</sup> Floor, Bandra-Kurla Complex, Bandra East,  
Mumbai – 400051.

**Applicant**

**Versus**

**Mr. Kshitiz Chhawchharia, Resolution Professional & Ors.**

**Respondents**

*Sd*

*Sd*

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**ICICI Bank Limited**

**Financial Creditor**

**Ramsarup Industries Limited**

**Corporate Debtor**

**AND**

**In the matter of:**

**Pegasus Assets Reconstruction Pvt. Ltd.** through its Authorised  
Representative Office: Free Press House, 55-56, 5<sup>th</sup> Floor, Nariman  
Point, Mumbai – 400021.

**Financial Creditor**

**In the matter of:**

**1. KSHITIZ CHHAWCHHARIA,**

**Resolution Professional**

**2. Ramsarup Industries Limited**

**Corporate Applicant/**

**Respondents**

**AND**

**In the matter of:**

**Indian Renewable Energy Development Agency Limited**, having its  
registered office at CORE 4A, East Court, 1st Floor, Indian Habitat  
Centre, Lodhi Road, New Delhi – 110003 and having its Corporate  
Office at 3<sup>rd</sup> Floor, August Kranti Bhawan, Bhikaji Cama Place, New  
Delhi – 110066.

**Applicant**

Sd

Sd

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019  
In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**M/s. Ramsarup Industries Limited**

**Corporate Applicant**

**Respondents**

**AND**

**In the matter of:**

**WEST BENGAL INDUSTRIAL DEVELOPMENT CORPORATION LIMITED**, a  
Company within the meaning of the Companies Act, 2013, having its  
registered office at "Protiti", 23, Abamniomndranath Thakur Sarani  
(Camac Street), kolkata 700017.

**Applicant**

**Versus**

**Mr. Kshitiz Chhawchharia, Resolution professional**

**Respondent**

**AND**

**Aashish Jhunjunwala & Ors**

**Applicants**

**Kshitiz Chhawchharia**

**Respondent**

**Versus**

**ICICI Bank Limited**

**Financial Creditor/Applicant Bank**

**Ramsarup Industries Ltd.**

**Corporate Debtor**





CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**AND**

**In the matter of:**

**M/S. VANGUARD CREDIT & HOLDING PVT. LTD.,** a Company incorporated under the Companies Act, 1956 having its registered office at 7C, Kiran Shankar Roy Road, Hastings Chambers, 2<sup>nd</sup> Floor, Room No. 1, Kolkata 700001

**Applicant**

**Versus**

**Mr. Kshitiz Chhawchharia, Resolution Professional**

**Respondent**

**ICICI Bank Limited**

**Applicant Bank/Financial Creditor**

**Ramsarup Industries Limited**

**Corporate Applicant/Corporate Debtor**

**AND**

**In the matter of:**

**M/S. ORISSA METALIKS PRIVATE LIMITED,** a company within the meaning of the Companies Act, 2013 having its registered office at 1, Garstin Plaxce, "Orbit House", 3<sup>rd</sup> Floor, Room No. 3B, Kolkata 700001.

**Applicant**

**Mr. Kshitiz Chhawchharia & Ors**

**Respondents**

**Ramsarup Industries Limited**

**Corporate Debtor/Corporate Applicant**

Sd

Sd

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In

CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &  
Shri Harish Chander Suri, Hon'ble Member (Technical)**

**Counsels on record:**

- |                                    |  |
|------------------------------------|--|
| 1. Mr. Anuj Singh, Advocate        | ] For SS Natural Resource                          |
| 2. Mr. R. Sarkar, Advocate         | ] Pvt. Ltd.  |
| 3. A. Das, Advocate                | ]  |
| 1. Mr. D.N. Sharma, Adv.           | ] For IREDA  |
| 2. Mr. Indranil Karfa              | ]  |
| 1. Mr. Abhik Sarkar, Advocate      | ] For SREI Multiple Asset<br>Investment Trust Fund |
| 1. Mr. Ramesh Chandra Prusti, Adv. | ] For SBI Global Factors                           |
| 2. Ms. Mahuya Ghosh, Adv.          | ] CA(IB)/1026/2019                                 |
| 1. Ms. Manju Bhuteria, Adv.        | ] For Kotak Mahindra                               |
| 2. Mr. Varun Kedia, Adv.           | ] Bank   |
| 3. Ms. Urvi Mitra                  | ]  |
| 1. Mr. Shaunak Mitra, Adv.         | ]  |
| 2. Mr. Soumabho Ghose              | ] For Financial Creditor                           |
| 3. Mr. Pratik Mukhopadhyay         | ] Bank of India                                    |
| 1. Mr. Kaushik Saha, Adv.          | ] For J.M. Financials                              |
| 2. Mr. Basabraj Chakraborty, Adv.  | ]  |
| 3. Ms. Kashmira Das, Adv.          | ]  |
| 1. Mr. Pramit Bag, Adv.            | ]  |
| 2. Mr. Anuj Kumar Mishra, Adv.     | ] For ARCIL  |

Sd

Sd

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In

CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| 1. Mr. Aniruddh Poddar, Adv.        | ] For CA(IB) Nos. 460, 511,           |
| 2. Ms. Moumita Bhattacharya, Adv    | ] 522 & 523/KB/2019                   |
|                                     | ] SSS Loha Marketing Pvt. Ltd,        |
|                                     | ] Ecko Cables, S M Electric &         |
|                                     | ] Tanter India                        |
| 1. Mr. Kshitiz Chhawchharia, RP     | ]                                     |
| 2. Mr. Ratnanko Banerjee, Sr. Adv.  | ]                                     |
| 3. Mr. Sidhartha Sharma, Adv.       | ] For Resolution                      |
| 4. Ms. Ujjaini Chatterjee, Advocate | ] Professional                        |
| 5. Mr. Diprani Thakur, PCS          | ]                                     |
| 1. Mr. Abhrajit Mitra, Sr. Adv.     | ]                                     |
| 2. Mr. R.N. Ghose, Adv.             | ] For OMPL                            |
| 3. Ms. Urmila Chakraborty, Adv.     | ]                                     |
| 4. Ms. Ankita Mukherjee             | ]                                     |
| 1. Ms. Swapna Choubey, Adv          | ] For Operational Creditor            |
| 2. Mr. Aditya Kanodia, Adv.         | ] Vinar Systems Pvt. Ltd.             |
| 1. Mr. Reetobroto Mitra, Adv.       | ]                                     |
| 2. Mr. Vikram Wadehra, Adv.         | ]                                     |
| 3. Ms. Vidushi Chokhani             | ] For the CoC                         |
| 4. Mr. Soumava Ghosh, Adv.          | ]                                     |
| 1. Mr. Rishav Banerjee              | ] Applicants in CA(IB) Nos.           |
| 2. Mr. Zeeshan Haque                | ] 1039, 1063, 461 & 462/KB/<br>] 2019 |

Date of pronouncement of the Order: 04/09/20109

Sd

Sd

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

## ORDER

### Per Jinan K.R., Member (Judicial):

All the above applications taken together for convenience and for avoiding repetition of facts and since common questions arises for consideration.

### CA(IB)No. 352/KB/2019

1. This is an Application filed by the Resolution Professional for approval of the Resolution Plan of M/s. Ramsarup Industries Limited/ Corporate Applicant which has been approved by the Committee of Creditors by a voting share of 74.41%. The Corporate Applicant/ M/s. Ramsarup Industries Limited had filed the **CP(IB) No. 349/KB/2017** for initiating Corporate Insolvency Resolution Process(in short CIRP) on the allegations of inability to pay the debt.

2. The Application was admitted vide Order dated 08-01-2019 by appointing Mr. Nilesh Sharma as the Interim Resolution Professional. However at the request of the CoC vide order dated May 2, 2018 Resolution Professional Mr. Nilesh Sharma was replaced by Mr. Kshitiz Chhawchharia. Upon appointment of the Resolution Professional, the CIRP commenced against the Corporate Applicant, M/s. Ramsarup Industries Limited. While continuing with the Resolution Plan, the extended period of CIRP also expired on 04-10-2018. Due to various reasons, including pending litigation,

Sd

Sd

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In  
CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

certain unutilized period has been excluded for the purpose of counting the period of CIRP, for enabling the Resolution Professional to complete the process and CIRP period was finally extended to 23.03.2019. In the meanwhile, the Committee of Creditors succeeded in approving the Resolution Plan in the meeting held on 16-03-2019 and it is that Resolution Plan that has been placed before us for consideration and approval.

3. Innumerable Applications (30 in number) have been filed by various stakeholders including the Operational Creditors, Financial Creditors, unsuccessful bidders and Promoter Director of the suspended Board of Directors of the Corporate Applicant objecting to the approval of the Resolution Plan.

4. The Operational Creditors challenged the approval of the Resolution Plan by filing individual applications **CA (IB) No.343/KB/2019, CA(IB) No. 349/KB/2019, CA(IB) No. 440/KB/2019, CA(IB) No. 460/KB/2019, CA(IB) No. 523/KB/2019, CA(IB) No. 636/KB/2019, CA(IB) No. 637/KB/2019 & CA(IB) No. 685/KB/2019.**

5. **CA(IB)No.511/KB/2019** is filed by **Ecko Cables Private Limited/Operational Creditor** claiming priority in payment of claims of the Operational Creditor over the claims of the Financial Creditors. According to the Ld. Counsel for the Ecko Cables, the Resolution Professional should



CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In

CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

make provision in the resolution plan for payment to the Operational Creditors prior to the payment of claims of the Financial Creditors.

6. **CA(IB)No.522/KB/2019** is an application filed by another Operational Creditor, **SM Electric**, claiming that Operational Creditors should be given priority in payment over Financial Creditors. All the other operational creditors raised similar contentions mainly contending that the Operational Creditors were being discriminated in regard to distribution of resolution bid amount.

7. Since all the operational creditors have raised similar objections, their objection is dealt with together and not separately, for convenience. According to the Ld. Counsels for the Operational Creditors, their claim must get similar treatment as being given to the dues of the Financial Creditors and that equality of treatment has not been proposed to be done in regard to distribution of bid amount. Therefore, the Resolution Plan cannot be approved.

8. One another contention on the side of the Operational Creditors is that they were not given priority in payment over the Financial Creditors. Some of the Operational Creditors also raised objection that none of the Operational Creditors were given notice in participating the meeting and no copy of the Resolution Plan has been given to the Operational Creditors and therefore, there is flagrant violation of the provisions of the Insolvency &

CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

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Ramsarup Industries Limited

Bankruptcy Code, 2016 (in the Code) and Regulations and therefore, the Resolution Plan cannot be approved.

9. The RP has objected all these applications. Upon hearing the arguments on both sides and considering the evidence and on perusal of the resolution plan, we come to the following conclusions:-

(i) The amount claimed by the operational creditors need not be given priority in payment over financial creditors, but the amount due to the operational creditors under a resolution plan must be given priority in payment over financial creditors as per Regulation 38(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"). As per the plan under consideration the amount found due to the operational creditors **under the resolution plan** was given priority in payment over financial creditors. Therefore the said objection of the OC's are found devoid of any merit.

(ii) As per the amendment to Section 30 (2) of the Code, OCs shall be paid **not less than the amount payable to them in the event of liquidation of the CD or the amount payable to them** if realisation under the resolution plan were distributed in accordance **with the priority in the liquidation waterfall**, whichever is higher. The resolution professional seems to have examined the resolution plan so as to ensure that the amounts payable to the operational creditors under the resolution plan is not lesser than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor. The distribution of the bid amount in respect of the OCs under

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challenge is found in accordance with the said provisions and thus there is no violation of S.30(2) (b) as is attempted to be established on the side of the OCs.

(iii) Some of the operational creditors contend that there should not be any differentiation between OCs and financial creditors. According to them distribution must be equal irrespective of classification of creditors as FC and OC. There is no provisions under the code enabling us to hold that the distribution of bid amount would be equal to the OCs and to the FCs. On the other hand, in *Binani Industries Ltd & Adhunik Alloys & Power Ltd*: differential treatment is found permissible if creditors are not similarly situated. In *Swiss Ribbons v. Union of India* it was held that Financial Creditors and Operational Creditors are positioned differently in view of nature of transactions and nature of debt. In view of the abovesaid discussions, we are unable to accept any one of the objections of the OCs.

(iv) One among the OCs also contends that non service of notice in attending the COC's meetings and non furnishing of copies of the resolution plan makes the proceedings illegal. In *Vijay Kumar Jain v. Standard Chartered Bank and Ors.* The Hon'ble SC has held that "*only those operational creditors may participate in the meeting of the committee of creditors (that is, the operational creditors to whom the amount due is more than ten percent of the total debt of the Corporate Debtor), must be furnished with copies of the resolution plan.*" The applicant OCs have failed in proving any violation of S.24(3) (c) of the Code, so we also do not find any merit in the above said objection on the side of the OCs.

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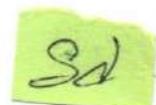
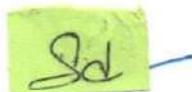
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10. Upon perusal of the proposed offer of the resolution applicant, it is understood that the very same treatment is proposed to be given to the OCs as is seen given to the Financial creditors as per the resolution plan. This is a case in which FCs have agreed to have a haircut of 94% and they would get 5.8% of their admitted claim of Rs.5853.00 crores, and OCs in total would get 10.50 Crores out of the total admitted claim of 224.05 crores. That would come to 38.82%. The payment to the workmen is 90% of the admitted claim. The Statutory Authorities have been offered Rs. 3,00,00,000/- (Rupees Three Crores Only). Thus total percentage of aggregated claim of Operational Creditors inclusive of statutory Authorities would come to 5.82%. The above sad distribution of the bid amount clearly indicates that the Operational Creditors are given similar treatment as being given to the Financial Creditors. In the above said peculiar nature and circumstances of the case, we are of the view that the objections raised on the side of the OCs are devoid of any merits.

11. As regards priority in the payment, the RP is seen to have followed Regulation 38(1) of the CIRP Regulation. As per Regulation 38(1), the liquidation value due to the operational creditors should be paid in priority to the FCs. Provision is seen made in the resolution plan to pay the amount found offered in any event one day prior to the date of the payment to the



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FCs. In view of the above-said, we hold that none of the objections of any one of the OCs are sustainable under law.

12. The next objectors are a batch of Financial Creditors. Their main challenge is against the methodology approved by the Committee of Creditors in regard to distribution of the bid amount on the basis of security interest. According to them it is not in accordance with the provisions of the Code and therefore, there is discrimination among the very same class of Financial Creditors. The Ld. Counsel appearing for the objecting Financial Creditors unanimously submits that the methodology adopted for distribution of the resolution bid amount is to be as per voting share and not on the basis of security interest and according to them there was no unanimous approval of the distribution methodology on the basis of security interest by the Committee of Creditors.

13. Bank of India filed **CA(IB)No.527/KB/2019** challenging the resolution plan that the methodology of distribution of process as per security structure and interest contravenes and in derogation of the provisions of the Insolvency and Bankruptcy Code, 2016 and results in creation of arbitrary clause amongst the Financial Creditors on the nature of security interest held by Financial Creditors. According to the Ld. Counsel appearing for Bank of India, the distribution methodology must be as per voting share as the Code does not specify any specific provision for the distribution in accordance with security interest.

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14. **SBI Global Factors Limited** filed **CA(IB)No.1026/KB/2019** is contending similar objections of State Bank of India and other Financial Creditors. According to the Ld. Counsel appearing for the applicant, the distribution methodology adopted for distributing the resolution bid is not in accordance with law and not equitable to all Financial Creditors and it would create arbitrary classification and, therefore, is liable to be set aside. According to him, the Resolution plan is liable to be set aside.

15. **Kotak Mahindra Bank** filed affidavit in the form of objection objecting to the approval of the resolution plan challenging the methodology. The Kotak Mahindra Bank and Bank of India have not voted in favour of the Resolution Plan and therefore, they are dissenting Financial Creditors. The challenge against the distribution methodology on the basis of security interest is not at all sustainable under law for two reasons.

16. Firstly, this methodology as per the available records and as per the averments advanced on the side of the Resolution Professional, has been deliberated within the Committee of Creditors from 02-02-2019 onwards till the final deliberation in regard to voting for approval of the Resolution Plan, held on 16-03-2019. The copy of resolution brought to our notice also proves that the distribution methodology on the basis of security interest was approved by the Committee of Creditors by a vote of 74.41%. This distribution cannot be challenged under law by the dissenting Financial

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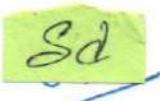
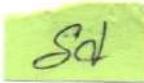
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Creditors who are Kotak Mahindra Bank and Bank of India. Moreover, this methodology is not in violation of Section 30 of the Code which has been amended vide notification dated 06-08-2019. The relevant portion of Section 30(b) reads as follows :

*"(b) in sub-section (4), after the words "feasibility and viability", the words, brackets and figures "the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of Section 53, including the priority and value of the security interest of a secured creditor" shall be inserted."*

17. So as of now, value of the security interest of the secured creditors can be considered as a methodology for the distribution of the bid amount. Therefore, we do not find any force in the argument advanced on the side of the above said Financial Creditors.

18. Two other Financial Creditors, **M/s. Pegasus Assets Reconstruction Pvt. Ltd.**, by filing **CA 424/KB/2019** and **M/s. JM Financial Assets Reconstruction Co. Pvt. Ltd.** by filing objection in the form of affidavit have also come forward for challenging the approval of the Resolution Plan. M/s. Pegasus Assets Reconstruction Pvt. Ltd. filed CA(IB) No. 424/KB/2019 contending that there has been an error in the calculation done by the process advisers to the Committee of Creditors in the methodology of distribution of proceeds and that the distribution of proceeds in respect of

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the two plants has wrongly been allocated to IDBI and therefore, Resolution Professional has failed in considering that M/s. Pegasus Assets Reconstruction Pvt. Ltd. has an exclusive charge over the Air Suppression Plant and sinter Plant of the Corporate Debtor.

19. **M/s. JM Financial Assets Reconstruction Co. Pvt. Ltd.** also raised same objections. On perusal of the records and letters exchanged in between the Consortium Lead Bank Merger and the Promoter Director, (Pages 58 & 70), it is understood that the assigners who assigned the debt of the Corporate Applicant in favour of the above said two FCs, have been assigned the debt to the above said two Financial Creditors by creating security interest over the Plants belonging to the Corporate Applicant and the Corporate Applicant has consented to the said arrangement.

20. **M/s. Pegasus Assets Reconstruction Pvt. Ltd.** has failed in proving that it has an exclusive charge on Air Suppression Plant and Sinter Plant. Admittedly, IDBI had also issued loans to the Corporate Applicant which was subsequently assigned in favour of ARCIL and ARCIL, inter alia, had charge over the Kharagpur Unit. The Resolution Professional had seen examined the mortgage deed executed by IDBI and according to Ld. Counsel for the Resolution Professional, the Mortgage Deed executed by IDBI indicates that IDBI had a charge of the property of the Corporate Applicant situated at Kharagpur.

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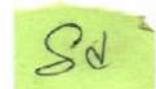
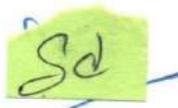
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21. Both these objectors are the members of the Committee of Creditors and it is also understood that the security interest recorded for each Creditors has been made available to all the members of the Committee of Creditors before finalization of the approval of the Resolution Plan. Therefore, the challenge raised by the above said Financial Creditors claiming exclusive charge over the above said Plants is found devoid of any merits. They are estopped from contending that the RP has erred in recording the value of security interest of FCs after the approval of the methodology by the required majority wherein they were parties and participated in the discussions. On the other hand, the records available in the case proves that the position in regard to pari passu charges has been accepted and acted upon by the members of Committee of Creditors themselves including the Financial Creditors who came forward objecting to the methodology and therefore, the attempt of the Financial Creditors who had dissented the approval of the Resolution Plan can be considered as an attempt to protract the proceedings by raising untenable contentions.

22. On perusal of the deed of Mortgage executed by IDBI indicates that IDBI had the first pari passu charge over the movable fixed assets of the Corporate Applicant and the second pari passu was set with the working capital lenders over the current assets. Allahabad Bank assigned the debt to M/s. Pegasus Assets Reconstruction Pvt. Ltd.(Destining creditor) and UCO Bank had assigned the debt of the Corporate Applicant to M/s. JM



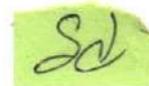
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Financial Assets Reconstruction Co. Pvt. Ltd.(Assenting Creditor). The **CA(IB) No. 424/KB/2019** requires no consideration and it is liable to be **dismissed**.

23. None of the Banks comes forward to raise a contention that they have had first pari passu charge over the Plant as the FCs alleged in the objections and in the applications. On the other hand, they are members of Consortium of Banks wherein the fact remains that IDBI has got the first pari passu charge and it has been acceded to by the Lenders. The Ld. Counsel for the JM Financial Assets Reconstruction Co. Pvt. Ltd submits the reason for the delay in raising the objection is that the assignee was not aware of the charge arrangement, but it was brought to its notice by the promoter director who is hotly contesting the application for approval. So JM Financial Assets Reconstruction Co. Pvt. Ltd comes before us as instigated by the promoter and not as of any of its right in respect of distribution of bid amount is affected. Voting in favour of the resolution plan and coming forward to challenge the plan also cannot be permitted in the nature of the case in hand. We do not find any justifiable reason to uphold the contentions raised on the side of the above said Financial Creditors.

24. The **CA (IB) No. 37/KB/2019** is an Application filed by **IREDA** seeking leave to intervene in the present proceedings, staying the



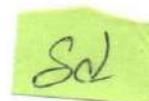
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proceedings for approval of the Resolution Plan by the Adjudicating Authority, on the ground that the schedule of assets included as the assets provided in the Resolution Plan is to be excluded as it belongs to it. The Ld. Counsel appearing for the Applicant submits that the Wind power Project of the Corporate Applicant is to be excluded from the Resolution Plan since the said assets were already recovered by Enforcement Directorate under the SARFAESI Act, 2002 and that the sale of the assets has been confirmed and the Applicant has realized the sale value. The Ld. Senior Counsel appearing for the Resolution Professional submits that the above said objection is unsustainable because the Debt Recovery Tribunal, Aurangabad stayed the sale stating that it was not conducted in accordance with the provisions of the SARFAESI Act, 2002 and that an Appeal preferred against the order of stay is pending before the Debt Recovery Appellate Tribunal. He further submits that the information memorandum includes the details of the pending litigation. Therefore, the Resolution Applicant is aware of the proceedings initiated under the SARFAESI Act, 2002. According to him, the Applicant IRDAI has been invited to be a member of the Committee of Creditors of the Corporate Applicant in regard to its claim against the Corporate Applicant and therefore, no prejudice is even caused to the Applicant herein in approving the Resolution Plan.

25. Being satisfied that the claim of the IRDAI is being considered by the RP, inclusion of the assets which were evidently sold illegally would in no



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way affect the right of the corporate applicant to hold it as its own assets until its right if any is reversed in the appeal. The above being the circumstance brought out in the case in hand, the relief sought for by the Applicant here in this case, cannot be allowed. Therefore, the objection raised by the Applicant as against the approval of the Resolution Plan is found unsustainable and accordingly, we are inclined to reject the objection of IRDAI by dismissing the application. Accordingly **CA(IB) No. 37/KB/2019** is liable to be **dismissed**.

26. One another objector is **West Bengal Industrial Development Corporation Limited(WBIDCL)**. It filed **CA(IB) NO 921/KB/2019**. The Ld. Counsel appearing for the Applicant, WBIDCL submits that it is not disputing the approval of the Resolution Plan. According to him, the Applicant submitted its claim in prescribed Form C under Regulation (A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 , 2016 as a Financial Creditor and contends that the Applicant being the first charge holder in respect of Saimanagar Unit of the Corporate Applicant, deployed security guards in the said premises from 30-07-2012 to 31-10-2018 against which the Applicant has incurred substantial expenses to the tune of Rs.1,14,25,806/-(Rupees One Crore Fourteen lakh twenty five thousand eight hundred six only) and another expenses of Rs.17,10,476/- (Rupees Seventeen lakh ten thousand four hundred seventy six only) and that security expenses have been incurred by the Financial Creditor. The

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Applicant has not been included in the portion of upfront amount payable by the successful Resolution Applicant to the Creditors. He would further submit that the security expenses incurred by the Financial Creditor, ARCIL, has been included as an upfront payment amount in priority of payment of bid amount to be distributed among the Creditors and that amounts to discrimination. He prays for issuing directions to successful Resolution Applicant to pay the security expenses incurred by the Applicant as an upfront payment.

27. The Ld. Senior Counsel for the Resolution Professional submits that the applicant has not made any request for distribution of the expenses by including in the upfront amount and raising the request first time by filing this application and that RP has no objection in issuing directions to the Resolution Applicant to pay the security expenses incurred by the Applicant which has been admitted in the Resolution Plan to be included in the upfront payment. The Ld. Counsel, appearing for the Resolution Applicant, also showed his readiness to pay the admitted amount of security expenses incurred by the Applicant as an upfront amount. Having regard to the above we are inclined to issue directions as prayed for. The said Application can be disposed of accordingly.

28. **CA(IB)No. 461/KB/2019** is an Application filed by **Shri Aashish Jhunjunwala**, Promoter Director of the Corporate Applicant/corporate



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Debtor challenging the approval of the Resolution Plan on the following grounds:-

(i) The resolution bid amount is substantially below the liquidation value of the Corporate Debtor of which Resolution Plan does not conform to the maximization of the assets of the Corporate Debtor for the Financial Creditors and other stakeholders,

(ii) The distribution modification must be on the basis of voting share and not on the basis of security share,

(iii) Charge of ARCIL with respect to IDBI Bank has been recorded erroneously.

(iv) The Resolution Plan approved by the Committee of Creditors must be unconditional. However, the Resolution Plan submitted with the Adjudicating Authority for its approval is not unconditional.

(v) The Resolution Applicant is not eligible to submit the resolution Plan as per section 29A of the Code.

(vi) The entire Resolution Plan deserves to be rejected since the entire CIRP has been manipulated and the same has not been conducted in accordance with the legal provisions of the Code as the voting time has

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been extended without any provision and without any basis whatever to suit the Resolution Applicant and to accommodate the Resolution Applicant.

29. **CA(IB) No. 462/KB/2019** is one another Application filed by the **Vanguard Credit Holding Limited**, a guarantor who is none other than the Promoter Director who filed the CA(IB) No. 461/KB/2019 contending that Vanguard Credit Holding Limited is the owner of the land situated at Durgapur and has allowed the Corporate Debtor to use the said land for setting up, establishing and running of the factory. Therefore, the approval of title of the property as per the Resolution Plan in favour of the Resolution Applicant is illegal. That proceedings under the Insolvency & Bankruptcy Code, 2016 have been initiated against the Corporate Debtor and that the Resolution Plans were formulated on the basis of the fact that the land belonged to the Corporate Debtor and not in accordance with the provisions of the Code and the Regulations. The land cannot be transferred by way of any scheme of Resolution of the Corporate Debtor without an express consent of the Applicant.

30. Though the above said grounds were taken in the above said CAs, an argument note was filed on the side of the applicant limiting the grounds under challenge as under:-

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(a) That the bid amount payable by the Resolution Applicant is substantially below the liquidation value and the Resolution Plan does not call for maximization of the assets of the Corporate Debtor and therefore, liable to be rejected,

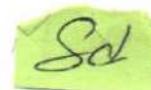
(b) That distribution pattern under the Resolution Plan is discriminatory and contrary to the principle laid down in Binani Industries Limited Vs. Bank of Baroda by the Hon'ble NCLAT and therefore, liable to be either modified or to be rejected,

(c) The resolution plan cannot be conditional or contingent in nature.

(d) The resolution applicant is disqualified u/s.29A of the Code as the resolution applicant is a related party to one BRG iron and steel Company Ltd in respect of which CIRP is already initiated.

(e) The resolution plan deserves to be rejected since the entire CIRP has been manipulated and has been conducted not in accordance with the provisions of the Code and regulations.

31. Although several contentions are raised in the application filed by the Aashish Jhunjunwala promoter Director of corporate



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applicant/corporate debtor, at the hearing of the applications (CA 461 and 462) Ld. Sr. Counsel Mr. Abhrajit Mitra restricted his argument to the following objections:-

(a) The upfront amount payable by the Resolution Applicant is substantially below the liquidation value and the Resolution Plan does not call for maximization of the assets of the Corporate Debtor and therefore, liable to be rejected

(b) That the charge in favour of ARCIL which has given 55% voting shares among the members in the Committee of Creditors has been recorded incorrectly. ARCIL is only holding second charge over the movable and fixed assets of the Corporate Applicant. According to him the AXIS Bank and Punjab National Bank who were the original lenders to whom Vanguard Credit Holding Private Limited stood as a guarantor cannot hold first charge over the property and therefore, the distribution of bid amount considering the security interest held by the ARCIL is wrong

(c) The distribution pattern under the Resolution Plan is discriminatory and contrary to the principle laid down in Binani Industries Limited Vs. Bank of Baroda by the Hon'ble NCLAT and therefore, liable to be either modified or to be rejected,

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(d) The approval of the Resolution Plan by the Committee of Creditors, is contrary to Section 37(a) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Section 18(1)(f) and Explanation (b) of the Code and therefore, liable to be rejected.

32. Coming to the first objection that the upfront amount offered to be paid is less than the Liquidation value is not at all a ground to reject the plan. So also we do not find any merit in the submission of the Ld. Sr. Counsel for the promoter director that the resolution plan requires modification by raising upfront amount. According to the Ld. Sr. Counsel for the promoter director of the corporate debtor (CD), the offer for payment of upfront amount if it is less than the liquidation value is against the principle of law set out in **Padmanavan Venkatesh Vs. Venkatachalam and Others, CA AT (Insol) 128 of 2019** and against the objectives of the Code. However he submits that if the Resolution Applicant is willing to modify the Resolution Plan in regard to payment of upfront amount and agrees to ensure to maximize the value of the assets of the Corporate Debtor by increasing the resolution bid, the Applicant has no objection in regard to upfront amount proposed to be paid by the Resolution Applicant.

33. The following is the list of claims received and admitted by the Resolution Professional based on the last updated List of Creditors :

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<b>Creditor Claims*(INR Crore)</b>	<b>Amount Claimed (Rs. in crore)</b>	<b>Claim Admitted (Rs. in crore)</b>
Financial Creditors	6046.77	5853.09
Operational Creditors(other than Workmen and employee)	284.23	216.17
Operational Creditors(only Workmen and employees)	20.31	7.88
<b>Total Claims</b>	<b>6351.31</b>	<b>6077.14</b>

\*Shall be subject to change if any till the Cut-Off Date

34. The following table summarizes the proposed offer as a part of the Resolution Plan to the financial creditors of the Corporate Debtor ("Financial Creditors") as well as other creditors specified under the Code :

<b>Particulars</b>	<b>Amount (in Rs. Crores)</b>
CIRP Process cost *	[ * ]
Sustainable Debt to be paid upfront to the Financial Creditors	351.0
Payment to Operational Creditors	3.50
Payment to Workmen	7.00
Payment towards Statutory Liabilities	3.00
Capex/Working Capital	306.00

\*To be paid at actual

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35. The above being the offers based on the admitted claim of the creditors, the distribution of the resolution bid amount is found not in contravention of any of the provisions of the Code or Regulations. The total bid amount comes to 670.50 Crores which is higher than the liquidation value of Rs. 610.29 crores. The facts in the given case being not similar to the **Padmanavan Venkatesh** case above referred, the principle of distribution if any in the said case cannot be applied in the case in hand.

36. An argument also was advanced that the Operational Creditors were treated differently and thereby discriminated among similar class of Creditors. According to the Ld. Sr.Counsel the distribution among workmen and operational creditor is not equal and therefore there is evidence of discrimination.

Ld. Sr. Counsel appearing for the Resolution Professional while referring to **Essar Steel Ltd. & Ors. (Company Appeal (AT) (Ins.) No. 242 of 2019)** submits that treatment in regards to distribution of resolution bid is equal in respect of 'financial creditors' and "operational creditors" and there is no discrimination as alleged. He refers to paragraph 177 of the above said judgement, which reads as under :-

*"For the aforesaid reasons, if the employees are given 100% of their dues or those who have 'supplied goods' and 'rendered services' having claim less than Rs. 1 Crore are provided with 100% dues of their claim amount as provided in the present case, the other 'Operational Creditors' whose claim are more than Rs. 1 Crore or the 'Central Government' or the 'State Government' or the 'Local Authority', who raise their claim on the basis of the statutory dues, they cannot ask for same treatment as allowed in favour of the aforesaid class of 'Operational Creditor'."*

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37. The Hon'ble Appellate Tribunal in Essar Steel case as referred to above has observed that there are three classes of 'operational creditor', - (a) who have supplied goods and rendered services, (b) employees who have rendered services and (c) the Central Government, the State Government and Local Authority, who has not rendered any services but derived the advantage of operation of the corporate debtor pursuant to existing law and held that operational creditors can be classified in three different classes for determining the manner in which amount is to be distributed to them. However, they are to be given the same treatment, if similarly situated. The observation in paragraph 177 referred to above made it clear that workmen cannot be equated with the class of operational creditors who have supplied goods and rendered services and, therefore, the contentions on the side of the Ld. Counsel appearing for the promoter-directors that the treatment given to the operational creditors and the workmen being different and they are similarly situated is found unsustainable. In view of the above-said discussion, we find no merits in the objections on the side of the promoter director as regards distribution of the bid amount.

38. The Ld. Sr.Counsel appearing for ARCIL brought our attention to the observations of IBBI advisory board who recommended amendment to the CIRP regulation. He read over its para no.7 as under:-



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*"7. Regulation 38(1)(c) provides that the liquidation value due to dissenting financial creditors shall be paid before any recoveries are made by the financial creditors who voted in favour of the resolution plan. Though the enterprise value (resolution value) is usually higher than the liquidation value, the reverse is possible in some cases. Moreover, liquidation value, as estimated, may not be realizable and realised value is usually liquidation value minus cost of realisation. It may be difficult to pay out liquidation value in all cases, that too, before any payment to other financial creditors. In a sense, this becomes an incentive for a financial creditor to dissent. Further, it may be difficult to arrange liquid cash to pay upfront to dissenting creditors and such payment may impinge on resolution of the corporate debtor. However, the Advisory Committee felt that those who remain vested in the future of the debtor should give way to those who would like to exit. It is, therefore, proposed to leave the regulations as they are in this regard."*

39. Referring to the above said observation the Ld.Sr.Counsel attempted to convince us that generally a plan is approved wherein resolution bid amount is higher than the liquidation value and that the board never recommended that the resolution bid amount must be above the liquidation value. He suggested instances of approval of plan wherein resolution bid amount is lesser than liquidation value and that the judgment of Padmanavan Venkatesh not at all laid down a principle that upfront amount in all cases to be above the liquidation value. Here is a company not functioning more than ten years prior to CIRP and that the resolution bid being above the liquidation value, the plan must be approved if it does not contravene any of the provisions of the Code and the regulation. He argued. He also relied upon **K.Sashidhar v.Indian Overseas Bank and Ors.** to stress an argument that the plan under consideration being passed by vote of 74.41% the distribution of bid amount approved by the CoC cannot be re-appreciated and cannot be altered unless there is any cogent evidence of discrimination among the same class of creditors. In the said case, the Hon'ble Supreme court has held that *"the commercial wisdom of the CoC is given paramount status"*. Bearing in mind the above said



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objective and the principles laid down by the Hon'ble Supreme Court, we are of the considered view that there is no error, illegality or any discrimination among the same class of creditors or there is no dissimilar treatment as attempted to be proved on the side of the promoter director and that the upfront amount offered by the Resolution Applicants though less than the liquidation value, it itself is not a ground for rejection of the Plan. We find no merit in the above said objection on the side of the promoter director of the Corporate Debtor.

40. The second objection stressed on the side of the promoter Director by the Ld. Senior Counsel is that the approval of the Resolution Plan only benefits the ARCIL and never balances the interest of all other stakeholders including the Financial Creditors and Operational Creditors because the ARCIL only held second charge over the security interest created to the assignors of the ARCIL and that if the Corporate Applicant Company goes into liquidation, the other Financial Creditors who dissented the approval of the Resolution Plan, would be more benefitted and thereby, the ARCIL who is having dominating voting percentage over others, decided to vote in favour of the Resolution Plan.

41. The above-said objection was also raised by the dissenting financial creditors and we found that the said objections are not sustainable as per the records available in this case. The Corporate guarantee and the mortgage deeds executed by the CD and Vanguard in the case in hand prove



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that the assignors, who are Axis Bank, and Punjab National Bank were given pari passu charge over the movable and immovable properties of the Corporate Debtor and Vanguard Credit Holding Private Limited (vanguard). Vanguard is a Company owned by the Promoter Director. He is holding 99.9% of the total shareholding of the Corporate guarantor, Vanguard Credit Holding Private Limited. The lenders, namely, Axis Bank, Punjab National Bank on the strength of mortgaging the land of the Corporate Applicant as well as the land owned by Vanguard Credit Holding Private Limited, (Vanguard) provided the loan on the basis that the repayment by the Corporate Applicant of the loan was secured by way of mortgage over the land provided by Vanguard Credit Holding Private Limited and by way of corporate guarantee provided by the Applicant itself. Therefore, the evidence submitted in the case in hand proves that Vanguard Credit Holding Private Limited has, by creating the mortgage over the land belonging to it, created security interest over the land in favour of Punjab National Bank which has been subsequently transferred to ARCIL and Axis Bank. The above said circumstances lead us to the conclusion that the land admittedly belonged to Vanguard Credit Holding Private Limited, wherein the Corporate Applicant has set up the Durgapur Plant, which has been encumbered by the Applicant to be utilized for the repayment of the debts of Punjab national Bank and Axis Bank. So, whatever right, interest etc. is held by the Punjab National Bank, and Axis Bank over the land belonging to

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Vanguard Credit Holding Private Limited has been legally transferred to the assignor, ARCIL. So also the deed of hypothecation executed by IDBI Bank indicates that the IDBI has the first pari passu charge over the movable fixed assets of the borrower and second pari passu charge is shared with the working capital lenders over the current assets. Therefore, the mortgage deed executed by the IDBI indicates that IDBI has the charge over the properties situated at Kharagpur. Therefore, there is nothing brought out on the side of the Applicant, Promoter Director of the Corporate Applicant that the charge in favour of ARCIL considered by the Committee of Creditors in the case in hand, has been recorded incorrectly.

42. An attempt is made on the side of the promoter-directors referring to a judgement of NCLT, Mumbai Bench in the matter of **Edelweiss Assets Reconstruction Co. Ltd. -vs- Bharati Defence and Infrastructure Ltd.** that title of a property cannot be transferred in favour of resolution applicant. The facts in the above said judgment is not similar to the facts in the case in hand. Here in the instant case, the owner of Durgapur land, namely, Vanguard Credit Holding Pvt. Ltd. had already created mortgage over the land in favour of the Axis Bank and Punjab National Bank and since Vanguard Credit Holding Pvt. Ltd. has created mortgage over the land; created security interest over the land in favour of the Bank the right, interest and title in respect of the mortgaged land can be assigned in favour

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of the Resolution Applicant. Accordingly, that argument does not hold good in the context of objections raised in the case in hand.

43. At this juncture, an argument is also advanced from the side of the Promoter/Director of the Corporate Applicant referring to Section 18(1) (f) and Explanation (b) of section 8 of the Code and Regulation 37(a) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, that the mortgagee has no right to transfer title of the properties of Vanguard and therefore resolution plan is liable to be rejected. According to him, as per the Resolution Plan, Clause 15.1, a mechanism for the transfer of the land to the Resolution Applicant has been laid down in regard to Durgapur land owned by the Vanguard Credit Holding Private Limited. According to him, Section 18, Explanation (b) of the Code and Regulation 37(a) of (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 restricts transfer of title of a third party or subsidiary of the Corporate Applicant in favour of the Resolution Applicant and therefore, is contrary to the said provisions and therefore, the Resolution Plan is liable to be rejected.

44. **Vanguard Credit Holding Private Limited**, admittedly, a Corporate guarantor, provided corporate guarantee dated April 23, 2009 to Axis Bank Limited and Corporate guarantee dated 30-07-2009 and May, 2009 to the Punjab national Bank. The Vanguard Credit Holding Private Limited has

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admittedly executed the guarantee deeds too. Thereby, the mortgaged land owned by it in Durgapur, measuring about 54 acres, named in the Resolution Plan as Durgapur land, by way of equitable mortgage in favour of Punjab National Bank, limited to secure the indebtedness of the Corporate Applicant which has subsequently been transferred to ARCIL on pari passu basis with Axis Bank Limited. Therefore, evidently, Vanguard Credit Holdings Private Limited, is a mortgagor. As a mortgagor, Vanguard Credit Holding Private Limited has its right to redeem its property after payment of the debt amount. Admittedly, the Vanguard Credit Holding Private Limited is a defaulter. So, Vanguard Credit Holding Private Limited was holding right to buy back the property without any encumbrance by paying the loan amount due to the Punjab National Bank and Axis Bank. That was not done in the case in hand. Therefore, upon approval of the Resolution Plan, the right to redeem held by the mortgagor/ Vanguard Credit Holding Private Limited would be lost. That being so, Durgapur land belonging to Vanguard Credit Holding Private Limited can be transferred to the Corporate Applicant. On the other hand such a sale is not restricted under Regulation 37(b). As per 37(b) CIRP Regulation "*sale of all or any part of the assets whether subject to any security interest is permissible.*"

45. One more argument also was advanced on the side of the Ld. Senior Counsel appearing for the Promoter Director/ Corporate Applicant that the



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action taken by Punjab National Bank as per Section 13 of the SARFAESI Act, 2002 and that taking possession of the land in exercise of its powers under Section 13(4) of the SARFAESI Act, 2002 will not give rise to any right over the Bank or ARCIL to transfer the right, interest of the mortgagee by way of assignment or sale. Section 13(4) of the SARFAESI Act, 2002, permits the secured Creditors to take possession of the secured assets including the right to transfer by way of lease, assignment or sale for realizing the secured assets. According to Ld.Sr.Counsel for the RP, the Bank referred to in the section includes its transferees and assignee's, and they will have the right to enforce possession under the SARFAESI Act, 2002 and therefore, transfer of all rights and interests in the Durgapur land and its marketable title to the Resolution Application, is perfectly legal and valid.

46. The third objection is about the distribution methodology which has been approved by the CoC by 74.41 % vote. According the Ld. Sr. counsel, the distribution of bid amount as per the Resolution Plan is discriminatory and contrary to the judgment of the **Hon'ble NCLAT in Binani Industries Limited Vs. Bank of Baroda** and another and that the Resolution Applicant has discriminated between the same set of group, such as, Financial Creditors or the Operational Creditors and the Operational Creditors are not getting the same treatment as that of Financial Creditors. The above said objection seen raised by the Operational Creditors. By

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answering their objection in this regard, we have already come to a conclusion that the Resolution Applicant has not discriminated between the Financial Creditors on the basis of charge held by the respective Financial Creditors and the Operational Creditors have not been differently treated as per the Resolution Plan. From a reading of the citation of Binani Industries Limited, what we understood is that differential treatment is permissible if the creditors are not similarly situated. The contention that the Financial Creditors to be equated with Operational Creditor is not sustainable even under the principles of law as settled in Binani Industry's case referred to and relied upon on behalf of the Promoter Director/Corporate Applicant. So also in Adhunik referred to above the differential treatment is permissible if creditors are not similarly situated. On the other hand in the case of Swiss Ribbons Vs. Union of India, the Hon'ble Supreme Court made it clear that Financial Creditors and Operational Creditors are positioned differently in view of the nature of transactions and nature of debt. Applying the above said principles of law settled in the above said decisions cited and referred to us, we do not find any justifiable reasons to hold that the distribution pattern under the Resolution Plan is discriminatory as is being tried to be set up by the promoter director.

47. The next and final objection raised by the Ld. Senior Counsel, appearing for the Applicant is that the Resolution Applicant is not eligible

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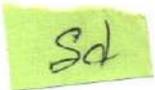
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to submit the Resolution Plan in the light of the bar contained in Section 29A(j) of the Code. According to him the resolution applicant is ineligible on account of their connection with BRG iron & Steel Private Company Limited, of which CIRP is already initiated or going on.

48. The above-said objection seems to have been raised for the sake of raising objection so as to prevent this Adjudicating Authority and delaying the approval of the Plan. It is a bare contention without any supporting materials. The attempt on the side of the promoter director is that SSPL and SS naturals (resolution applicant) to be ineligible as a result of actions of a connected persons who was declared as NPA. But here in this case there is no proof to prove that resolution applicant is in any way connected to the company undergoing CIRP. The burden is heavy on the side of the objector to prove that the resolution applicant has direct control over the company undergoing CIRP for at least a period of one year from the date of commencement of CIRP. Such an evidence is lacking in the case in hand. So the said objection is found devoid of any merit. The resolution applicant is found eligible u/s 29A (j) of the Code. The above said discussions leads to a legitimate conclusion that any one of the objections on the side of the promoter director of the CD and Vanguard are sustainable under law and both applications deserve dismissal.

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49. An argument was advanced at this juncture on the side of the Resolution Professional as well as on the side of the ARCIL that the Promoter Director is only attempting to waste the precious time of this Tribunal by filing malicious applications. According to them, the resolution process has been completed and conducted legally and diligently and conducted the voting among the members of Committee of Creditors in accordance with Section 26 of the Code. All the objections including ineligibility of the resolution applicant was raised by the promoter before the CoC and the CoC deliberated the said issue and found the objections are not sustainable for want of supporting evidence. The only attempt on the side of the Promoter Director/Corporate Applicant is to see that the Resolution Plan could not be approved so as to see the Adjudicating Authority to pass an order of liquidation of the Corporate Applicant. They would further submit that the Promoter Director/Corporate Applicant has concocted and misrepresented the facts and to further prejudice the confidentiality undertaking, thereby jeopardizing the entire CIRP process for not only the present Corporate Applicant but for other Corporate Debtors as well as that are currently undertaking CIRP. He has approached this Tribunal with unclean hands and the present Application deserves to be dismissed with imposition of heavy cost on the Applicant, argued by the Ld. Senior Counsel.



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50. This is a unique case wherein the promoter director of the Corporate Debtor had filed the CP for CIRP under Section 10 of the Code showing his inability to pay. After admission and when the CIRP period expired and the application filed by the RP came up for consideration, the attitude of the promoter-director was seen changed. He filed **CA 461 of 2019** challenging the approval of the resolution plan. Filed **CA 1039 of 2019** challenging non admission of his claim by the resolution professional. Vide separate order, we dismissed the **CA 1039 of 2019**. It has come out in evidence that the promotor director had circulated among the financial creditors about the security interest they hold allegedly not within the knowledge of the Financial creditor. The Ld Counsel for the JM Financial Asset Reconstruction Company Pvt. Ltd admitted at the time of hearing that he had raised the objection against the distribution methodology because the Financial Creditor was in receipt of an e-mail sent by the promoter director that there is erroneous computation and concealment of facts pertaining to actual position of charges over the assets of the Corporate Debtor in favour of the ARCIL. In answering its objection, we hold that RP has not committed any error in recording the security interest hold by the Financial Creditors as per the available records brought to his notice. There was no traces of concealment of facts on the side of the RP but there are suppression of material facts on the side of the promoter director.

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51. Ld. Sr. Counsel, Mr. S. N. Mookherjee, appearing for ARCIL submits that the promoter-director, who has filed **CA(IB) No. 461/KB/2019**, has instigated Vanguard Credit Holding Pvt. Ltd., by filing **CA(IB) No. 462/KB/2019** wherein he had 99.99% shareholding to see that the resolution plan cannot be approved and his company is ordered to be liquidated. He further would submit that the promotor director did not come with clean hands to this Tribunal and the above said application is liable to be dismissed with exemplary costs.

52. In order to highlight his conduct in dealing with the shares he holds in the Ramsarup Industries Ltd/Corporate Applicant, he has cited an **Adjudication Order (SS/AS/2018-19/1625)** of the **Securities and Exchange Board of India** and referred to paragraph 14 in the above judgement, which is worthwhile to read, which reads as follows :-

*"In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. It is noted that the Noticee has not paid the disgorgement amount and interest thereof. It is to be noted that the Noticee had avoided potential loss of Rs. 98,11,465.32 by trading on the basis of Unpublished Price Sensitive Information ("UPSI") regarding un-audited financial results of the Company. Apart from such heinous act of insider trading, misusing the UPSI and abusing the fiduciary position of the Chairman and Managing Director of the Company, he has also disobeyed, disregarded and defied the directions of SEBI as confirmed by the Hon'ble SAT. Further, such defaults seriously compromise the regulatory framework. The Noticee has submitted that his demat account has been attached in the Recovery Proceedings and has assured cooperation in the process."*

53. The Adjudicating Authority by the said order imposed a penalty of Rs.5 lakh under section 15 HB of SEBI Act. Truly we are not influenced by the said order. However, by considering the above-said circumstances

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discussed in detail and considering the peculiar nature of defence taken by the promoter director and some of the FCs at his instances, we are of the considered view that the **CA 461 of 2019 & CA 462 of 2019** is to be dismissed with a cost not less than 25 Lakh fixing liability to pay on the promoter director Mr. Aashish Jhunjhunwala. The overall conduct of the applicant in filing multiple applications cannot be considered as with genuine object to get a relief as prayed for, but with the object to protract the matter. In our view is an abuse of the process of this Tribunal. If this kind of approach is not prevented, it would air a wrong message to the similarly situated directors of a CD companies. Filing of CAs by some of the financial creditors and belatedly challenging the qualification of the resolution applicant by two of the unsuccessful bidders at the instigation of this director also cannot be ruled out from the circumstances brought out in the case in hand. In our view fixing cost at 25 lakh is fair and just and it would meet the ends of justice in this case.

54. **CA(IB) No. 497/KB/KB/2019** is an application filed by **Orissa Metaliks Private Limited (OMPL)** challenging the eligibility of H-1 bidder S.S. Natural Resources Pvt. Ltd. (SS Natural) (Successful Resolution applicant) u/s. 29A of the I & B Code, 2016. The Ld. Sr. Counsel, Mr. Abhrajit Mitra, appearing for and on behalf of the OMPL submits that one of the directors of the SS Natural Mr. Bajranglal Agarwal is a common director in

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the SS Natural, Shyam Emco Infrastructure Limited and Emco Power Limited and since Emco Ltd. is a defaulter in repayment of loan and interest and as the account of Emco Ltd. has become NPA is being under the management or control of the SS Natural or its promoters, the SS Natural has become ineligible to submit a resolution in respect of the Corporate Debtor u/s. 29A of the Code. No material has been brought to substantiate the said contention that Mr. Bajranglal Agarwal has got control over the management of Shyam Emco Infrastructure Limited. From the available records and arguments advanced on both side what we understood is that the applicant is trying to set up a case that Mr. Bajranglal Agarwal is a shareholder in BRG Iron & Steel Company Private Ltd. which has been declared as NPA and CIRP proceedings has already been initiated against the BRG Iron & Steel Company Private Ltd., SS Natural is connected with the said company and, therefore, is ineligible.

55. According to him, SS Natural's shareholders are also shareholders in Shyam Emco Infrastructure Ltd. along with the Emco Power Ltd. and therefore, SS Natural is ineligible. For strengthening the above arguments no materials was brought in. Admittedly, Shyam Emco Infrastructure Ltd. is not an NPA company and does not have any investment in a company, who was declared as NPA. So also there are no allegations that Shyam Emco Infrastructure Ltd. or Emco Power Limited is declared as a NPA company.

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There are no allegations that the above company has any investment in a company declared as NPA. Therefore, in the absence of any evidence to prove the averments in the application, it enables us to understand that some of the shareholders in SS Natural have some shareholding in some group companies referred to above. Having shareholding in a group company does not in any way disqualify SS Natural u/s. 29A of the Code. Admittedly, the alleged shareholders do not have any shareholding in a company which has been declared as NPA. The eligibility criteria as provided u/s. 29A of the I & B Code never prescribed a restriction upon a shareholder of a resolution applicant, to be a shareholder in a group company wherein one of the companies is declared as NPA, in which the shareholders have no direct control or direct communication. Accordingly, we do not find any violation of Section 29A as attempted to establish on the side of the OMPL the unsuccessful bidder.

56. Ld. Counsel appearing for the Resolution Professional also submits that the challenge and objections raised by the OMPL, the H-2 bidder against the SS Natural have been dealt with by the CoC in the 23<sup>rd</sup> meeting held on 02/03/2019 and it came to the conclusion that SS Natural cannot be disqualified u/s. 29A of the Code as alleged by the OMPL.

57. Here in the case in hand during the resolution process at the final round, there were 4 resolution applications, SS Natural, OMPL, Srei



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Multiple Assets Investment Trades Vision India Fund (SMAIT-VIF) and Liberty House Group Private Limited. The copy of the minutes produced on the side of the Resolution Professional enable us to hold that OMPL was the successful bidder during the first round. In the initial period of bidding process, the CoC after deliberation agreed to re-consider the resolution applicants bid and decided to re-conduct the out-bid process with all the eligible bidders. In the said out-bid process OMPL did not improve its bid and thereby SS Natural out-bid the OMPL and became H-1 bidder. It is thereafter that the above said challenge came from the side of the OMPL/resolution applicant. So the conduct of the OMPL who had failed in out-bidding at the re-conducting outbid process, who also failed in convincing the CoC that SS Natural is not eligible under Section 29A of the Code filed this application challenging the very same objection, knowing well that its objections were over-ruled by the CoC, without any additional evidence over and above the evidence led in before the Resolution Professional and CoC, approached this Tribunal and interfered in the process of approval of the plan without any justifiable or sufficient cause. In the said circumstances, we are of the considered view that this application deserve dismissal with costs. Considering the nature and circumstances of the contentions raised, awarding a cost of Rs. 5 lakh would be fair and just.

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58. **CA(IB) NO 1093/KB/ 2019** is one another application filed by **SREI Multiple Asset Investment Trust-Vison India Fund(SREI)**, an unsuccessful bidder challenging the approval of the resolution plan. The SREI contends that Mr. Anoop Krishna, is an employee of Grant Thornton India LLP Process advisers to the RP. He had leaked information regarding the offers of bid to the SS Naturals (SSN) and SSN had access to bids of the other resolution applicants and thereby influenced the outcome of the outbidding process that was conducted to finalize selection of successful bidder.

59. One another allegation also raised by the Ld. Counsel appearing for the SREI is that the said Mr. Anoop Krishna is a director of the flagship company of the group to which SSN belonged since 18.02.2019 onwards. According to him SSN is a consortium company including Shyam Metaliks and Energy Limited and thereby a conflict of interest existed in the CIRP and therefore the entire process is vitiated and hence the plan is liable to be rejected.

60. The Ld.Sr. Counsel for the RP objected to this application. Since this application came up for consideration on the last day of hearing of the CP, for want of time we direct the RP to file written submissions and not reply affidavit. According to him, this application is a frivolous application filed at the instigation of the promoter director as the last attempt to derail the CIRP for enabling him to pass an order of liquidation. He also contends that there is no merit in the contention. He would submit that Mr. Anoop

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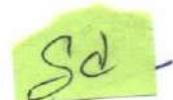
CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019

In

CP(IB) No. 349/KB/2017  
Ramsarup Industries Limited

Krishna is not an employee of the process adviser LLP, but worked for it as a consultant and to support the said contention, a copy of the agreement entered into in between them is produced for our perusal. He further submits that the out bidding process was conducted openly and there is no question of leaking the details of outbidding data.

61. Having heard the parties on both sides and perusal of the records, we are satisfied that the outbidding process was openly conducted by the CoC at the meetings of creditors, in the presence of members of the CoC and all the four resolution applicants including SREI who reached upto the final round. We also understood that multiple rounds of outbidding took place and each participating resolution applicant was given same opportunity to outbid the other resolution applicant. The above said factors brought out from the copies of minutes is self explanatory. Possibility of leaking any data for enabling the bidders to increase its bids never, ever arose in the said process adopted by the CoC. None of the resolution applicants is to be influenced by an insider or outsider. The outbidding process was conducted transparently and diligently. It is significant to note here that other than SREI, none other raised the said contention. The contention of the applicant is frivolous and raised only for the purpose of abusing the process by the unsuccessful bidder. Though an allegation was raised that it was instigated by the promoter director, we



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were not supplied any data, but we could not rule out that possibility too in the peculiar circumstances of the case in hand. The promoter director was present in the Tribunal on all days of hearing this CP, and he rushed in front of us denying the allegation and submits that he never wished to have an order liquidating his company. He also sought permission to make his submissions in person which we declined since Sr. Counsel was already appearing for him.

62. We also do not find any merit in the submission of the Ld. Counsel for the SREI that Mr. Anoop Krishna being a director of Shayam Metalics and Energy Limited SSN is a disqualified resolution applicant. It is significant to note here that Shayam Metalics and Energy Limited is not a successful resolution applicant. Truly the successful resolution applicant is a consortium of SSN and Shayam SEL and Power Ltd. In the absence of any materials brought out to prove that he is connected in any manner with SSN or its consortium members we are unable to hold that Mr. Anoop Krishna is connected with a company allegedly a group company of SSN and thereby entire process is vitiated by undue influence of an employee.

63. The above-said circumstance leads us to a legitimate and irresistible conclusion that this CA which was filed two days before the final hearing of the pending applications in the case in hand is to be dismissed with heavy costs but we are limiting it to Rs.10 Lakh. In our view awarding the said cost

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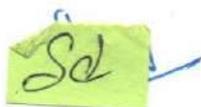
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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
511, 522, 523, 527, 636, 637, 685, 921, & 1026/KB/2019  
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is just and proper to keep the proceedings in a time bound manner so as to achieve the objective of the Code. If we do not do so, it would give a wrong message to the similarly situated applicants who wish to come forward to raise challenge without any right cause. We accordingly **dismiss this CA** with a cost of Rs.10 Lakh.

64. To sum up, we are unable to uphold any one of the objections submitted on the side of the Operational Creditors, Financial Creditors and from the side of the Promoter Director Mr. Aashish Jhunjunwala and the two unsuccessful bidders viz., OMPL and SREI.

65. From the above said discussions, we have already come to a conclusion that the distribution methodology considering the value of security interest held by the FC's adopted by the CoC for distributing the resolution bid amount which has been approved by a vote of 74.41% is not contrary to any of the provisions of the Code or regulations and any of the principle of law settled by NCLAT and Hon'ble Supreme Court. This is a case wherein the Financial Creditors have taken a hair-cut of 94% by receiving about 6% of admitted claim and the Operational Creditors as a class were treated similarly. Therefore, none of the objections of the Operational Creditors are found sustainable. So also two of the unsuccessful resolution applicants challenging the approval of the resolution plan were found devoid of any merit. Being satisfied that none of the objections raised on



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the side of the objectors are worth consideration except CA filed by WBIDCL (CA 921 of 2019), are ordered to be dismissed. In the said circumstances, let us take the resolution plan.

66. The question is whether the application filed by the RP (CA 352 of 2019) for the approval of the resolution plan of consortium of SSN and Shyam SEL and Power Ltd. approved by the CoC by vote of 74.41% deserves to be approved?.

67. Though a form H is not required to be filed in this case since this application was filed before the amendment to CIRP regulation came into being, we directed the RP to file a Form H and he filed the same. The resolution plan that came up for our consideration is a plan approved by the CoC by a vote of 74.41%. Except certain wavier clause like, procedural requirement under the companies Act, waiver of any fee payable to any stock exchange, statutory liabilities other than operational debt specified in the information memorandum, Stamp duty and ROC fees in case of increase in the authorised capital etc., claimed as per the plan which according to us cannot be approved for the reason that those statutory fees, and taxes claimed in the case in hand are liable to be paid by the resolution applicant in accordance with applicable law. Any exemption for payment would be dealt with by the respective authorities if applied for. With the above observations, we are not inclined to approve the waiver as prayed for in

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
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the plan. It is left open for determination by the appropriate authorities if applied for the wavier/exemption as prayed for in the Plan.

68. As per clause 15.3 of the resolution plan, the resolution applicant has given an undertaking that ***“if the approvals, extinguishments and waivers sought under Annexure 3 are not granted, it will not any way jeopardize the implementation of the Resolution Plan, and the resolution applicant shall remain responsible for such implementation of the resolution plan.”***

The Ld. Counsel appearing for the resolution applicant was asked about the possibility of increasing the distribution percentage offered to the operational creditors other than workmen’s dues. He would submit that the resolution applicant is unwilling to vary and modify the plan and that the waiver asked for if not granted, the resolution applicant may withdraw from implementing the plan. We are afraid, the said submission is unmindful of the consequences of the clause 15.3 in the Plan.

69. A careful screening of the Form-H produced on the side of the Resolution Professional proves that all the requirements to be meted out under sub-section (2) of section 30 have been complied by the Resolution Professional. The resolution applicant S.S. Natural is a Consortium of SSNRPL and Shyam SEL & Power Limited. SSNRPL is the lead partner of the Consortium. All the Consortium members have given Affidavit in compliance of Section 29A of the Code. They have given declaration in



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conformity with Regulation 38(3) of the CIRP Regulation that the resolution applicant confirms that it is eligible to submit the resolution plan in accordance with Section 29A of the Code.

70. An undertaking under regulation 39(1)(c) of the CIRP Regulations (in Form VI) has already been submitted while submitting the Plan according to the Resolution Professional. Upon screening of the documents, we are of the considered view that the Resolution Plan is not contravening any of the provisions of the applicable law.

71. The Corporate Debtor company was incorporated in the year 1979. It was involved in the business of manufacturing Steel, TMT Bars and Steel Wires. Its manufacturing units are situated in Kharagpur, Durgapur, Shyamnagar and Kalyani. It also owned a windmill located at Dhule. However its manufacturing units had not been in operation for more than 10 years. According to the Resolution Applicant, the assets of the Corporate Debtor, including the plant and machinery are not in a working condition and considerable investment is required to be made before the factory and the plant and machinery of the Corporate Debtor can be made operational. This facts brought to our notice is unchallenged. It is in the said circumstance we found that out of 670.50 crore of the resolution bid amount keeping Rs.306.00 crore included in the resolution bid as

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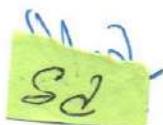
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Capex/Working Capital for enabling it to run the CD Company as an on going concern is not unreasonable.

72. The resolution applicant is experienced in Iron and Steel/Ferro alloys Sector. As per the data furnished the group company namely Shayam group has an established position in the ferro-alloy industry with track record of around two decades and huge experience of successful running and scaling up operations. Having run similar business like that of the corporate debtor the choosing of resolution applicant appears to us is a wise selection and we believe that the Corporate Debtor is to be transferred to safer and healthy hands. It would benefit all its stakeholders inclusive of its workmen and employees.

73. As per Regulation 39A of the CIRP Regulations, liquidation value due to the operational creditors should be paid in priority to the Financial Creditors. Provision is seen made in the plan to pay aforesaid amount within 30 days from the Effective Date and in any event 1(one) day prior to the payment to the Financial Creditors.

74. Insolvency resolution cost is agreed to be paid in full in priority over payments to be made of any other debt as per the Code. It is also made clear that resolution applicant and its group companies have sufficient funds and do not envisage any challenge in terms of source for the payment. Payment to workmen's admitted due also is agreed to be paid



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by the resolution applicant and it is made clear that in any event any further due is admitted under the category, all the workmen and employees shall be paid pro rata based on the admitted claims by the RP.

75. While hearing the CA 921 of 2019, it is agreed by the Ld Sr. Counsel for the RP as well as the Ld. Counsel for the Resolution Applicant that they have no objection in including the portion of security expenses incurred by the Financial Creditor/ West Bengal Industrial Development Corporation Limited(WBIDCL) which is admitted by the RP in the upfront amount payable by the Resolution Applicant to the Creditors. Accordingly the plan approved by this AA must include provisions for inclusion of portion of security expenses incurred by the Financial Creditor and admitted by the RP in the upfront amount payable by the Resolution Applicant to the Creditors.

76. The CoC by voting in favour of approval of resolution plan by a vote share of 74.41% after considering its feasibility and viability and that all other requirement specified by the CIRP regulation seen meted out by the CoC we are bound by the approval as per the principle of law settled in **K. Sasidhar case** referred to above.

77. Before parting with this case, it is fair and just for us to appreciate the herculean task done by the Ld. Resolution Professional who has succeeded in resolving the stressed assets of the Corporate Debtor. The Corporate

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
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Debtor has been taken over by a Resolution Applicant who can safeguard the Company by infusing some healthy blood in to the dying flesh.

78. Having regard to what has been said above we hereby approve the resolution plan upon the following directions:-

### ORDERS

i) The **Resolution Plan of Ramsarup Industries Ltd.**, which is approved by the CoC with 74.41% voting share, is hereby **approved** under provisions of sub-section(1) of Section 31 of the Insolvency and Bankruptcy Code, 2016, which shall be binding on the Corporate Debtor, **M/s. Ramsarup industries Limited**, its employees, members, creditors, guarantors, the central Government, any State Government or any local authority and other stakeholders involved in the Resolution Plan subject to the below mentioned modification.

ii) The Resolution Plan approved by the CoC shall include the portion of security expenses incurred by the Financial Creditor/ West Bengal Industrial Development Corporation Limited(WBIDCL) which is admitted by the RP in the upfront amount payable by the Resolution Applicant to the Creditors.

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
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- iii) The Resolution Plan, shall come into force from the date of pronouncement of this order.
- iv) The moratorium order passed under Section 14 shall cease to have effect.
- v) The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.
- vi) **CA(IB) No. 352/KB/2019 is allowed.**
- vii) **CA (IB) No 921/KB/2019 is disposed of** as directed above.
- viii) **CA (IB) No.343/KB/2019, CA(IB) No. 349/KB/2019, CA(IB) No. 440/KB/2019, CA(IB) No. 460/KB/2019, CA(IB) No. 523/KB/2019, CA(IB)No.636/KB/2019, CA(IB)No. 637/KB/2019, CA(IB) No. 685/KB/2019, CA(IB)No.511/KB/2019, CA(IB) No. 522/KB/2019, CA(IB) No. 37/KB/2019, CA(IB) No. 424/KB/2019, CA(IB) No. 1026/KB/2019 & CA(IB) No. 527/KB/2019 are dismissed.** However, without costs.



CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
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- ix) **CA(IB) No. 461/KB/2019** and **CA(IB) No. 462 /KB/2019** is **dismissed** with cost of Rs.25 lakh payable by the promoter director **Mr. Aashish jhunjunwala** within 45 days from the date of receipt of this order to the account of the Corporate Debtor either by e-payment facility into bank account of Corporate Debtor or by way of DD.
- x) **CA(IB) No. 1093/KB/2019** is **dismissed** with a cost of Rs.10 lakh directing **SREI Multiple Asset Investment Trust-Vison India Fund(SREI)** to pay the said amount within 45 days from the date of receipt of this order to the account of the Corporate Debtor either by e-payment facility into bank account of Corporate Debtor or by way of DD.
- xi) **CA(IB) No. 497/KB/KB/2019** is **dismissed** with cost of Rs. 5 lakh directing the **Orissa Metalics Private Limited (OMPL)** to pay the said amount within 45 days from the date of receipt of this order to the account of the Corporate Debtor either by e-payment facility into bank account of Corporate Debtor or by way of DD.
- xii) If the cost as directed is paid the said amount is to be added to 3.50 Crores payable to operational creditors other than

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CA(IB) Nos. 37,343,349,352, 424, 440, 460, 462, 461, 497,  
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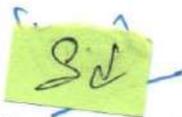
CP(IB) No. 349/KB/2017  
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workmen and the Monitoring Agency shall pay the said amount in accordance with the percentage of distribution approved in the plan to the operational creditors.

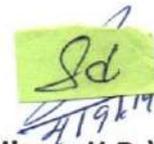
xiii) **CP (IB) No 349/KB/2017** is disposed of by listing **CA (IB) NO. 716/KB/2018** and **CA (IB) NO. 346/KB/2019** separately for hearing and disposal on **15/11/2019**.

xiv) Registry is hereby directed to communicate the order to all the Applicants, Respondents and to the Resolution Applicant through e-mail and free copy .

xv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



**(Harish Chander Suri)**  
**Member (T)**



**(Jinan K.R.)**  
**Member (J)**

Signed on this, the 4<sup>th</sup> day of September, 2019

VC

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH,  
KOLKATA**

**Coram :** Shri Jinan, K.R., Hon'ble Member (Judicial)  
Shri Harish Chander Suri, Hon'ble Member (Technical)

**CA(IB) No. 877/KB/2019 & CA(IB) No. 1051/KB/2019  
in  
C.P. (IB) No. 349/KB/2017**

**In the matter of:**

An application application under Rule 11 and 153 of the National Company Law Tribunal Rules, 2016;

-And-

**In the matter of:**

**RAMSWARUP INDUSTRIES LIMITED**, a Company within the meaning of the Companies Act, 2013 and having its registered office at 7C, Kiran Shankar Roy Road, Hasting Chambers, 2<sup>nd</sup> Floor, Room No. 1, Kolkatta 700001;

...

...

**Corporate Debtor**

-And-

**In the matter of:**

**EDELWEISS FINVEST PRIVATE LIMITED**, a Non-Banking Financial Institution and having its registered office at Edelweiss House, Off. CST Road, Kalina, Mumbai 400098;

...

...

**Applicant**

-Versus-

**KSHITIZ CHHAWCHHARIA**, being Resolution Profession appointed in C.P. No. 349/KB/2017

...

...

**Respondent/Resolution Professional**

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**Counsels appeared:**

- |    |                                    |                           |
|----|------------------------------------|---------------------------|
| 1. | Mr. Kshitiz Chhawchharia           | ] Resolution Professional |
| 2. | Mr. Ratnanko Banerji, Sr. Advocate | ]                         |
| 3. | Mr. Sidhartha Sharma, Advocate     | ] For the Resolution      |
| 4. | Ms. Ujjaini Chatterjee, Avocate    | ] Professional            |
| 5. | Ms. Diprani Thakur, Pr. CS         | ]                         |
| 1. | Mr. Kuldip Mallik, Advocate        | ] For Edelweiss Finvest   |
| 2. | Mr. Debasri Dutta, Advocate        | ] Private Limited         |

Order pronounced on 4<sup>th</sup> September, 2019.

**ORDER****Per Shri Jinan, K.R., Member (Judicial)**

1. The CA(IB) No. 877/KB/2019 is an Application filed by Edelweiss Finvest Private Limited, praying for permitting the Applicant/Financial Creditor to participate in the Resolution Process by issuing direction to the Resolution Professional to admit its claim of a sum of Rs. 7,63,28,919=00 (Rupees Seven Crores Sixty three Lakh twenty eight thousand nine hundred nineteen only) which includes interest @ 15% per annum from 11-10-2017 onwards. The Applicant has not chosen to submit its claim in the prescribed format within the time stipulated as per the provisions of the Insolvency & Bankruptcy Code, 2016 and the Regulations.

2. The CP(IB) No. 349/KB/2017 was admitted vide Order dated 08-01-2019 and this Application seen filed on 28-06-2019. The Resolution Plan here in the case in hand, approved by the Committee of Creditors on 16-03-2019 and that Plan is under consideration of this Bench. It is, at this juncture, this Application comes up for consideration. According to the Ld. Counsel for the

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Applicant, the Hon'ble Supreme court, vide Order dated 09-08-2019, issued direction to this Tribunal to consider this application and prays for issuing direction to RP for consideration of its claim. The direction he referred read as under:-

*"Taking into consideration the peculiar facts and circumstances of the case, the Appellant, with the consent of all the respondents, is permitted to participate in the resolution process which is going on before the National Company Law Tribunal, Kolkata in CP(IB) No. 349/KB/2017."*

3. While this Bench is considering the question of approval of the Resolution Plan submitted by the Resolution Professional, the Ld. Counsel, appearing for the Applicant in this CA, interfered the hearing on many occasions and this Bench, vide Order dated 21-08-2019, made it clear that the argument, if any, in respect of the Application above referred, would be heard after completion of the hearing of the pending CA s., challenging the approval of the Resolution Plan. Accordingly, this Application came up for final hearing on 29-08-2019. Neither the Applicant, nor the Ld. Counsel, has entered appearance for prosecuting the Application. In the meanwhile, a written notes of submission seen filed by the Ld. Counsel for the Applicant on 26-08-2019.

4. The objections seem to have raised in the written submission is that the Applicant, from the commencement of the proceedings initiated by the Corporate Applicant, in the case in hand, raised objections regarding the maintainability of this Petition before this Bench. Overruling the objections and dismissing the Application filed by the Applicant, this bench admitted the

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CP(IB) No. 349/KB/2017 and initiated CIRP process as against the Corporate Applicant. Aggrieved by the Order of dismissal, the Applicant went up to Hon'ble Supreme Court. The appeal preferred before the Hon'ble NCLAT was dismissed by the Order dated 14-12-2018. Dissatisfied with the Order of dismissal, the Applicant went up to Hon'ble Supreme Court. The Hon'ble Supreme Court, though stayed all further proceedings in continuing the CIRP process in the case in hand, vide Order dated 06-05-2019, dismissed the Application, however, making the observation referred to above.

5. The Applicant filed this Application allegedly on the strength of the Hon'ble Supreme Court observations in the above said Order that it is permitted to participate in the Resolution Process undergoing before the Tribunal including staying the proceedings so as to enable its claim which has not been submitted before the Resolution Professional till the date of approval of the Resolution Plan by the Committee of Creditors.

6. The CA(IB) No. 1051/KB/2019 is an Application filed on 16-08-2019 for early disposal of CA(IB) No. 877/KB/2019, before the disposal of the remaining pending Applications. Both these applications were opposed by the RP. We heard the Ld. Sr. Counsel for the RP and perused all the records.

7. The request for stay of the proceedings after approval of the Resolution Plan by the Committee of Creditors cannot be taken consideration because the CIRP period was expired on 23.03.2019. As per the objection raised in the written submission, the reason for non-submission of the claim before the resolution Professional is that the Applicant challenged the jurisdictional issue of this Tribunal in considering an Application under Section

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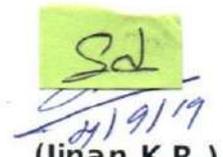
10 of the Code. We do not find any justifiable reason to hold that an Applicant, who failed in challenging the jurisdictional issue upto Hon'ble NCLAT, has not chosen to submit its claim before the Resolution Professional within the stipulated period as provided under the provisions of the Code and the Regulations. The pendency of the Appeal challenging the jurisdictional issue in admitting the CP by this Bench not at all prevented the Applicant in submitting its claim before the Resolution Professional for the consideration by the Committee of Creditors. That being so, we do not find any justifiable reason in upholding the contentions on the side of the Applicant that its claim submitted before us is to be referred to the Resolution Professional. There is no provision under the Code and Regulations to enable us to do so and accordingly, both these Applications deserve no consideration and therefore, are liable to be dismissed.

8. In the result both this applications are dismissed. However parties are directed to bare the respective cost.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



**(Harish Chander Suri)**  
**Member (T)**

  
**(Jinan K.R.)**  
**Member (J)**

Signed on this, the 4<sup>th</sup> day of September, 2019.

/hb./

## IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CA(IB) No. 1039/KB/2019

CA(IB) No. 1063/KB/2019

CA(IB) No. 1064/KB/2019

In CP(IB) No. 349/KB/2019

In the matter of :

Ramsarup Industries Limited

.. Corporate Debtor/Corporate Applicant

In the matter of :

Aashish Jhunjunwala

.. Applicant/ Financial Creditor

-Versus-

Mr. Kshitiz Chhawchharia, Resolution Professional of Ramsarup Industries Limited

.. Respondent

Coram : Shri Jinan, K.R., Member(Judicial)

Shri Harish Chander Suri, Member(Technical)

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For the Applicants in CA(IB) No. 1039/KB/2019 – CA(IB) No. 1063/KB/2019

1. Mr. Rishav Banerjee, Advocate
2. Mr. Zeeshan Haque, Advocate

For the Resolution Professional :

1. Mr. Kshitiz Chhawchharia, RP
2. Mr. Ratnanko Banerjee, Senior Advocate
3. Mr. Sidhartha Sharma, Advocate
4. Ms. Ujjaini Chatterjee, Advocate
5. Mr. Diprani Thakur, PCS

For the Committee of Creditors :

1. Mr. Vikram Wadehra, Advocate
2. Ms. Vidushi Chokhani, Advocate
3. Mr. Soumava Ghosh, Advocate

Date of pronouncement of the Order : 04-09-2019

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## ORDER

Per Shri Jinan K.R., Member(Judicial)

**1. CA(IB)No.1039/KB/2019** is an application filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 and under Rule 11 of the National Company Law Tribunal Rules, 2016 by Ashish Jhunjhunwala/Promoter Director of the Corporate Applicant challenging the approval of the resolution plan contending that the Resolution Professional rejected the claim filed by the applicant/Financial Creditor without any jurisdiction, illegally and unlawfully. According to the Ld. Counsel appearing for the applicant, the Resolution Professional has partly accepted his claim initially and thereafter proceeded to reject the entire claim of the applicant/Financial Creditor arbitrarily overlooking the fact that all necessary documentation in support of the claim for the money actually transferred to the Corporate Debtor had been furnished by the applicant to the respondent, Resolution Professional. The rejection of the claim of the applicant has prejudiced the rights of the applicant/Financial Creditor. The Resolution Professional has no right to adjudicate the claim of the applicant and, therefore, rejection of claim is quite illegal and arbitrary and, therefore, his claim to the tune of Rs. 13,52,69,140/- (Rupees Thirteen Crore Fifty Two Lakh Sixty Nine Thousand One Hundred Forty Only) to be admitted.

**2. CA(IB)No.1063/KB/2019 and CA(IB)No.1064/KB/2019** are similar applications filed by N.R. Mercantile Private Limited and R.A.V Dravya Private Limited challenging rejection of the applicant/Financial Creditor which according to the applicant has been duly supported by adequate and proper documentary evidence. According to the Ld. Counsel for the applicant, the RP has proceeded to reject the entire claim of the applicant towards the said principal amount by overlooking the fact that all necessary documentation in support of the claim for the money actually given transferred to the Corporate

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Debtor by way of a loan have been financed by the applicant to the respondent RP. Therefore, according to him, rejecting entire claim of the applicant towards the principal amount of Rs. 2,81,14,090/- (Rupees Two Crore Eighty One Lakh Fourteen Thousand and Ninety Only) is to be cost and set aside and his claim is to be included for consideration of the approval of the resolution plan.

3. Heard both sides. Perused the documents and citation referred to on both sides.

According to the Ld. Senior Counsel for the Financial Creditor, the claim submitted by the applicant has been erroneously sent to the claimant and that the claim of the applicant has not been admitted due to insufficient proof of the claim. The Ld. Senior Counsel appearing for the Resolution Professional relied upon Annexure A, an e-mail dated 30.06.2019 addressed to the applicant. He was informed by that said e-mail that the earlier mail dated 16.02.2019 admitting the part of the claim of the applicant has been erroneously sent by the Resolution Professional's team member. However, when the claim has been verified, the RP was satisfied that document evidencing a contract for such loan by the financial creditor has not been submitted by the applicant even if demanded and hence he did not include the claims of the applicant.

4. According to the Ld.Counsel for the applicant the financial statement evidencing that such amount was actually drawn by the Corporate Debtor and evidence demonstrates that funds have not been paid back to the claimant. According to the Ld.Sr.Counsel for the RP despite submission of the document asked for what the applicant has done is that he sent a reply vide e-mail dated 02.07.2019 and 12.07.2019. He repeatedly requested to admit the claim of the claimant as well as the claim of the Promoter Group vide mail dated 07.03.2019. The Ld. Counsel for the applicant, also not submitted any explanation as to non production of document related to financial contract.

Sd

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He would repeatedly submit that the financial statement includes the amount due to the claimant and the financial statement for the year ending 2017 has been placed before the RP and that according to him the financial statement available with the Corporate Applicant in the annual account of corporate applicant company can also to be referred by the RP. The letter dated 12.07.2019 is worth for reading

*"Most importantly we have also informed you that the above loan figures of related party transactions has been appearing in the Annual Accounts of Ramsarup Industries Ltd., from last several years. In this regard please refer to my mail dtd. 04.02.2019 (copy attached) giving page number of Annual Accounts from the year FY 10-11 to FY 16-17 clearly reflecting related party transactions and loan given thereof. This is enough evidence that the debt has not been paid by the corporate debtor."*

5. The Ld. Counsel appearing for the Applicants further submits that the Resolution Professional has no power to reject the claim. What we understood from the records available in this Application and upon hearing the argument advanced on both sides, is that the Resolution Professional has not admitted the claim for want of proof. Mere disclosure of the amount due to the Applicants in the financial statements itself cannot be the supporting proof to prove that the debt is due to the Applicants and thereby the Resolution Professional has to admit the claim. Regulation 8(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short Regulation) states as follows :

*" The existence of debt due to the financial creditor may be proved on the basis of -*

- (a) The records available with an information utility, if any; or*
- (b) other relevant documents, including -*

Sd

Sd

- (i) *a financial contract supported by financial statements as evidence of the debt;*
- (ii) *a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;*
- (iii) *financial statements showing that the debt has not been paid; or*
- (iv) *an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any."*

6. The attempt on the side of the Ld. Counsel for the Applicants is that Regulation 8(2)(b)(iii) refers to submission of financial statement showing that the debt has not been paid. So, according to him, the document enabling the Resolution Professional was given to him. Despite the sufficiency of the documents, the Resolution Professional did not admit the claim. On a reading of Regulation 8(2), what we understand is that not only the financial statement for enabling a claimant to prove that a debt disclosed in the financial statement is due to the Applicant, the Applicants need to establish right to realise that amount. It is in that regard, the Resolution Professional has demanded, necessary documents to substantiate their claim. The RP has not been served with all the necessary documentation or information as required in the Insolvency & Bankruptcy Code, 2016 to substantiate the claim amount of the Applicants.

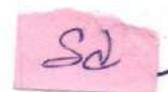
7. The Ld. Senior Counsel, appearing for the Resolution Professional, submits that no record from any information utility or an order of a Court or Tribunal that has adjudicated upon a non payment of debt claimed by the Applicants is available, in the case in hand, to prove the existence of debt realizable from the Corporate Debtor. So, only on cause production of financial statement itself cannot be held that all the requirements for substantiating the claim has been fulfilled on the side of the Applicants. It has



come out in evidence that the Applicant, in CA(IB) No. 1039/KB/2019, Mr. Aashish Jhunjhunwala, was asked to provide the document evidencing the contract for the loans in support of the amount shown in the financial statement evidencing that such amount was actually drawn by the Corporate Debtor and further evidence proving that, that fund has not been paid back to the related parties. No valid explanation is forthcoming as to non production of the above said documents asked for from the Applicants here in this case in hand. There are various correspondence by way of e-mail referred to us on the side of the Applicants. None of the e-mails referred to us enabled us to hold that the Applicants have meted out the requirement in order to see that the claim of the Applicants has been substantiated as alleged on the side of the Applicant.

8. The Ld. Senior Counsel, appearing for the Resolution Professional, cited an order of National Company Law Tribunal, Mumbai Bench in **Urban Infrastructure Trustee Limited Vs. Neelkanth Township and Construction Private Limited**, to strengthen his said submission. In the given case the ,Hon'ble NCLT, Mumbai Bench has considered documents other than what prescribed as per Regulation 8(2) so as to admit a claim by the RP. According to him, the relevant documents referred to in the Regulation cannot be independently sufficient enough to prove that the amount claimed by the Applicant is due to them and that there is a default in payment by the Corporate Debtor. That being so, non admission of the claim of the Applicants found not in violation of any of the provisions of the Code and Regulation and therefore, none of the Applications deserves consideration. Accordingly, the Applications are liable to be dismissed.

9. In the result, the Applications are dismissed. However no order as to cost.



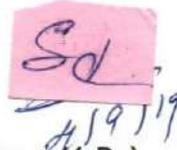
10. Free copy if asked for is to be issued. Registry is directed to send a copy by e-mail to the applicants and to the RP.

11. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)

Member(Technical)



(Jinan K.R.)

Member(Judicial)

Signed this, the 4<sup>th</sup> day of September, 2019

GOUR\_STENO

Speed Post/Online

F. No. IA-Z-12011/16/2023-IA-I (M)  
Government of India  
Ministry of Environment, Forest and Climate Change  
(IA-Compliance & Monitoring Division)  
\*\*\*\*\*

Indira Paryavaran Bhavan  
Jor Bagh Road, Aliganj  
New Delhi-110 003  
Email: [moefcc-monitoring@gov.in](mailto:moefcc-monitoring@gov.in)

Dated: 20<sup>th</sup> September, 2024

To,

**M/s Ramsarup Lohh Udyog Limited,**  
7C, Kiran Shankar Roy Road,  
Hastings Chambers, 1st Floor,  
Kolkata-700001

**Sub: Complaint against illegal construction by "Integrated Steel Plant at Industrial Estate Kharagpur, District Paschim Medinipur, West Bengal of M/s Ramsarup Lohh Udyog Limited"- reg.**

Ref: i. Ministry's EC letter No. J-11011/1229/2006-IA-II (I) dated 03.10.2006, J-11011/14/2008-IA II(I) dated 03.06.2009.  
ii. Complaint dated 30.06.2023 from Swami Vivekananda Mission Trust.  
iii. RO, Bhubaneswar Monitoring report no. 102-494/14/EPE/37 dated 16.08.2023.  
iv. Show Cause Notice to PP dated 23.08.2023  
v. Minutes of the Personal Hearing dated 11.07.2024 issued vide letter dated 05.08.2024

This has reference to the Personal Hearing held on 11.07.2024 in the Ministry regarding the above cited subject under the Chairmanship of Dr. Sujit Kumar Bajpayee, Joint Secretary, MOEF&CC, Minutes for which have been issued vide communication dated 5.8.2024 of the Ministry (Annexure-I).

2. As was concluded during the personal hearing, views of Legal Monitoring Cell (LMC) of the Ministry were to be sought on the issue of validity of EC wrt the Resolution Plan and Hon'ble Supreme Court Order, considering the legality involved in the matter. The matter has been examined in detail by the LMC in reference to all documents made available by the project proponent and outcome of personal hearing. Accordingly, LMC has quoted following Clauses from the Resolution Plan as vetted by Hon'ble Supreme Court, which have implication wrt conclusion on the validity of EC:

i. Clause 15.13:

*"upon approval of this resolution plan all investments (included but not limited to the investment in key infrastructures facilities) statutory rights, licenses, agreements, registrations or any similar approval by whatever name called and*

*fundamental for running the business on going concern shall be in complete force and valid.*

ii. Clause 15.14:

*(i) Upon approval of this Resolution Plan by the Adjudicating Authority, all actions stated in this Resolution Plan shall be deemed to be approved. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any consents, approvals, concessions, authorizations, permits or the like that has been granted to the Corporate Debtor or for which the Corporate Debtor has made an application for renewal or grant.*

*(ii) Licenses/ Approvals/Contractual Rights and Benefits*

*a) The Resolution Applicant is praying that upon approval of this Resolution Plan by the Adjudicating Authority And since the Resolution Applicant will acquire the Corporate Debtor on a going concern basis, all subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to shall, notwithstanding any provision to the contrary in their terms, be deemed to continue without disruption for the benefit of the Corporate Debtor.*

*(b) For the avoidance of doubt, it is hereby clarified that all consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to, which were in place on the date of shut down of the plant pursuant to lock-out ("Shut Down Date"), shall be deemed to continue without disruption for the benefit of the Corporate Debtor for a period of 12 months from the Completion Date or until renewed by the relevant authorities, whichever is later. Without any liability for the noncompliance during the time specified above, the Resolution Applicant undertakes to cause the Corporate Debtor to expeditiously identify such expired consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to, evaluate the steps required to address the same and take steps to remedy the same to the extent practically possible.*

*(c) The period of non-operation ie. from the Shut Down Date to the Effective Date shall not be counted upon i.e. any approval, grant, license, etc shall be treated to be in effect as the same was in effect on the Shut Down Date and shall remain valid for their residual tenor as on the Shut Down Date with effect from the Effective Date".*

3. Accordingly, as opined by the LMC, considering the above cited provisions of Resolution Plan, Environmental Clearance (EC) for the project dated 03.06.2009 with validity of 5 years was valid till 02.06.2014. On the date of shut down i.e. on May, 2010 (Suspension Certificate is available), the residual period of validity after Shut down was 4 years. Considering clause 15.14(ii)(C), it can be said that EC dated 03.06.2009



will be valid for its residual period of 4 years as on the date of shut down w.e.f. the Effective Date i.e. 04th May, 2021 (date when the Hon'ble Supreme Court upheld the order of the Hon'ble NCLT, Kolkata Bench). As concluded by LMC, it can be interpreted that EC dated 03.06.2009 will be valid for 4 years from 04th May, 2021 to May, 2025.

4. In view of foregoing, considering that the validity of EC dated 03.06.2009 is now expiring on 3rd May 2025, project proponent shall initiate timely actions for extension or amendment of EC to ensure valid EC wrt previous or any newly planned activities. Further, PP shall also ensure proposing for amendment of all such conditions of previous ECs dated 2006 and 2009, which are now not applicable to the project.

This issues with the approval of the Competent Authority.

Encl: As above



(Dr. Shruti Rai Bhardwaj)  
Director/Scientist 'F'

**Copy to:**

- i. The Chairman, Central Pollution Control Board, Parivesh Bhawan, East Arjun Nagar, Delhi-110032.
- ii. The Deputy Director General of Forests (C), Ministry of Environment, Forest and Climate Change, Integrated Regional Office, A/3, Chandrasekharpur, Bhubaneswar-751023.
- iii. Member Secretary, West Bengal State Pollution Control Board, Paribesh Bhawan, 10A, Block-LA, Sector-III, Bidhannagar, Kolkata-700106.
- iv. The Member Secretary, Industry-1, Ministry of Environment, Forest & Climate Change, Paryavaran Bhawan, Lodhi Road, New Delhi-110003. (For kind information)



(Dr. Shruti Rai Bhardwaj)  
Director/Scientist 'F'