



*Ushdev International Ltd.*

11<sup>th</sup> November, 2019

M/s. BSE Limited  
Regd. Office: Floor 25, P J Towers  
Dalal Street  
MUMBAI-400 001

Dear Sir,

Sub: - Intimation under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 - Reg.

This Letter is an intimation to Stock Exchange in respect of application for liquidation under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 filed by Resolution Professional ("RP") with Hon'ble National Company Law Tribunal ("NCLT"), Mumbai Bench on February 07, 2019 after non-approval of the Resolution Plan by the Committee of Creditors.

It is hereby informed that the Hon'ble NCLT, Mumbai Bench vide an Order dated November 07, 2019 has approved the Resolution Plan of the Resolution Applicant M/s. Taguda Pte Ltd and Liquidation Petition filed by Resolution Professional has been rejected by the Hon'ble NCLT, Mumbai Bench.

The copies of the NCLT Orders are enclosed for your reference.

This is for your information and record.

Thanking you,  
Yours Faithfully

Authorised Signatory  
(Ushdev International Limited)



Encl. Above

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

**CP No.1790/IBC/NCLT/MB/MAH/2017**

**MA 626/2019**

**Under Section 33** of the Insolvency and  
Bankruptcy Code, 2016

By Mr. Subodh Kumar Agrawal

.....Applicant/Resolution Professional

**MA 517/2019**

Under section 60(5) of I&B Code

By Canara Bank

...CoC Member

**MA 716/2019**

Under Section 60(5) of I&B Code

By Lodha Development Management Pvt. Ltd.

....CoC Member

**MA 989/2019**

Under section 60(5) of I&B Code

By Suman Gupta

....Promoter of Corporate Debtor

**MA 762/2019**

Under Section 60(5) of I&B Code

**By Taguda Pte. Ltd.**

...(Unsuccessful) Resolution Applicant

**MA 857/2019**

Under Section 60(5) of I&B Code

By Ushdev Employees Association

...Employees of Corporate Debtor

**In the matter of**

State Bank of India

...Financial Creditor

v.

Ushdev International Limited

....Corporate Debtor

Date of Pronouncement: 07.11.2019

**Coram :**

Hon'ble M.K. Shrawat, Member (J)

**For the Applicant :**

Adv. Fatima Kachwalla, For Resolution Professional (RP)

*Per: M. K. Shrawat, Member (J)*

### **ORDER**

1. The Corporate Insolvency Resolution Process of M/s Ushdev International Limited (the **Corporate Debtor**) began on 14.05.2018, pursuant to admission of Section 7 application (CP 1790/I&BP/NCLT/MB/2017) filed by a '**Financial Creditor**' State Bank of India (hereinafter referred to as "SBI"). The time period of 270 days for completion Corporate Insolvency Resolution Process of the Corporate Debtor completed on 07.02.2019.

#### **( A ) Miscellaneous Application No. 626 of 2019**

2. This Application has been preferred U/s 33 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") by the Resolution Professional (hereinafter as "RP"), seeking an order of this Tribunal for '**Liquidation**' of the Corporate Debtor and appointment of Mr. Sudip Bhattacharya to act as 'Liquidator' of the Corporate Debtor for the completion of liquidation proceedings.
3. It is stated that the RP was appointed Interim Resolution Professional (hereinafter referred to as "IRP") of the Corporate Debtor by way of the admission order under section 7 of the I&B Code passed on 17.05.2018 by this Tribunal. The IRP made a public announcement in Business Standard, Indian Express and Loksatta newspapers in terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016 ("CIRP Regulations").
4. A Committee of Creditors (hereinafter referred to as "CoC") was constituted on 06.06.2018 as per section 18(1)(c) of the I&B Code, which comprised of the Financial Creditors of the Corporate Debtor including SBI. The first meeting of CoC was held on 14.06.2018 wherein the IRP was confirmed as the RP of the Corporate Debtor.
5. The RP appointed M/s Adroit and M/s Crest Capital advisers as "**Valuers**" in accordance with Regulation 27 of the CIRP Regulations for the purpose of determining the '**fair value**' and the '**liquidation value**' of the Corporate Debtor. Thereafter, the Information Memorandum (IM) was prepared by the RP and an advertisement seeking 'Expressions of Interest' (EOI) from prospective resolution applicants was published in Business Standard (All India Edition), Indian Express and Loksatta (Mumbai Edition).
6. It is submitted that upon issuance of EOI , three potential Resolution Applicants showed interest in the Corporate Debtor, namely,

- a. M/s. Taguda Pte. Ltd., Singapore (Trading House);
  - b. M/s. Anika Industries Pvt. Ltd. (Trading House); and
  - c. M/s. Langley (UK) jointly with M/s. Bowline Capital Partners, Netherland (Fund House).
7. Out of the three Resolution Applicants, **only** one applicant had **qualified i.e. M/s. Taguda Pte. Ltd., Singapore (Trading House)** (hereinafter referred to as “Taguda/Resolution Applicant”) as per the evaluation matrix to submit the resolution plan. The other two applications were rejected for certain reasons. Taguda submitted its respective bid, now under consideration and presently sub-judice. In the 7<sup>th</sup> CoC meeting dated 29.09.2018, the RP opened the sealed bid submitted by Taguda. The RP also placed the liquidation values and fair values of the Corporate Debtor before the CoC. The CoC sought some time to consider the resolution plan. At the 15<sup>th</sup> CoC meeting dated 02.02.2019, the CoC members **rejected the Resolution Plan** submitted by Taguda with **77.61%** voting share.
8. It is worth to note that Allahabad Bank, Central bank, Oriental Bank of Commerce, Bank of Maharashtra and Lodha Development Management Pvt. Ltd. all together holding **22.39% share in the CoC, voted in favour of the Resolution Plan.** However, Andhra Bank, Bank of Baroda, Canara Bank, Dena Bank, ICICI, IDBI, Indian Overseas Bank, SBI and UCO voted against the Resolution Plan constituting to 77.61% of the voting right of the CoC. Therefore, the plan being rejected by the CoC members by more than 66% voting share and there was no other Resolution Plan, thus decided to move a Liquidation application for the Corporate Debtor.
9. This application is by the RP seeking order of Liquidation moved as a consequence of voting result.
10. Before adjudicating on this application, it is worth to note that the decision of CoC for liquidation of the Corporate Debtor has been challenged by (i) Taguda a Resolution Applicant, (ii) Lodha Development Management Pvt. Ltd. (“Lodha”), (iii) Ex directors of the Corporate Debtor as well as the (iv) Employees association of the Corporate Debtor vide respective Miscellaneous Applications independently moved by them. These objections are going to be dealt with hereunder.

**( B ) Miscellaneous Application No. 716 of 2019:**

11. This application is filed by **Lodha Development Management Pvt. Ltd. (“Lodha”)**, a ‘Financial Creditor’ and one of the members of the CoC of the Corporate Debtor, having 1.03% of the voting share in the CoC. The admitted claim of Lodha after verification by the RP is ₹32.52 Cr.

11.1 The major grievance of Lodha is that the commercial decision arrived at by the CoC for **‘liquidation’** of the Corporate Debtor is **not a sound decision** being

unsupported by any credible information. It is submitted that as opposed to Liquidation value, **Taguda's resolution plan** is a better offer for revival of the Corporate Debtor and **beneficial to all the stakeholders**.

11.2 The resolution plan of **Taguda** provides for an **upfront** payment of INR **200 Crores** which will be paid in 4 equal tranches in 90 days. The 1<sup>st</sup> tranche of the amount would be paid by the resolution applicant within 15 days from the date of approval from NCLT.

11.3 It is submitted that the books of the Corporate Debtor show the receivables to an extent of ₹75,00,00,000/-. During the 15<sup>th</sup> CoC meeting, the representative of SBI informed that as per their assessment the recoverable amount from the debtor is around INR 400 to 500 Crores. The resolution plan provides that on recovery from the debtors of the Corporate Debtor over an amount of ₹75,00,00,000/-, the receivables will be shared in 75:25 ratio for the next 3 years between Financial Creditors and the Resolution Applicant and payment will be done at the end of every year. A **monitoring mechanism** will be employed to look after the affairs of the Corporate Debtor and to protect the interest of the financial creditors during these three years.

11.4 It is further submitted that despite all these provisions in the resolution plan, the plan was rejected out rightly. When SBI was asked about the source of assessment of receivables of around ₹400-500 Crores, SBI informed that they were informed about the assessment by, quote "some recovery agency", however, the said recovery agency neither informed about the period in which it would be recovered nor the total amount that can be recovered. Hence, Mr. Zal Andhyarujina Ld. Advocate appearing for Lodha, submitted that this bald statement by SBI at the fag end of the CIRP is not backed by any substantial evidence, neither the source of information is named. **Most of the debtors of the Corporate Debtor were either themselves under liquidation or on the verge of bankruptcy**. Hence, the circumstance of expected receivables of Corporate Debtor that too up to ₹400-500 crores, is nothing but an imaginary dream, far from reality.

11.5 The valuers appointed have calculated the fair market value and the liquidation value of the Corporate Debtor as given below:

Valuer	Crest Capital Advisers	Adroit Technical Services Pvt. Ltd.
Fair Market Value (₹)	1,03,93,09,800/-	95,11,62,281/-
Liquidation Value (₹)	66,34,67,003/-	67,11,18,679/- *

\*(there seems to be amount difference in MA 716 pg 19 & rejoinder to MA 762 pg 43)

11.6 It is further submitted that as against the receipt of ₹200 Crores within 90 days, strangely, **how the CoC has exercised its commercial wisdom by choosing liquidation of the Corporate Debtor wherein the liquidation value is merely ₹67 Crores (approx.) ? questioned by this applicant.** On top of it, the time taken may turn out to be more than two years.

11.7 It is further submitted that Adroit Technical Services Pvt. Ltd. has assigned “Nil” value to majority of the sundry debts due to the Corporate Debtor. The reasons assigned for the same are that most of the debtors of the Corporate Debtor are under liquidation proceedings or NPAs themselves and that most of the receivables are outstanding for more than three years. Therefore, even if the Corporate Debtor is liquidated, the financial creditors may recover only the liquidation value of the assets, whereas the possibility of recovering the receivables is almost non-existent.

11.8 Furthermore, it is stated that **liquidation** of the Company would gravely prejudice the **livelihood of the employees** of the Corporate Debtor and suffocates the object of the Code i.e. maximization of value of the assets of the Corporate Debtor.

11.9 The Applicant has relied on the judgement of the Hon’ble Supreme Court in the matter of **Miheer H. Mafatlal v. Mafatlal Industries Ltd. [(1997) 1 Supreme Court Cases 579]**, wherein it has laid down the broad contours of jurisdiction of the Company Courts to sit in appeal over the decision taken for approval of a Scheme decided in a meeting of Board and shareholders under the provisions of Sec. 391 & Sec. 393 ( old Act) . It was held that:

*“In view of the aforesaid settled legal position, therefore, the scope and ambit of the jurisdiction of the Company Court has clearly got earmarked. The following broad contours of such jurisdiction have emerged :*

*1. The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meeting as contemplated by Section 391(1) (a) have been held.*

*2. That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391 sub-section (2).*

*3. That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an **informed decision** for approving the scheme in question. That the majority decision of the concerned class of voters is **just and fair** to the class as whole so as to legitimately blind even the dissenting members of that class.*

*4. That all the necessary material indicated by Section 393(1)(a) is placed before the voters at the concerned meetings as contemplated by Section 391 sub-Section (1).*

*5. That all the requisite material contemplated by the provision of sub-Section (2) of Section 391 of the Act is placed before the Court by the concerned*

*applicant seeking sanction for such a scheme and the Court gets satisfied about the same.*

**6. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the Scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same.**

*7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising of the same class whom they purported to represent.*

*8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.*

*9. Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the **commercial wisdom** of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.”*

12. The Ld. Counsel for Lodha has also pointed out in its application that Mr. Sudip Bhattacharya, whose appointment the CoC seeks as a liquidator of the Corporate Debtor, is associated and affiliated with Duff and Phelp, a recovery agency who has informed SBI of the potential recovery of ₹400 to ₹500 Cr. A suspicion is raised regarding the above said connivance.

13. The RP has filed an **affidavit in Reply** stating that this MA filed by Lodha has not been filed to support the Resolution Plan of Taguda or to challenge the decision of the CoC, but to highlight the flawed manner in which the CoC meeting have been conducted. The RP submits that even after making all endeavours to have a successful resolution of the Corporate Debtor, no plan could be approved as the fate of the Corporate Debtor eventually lies in the hands of the CoC. It is stated that Lodha's application cannot be entertained by the NCLT because of the decision of the **Hon'ble Supreme Court in K. Sashidhar v. Indian Overseas Bank & Ors** [Civil Appeal No. 10673/2018], wherein it is clarified that :

*“33. ....The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC muchless to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. .... Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the*



***I&B Code.*** *There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.*

39. ***In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors.....***

44. ***.....The resolution professional is not required to express his opinion on matters within the domain of the financial creditor(s), to approve or reject the resolution plan, under Section 30(4) of the I&B Code. At best, the Adjudicating Authority (NCLT) may cause an enquiry into the “approved” resolution plan on limited grounds referred to in Section 30(2) read with Section 31(1) of the I&B Code. It cannot make any other inquiry nor is competent to issue any direction in relation to the exercise of commercial wisdom of the financial creditors - be it for approving, rejecting or abstaining, as the case may be. Even the inquiry before the Appellate Authority (NCLAT) is limited to the grounds under Section 61(3) of the I&B Code. It does not postulate jurisdiction to undertake scrutiny of the justness of the opinion expressed by financial creditors at the time of voting.....”***

14. The RP submits that most of the CoC members have voted against the Resolution Plan, merely banking upon one statement of SBI, that was regarding recoveries of the Corporate Debtor. That reliance would be unjust because all the CoC members have given their own reasoning for rejecting or approving the resolution plan. The reasons given by each of the Financial Creditor for rejecting the resolution plan is given below ( extracted from the compilation):

- ***Andhra Bank***
  - ✓ *The amount offered (INR 197 Cr.) in the resolution plan is very low coming to around 5.99%.*
  - ✓ *Forensic audit identified certain preferential transaction.*
  - ✓ *Conversion of debt to equity and then cancellation of same has no benefit to the lenders.*
  - ✓ *As per resolution plan the amount of 47 Cr. will be reduced with the amount which is arising out of any deficit in CIRP cost payment and Operational Creditor payment.*
- ***Bank of Baroda***
  - ✓ *Plan was asking for 3<sup>rd</sup> party release of security*
  - ✓ *Receivable as was informed by SBI in 15<sup>th</sup> CoC meeting that is recoverable around INR 400-500 Cr, hence the amount offered is low.*
- ***Canara Bank***
  - ✓ *Canara Bank have 29% exclusive charges on the security and should be given preferential treatment however the plan does not provide for the same.*



- **Dena Bank**
  - ✓ *There is large amount of haircut as per plan.*
- **ICICI**
  - ✓ *There is large amount of haircut as per plan.*
  - ✓ *Bank did not wanted to leave the corporate guarantee in the plan.*
- **IDBI**
  - ✓ *Although the amount offered is more than liquidation value however it is coming around 6% of total bank exposure.*
  - ✓ *SBI has mentioned INR 400-500 Cr. was recoverable from the debtors whereas in plan applicant has set aside INR 75 Cr. for itself & mentioned that legal and other charges has to be paid out of company cash flow. There was no assured recovery to lenders while Applicant had INR 75 Cr. assured inflow.*
  - ✓ *Release of corporate guarantee with security.*
  - ✓ *Conversion of debt to equity and subsequent cancellation and RA did not provide for any immunity to lender on the tax implications.*
- **Indian Overseas Bank**
  - ✓ *Inadequate financial consideration*
- **State Bank of India**
  - ✓ *The offer was low.*
  - ✓ *Receivable was not assigned.*
  - ✓ *Need to relook into forensic audit (go deeper into transaction).*
- **UCO**
  - ✓ *The RA provided condition to plan.*
  - ✓ *Company have huge recovery to be made from receivables that may be recovered which can add value to the plan*

15. Canara Bank, a dissenting financial creditor, has also filed an affidavit in reply to Lodha's Application stating that Lodha has no locus to challenge the decision taken by majority of the CoC members to reject the resolution plan.

#### **( C ) Miscellaneous Application No. 857 of 2019**

16. The **Employees Association** of the 'Corporate Debtor' has filed an application challenging the decision of COC of rejecting Taguda's resolution plan. It is stated that as per the two valuers appointed, the liquidation value of the Corporate Debtor is much less as compared to the proposal of the Resolution Applicant. Hence, keeping in view the interests of all the stakeholders including employees and object of the Code i.e. "**promoting resolution over liquidation of corporate debtor**" as mentioned in the Preamble of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, the decision taken by CoC in its 16<sup>th</sup> meeting dated 06.02.2019 should be set aside.

#### **( D ) Miscellaneous Application No. 517 of 2019**

17. This Application is filed by **Canara Bank** on 06.02.2019, a 'financial creditor' dissenting to the resolution plan proposed by Taguda. The Applicant seeks an order against the Resolution Applicant **to revise the Resolution Plan** by giving preferential treatment to the Applicant. It is stated that the Applicant has 3.14% voting share in the CoC of the Corporate Debtor. However, the plan provides for a meagre share of 0.34% which is nothing but un-proportionate share to the secured creditor of the CoC.

18. It is further stated that the Applicant has an exclusive charge on the assets (having liquidation value of ₹20.97 Cr. of the Corporate Debtor which is more than 29% of the total assets. Despite 3.14% share, an exclusive charge on 29% of the total assets and a claim of ₹11.19 crore, the Applicant states that it has got a meagre share of 0.34% which amounts to 0.58 lacs, not at par treatment with other unsecured creditors.
19. Hence, the Applicant seeks a preferential treatment to a secured creditor in the resolution plan.

**( E ) Miscellaneous Application No. 762/2019**

20. This application is filed by **Taguda Pte. Ltd. (the Resolution Applicant/Taguda)** seeking setting aside of decision taken by CoC on 06.02.2019 and to approve the Resolution Plan submitted by Taguda.
21. The Resolution Applicant submits that it has submitted its Resolution plan on 28.09.2018 and **paid the bid bond amount of ₹5,00,00,000/- to the RP**. After all the modifications and amendments suggested by the CoC to the plan, **an updated plan was submitted on 02.02.2019** with the following provisions:
- i. The **Upfront payment is ₹200,00,00,000/- (Two Hundred Crores)** i.e. ₹197 crores being paid to Financial Creditors and ₹3 Crores to the Operational Creditors/CIRP Costs.
  - ii. The debt will be converted into equity on a pro rata basis in four tranches i.e. percentage of equity conversion shall be equal to percentage of upfront money paid;
  - iii. The 1<sup>st</sup> tranche of the amount would be paid by the Applicant within 15 days from the date of the approval of the plan from NCLT;
  - iv. Four immovable properties in the name of Promoters of the Corporate Debtor would continue with the Financial Creditors having created a charge;
  - v. Sharing of recovery from receivables from the debtors of the Corporate Debtor was agreed to be in the ratio of 75:25, where 75% is with the lenders and 25% with Taguda for the initial three year period. All costs for recovery were to be borne by the Applicant and the payment in lieu of the recovery to the financial creditors.
  - vi. A **'Monitoring Committee'**, consisting of one member from amongst 5 professional consultants suggested by the CoC and one member nominated by the Resolution Applicant, would be appointed to oversee the recovery efforts made by the Resolution Applicant.

- vii. A '**Performance guarantee**' of ₹10,00,00,000/- shall be submitted by the Resolution Applicant by 06.02.2019 in an instance the Letter of Intent is issued.
- viii. ₹35 Crores is being paid for capital expenditure and working capital requirements of the Corporate Debtor.
22. **It is submitted that despite all modifications done as per the suitability of the CoC, the CoC rejected the plan on 06.02.2019 and opted for Liquidation of the Corporate Debtor. The CoC without considering that the liquidation value of the Corporate Debtor, as arrived at by two valuers, is less than even from the upfront payment of the plan, took an unreasonable and un acceptable view, which was *abinitio* bad in law .**
23. The Resolution Applicant further submits that SBI has coloured the mind of all the CoC members by mentioning the wrong figure of liquidation i.e. ₹400-500 Crores and without mentioning even the source of this evaluation. The Resolution Applicant submits that even based on the hypothetical assumption of ₹400-500 crores of recoveries which would be monitored by a Monitoring Committee consisting of 50% representation by CoC nominee, the total Resolution Plan amount would work out to ₹444 crores - ₹519 crores (i.e. 13.5% - 15.8% of the total admitted Financial Liabilities). The Applicant further ensures that its bid bond of ₹5,00,00,000/- shall continue to be deposited with the RP. Also, the Applicant remains committed to submit a Performance Guarantee of ₹10,00,00,000/- as per the Letter of Intent issued.
24. Hence it is contended that by rejecting a "technically qualified" Resolution Plan which is "Financially" much higher than liquidation value arrived at for the Corporate Debtor, the CoC has made the entire process of Insolvency and Bankruptcy Code arbitrary, whimsical, irrational and non-transparent devoid of natural justice whatsoever. Therefore, the Applicant prays that it's Application should be allowed by setting aside the decision of CoC and thereupon by approving the resolution plan.
25. That during the arguments a strong reliance has been placed on the 'Preamble' of the IB&C for the reason that any decision which is against the very basis of incorporation of the Statute should be out rightly rejected.
26. **Argument of R.P. :-** With regard to Taguda's Application, the RP states this Tribunal does not have jurisdiction to sit in appeal over the decision of CoC until it is shown that the same is perverse, against the provisions of the Code, or is ultra vires. The Adjudicating Authority can look into the Resolution Plan only when an application for its approval has been filed by the RP. However, the same is not the case of Taguda or any other entity. Hence, such relief cannot be granted to Taguda.
27. **Argument of SBI :-** In a reply to Taguda's application SBI has preliminarily stated that the CoC of the Corporate Debtor ought not be called upon to justify the decision

taken in commercial wisdom, as the same is given a paramount status without any judicial intervention.

27.1 Further, it is stated that Regulation 35(2) of the CIRP Regulations reads that:

*“(2) After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29:*

*(3) The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value.”*

Therefore, as per law, the Liquidation Value of the Corporate Debtor has to be a confidential figure and can be shared only with the CoC members subject to the confidentiality undertaking. Hence, it is not clear that how Taguda is aware of the liquidation value, as it has given the comparing figures of its Resolution Plan and the Liquidation Value of the Corporate Debtor.

27.2 SBI further submits that approval holds only 28.68% of the voting share in CoC, while plan is rejected by 77.61% of CoC members. It states that it has not coloured the minds of CoC members as alleged. The minutes of the 16<sup>th</sup> CoC meeting show that out of 9 dissenting financial creditors, only 4 had voted in favour of the plan due to the reason of receivables of the Corporate Debtor. Other 5 financial creditors rejected Taguda's Plan on other grounds as mentioned above (*supra*).

27.3 SBI states that the plan provided for a haircut of 94.78% to the financial creditors, which is another reason for rejection of resolution plan. Furthermore, it is contended that the receivables in excess of ₹75 Crores were to be shared with the financial creditors in the ratio of 75:25 at the end of each year for 3 years under the plan. However, in the event, the recoveries within 3 years from the transfer date are going to be less than ₹75 Crores (being litigation expense), no amount would be received by financial creditors.

27.4 During the arguments, the Ld. senior counsel for SBI Mr. Gaurav Joshi vehemently argued that the Resolution Applicant wishes to gulp all the receivables of the Corporate Debtor in itself because of the fact that the Resolution Applicant is well aware that no litigation for the recovery of receivables would be completed in a time span of 3 years. Hence, this is mere verbosity that the receivables would be shared. If no recovery is done in three

years, or if the recovery is less than ₹75 Crores, then the financial creditors would be left high and dry at the hands of the Resolution Applicant. It is further argued that the only reason of the Resolution Applicant to show interest in the Corporate Debtor is its huge receivables. At this juncture a question had been raised that even the Financial Creditors are banking upon the said recoveries if Liquidation is approved, then why two standards are adopted by SBI ? , however there was no answer.

27.5 Regarding receivables, the Id. counsel for SBI submits that as on 31.03.2018 the trade receivables stood at ₹59,050.27 lakhs as per the financial statements of the Corporate Debtor and out of the total debtors of the Corporate Debtor, 11 debtors had confirmed that a sum of ₹976.77 crores was outstanding to the Corporate Debtor. It is stated that a large number of recoverable are from the international debtors, in particular Singapore and Dubai, where on account of sophisticated recovery mechanism, chances of recoveries are high. It is stated that apart from the receivables amounting to ₹120 Crores approx., which relate to entities that are in the corporate insolvency resolution process or are actually insolvent, there is no basis for SBI to justify why the remainder of receivables ought to be written off.

28. **Rejoinder by Taguda :-** The Resolution Applicant/Taguda in its rejoinder to SBI's reply submits that the amount offered (₹200 Crores payable in 90 days) by itself is 250% more than 'liquidation value' of the Corporate Debtor which is merely ₹76 Crores (67.11 Cr.) . As far as knowledge of liquidation value is concerned, the Ld. counsel for Taguda submits that it was made aware about the Liquidation value from RP himself and thereafter upon receipt of MA No. 716 of 2019 filed by Lodha.

28.1 It is further submitted that SBI had no substantial information regarding the amount of receivables which it quoted to be ₹400-500 Crores valued by "*some recovery agency*" before the CoC members. It is submitted that when the liquidation value as per the valuers is merely ₹67 or ₹76 crores, there is no possibility that the debt of the Corporate Debtor would be covered by the liquidation value.

28.2 The Ld. counsel for Taguda submits that the debt of the Corporate debtor to the tune of ₹976.77 Crores which is allegedly admitted is in fact not available to the Corporate Debtor. It is submitted that 10% of the confirmed debt of the debtors have already been liquidated and around 45% of these debtors are under litigation. Further, it is a known fact that 10% of such debtors belong to one group which is undergoing bankruptcy proceedings in India. Hence the trade receivables of the Corporate Debtor are merely shown to be ₹12 Crores, as available on BSE website.

28.3 Also, M/s, Crest Capital assigned ₹1.89 Crores as the liquidation value of the **sundry debtors** of the Corporate Debtor. Adroit Technical Services assigned ₹2.65 crores as the liquidation value to the sundry debtors. It is also mentioned in the report that *“Analysis of other debtors brought to light that most of these parties are under liquidation proceeding or NPA’s themselves. Further, all these receivables are outstanding for more than three years. In view of dated nature and lack of financial prowess of these receivables, the fair market and liquidation value is Nil”*, as assessed or alleged in the report.

**( F ) Miscellaneous Application No. 989 of 2019**

29. This application is filed on 08.03.2019 by **Mr. Suman Gupta, promoter** of the Corporate Debtor praying for setting aside the order of CoC approving liquidation of the Corporate Debtor and approval of Taguda’s Resolution Plan. The Applicant herein submits that the sundry debtors amounting to ₹1100 Crore of the Corporate Debtor have been wound up / liquidated. Giving the status of debtors as on the date of this application, the applicant has submitted the following chart:

<i>Sr. No.</i>	<i>Status of Debtors</i>	<i>Amount (₹ in Cr.)</i>
1	<i>Debtors currently under CIRP or NPA</i>	695.55
2	<i>Debtors under liquidation by way of orders passed by the respective courts</i>	918.73
3	<i>Debtors who have lodged counter claims</i>	810.07
4	<i>Litigation taken out against the company by the debtors on various grounds</i>	431.35
5	<i>Promoters of debtors are bankrupt</i>	344.34
6	<i>Other debtors</i>	242.96
	<i>Total</i>	3442.99

30. It is further stated that despite the Resolution Plan being put up before CoC for a number of times and with modifications suitable to CoC, the same was rejected because of SBI making absurd claims regarding some recovery numbers, without providing any supporting documents to show the source of assessment. Hence, the Applicant states that the liquidation has been approved without following the due procedure of law.

31. The promoters further allege that they were not given copy of any of the resolution plan which was discussed in CoC meetings. As per the decision of **Hon’ble Supreme Court in Vijay Kumar Jain v. Standard Chartered Bank & Ors. [Civil Appeal No. 8430 of 2018]**, though the erstwhile Board of Directors are not members of CoC, yet they have a right to participate in each and every meeting held by the CoC and also have a right to discuss along with members of CoC all resolution plans

that are presented at such meetings. In this case, the promoter alleges that not only the papers were not given to them by CoC, also they were asked to wait outside the CoC meeting and were not allowed to take part or discuss the plan in the meeting. Therefore, the due procedure is not followed to conduct CIRP proceedings of the Corporate Debtor. Hence, it is argued that the decision of CoC for liquidation of Corporate Debtor be rejected for the same is not taken after complying with the procedure prescribed by law.

**Findings:**

32. To arrive at a rightful conclusion and before coming to pronounce a reasoned judgement it is necessary to first scrutinise the purpose of introduction of the Insolvency Code and for that study of '**Preamble**' is paramount, which prescribes as under :-

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

32. (1) On going through the facts of the case and after perusing the documents produced on record, it is seen that the RP has filed an application for 'Liquidation' of the Corporate Debtor as the CoC has rejected the Resolution Plan submitted by Taguda with 77.61% voting share against the above mentioned resolution plan. This decision of CoC is being challenged by (i) Lodha (one of the Financial creditor of the Corporate Debtor having 1.03% share in CoC), (ii) the Promoters of the Corporate Debtor, (iii) the employees of the Corporate Debtor and the (iv) Resolution Applicant itself. The objection raised is regarding the justification of the alleged 'commercial wisdom' claimed to be exercised by the CoC. Canara Bank is supporting the decision of CoC for liquidation as it has given its own reasons for rejection of Resolution Plan.
33. At the very threshold or *ex-facie* the impugned decision of the CoC stated to be bad in law, thus deserves to be overturned. If a decision of the CoC is against the 'Preamble' of The Code, such decision ought to be discarded. The preliminary contention against the rejection of 'resolution plan' and approval of 'liquidation' is that the plan had been rejected despite it being more than the liquidation value. The plan provides for **₹200 Crore upfront** payment within 90 days as against ₹76 Crores 'liquidation value'. It is seen that liquidation has been chosen over the revival because the CoC happened to be under an impression that the receivables of the corporate debtor are worth ₹400-500 crores, however, the time period of recovery of alleged trade receivables is not certain. Otherwise also the recovery of Trade receivable is always uncertain, what to say about the time period. It is vehemently pleaded that surprisingly the source of this information of 'trade receivables', whether at all



recoverable or not and within what period of time, is still a grey area. No evidence of confirmed recovery of the impugned outstanding trade receivable is on record. The valuation reports pose a different figure. It is worth to note that most of the debtors of the Corporate Debtor are under insolvency/liquidation or NPAs. Further, the debts are more than 4-5 years old and under dispute as per the valuation report given by Adroit, hence, chances of recovery from these debtors is almost negligible.

34. It is seen that four CoC members, namely, Bank of Baroda holding 3.59%, IDBI holding 13.51%, SBI holding 29.09% and UCO Bank holding 2.45% have rejected the resolution plan due to the only reason of alleged presence of receivables. Their respective reasons have already been reproduced above. If a correct figure of receivables is presented to these dissenting financial creditors, then there was every possibility of approval of the plan by around 71% voting. Therefore, even if this contention is considered that there were other reasons given by banks other than the fact that receivables are more than ₹400 Crores, then also the plan would have stood approved.

35. That regarding the **Apex Court's decision in K. Sashidhar ( supra )**, this Bench is not suggesting to interfere in general with the commercial wisdom exercised by a CoC, if the implementation of such alleged 'commercial wisdom' is permissible (i) under the facts of the circumstances of this case, and also (ii) under the provisions of the Code. Significantly, if on the face of it, it is ascertainable that the basis on which the commercial wisdom is exercised, was not sound enough to protect the interest of the corporate debtor as well as the stakeholders, the Adjudicating Authority shall not hold itself back from applying a judicious mind to determine the correctness of the impugned commercial decision taken. I hasten to clarify that If it is glaring that the **CoC has not at all applied its mind, what to say a commercial mind**, such decision is fit to be discarded at the very threshold. It is a gospel truth that "wisdom" is an exercise of prudence based upon knowledge, intelligence, brilliance and acumen ship. The terminology 'commercial' is based upon data and figures. Therefore, while applying 'commercial wisdom', there should be an existence of prudence as exercised by a common man having sufficient knowledge of the subject. Likewise, while taking a commercial decision that should be based upon the facts and figures of a situation for which such decision is taken. In this case, on the face of it both the preconditions, that is, (i) existence of prudence and (ii) existence of commercial data are missing. This is not a case where there is an attempt to tinker in a "commercial wisdom". On the contrary, this is a case where there was no element of a common prudence or a basic 'commercial wisdom'. When the very existence of commercial wisdom is not in existence, then there is no question of tinkering with the impugned alleged 'commercial wisdom'. From the foregoing paragraphs as well as from the

paragraphs herein below it explicitly emerges that there was no element of wisdom displayed, what to say a 'commercial wisdom'. The Hon'ble S.C. has used this phraseology with due care that the element of wisdom ought to be displayed for taking a commercial decision. Absence of common wisdom thus make such decision a bad decision, not sustainable in the eyes of law.

36. Further, a purposive construction of the findings in **Mafatlal judgement (supra)** lead me to a conclusion that if the process which is prescribed by law is not followed for approving a scheme, or for approving a resolution plan as in this case, then the Adjudicating Authority has the authority to pierce the veil and expected to judiciously x-ray the scheme/plan. In the present case, the procedure established by law is that the 'commercial wisdom' is to be exercised by the CoC, and if the same is not done, then the Adjudicating Authority within its jurisdiction can neglect such an illogical, unreasoned, unfounded, unsound decision of CoC. In this case, regardless of the fact that the impugned trade receivables cannot be recovered and most of them are stated to be bad debts, even the CoC claims to be able to recover some amount against the outstanding of ₹400 crores pursuant to a liquidation order in future. As on date, it is an unpredictable, erratic and capricious situation of recovery i.e. a far fetched imaginary rather unrealistic and simply a dream. As against that, the resolution plan proposes an upfront payment of ₹200 Cr. And on the other hand, it is proposed by the R.A. to share 75% of the 'trade receivables' that will be given to the financial creditors for the next three years. Thus the CoC by not considering this fact has *prima facie* failed to exercise its profitable wisdom, strangely relying upon statements, that too made in the air, that the receivables are worth ₹400 crores, without substantiating the same with any evidence. Even assuming that minimal recoveries shall be made in three years by the Resolution Applicant, but on the other hand, there is no prescribed time limit or certainty that when and by what time period and how much the CoC will be able to recover the receivables. Therefore it is necessary to opine that such non-profitable, non-economical decision, on the face of it, said to be non-judiciously exercised, specially when the same is based upon mere colossal assumptions and presumptions.

37. It is worth to note that the books of accounts of the corporate Debtor reflect the extent of 'Trade Receivables' good to be recovered only ₹12,33,08,000/-, but rest i.e. 363,22,55,000 are considered as 'doubtful' recoveries. The Notes to the standalone financial statements reflect the following position of the Trade receivables:

(Rs. In lakh)

Particulars	As at 31 Mar – 19	As at 31 Mar – 18
Gross	364,458.58	345,019.93

<b>Unsecured:</b>		
<b>Considered Good :</b>	1,233.08	4,896.78
<b>Considered Doubtful :</b>	363,225.50	340,123.15
<b>Less: Provision for expected credit losses</b>	(363,225.50)	(285,969.66)
<b>Sub Total :</b>	(363,225.50)	(285,969.66)
<b>Total :</b>	1,233.08	59,050.27

38. On one hand, the Corporate Debtor's own financial statements reflect the position of the receivables of ₹363 crores approx. to be **doubtful**, but on the other hand, the SBI goes on to reject the resolution plan and opts for liquidation wherein SBI contends that the recovery from receivables is ₹400 crores, thereby completely ignoring the facts and figures reflected in the Audited Accounts as well as the object of the Code as also welfare of the Corporate Debtor. Such decision is totally devoid of a common sense and normal intelligence thus no sane person shall approve such obnoxious decision.

39. In the light of the above discussion and the judgement of the Hon'ble S.C. ( K. Sashidhar *supra*), I am of the conscientious view that having a supervisory jurisdiction over the CIRP proceedings it is desirable to examine whether due procedure of law has been followed or not. Under supervisory jurisdiction the job of the Adjudicating Authority is not merely a stamping authority to approve each and every decision of the CoC, but to test decision on three parameters i.e. (i) it's **feasibility**, (ii) it's **viability** , and (iii) it's **effective implementation**. Only after careful examination of these factors an A.A. is expected to record it's **satisfaction** that too in writing as prescribed U/s 31(1) of the Code. The term 'satisfaction' has been interpreted in a Judgement pronounced in the case of Raj Oil Mills (MA 35/2018 in CP (IB) 1132 (MB)/ 2017 order dated 19/04/2018) by this Bench and the Code prescribes ...

**Approval of resolution plan**

*"31.(1) If the Adjudicating Authority is **satisfied** that the resolution plan as approved by the committee of creditors under sub-section(4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan:*

*[**Provided** that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its **effective implementation**.]" .....*

Thus, on one hand the **CoC is required to consider the “feasibility and validity”** as prescribed under section 30(4) of the Code, side by side, on the other hand while approving a resolution plan under section 31 of the Code the **Adjudicating Authority is to examine the “effective implementation”**. Relevant portions of these Sections are reproduced below :-

**" Submission of resolution plan.**

*30.(1) A resolution applicant may submit a resolution plan [ along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.*

*(2) .....*

*(3).....*

*(4) The committee of creditors may approve a resolution plan by a vote of not less than [sixty-six] per cent of voting share of the financial creditors, **after considering its feasibility and viability** , and such other requirements as may be specified by the Board. "*

39.1 If no ‘Viability’ and no ‘feasibility’ is demonstrated by CoC , then automatically such a decision is flawed one, as happened in this case. There was no sensible examination of facts & figures by CoC, rather a senseless decision of liquidation was adopted.

39.2 As discussed above, Liquidation has to be a last resort , that too in Public interest which ought to be fair and just, only in the absence of a Resolution Plan. Therefore the decision of CoC, which is adversely effecting so many lives, be based upon **common judicious prudence coupled with commercial viability, and lack of these criteria is nothing but a bad exercise of a non-commercial decision. .**

39.3 This is not a case where the Resolution Professional has recorded his dissatisfaction on the Resolution Plan of Taguda. In this regard **Sec. 30 (2) of the Code** is relevant , which prescribes that the Resolution Professional shall examine each Resolution Plan to confirm that :-

**" Section 30(1)...**

*(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan-*

*(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [payment] of other debts of the corporate debtor;*

*(b) provides for the [payment] of the debts of operational creditors in such manner as may be specified by the Board **which shall not be less than the***

*amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;*

*(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;*

*(d) the implementation and supervision of the resolution plan;*

*(e) does not contravene any of the provisions of the law for the time being in force.*

*(f) ...."*

39.4 One of the basic requirement of law is that the **offer in a resolution Plan has to be above the Liquidation value. In this case this requirement is very much satisfied, as discussed supra, by the Resolution Applicant.** In short , the requirement of Sec.30(2)(b) to be read along with **Regulation 39B** of IBBI (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS ) REGULATIONS,2016 , has been duly complied with.

39.5 A glaring **misconduct of CoC** has also been highlighted that the Resolution Plan was submitted on 02/02/1019 and the same was rejected on 06/02/ 2019 without giving an opportunity to the Resolution Applicant to explain the Plan. Another wrong doing highlighted is that a copy of the Plan was not shared with the promoter although it is held as a mandatory requirement by the Supreme Court in the case of **Vijay Kr Jain ( Civil Appeal No.8430/2018) dated 31.01.2019 .**

40. The decision of **K. Sashidhar Vs. Indian overseas Bank (Civil Appeal No .10673 of 2018) [2019 SCC Online Supreme Court 257]** has propounded certain guidelines . As well as certain legal ratio had been laid down which is to be discussed and followed before arriving at a final decision .The appeal before the Hon'ble Supreme Court had been filed against NCLAT order dated 06.09.2018, concerning Kamineni Steel & Power India Ltd.(KS&PIPL), affirming the order passed by NCLT Mumbai recording rejection of resolution plan of Innoventive industries Ltd.(IIL) and directing initiation of Liquidation Process. The Hon'ble Supreme Court has recorded that in both the cases the resolution plan did not garner support of not less than 75% of voting share of the financial creditors constituting the committee of Creditors ( for short "CoC") the same stood rejected and thereby warranted initiation of liquidation process of the concerned corporate debtor, namely, KS&PIPL and IIL. In the case of KS&PIPL NCLT Hyderabad vide judgment dated 27.09.2017 approved the resolution plan and the moratorium thereupon ceased to effect from the date of order. Financial Creditor namely IOB, CBI & Bank of Maharashtra have file an appeal before NCLAT questioning the authority of NCLT Hyderabad to approve the resolution plan despite the same had not received approval of 75% voting shares. In appeal it was held that the approval to the proposed resolution plan should be by a vote of 75% which is mandatory, therefore, not open to the AA to disregard the mandate of the CoC by adopting a convoluted approach. Regarding

second set of appeals, the corporate debtor IIL suffered losses which resulted into filing of Insolvency Petition by ICICI Bank. The said petition was admitted by NCLT Mumbai vide order dated 17.01.2017. IRP was appointed and Moratorium was declared. Financial Creditors holding 66.57% voting shares have voted in favour of approving the proposed resolution plan. Since the voting share was less than 75% the proposed resolution plan was not approved for want of requisite percentage. As a consequence the RP filed application for initiation of Liquidation Process. The NCLT Mumbai directed initiation of Liquidation process against the corporate debtor. An appeal was filed before NCLAT, wherein it was held that 75% voting share was mandatory thus requirement of the approval of the resolution plan was mandatory hence dismissed the appeal. In short in both the cases the respected NCLAT had taken a view that in the absence of garnering 75% voting share the resolution plans ought not to be approved. The **moot question which was addressed by the Hon'ble Supreme Court** as framed was as under;

*"Having heard learned counsel for the parties, the moot question is about the sequel of the approval of the resolution plan by the CoC of the respective corporate debtor, namely KS&PIPL and IIL, by a vote of less than seventy five percent of voting share of the financial creditors; and about the correctness of the view taken by the NCLAT that the percentage of voting share of the financial creditors specified in section 30(4) of the I&B Code is mandatory. Further, is it open to the adjudicating authority/ appellate authority to reckon any other factor (other than specified in Section 30(2) or 61(3) of the I&B Code as the case may be) which, according to the resolution applicant and the stakeholders supporting the resolution plan, may be relevant?" ( refer para 18 of the judgement)*

40.1 After framing the Question, the respected Supreme Court has given the answer in para 36 of the order, reproduced below:

*"Thus understood, no fault can be found with the NCLAT for having recorded the fact that the proposed resolution plan in respect of both the corporate debtors was approved by vote of "less than 75%" of voting share of the financial creditors or deemed to have been rejected. In that event, the inevitable corollary is to initiate liquidation process relating to the concerned corporate debtor, as per section 33 of the I&B Code."*

40.2 An important point has been dealt with by the Hon'ble Supreme Court by reproducing section 30 of the Code which prescribes the "Submission of resolution plans" , wherein vide sub section (1) (e) it is provided that **a resolution plan should not contravene any of the provisions of the law** for the time being in force. This is an important provision which is introduced at the very start of entertaining a resolution plan. If at threshold a plan is in contravention of law, deserves to be rejected. Likewise, **adopting analogical reasoning**, if a decision of CoC since inception is in contravention of law, the same is also to be rejected. In the present case *ex-facie* the rejection of the impugned resolution plan by itself is in contravention of the Insolvency provisions. A resolution plan which is otherwise fit to be approved but on some flimsy ground rejected is nothing but contravention of provision of law. Thus without going into the merits of the reasons such a decision is to be over ruled at the very outset being in contravention of

law. This view is adopted after following an opinion expressed by the Hon'ble S.C. in **para 71** of the order , for reference reproduced below:-

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

40.3 The Hon'ble Court also talks about subjective satisfaction of the financial creditors, as per following observations :-

*"The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit , the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under section 30(4) of the I&B Code" ( refer middle of **para. 42** of the Order )*

40.4 The Hon'ble Supreme Court has laid down that fullest attempt should be made to revive the corporate debtor and not to mechanically shove the corporate debtor to the brink of Liquidation process, which has the inevitable impact on larger public interest and the stakeholders in particular, including workers associated with the company (refer **para 48** of the order). Therefore, the attempt of this Bench is also in the same direction. This Bench is of the view that the CoC handles or deal with the public money being bankers therefore they are the custodian and guardian of public interest. This statute has granted a statutory power to CoC which must be exercised carefully as also judicially. As per section 30 (4) of the Code the CoC may approve a resolution plan after considering its feasibility and viability. Likewise vide Regulation 39 of Corporate Insolvency Resolution Process Regulations as per sub regulation (3) it is prescribed that *"The committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the **evaluation matrix** to identify the best resolution plan and may approve it with such modifications as it deems fit:*

*[ Provided that the **committee shall record its deliberations on the feasibility and viability of the resolution plans.**] "* In this case no convincing reason is forthcoming for



rejection of plan. There is no evidence of evaluation of the facts & figures as suggested in the Resolution Plan. If power of rejection is granted to CoC, that power must not be abused but to be exercised after due diligence with fairness.

40.5 Finally, the actual issue which was decided by the S.C was as per concluding paragraph, reproduced below :

*"As a result, we hold that the NCLAT has justly concluded in the impugned decision that the resolution plan of the concerned corporate debtor(s) has not been approved by requisite percent of voting share of the financial creditors; and in absence of any alternative resolution plan presented within the statutory period of 270 days, the inevitable sequel is to initiate liquidation process under Section 33 of the Code. That view is unexceptional. Resultantly, the appeals must fail."* ( refer para 77 of the judgement )

41. In this case under these parameters, as narrated herein above , on one hand there was a proposal of Liquidation and on the other hand there was the existence of a resolution plan of Taguda and thus both points to be are examined. In this case, it seems that the decision of CoC is based on some wrong unsubstantiated facts that is why the judicious applicability of mind by the CoC has gone in the wrong direction. The Adjudicating Authority may not be in a position to go into the nitty-gritty of the commercial aspects of the plan, but even a reasonably prudent man would not support such obnoxious decision of the CoC. **My reason and conscience do not allow me to let this company go into liquidation when such a better beneficial offer is already on the table.** When one of the valuer has assigned 'zero' value to the trade receivables and the source of the information regarding receivables being worth ₹400 Cr. is not known, I shall not let some misconceived facts take the company down on its knees and then ultimately die. Therefore, the endeavour is to save this company from liquidation in the larger interest of the employee and the public at large by considering the resolution plan of Taguda.

42. About the Resolution Plan it is noticed that the resolution applicant M/s Taguda is a Singapore based company engaged in the business of metal trading. The company is also in wholesale import and export as well as trading of ferrous and non-ferrous metal, precious stones through its wholly owned subsidiaries. The resolution applicant is also in mining activities and real estate activities. The subsidiaries are situated in Singapore, Hong Kong, UAE and Australia. All the subsidiaries have good net worth and turnover. It is informed that the promoter/ chairman has good family background and successfully running the business. The resolution applicant proposed to settle the existing dues of creditors, as well as proposed to induct capital for necessary capital expenditure as well as to meet out the working capital requirement. The resolution applicant has proposed for up- front cash payment to the financial creditor of an amount of ₹47 Cr and thereafter on or before 30<sup>th</sup> day from the date of transfer pay of ₹ 50 Cr to financial creditors. 50 Cr proposed to be paid to

financial creditors on or before the 60<sup>th</sup> day from transfer date. Thereafter the next payment of ₹ 50 Cr is proposed to be made on or before 90<sup>th</sup> day. In addition to the cash up-front payment of ₹ 200 Cr the proposal is that in addition to this payment the resolution applicant shall pay 75% of the cash recovery expected to be made from existing trade receivable. Certain other conditions are also proposed in respect of trade receivable as enlisted in the impugned Resolution Plan. There is a provision of Corporate Insolvency Resolution Process cost of ₹ 1Cr. Likewise a provision of ₹ 2 Cr is proposed for payment to the operational creditors. within 12 months the RA undertook to infuse ₹ 35 Cr to meet capital expenditure and requirement of working capital of the company. The said amount is proposed to be generated by way of debt or equity funding. In short the resolution plan proposes a committed payment ₹ 235Cr, out of which ₹200Cr towards financial creditors, Corporate Insolvency Resolution Process cost, operational creditors and the balance ₹35 Cr towards working capital and capital expenditure.

42.1 The resolution applicant has also proposed that out of the existing trade receivables are in excess of 75 Cr. then within a period of three years financial creditor shall be paid 75 % of the actual amount recovered in excess of ₹ 75 Cr after paying expenditure incurred. The monitoring committee look after the procedure and transaction. It is clarified that no amount shall be paid beyond three years or recoveries are less than ₹75 Cr.

42.2 All other proposal have been perused and prima facie appears to be advantageous for the debtor company, as well as other stakeholders. This plan of Taguda Ltd is hereby approved. For the sake of completeness, however keeping brevity in mind only the relevant portion of the plan is reproduced below to be made a part of this order;-

*" RESOLUTION PLAN-*  
*USHDEV INTERNATIONAL LIMITED*

*Submitted by:- --*  
*TAGUDA PTE LIMITED*

## **RESOLUTION PLAN**

### **General Overview**

Taguda Pte Limited, a private limited company incorporated under the laws of Singapore and having its registered office at 1 Magazine Road, #04-11 Central Mall Singapore 059567 (the **Resolution Applicant** or **Taguda**), is pleased to submit this resolution plan (the **Resolution Plan**) for Ushdev International Limited (**Company**) under the IBC, and in accordance with the Request for Resolution Plan (**RFRP**), the CIRP Regulations and subsequent communications received from the Resolution Professional. The Resolution Applicant proposes to implement the Resolution Plan in the manner as set forth in this

Resolution Plan and seeks the support of all the stakeholders of the Company in this regard. *Any action proposed to be undertaken by the Resolution Applicant for the implementation of this Resolution Plan, will be undertaken, either directly or indirectly through or with the Affiliates, subsidiaries or associates of the Resolution Applicant, either individually or collectively, as set out in this Resolution Plan and detailed in schedules attached herewith.*

This Resolution Plan is submitted to Mr. Subodh Kumar Agrawal (**Resolution Professional**) on 2 February 2019 pursuant to the public announcement dated 23 July 2018 inviting the prospective lenders, investors and any other persons to put forward a resolution plan for the Company and overrides all past discussions with the CoC and the Resolution Professional and the earlier resolution plans submitted by the Resolution Applicant, and all such earlier resolution plans shall be considered to have been nullified by this Resolution Plan.

The Resolution Plan has been proposed on the basis of the limited information given in the Information Memorandum, the Data Room, conference calls and on the assumptions and other terms and conditions stated in this Resolution Plan. If any further information is available at any point in time, which information is required to be provided as part of the Information Memorandum or under any relevant provisions of the IBC to the Resolution Applicant or is relevant for any part/provision of this Resolution Plan, the Resolution Applicant reserves the right to revise this Resolution Plan basis such information.

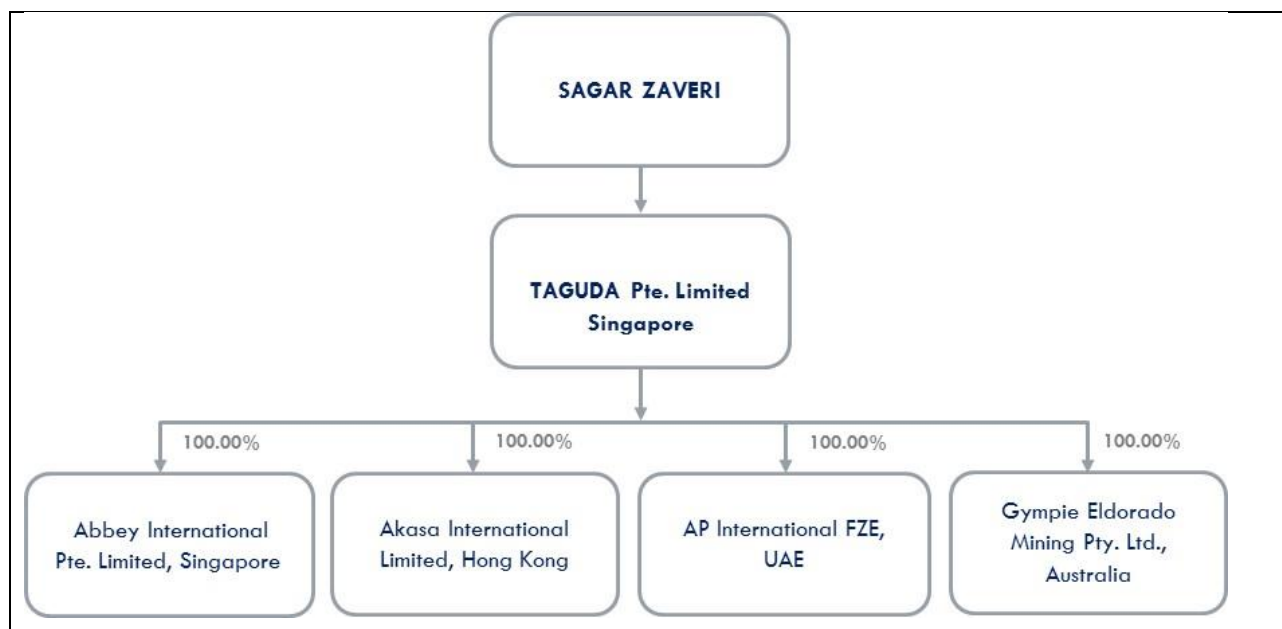
The Resolution Applicant has, to the extent possible, taken into account the interest of all the stakeholders and therefore believes that the Resolution Plan will create a sustainable capital structure that will enable the Company to continue as a “going concern”. Accordingly, we are very keen to work 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.

#### **Key Strengths of Resolution Applicant**

The Resolution Applicant is a Singapore based private company engaged in general wholesale (including import and export) trade of ferrous and non-ferrous metals and precious stones through its wholly owned subsidiaries. The Resolution Applicant also deals in mining activities and consultancy services in real estate.

The Resolution Applicant has established its business model by building a long-term relationship to clients and suppliers, a highly trusted commitment to quality and deliver the best possible customer service.

Mr. Sagar Subhash Zaveri, an Indian national who has global wings in trading and mining operations, owns 100% (one hundred percent) of the share capital of the Resolution Applicant and its subsidiaries in the manner set out below:



### Brief Background of Mr. Sagar Subhash Zaveri

Mr. Sagar Subhash Zaveri is a commerce graduate and hails from a family traditionally into business, started his first business venture at the young age of 19. He is the third-generation entrepreneur with unique approach and understanding of the business. With his expertise, he has been able to form a customized and profitable business model best suited to the current market scenario, the benefits of which, he offers to clients.

Mr. Zaveri's foray as a businessman and owner at the same time was not a surprise considering the family he comes from i.e. Late Shri Tribhovandas Bhimji Zaveri (**TBZ**) family. TBZ happens to be a prestigious jeweller having multiple retail outlets in India (especially in and around Mumbai). TBZ's story began in 1864, in a tin shed at Zaveri Bazar in Mumbai when Late Shri Bhimji Zaveri's vision was to give India the jewellery it deserved, that of uncompromising quality and craftsmanship. He used a state of the art manufacturing unit that brings cutting edge innovation to jewellery making, putting the art and purity of the jewel above all else. Learning the tricks of the trade from within family, he soon took the charge at a very young age and started his business stint very successfully. TBZ, under his leadership successfully transformed into the modern and innovative jewellery maker having multiple outlets in India today. This in itself speak volumes about his capability as a visionary leader & able businessman where his strong roots are nothing but inherited from his family.

Having successfully managed the business of TBZ and because of his exceptional out of the box thinking and desire to grow incessantly, Mr. Zaveri desired for a global presence and thereby diversified his business plans by venturing into trading of ferrous & non-ferrous metals, backed by the business experience and acumen gained by him from a young age.

There is no doubt in his capability as a businessman and his ability to run a venture quite successfully which is a proven fact. It can be vouched comfortably that the Resolution Applicant is in safe hands and potential future plans for the group under his vision are to venture into various metals trading activities besides foraying into metal processing, industrial park and metal recycling etc.

The activities of the subsidiaries of the Resolution Applicant is as follows:

- a) Abbey International Pte. Limited, Singapore: Primarily engaged in the activity of metal trading in the region of south east Asia. It has net worth of USD 18.96mn and revenue of USD 87.11mn;
- b) Akasa International Limited, Hong Kong: Focuses on metal and precious stones trading in China, Korea, Japan, Vietnam and other Asian markets. It has net worth of USD 20.06 million and revenue of USD 96.68 million;
- c) AP International FZE, UAE: Operates in the Middle East & African market with primary business activity of metal and precious stone trading. It has net worth of USD 19.55 million and revenue of USD 101.28 million; and
- d) Gympie Eldorado Mining Pty. Limited, Australia: Located in the mining hub of Australia, owns a sprawling land of over 125 hectare with a plan to develop an industrial park in collaboration with the local partners, along with initiation of trading business activities;

### **Company– ideal platform to grow the business of the Resolution Applicant**

Resolution Applicant has presence in commodity trading where it trades into ferrous & non-ferrous metals, precious metals and stones. It has operations in Singapore, Hong Kong, Australia and UAE.

Company at one point in time was marquee player in Indian commodity segment with strong distribution infrastructure, hedging platform and trading team.

Resolution Applicant has good client base in India and Company's trading platform can support the growth plan of Resolution Applicant in India. Trading operations similar to Company can facilitate the entry of Resolution Applicant into Indian commodity distribution market and capturing significant market share. Resolution Applicant is confident about the future growth and revival of the business of Company in synergy with its international business operations.

**Creditworthiness and financial capability of the Resolution Applicant**

Resolution Applicant has consolidated annual turnover of approximately USD 295,000,000 (United States Dollars two hundred and ninety five million) and net assets of approximately USD 58,000,000 (United States Dollars fifty eight million). The audited consolidated financial statements of the Resolution Applicant for the financial year ending 31st March 2018 and standalone financial statements for the financial years ending 31st March 2017 and 31st March 2016 have been separately provided. Please refer to Annexure I of this Resolution Plan for further details in relation to the financial standing of the Resolution Applicant.

Resolution Applicant has financing lines available of USD 42,000,000 with a financial institution in addition to the equity support of USD 58,000,000 from its promoter.

*Detailed track record of Taguda highlighting past merger and acquisition is set out in Schedule IX.*

**Proposal for Financial Creditors**

This Financial Proposal is based on the statement of assets and liabilities of the Company as set out in the Information Memorandum which is also summarized in Schedule III (**Provisional Balance Sheet**).

The following table summarizes the proposed offer as part of the Resolution Plan to the Financial Creditors under the IBC:

Particulars	Amounts/Description	Timelines for payment
1. Upfront Cash Payment to the Financial Creditors	1. The Resolution Applicant shall through the Company pay an amount of INR 47 crore to the Financial Creditors. In case the amounts set aside for the CIRP Costs and payments to Operational Creditors in this Resolution Plan is less than the amounts required to pay for the CIRP Cost and Operational Creditors as per IBC, then such additional amounts required shall be deducted from the above-mentioned amount proposed to be paid to the Financial Creditors	On the Transfer Date
	2. The Resolution Applicant through Taguda India Private Limited ( <b>Identified Affiliate</b> ) shall pay an amount aggregating to INR 50 crore to the Financial Creditors towards assignment of Financial Debt of the Company of equal value out of the Admitted Debt to the Identified Affiliate. The Identified Affiliate is managed and controlled jointly by Radhika Zaveri and Sagar Zaveri. The Identified Affiliate is compliant with Section 29A of IBC and the manner of payment (at the discretion of the Resolution Applicant) shall be in compliance with the requirements of IBC and informed to the CoC.	On 30 <sup>th</sup> day from Transfer Date*
	3. The Resolution Applicant shall cause the Company to pay an amount of INR 50 crore to the Financial Creditors.	On 60 <sup>th</sup> day from Transfer Date*
	4. The Resolution Applicant shall cause the Company to pay an amount of INR 50 crore to the Financial Creditors.	On 90 <sup>th</sup> day from Transfer Date*
2. Payment to the Financial Creditors against recoveries from the Existing Receivables	In addition, if the cash recoveries made by the Resolution Applicant and/or the Company from the Existing Receivables (net of debtors) during the period of 3 years from the Transfer Date are in excess of INR 75 crores, the Financial Creditors shall be paid 75% of the actual amounts recovered that are in excess of INR 75 crore (after paying all costs and expenses incurred in making cash recoveries and costs and expenses incurred for the Monitoring Committee). The Financial Creditors	At the end of each year for 3 years from the Transfer Date

	<p>shall be paid their pro rata share at the end of each year for 3 years from the Transfer Date. For this purpose, the Existing Receivables shall be reckoned as existing on the Transfer Date.</p> <p>If, however, the aggregate amounts of cash recoveries made by the Resolution Applicant and/or the Company from the Existing Receivables within 3 years from the Transfer Date is less than INR 75 crore (after paying for all costs and expenses incurred in making cash recoveries and costs and expenses incurred for the Monitoring Committee), no amounts shall be paid to the Financial Creditors by the Company and/or the Resolution Applicant on this account.</p>	
3. Payment for CIRP Costs and Operational Creditors	<p>1. The Resolution Applicant shall through the Company pay an amount of INR 1 crore towards the CIRP Costs. If the amount of CIRP Costs payable are less than INR 1 crore, the amounts that remains out of INR 1 crore will be paid by the Company to the Financial Creditors.</p> <p>2. The Resolution Applicant shall through the Company pay an amount of INR 2 crore or the Liquidation Value, whichever is higher, to the Operational Creditors.</p>	<p>On the Transfer Date</p> <p>On the Transfer Date</p>
4. Fresh equity infusion for meeting working capital requirement or capital expenditure of the Company.	<p>Within 12 months from Transfer Date, the Resolution Applicant shall infuse an amount of INR 35 crore in the Company for meeting capital expenditure and working capital requirements of the Company, which amount shall be invested by way of debt or equity funding either directly or through any of its Indian Affiliate which shall be an entity compliant with Section 29A of IBC.</p>	<p>Within 12 months from the Transfer Date</p>

\* If this date is not a Business Day, then the immediately next Business Day.

*To summarize, this Resolution Plan proposes a committed payment of INR 235 crores, of which INR 200 crores will be paid towards the settlement of the Financial Creditors, CIRP Costs, and the Operational Creditors and INR 35 crores is for meeting the capital expenditure and working capital requirements of the Company, in each case subject to the terms set out in this Resolution Plan. The CIRP Costs and the payments to the Operational Creditors shall be made out of upfront equity investment of INR 50 crore.*

*Further, the Resolution Applicant proposes that if the cash recoveries from the Existing Receivables (net of debtors) made by the Resolution Applicant and/or the Company, within the period of 3 years from the Transfer Date, are in excess of INR 75 crores in aggregate, the Financial Creditors shall be paid 75% of the actual amounts recovered that are in excess of INR 75 crore (and after paying all costs and expenses incurred in making cash recoveries and costs and expenses incurred for the Monitoring Committee). This amount payable to the Financial Creditors is proposed to be paid at the end of each year for 3 years from the Transfer Date, as the Resolution Applicant believes that this time period is required to successfully recover amounts against the Existing Receivables. It is, however, clarified that the Financial Creditors shall not be paid any amounts if (i) the cash recoveries from the Existing Receivables are made after 3 years from the Transfer Date; or (ii) the cash recoveries from the Existing Receivables is less than INR 75 crore (after paying all costs and expenses incurred in making cash recoveries and costs and expenses incurred for the Monitoring Committee).*

*For clarity, INR 197 crore is the maximum amount that the Resolution Applicant is committing to pay the Financial Creditors, and neither the Resolution Applicant nor its Affiliate (including the Company) are making a commitment to pay any amounts in addition to INR 197 crore as proposed in this Resolution Plan.*

#### **MANDATORY CONTENTS OF THE PLAN**

In accordance with Section 30(2) of the IBC and Regulation 38 of the CIRP Regulations, this Resolution Plan includes the following mandatory contents:

- (i) Provides for payment of CIRP Costs in priority of the repayment of any other debts of the Company, and identifies the specific sources of funds that will be used for such payments (**Section 3.1 of this Resolution Plan**);
- (ii) Provides for settlement of Operational Creditors, within the period prescribed under Regulation 38(1)(b) of the CIRP Regulations. This Resolution Plan also identifies the specific sources of funds that will be used for such settlement (**Section 3.3 of this Resolution Plan**);
- (iii) Specifies the term of the Resolution Plan and implementation schedule (**Section 7.4 of this Resolution Plan**)

Subject to the above and other terms and conditions set out in this Resolution Plan, the Resolution Applicant proposes the following proposal.

#### Part A: Financial Proposal

##### 1. Summary Table of Financial Proposal

No.	Type of Claim/Amounts	Claimed amount (in INR Cr)	Our Intent
1	Financial Creditors	3,301.70	<p>An amount of INR 197 crore to be paid in the following manner:</p> <ul style="list-style-type: none"> <li>(a) INR 47 crore, to be paid out of the Investment Amount, on the Transfer Date;</li> <li>(b) INR 50 crore towards Assigned Debt, on or before 30<sup>th</sup> day from the Transfer Date;</li> <li>(c) INR 50 crore to be paid on or before 60<sup>th</sup> day from the Transfer Date; and</li> <li>(d) INR 50 crore to be paid on or before 90<sup>th</sup> day from the Transfer Date.</li> </ul> <p>In addition to INR 197 crore, if the cash recoveries made by the Resolution Applicant and/or the Company from the Existing Receivables (net of debtors) during the period of 3 years from the Transfer Date are in excess of INR 75 crores (after payment of all costs and expenses incurred in making cash recoveries and costs and expenses incurred for the Monitoring Committee), the Financial Creditors shall be paid 75% of the actual amounts recovered that are in excess of INR 75 crore (after payment of above mentioned cost and expenses) at the end of each year for 3 years from the Transfer Date.</p>
2	Operational Creditors (including workmen and employees)	913.79	INR 2 crore or Liquidation Value owed to Operational Creditors, whichever is higher, to be paid out of INR 50 crore of Investment Amount
3	Statutory claims	NA	To the extent the claims with respect to statutory liabilities are included as part of Operational Debt, proportional share out of the payments to the Operational Creditors as mentioned above, to be paid out of INR 50 crore of Investment Amount
4	CIRP Cost payment	Actuals	INR 1 crore, to be paid out of INR 50 crore of Investment Amount
5	Shareholders	Nil	Capital reduction of shares held by Promoters, and public shareholders holding more than 5,000 equity shares, at NIL value
6	Capital expenditure and working capital for revival of the Company	NA	INR 35 crore to be infused in the Company over a period of 12 months from the Transfer Date

#### Executive Summary; Statement on Treatment of all Stakeholders



- 2.1** This Resolution Plan deals with and addresses the interest of all stakeholders, including the Financial Creditors and Operational Creditors, of the Company in the manner set out in Part A of this Resolution Plan.
- 2.2** The Resolution Applicant proposes that an aggregate amount of INR 235 crore (**Resolution Amount**) shall be paid towards the settlement of the Financial Creditors of the Company, towards settlement of the CIRP Costs, the Operational Creditors of the Company and towards the operations of the Company, in accordance with the terms set out in this Resolution Plan. Out of the Resolution Amount, an amount of INR 197 crore shall be paid upfront to the Financial Creditors in accordance with this Resolution Plan and subject to other payments as set out in this Resolution Plan (**Upfront FC Payment**), and INR 35 crore shall be paid towards the improvement of operations of the Company within 12 months from the Transfer Date.

Out of the Upfront FC Payment of INR 197 crore, an amount of INR 47 crore shall be invested by the Resolution Applicant in the Equity Shares, which amount shall be paid to the Financial Creditors by the Company towards repayment of the Financial Debt, in each case in accordance with this Resolution Plan, subject to payment of CIRP Costs and payments to the Operational Creditors of the Company as proposed under this Resolution Plan. The Resolution Applicant has proposed to invest an amount of INR 1 crore to pay for the CIRP Costs and invest INR 2 crore to pay for the dues of the Operational Creditors of the Company. Accordingly, the Resolution Applicant proposes to invest an aggregate amount of INR 50 crore in the Equity Shares of the Company (**Investment Amount**). Further, an amount aggregating to INR 50 crore out of the Upfront FC Payment that is payable to the Financial Creditors, shall be paid by the Resolution Applicant through Identified Affiliate against assignment of Financial Debt of the Company of equal value out of the Admitted Debt to the Identified Affiliate on or before 30<sup>th</sup> day from the Transfer Date. The Identified Affiliate is compliant with Section 29A of IBC and the manner of payment (while at the discretion of the Resolution Applicant) shall be in compliance with the requirements of IBC and informed to the CoC. The balance INR 100 crore out of the Upfront FC Payment shall be paid by the Company to the Financial Creditors in two equal instalments of INR 50 crore each on or before 60<sup>th</sup> day and 90<sup>th</sup> day from the Transfer Date.

Notwithstanding anything stated herein, the Bid Bond and the Performance Bank Guarantee/PBG as paid by the Resolution Applicant as per the requirements of RFRP shall be treated as part of the Investment Amount, and used towards payment of the first payment of INR 47 crore proposed to be made to the Financial Creditors on the Transfer Date.

- 2.3** Out of the Resolution Amount, the Resolution Applicant shall infuse an amount aggregating to INR 35 crore in the Company over a period of 12 months from the Transfer Date for meeting Company's capital expenditure and working capital requirements. This amount will be infused by the Resolution Applicant either directly or through any of its Indian Affiliates (such entity shall be compliant with Section 29A of IBC) by way of debt or equity funding, as it may consider appropriate.
- 2.4** In addition to the Resolution Amount, the Financial Creditors shall be paid 75% of the cash recoveries made by the Resolution Applicant and/or the Company from the Existing Receivables (net of debtors) within 3 years from the Transfer Date, that are in excess of INR 75 crore (plus all costs and expenses incurred in making cash recoveries and costs and expenses incurred for the Monitoring Committee). These amounts shall be paid to the Financial Creditors in at the end of each year for 3 years from the Transfer Date. Further details in this regard are set out in Clause 3.2 (e) below.
- 2.5** Other than the approval of this Resolution Plan by the Adjudicating Authority, there are no other conditions contemplated for the implementation of this Resolution Plan. After the Adjudicating Authority approves this Resolution Plan, the Resolution Applicant will as per the process set out in Schedule V, capitalize and fund the Company for the Resolution Amount with a combination of equity and debt, from which the CIRP Cost and all creditors of the Company, including the Financial Creditors and the Operational Creditors, will be paid their respective settlement amounts as set out in this Resolution Plan.

## **2. Detailed Financial Proposal**

### **3.1 CIRP Cost**

- (i) The Resolution Professional shall provide an estimate of the CIRP Cost, along with the details of the persons to whom such costs are to be paid, on or before the date of approval of this Resolution Plan by the CoC.
- (ii) In terms of Section 30(2) of IBC, the CIRP Costs are to be paid in full and in priority over the payments to be made to any other creditors. CIRP Costs shall, amongst other things, include the costs, fees and charges incurred by the Resolution Professional, in running the operations of the Company as a going concern, as per the IBC.
- (iii) The Resolution Applicant understands that the CIRP Costs is currently being met out of the cash flows of the Company. Therefore, the Resolution Applicant proposes to pay the CIRP Cost at actuals from the cash balance available with the Company as on the Transfer Date in full and in priority to any other creditor of the Company on the date set out in Schedule V. If, however, there is a shortfall in the cash balance available with the Company to meet the CIRP Cost at actuals, such shortfall will be paid out of the Investment Amount proposed to be invested in the Company by the Resolution Applicant. For this purpose, an amount of INR 1 crore shall be set aside out of the Investment Amount for its use for the payment of any pending CIRP Costs, and if any part of this amount is not required, then such excess amounts shall be paid by the Company to the Financial Creditors.
- (iv) However, and without prejudice to the above, if the shortfall in cash balance available with the Company as on the Transfer Date is in excess of INR 1 crore, the Resolution Applicant proposes that INR 47 crore that is set aside to be paid to the Financial Creditors shall be reduced with an amount such that the CIRP Costs are paid in full and in priority to any other payments to the creditors of the Company.

### 3.2 Financial Creditors

- (i) As per the Information Memorandum, the total claims filed by the Financial Creditors is INR 3,301.70 crores, out of which claims aggregating to INR 3,292.52 crores have been verified and admitted by the Resolution Professional pursuant to the CIRP Regulations as on 26 January 2019. This admitted claim amount and any other claims submitted by the Financial Creditors that are verified and admitted by the Resolution Professional pursuant to the CIRP Regulations (together, the **Admitted Debt**) are proposed to be settled in full in accordance with this Clause 3.2. Based on the information shared by the Resolution Professional, it is hereby assumed that the Admitted Debt is the entire debt owed to the Financial Creditors.
- (ii) No amounts shall be payable to the Financial Creditors, unless the CIRP Cost and Operational Creditors are paid in accordance with the provisions of this Resolution Plan.
- (iii) Post the payment of CIRP Costs in the manner set out in Clause 3.1 above and payments to Operational Creditors in the manner set out in Clause 3.3 below, all Admitted Debt of the Financial Creditors will be treated proportionately (and on a *pari passu* basis) in the following manner:
  - (a) An amount of INR 47 crore forming part of the Admitted Debt is proposed to be carved out and paid upfront to the Financial Creditors on the date set out in Schedule V, out of the Investment Amount proposed to be invested by the Resolution Applicant in the Company. In case the amounts set aside for the CIRP Costs and payments to Operational Creditors in this Resolution Plan is less than the amounts required to pay for the CIRP Cost and Operational Creditors as per IBC, then such additional amounts required shall be deducted from the above-mentioned amount proposed to be paid to the Financial Creditors.

**Notwithstanding anything stated herein, the Bid Bond and the Performance Bank Guarantee/PBG as paid by the Resolution Applicant as per the requirements of RFRP shall be treated as part of the Investment Amount and used towards above mentioned payment of INR 47 crore to the Financial Creditors on the Transfer Date.**

- (b) In addition to the payment of amount as set out in sub-Clause (a) above, the Resolution Applicant through the Identified Affiliate shall pay an amount aggregating to INR 50 crore forming part of the Admitted Debt (**Assigned Debt**), on the date set out in Schedule V, in consideration of the assignment of the Financial Debt of the Company of equal amount out of the Admitted Debt to the Identified Affiliate. The

detailed proposal on the assignment of Assigned Debt is set out in Schedule XI. On this assignment to Resolution Applicant, the Resolution Applicant shall hold all rights in respect of the Assigned Debt, as are available with the Financial Creditors including right to enforce the identified security that has been assigned along with the Assigned Debt.

The assignment of the Assigned Debt and related security will occur pursuant to and as an integral part of this Resolution Plan and shall not require any further actions and execution of any further documents by the Financial Creditors or any party concerned.

- (c) In addition to the payments under sub-Clause (a) and sub-Clause (b) above, the Resolution Applicant proposes that Financial Debt aggregating to INR 100 crore out of the Admitted Debt shall be repaid by the Company to the Financial Creditors in two equal tranches in the following manner: (A) INR 50 crore on or before the 60<sup>th</sup> day from the Transfer Date; and (B) INR 50 crore on or before the 90<sup>th</sup> day from the Transfer Date.

The internal accruals of the Company may be used to fund the repayment of aforesaid instalments by the Company. In addition, if any amounts are required for repayment of aforesaid instalments by the Company, it shall be funded by the Resolution Applicant by way of subscription of such instruments including equity shares, convertible preference shares or convertible/non-convertible debentures or any debt funding as it may decide in its sole discretion in the Company, detailed terms of which are set out in Schedule V.

- (d) Any balance Financial Debt forming part of the Admitted Debt (**Unpaid Debt**), i.e. the Admitted Debt as reduced by the amounts mentioned in sub-Clauses (a), (b) and (c) above, is proposed to be converted into Equity Shares of the Company at the face value of such Equity Shares in four equal instalments as mentioned below; and on their issuance, such Equity Shares shall be immediately cancelled for payment of Nil consideration to the Financial Creditors as part of the capital reduction as detailed in Schedule V. . The Financial Creditors are proposed to be paid Nil amount for all Unpaid Debt. The Unpaid Debt shall be converted into Equity Shares as per above (and thereafter cancelled) in four equal instalments of 25% of the Unpaid Debt each on the following dates, simultaneous with the payments to the Financial Creditors as proposed in sub-Clauses (a), (b) and (c) above for such dates, on (i) the Transfer Date, (ii) the 30<sup>th</sup> day from the Transfer Date, (iii) the 60<sup>th</sup> day from the Transfer Date and (iv) the 90<sup>th</sup> day from the Transfer Date (if any of these dates is not a Business Day, then the immediately next Business Day).
- (e) In addition to the payments proposed under sub-Clauses (a), (b) and (c) above, the Financial Creditors shall be paid 75% of the cash recoveries made by the Resolution Applicant and/or the Company from the Existing Receivables (net of debtors) within 3 years from the Transfer Date that are in excess of INR 75 crore (plus specified cost and expenses) as detailed below:
- A. All cost and expenses incurred in making recoveries from the Existing Receivables, including the expenses for pursuing litigations, and appointing legal, financial and tax advisors, shall be borne by the Company.
- B. There shall be a monitoring committee, comprising of two members where 1 member shall be appointed from amongst up to 5 professional consultants suggested by the Financial Creditors, and the other 1 member shall be nominated by the Resolution Applicant (**Monitoring Committee**). From amongst the professional consultants suggested by the Financial Creditors, the Resolution Applicant shall discuss, negotiate terms of engagement and finalise 1 such consultant to be the member of the Monitoring Committee. The role of the Monitoring Committee shall be to generally oversee the recovery efforts made by the Resolution Applicant and/or the Company, and the exact scope shall be as specified by the Financial Creditors. The cost and expenses of engaging the professional consultant to be the member of the Monitoring Committee, or any other cost and expenses incurred by the members of the Monitoring Committee shall be borne by the Company, subject to a maximum amount of Rs. 75 lakhs. The term of the Monitoring Committee shall be until the completion of 3 years from the Transfer Date.

- C. Any cash recoveries made by the Resolution Applicant and/or the Company within a period of 3 years from the Transfer Date of up to INR 75 crore (after payment all costs and expenses incurred in making cash recoveries as mentioned in sub-Clause (A) above and costs and expenses incurred for the Monitoring Committee as mentioned in sub-Clause (B) above) shall be retained by the Company, and the Financial Creditors shall not be paid any amounts from such recoveries. If, however, the cash recoveries made by the Resolution Applicant and/or the Company (net of debtors) within 3 years from the Transfer Date are in excess of INR 75 crore (after payment all costs and expenses incurred in making cash recoveries as mentioned in sub-Clause (A) above and costs and expenses incurred for the Monitoring Committee as mentioned in sub-Clause (B) above), such cash recoveries that are in excess of INR 75 crore (after payment of above mentioned cost and expenses) will be shared between the Company and the Financial Creditors in the ratio of 1:3. It is clarified that the Financial Creditors shall be paid amounts from cash recoveries only after all costs and expenses as mentioned in sub-Clauses (A) and (B) above are paid or reimbursed (including the amounts incurred by the Company and/or the Resolution Applicant), and INR 75 crore in aggregate of cash recoveries are set aside for the Company.
- D. The Financial Creditors shall be paid their portion, i.e. 75% of the cash recoveries above INR 75 crore, at the end of each year for 3 years from the Transfer Date, i.e. one tranche payment at the end of each year subject to cash recoveries made in that year.
- E. The Company shall be free to use its portion of the cash recoveries made within 3 years from the Transfer Date, i.e. any cash recovery up to INR 75 crore, and its 25% share of cash recoveries above INR 75 crore (after payment of above mentioned cost and expenses), at its discretion at all times including to pay such amounts to the Resolution Applicant.
- F. Any cash recoveries made by the Resolution Applicant and/or the Company after the expiry of 3 years from the Transfer Date (including cash recoveries from the Existing Receivables) shall be retained by the Company and shall be available for use at its discretion at all times including to pay such amounts to the Resolution Applicant. In order to make recoveries from the Existing Receivables, the Company shall be entitled to execute power of attorney in favour of the Resolution Applicant in the form proposed by the Resolution Applicant.
- G. All cash recoveries and costs and expenses as mentioned above shall be routed through a separate bank account opened by the Company with any of the scheduled bank who is a part of the Financial Creditors; however, it is clarified that the Financial Creditors shall not have any lien or charge, including bankers' lien, on such bank account.
- (f) .....
- (g) Security: All Encumbrances provided by the Promoters or any third party, other than the Excluded Securities, in favour of the Financial Creditors for securing the financial debt of the Company (hereinafter referred as the **Assigned Securities**) shall not be extinguished or waived under this Resolution Plan and shall be assigned to Taguda India Private Limited (which entity is the 'Identified Affiliate'), along with the payment of INR 50 crore constituting the Assigned Debt by Taguda India Private Limited in the manner set out in Schedule XI. The Excluded Securities shall also not be extinguished or waived under this Resolution Plan and will continue be available with the Financial Creditors in accordance with their terms, which may be exercised by the Financial Creditors at their discretion. All other securities or other Encumbrances provided by the Company including on the fixed assets of the Company shall be extinguished as on the Final Settlement Date. The Financial Creditors reserve the right to take any action against the Promoters.
- (iv) Other than the payments as specified in this Clause 3.2 above, any and all other claims or demands made by or liabilities or obligations owed or payable to (including any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated

damages, notional or crystallized mark to market losses on derivatives and other charges already accrued/ accruing or in connection to any third party) any actual or potential Financial Creditors of the Company or in connection with any debt of the Company (including any transactions in derivatives), whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, disputed or undisputed, present or future, whether or not set out in this Resolution Plan, the balance sheet of the Company or the profit and loss account statements of the Company or the Information Memorandum, in relation to any period prior to the Insolvency Commencement Date 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 Resolution Professional (and his representatives, advisers and agents), the Company and the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. It is hereby clarified that the Company shall neither be bound by nor be liable to pay an amount as part of any settlement terms relating to an issue that has arisen prior to the Insolvency Commencement Date nor the Resolution Applicant shall be liable to make any such payments on behalf of the Company.

- (v) Other than as specified in this Clause 3.2 above, any and all rights and entitlements of the Financial Creditors against the Company (including any right to convert debt into equity except in the manner set out in this Resolution Plan, right of recompense under any restructuring/ financing agreement) whether recorded as a contingent liability or not or any remedy available pursuant to any default including event of default (whether financial or otherwise) by the Company or the Promoters or any third party in relation to any loans or other Financial Debt availed by the Company, under any loan documents, restructuring agreements, guarantees, undertaking, or other financing agreements/ arrangements (including any undertaking, side letter, letter of comfort, letter of undertaking etc.) of any actual or potential Financial Creditors not addressed in this Clause, 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 Insolvency Commencement Date shall be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Resolution Professional (and his representatives, advisers and agents), the Company and the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto. Furthermore, subject to sub-Clause (vii) below, any third party (other than the Promoters) who has guaranteed or secured the obligations of the Company shall stand discharged of and not liable for any default or event of default under any loan documents or other financing agreements or financing arrangements (including any side letter, letter of comfort, letter of undertaking etc) and all rights/ remedies of the creditors shall stand permanently extinguished. Notwithstanding anything stated herein, the Excluded Securities and Assigned Securities shall continue to survive, in the manner set out in this Resolution Plan. The Resolution Professional (and his representatives, advisers and agents), the Company or the Resolution Applicant shall have no liability, either present or arising in future, and all such liability shall be waived in entirety, either pursuant to a right of subrogation under law or otherwise, for any amounts or obligations paid or discharged by the Promoters or any third party pursuant to any guarantee or surety given by such Promoters or third party on or before the Insolvency Commencement Date to secure the obligations of the Company or to any creditor of the Company. Furthermore, it is hereby clarified that upon approval of the Resolution Plan by the Adjudicating Authority, no further consent of any creditor (Financial Creditor or otherwise) shall be required to implement the Resolution Plan.
- (vi) Except for the security or Encumbrances referred in Clause 3.2(iii)(g) and Schedule XI which are to be assigned along with Assigned Debt, any and all other 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, hypothecation over receivables of the Company, mortgage over Company's assets or any other form of security; letter of credit or pledge provided by the Promoters of the Company) that was created/granted/arranged in connection with any Financial Debt or Operational Debt or any other debt or obligation of the Company, at any time prior to the Insolvency Commencement Date, shall automatically be waived and/or released on the Final Settlement Date and all liabilities and obligations of the Company in relation to such Encumbrance or other form of collateral shall stand permanently waived and/or released on the approval of this Resolution Plan by the Adjudicating Authority and upon payment of Financial Creditors in the manner set out in this Resolution Plan (including those created/ arranged by the Company as a

guarantor or a third party security provider in relation to the Company or its subsidiaries, if any), without the requirement of any further action on part of any party and the Company or Resolution Applicant. All title deeds and other documents (including charge documents, if any) in relation to such Encumbrances that are in possession of the Financial Creditors or possessed by any other Person on their behalf shall be immediately returned to the Company.

- (vii) The Assigned Securities shall be assigned along with the Assigned Debt. These Assigned Securities and the Excluded Securities shall continue to survive the settlement of debt of the Financial Creditors proposed in this Resolution Plan. Notwithstanding anything contained in any agreement or undertaking given by the Company and/or provisions of Applicable Law, the Excluded Securities and Assigned Securities shall be free from any subrogation rights of the Promoters or respective guarantors or security provider. By virtue of the approval of this Resolution Plan by the Adjudicating Authority, the Promoters or respective guarantors/security provider shall have no claim of any right of subrogation, indemnity, security, recompense or any claim of whatsoever nature (whether under contract, equity or Applicable Law) against the Company, assignee or the Resolution Applicant against recovery or reimbursement or any amounts paid by them pursuant to invocation of the Excluded Securities and Assigned Securities, and all such rights and obligations stand irrevocably and unconditionally extinguished in perpetuity. Along with the assignment of the Assigned Debt, the Financial Creditors shall deliver and shall cause to be delivered to the Identified Affiliate, all documents (including loan agreements, guarantees, security documents, title deeds, lease deeds, lease agreements, demand promissory notes, records, powers of attorneys, post-dated cheques, other negotiable instruments, share certificates encumbered with the Financial Creditors and all other documents) and collateral in relation to the Assigned Securities that have been assigned along with the Assigned Debt.
- (viii) Notwithstanding the above, in relation to all other security or Encumbrances that continues to be retained by the Financial Creditor, on the Final Settlement Date, all relevant Persons including the Financial Creditors shall redeliver and shall cause to be delivered to the Company, all documents (including loan agreements, guarantees, security documents, title deeds, lease deeds, lease agreements, demand promissory notes, records, powers of attorneys, post-dated cheques, other negotiable instruments, share certificates encumbered with the Financial Creditors and all other documents) and collateral in relation to such assets that are in possession of or deposited with such Financial Creditors or any other Person for the benefit of any of the creditors of the Company. Further, each Financial Creditor of the Company shall execute or issue discharge certificates, no-objection certificates and all other documents and take all such actions as may be reasonably required by the Resolution Applicant for the release of the Encumbrances, security interests and charges contemplated in this paragraph.
- (ix) Notwithstanding the above, on the approval of the Resolution Plan by the Adjudicating Authority:
- (a) all violation or breach of financial nature of any agreement of the Company shall stand condoned or waived, and such agreements shall be treated as if no violation or breach has ever been committed;
- (b) any event of default having occurred on part of the Company under any of the financing documents entered into by the Company on its own behalf or on behalf of any subsidiaries, joint ventures or associates to secure or guarantee any of their liabilities, prior to the Transfer Date shall be waived in entirety and all rights under the existing finance documents in relation thereto shall stand extinguished; and
- (c) all the outstanding negotiable instruments issued by the Company or by any Person on behalf of the Company including demand promissory notes, post-dated cheques and letters of credit, shall stand terminated and the Company's liability under such instruments shall stand extinguished.

### **3.3 Operational Creditors (including Employees and Workmen)**

- (i) As per the Information Memorandum, the total claims filed by Operational Creditors (excluding employees and workmen) aggregate to INR 913.04 crores out of which claims aggregating to INR 912.15 crores have been verified and admitted by the Resolution

Professional pursuant to the CIRP Regulations as on 26 January 2019. Further, the Information Memorandum also records claims amounting to INR 0.75 crore made by the workmen and employees of the Company out of which claims aggregating to INR 0.63 crore have been verified and admitted as on 26 January 2019. The admitted claim amount and any other claims submitted by the Operational Creditors including the employees and workmen of the Company that are verified and admitted by the Resolution Professional pursuant to the CIRP Regulations are proposed to be settled in accordance with this Clause 3.3.

- (ii) The claims of the Operational Creditors (including employee and workmen) will be paid in compliance with Regulation 38 of the CIRP Regulations. The Resolution Applicant proposes to pay an amount aggregating to INR 2 crore or the Liquidation Value due to Operational Creditors, whichever is higher (**Operational Creditors Dues**) in priority to any amounts paid to the Financial Creditors of the Company, out of the Investment Amount arranged by the Resolution Applicant. While distributing the above stated amounts, all Operational Creditors shall be treated in a *pari passu* manner. Other than as mentioned in the preceding sentence, no other amounts are proposed or agreed by the Resolution Applicant to be paid to the Operational Creditors of the Company. Further, it is clarified that if the Resolution Applicant is required by the Adjudicating Authority or any other Person to pay any amounts to the Operational Creditors (over and above the Operational Creditors Dues), then such request, order or directions shall not be binding on the Resolution Applicant unless specifically agreed in writing by the Resolution Applicant, and the Resolution Applicant reserves the right to contest or appeal against any such request, order or directions.
- (iii) The Operational Creditors Dues will be paid out of the Investment Amount proposed to be invested in the Company by the Resolution Applicant, on the date as set out in Schedule V. It is expected by the Resolution Applicant that the Liquidation Value due to the Operational Creditors is Nil amount, therefore, the Resolution Applicant proposes to pay a maximum of INR 2 crore towards full and final settlement of all outstanding amounts due to the Operational Creditors.
- (iv) Subject to the Adjudicating Authority granting the relief as set out in Clauses 13, 14, 15 and 16 of Schedule VII of this Resolution Plan, other than the Operational Creditors Dues, any and all other claims or demands made by, or liabilities or obligations owed or payable to (including but not limited to any Operational Debt, any demand for any losses or damages, indemnification, principal, interest, compound interest, penal interest, liquidated damages, and other charges already accrued/ accruing or in connection with any third party claims) any actual or potential Operational Creditor, vendor, contracting counterparty, Governmental Authority, claimant or any other person whatsoever (including but not limited to the Operational Creditors and its promoters, directors and other related parties of the Company and/ or the Promoters) (collectively, **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 Schedule III, the balance sheets of the Company or the profit and loss account statements of the Company or the Information Memorandum, in relation to any period prior to the Insolvency Commencement Date 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 Resolution Professional (and his representatives, advisers and agents), the Company and the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
- (v) Subject to the Adjudicating Authority granting the relief as set out in Clauses 13, 14, 15 and 16 of Schedule VII of this Resolution Plan, 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 Promoters of the Company) that was created/granted/arranged in connection with any Operational Debt of the Company, at any time prior to the Insolvency Commencement Date, shall automatically be waived and/or released and all liabilities and obligations of the Company in relation to such Encumbrance or other form of collateral shall stand permanently waived and/or released on the approval of this Resolution Plan by the Adjudicating Authority, without requirement of any further action on part of any party.
- (vi) Subject to the Adjudicating Authority granting the relief as set out in Clauses 13, 14, 15 and 16 of Schedule VII of this Resolution Plan, any and all rights and entitlements of any actual or potential Third Party, 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 Insolvency Commencement Date shall be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving

this Resolution Plan and the Resolution Professional (and his representatives, advisers and agents), Company and the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.

- (vii) Notwithstanding anything stated in sub-Clauses (iv), (v) and (vi) above, the reliefs from the Adjudicating Authority to provide for waiver and/or release from liability as mentioned in these sub-Clauses is an integral part of this Resolution Plan and this Resolution Plan shall be automatically withdrawn and will not be binding on the Resolution Applicant if these reliefs are not granted by the Adjudicating Authority, unless otherwise agreed in writing by the Resolution Applicant accepting any outstanding and continuing liability.

### **3.4 Statutory liabilities including outstanding Governmental Authority dues, taxes, etc:**

- (i) The statutory liabilities payable by Company includes without limitation monetary claims under or towards all Taxes. The claims with respect to the statutory liabilities of the Company, if forming part of the Operational Debt, shall be treated at par with the debt owed to Operational Creditors and shall be paid in priority to any amounts paid to the Financial Creditors of the Company out of the Investment Amount arranged by the Resolution Applicant, in the manner set out in Clause 3.3 above.
- (ii) Subject to the Adjudicating Authority granting the relief as set out in Clauses 13, 14, 15 and 16 of Schedule VII of this Resolution Plan, other than the statutory liabilities that have been filed/ claims as dues of the Operational Creditors, all monetary claims or demands made by, or financial 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, in relation to any Taxes, including all such dues, duties, direct or indirect, penalties, fees, interest, fines, levies, cesses, assessments or additions or any other charges or payments whatsoever (including without limitation, claims by tax authorities and any financial 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), existing Tax related proceedings, 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 Schedule III, the balance sheets of the Company or the profit and loss account statements of the Company or the Information Memorandum, in relation to any period prior to the Insolvency Commencement Date 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 Resolution Professional (and his representatives, advisers and agents), the Company and the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. Further, no interest or penalty should be levied on the crystallised statutory liabilities with respect to the statutory liabilities of the Company.
- (iii) Subject to the Adjudicating Authority granting the relief as set out in Clauses 13, 14, 15 and 16 of Schedule VII of this Resolution Plan, specifically, all dues under the provisions of Applicable Laws relating to Taxes (including without limitation, the claims by the tax authorities) whether admitted or not, due or contingent, whether or not set out in the Schedule III, the balance sheets of the Company or the profit and loss account statements of the Company or the Information Memorandum, 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 Insolvency Commencement Date shall stand extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Resolution Professional (and his representatives, advisers and agents) or Company shall not be liable to pay any amount against such dues.
- (iv) Subject to the Adjudicating Authority granting the relief as set out in Clauses 13, 14, 15 and 16 of Schedule VII of this Resolution Plan, however, without prejudice to the above sub-Clauses, all monetary or financial liabilities or obligations (including without limitation, for any penalty, interest, fines or fees) of the Company, in relation to (a) any investigation, inquiry or show-cause, whether civil or criminal; (b) any non-compliance of provisions of any Applicable Laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions; (c) change of control, transfer charges, unearned increase, compensation, or any other such liability whatsoever under any contract, agreement, lease, license, approval, consent or permission to which the Company are entitled; (d) any leasehold rights or freehold rights to movable or immovable properties in



the possession of the Company (including but not limited to the leases, letter of intent or other agreements/contracts/arrangements for immovable property entered into by the Company with the Central and State Government); and (e) any contracts, agreements or commitments made by the Company, in each of the foregoing cases 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 Schedule III, the balance sheets of the Company or the profit and loss account statements of the Company or the Information Memorandum, in relation to any period prior to the Insolvency Commencement Date 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 Resolution Professional (and his representatives, advisers and agents), the Company and the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

- (v) Subject to the Adjudicating Authority granting the relief as set out in Clauses 13, 14, 15 and 16 of Schedule VII of this Resolution Plan, 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 Insolvency Commencement Date shall be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Resolution Professional (and his representatives, advisers and agents), the Company and the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.
- (vi) Notwithstanding anything stated in sub-Clauses (ii), (iii), (iv) and (v) above, the reliefs from the Adjudicating Authority to provide for waiver and/or release from liability as mentioned in these sub-Clauses is an integral part of this Resolution Plan and this Resolution Plan shall be automatically withdrawn and will not be binding on the Resolution Applicant if these reliefs are not granted by the Adjudicating Authority, unless otherwise agreed in writing by the Resolution Applicant accepting any outstanding and continuing liability.

### **3.5 Treatment of amounts against the Company under ongoing litigations**

- (i) Subject to the Adjudicating Authority granting the relief as set out in Clauses 13, 14, 15 and 16 of Schedule VII of this Resolution Plan, all financial claims arising out of any inquiries, investigations, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, the Company or the affairs of the Company, pending or threatened, present or future and the proceedings (whether civil or criminal, including under Section 138 of the Negotiable Instruments Act, 1881, and the Tax related claims or liabilities) in relation to any matter for the period prior to the Insolvency Commencement Date, including the existing litigations or proceedings as set out in Schedule VI, shall be settled at **NIL** value as against any amount determined to be paid by the Company and accordingly, all financial liabilities or obligations of the Company in relation thereto, 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 Information Memorandum, will be deemed to have been waived and written off in full against a **NIL** value by virtue of the order of the Adjudicating Authority approving this Resolution Plan. By virtue of the order of the Adjudicating Authority approving this Resolution Plan, no amounts or monies shall be payable by the Company and no financial liability or obligation will arise in future for the Company in relation to any existing litigations or proceedings that pertain to the period prior to the Insolvency Commencement Date. All new inquiries, investigations, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will not be initiated or admitted if these relate to any period prior to the Insolvency Commencement Date against the Company or any of its employees or directors who are appointed or who remain in employment or directorship after the date of the approval of this Resolution Plan by the Adjudicating Authority or pursuant to the implementation of the Resolution Plan. Notwithstanding anything stated above in this sub-Clauses, the reliefs from the Adjudicating Authority to provide for waiver and/or release from liability as mentioned in these sub-Clauses is an integral part of this Resolution Plan and this Resolution Plan shall be automatically withdrawn and will not be binding on the Resolution Applicant if these reliefs are not granted by the Adjudicating Authority, unless otherwise agreed in writing by the Resolution Applicant accepting any outstanding and continuing liability.

- (ii) In case of all litigations filed by the Company, appropriate direction will be ordered by the Adjudicating Authority while approving this Resolution Plan for early disposal of the said cases within a period of 3 to 6 months from date of approval of this Resolution Plan. In addition all new inquiries, investigations, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings initiated at any time post the Transfer Date against the Company or any of its employees or directors who are appointed or who remain in employment or directorship after the Transfer Date or pursuant to the implementation of the Resolution Plan shall be independently dealt with by the Resolution Applicant and resolved accordingly and the Financial Creditors will not have any right whatsoever to opine on the manner the Resolution Applicant seeks to deal with the same.
- (iii) It is clarified that the Promoters and other 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 (a) 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 IBC), whether civil or criminal, pending before any authority, court, tribunal or any other forum prior to the Transfer Date or (b) 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 IBC), 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 Promoters and existing shareholders, managers, directors, officers, employees, Workmen or other personnel of the Company, and notwithstanding anything stated above the Resolution Professional (and his representatives, advisers and agents), the Company and the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

### **3.6 Equity Shareholders**

- (i) The details of the outstanding Equity Share capital of the Company as of the Insolvency Commencement Date is set out in Schedule IV. The Resolution Applicant acknowledges that there are no outstanding preference shares that are issued by the Company, hence, not required to be dealt with in this Resolution Plan.
- (ii) All outstanding Equity Shares held by the Promoters constituting 49.04% of the entire paid up share capital of the Company will be cancelled against the payment of NIL consideration by way of capital reduction process as set out in Schedule V. Other than the cancellation of the outstanding Equity Shares held by the Promoters, the Resolution Applicant proposes that all outstanding Equity Shares that are held by any shareholder forming part of the public shareholders, who is holding more than 5000 number of Equity Shares, will be cancelled against payment of NIL consideration by way of capital reduction process as set out in Schedule V. Nil consideration is proposed on the expectation that the Liquidation Value due to the equity shareholders of the Company shall be a Nil amount.
- (iii) Any Encumbrance that was created over any Equity Shares of the Company by the Promoters, at any time shall automatically be released and all liabilities and obligations of the Company and any Third Party (including the Promoters) on behalf of the Company 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 and the Resolution Professional (and his representatives, advisers and agents), the Company and the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.

### **3. Admitted Claims**

- (i) Notwithstanding anything contained in this Resolution Plan, claims made by the creditors and other stakeholders of the Company and stated to be paid in accordance with Clause 3 of this Resolution Plan, shall be paid only if they are verified as valid and admitted by the Resolution Professional pursuant to the IBC and CIRP Regulations.
- (ii) Claims that have not verified and/or admitted by the Resolution Professional pursuant to the IBC and CIRP Regulations shall not be paid any amounts, and any such claim, whether identified or unidentified, submitted or not submitted to the Resolution Professional, shall be

considered to have been extinguished in its entirety on the approval of this Resolution Plan by the Adjudicating Authority without requiring any further actions on the part of the Company and/or Resolution Applicant.

#### **4. Proposal for Settlement of Resolution Debt Amount**

The entire Resolution Debt Amount as understood under the RFRP will be paid in the manner set out in Clause 3 above.

#### **5. Proposal for funding by the Resolution Applicant**

The Resolution Amount is proposed to be infused by the Resolution Applicant in the following manner:

- (i) *Infusion on and after the Transfer Date:*
  - (a) The Resolution Applicant shall infuse the Investment Amount of INR 50 crore in the Company, against subscription of the Equity Shares of the Company, as contemplated under Schedule V. It is clarified that the amounts paid by the Resolution Applicant towards Bid Bond and PBG as per the requirements of the RFRP shall be treated as part of the Investment Amount and on the Transfer Date, Equity Shares shall be issued to the Resolution Applicant for such amounts; and
  - (b) On or before the 30<sup>th</sup> day from the Transfer Date, the Resolution Applicant shall cause the Identified Affiliate to pay an amount aggregating to INR 50 crore towards Assigned Debt. The Identified Affiliate is compliant with Section 29A of IBC and the manner of payment to the Financial Creditors shall be on a proportionate basis in compliance with the requirements of IBC.
  - (c) The funding of the aforesaid amount of INR 100 crore by the Resolution Applicant is sourced from the internal accruals or funds arranged by the Resolution Applicant.
  - (d) This amount shall be utilized to pay for the CIRP Costs and settlement of the Financial Creditors, workmen/employees and Operational Creditors in accordance with the terms of this Resolution Plan.
  - (e) Notwithstanding anything stated herein, if any unforeseen amounts are required to be paid to any other Person or settlement of any other creditors of the Company, including by an order, direction or request by the Adjudicating Authority or any Person, which is currently not contemplated and required as per this Resolution Plan, the Resolution Applicant shall not be liable to provide funds either as equity or debt to meet such exigencies. Without prejudice to the above, if any such unforeseen amounts are required to be paid to any other person or settlement of any other creditors of the Company, then the Resolution Applicant will on commercially reasonable efforts basis endeavor to settle such unforeseen amounts, without presently making any commitments in relation thereto.
- (ii) In addition to the INR 100 crore as set out in Clause (i) above, the Resolution Applicant shall cause the Company to pay an additional amount aggregating to INR 100 crore in two equal instalments in the following manner:
  - (a) On or before the 60<sup>th</sup> day from the Transfer Date, an amount of INR 50 crore shall be paid by the Company to the Financial Creditors; and
  - (b) On or before the 90<sup>th</sup> day from the Transfer Date, an amount of INR 50 crore shall be paid by the Company to the Financial Creditors.

It is clarified that in case the Company is unable to fund any of the amount as set out in Clause (ii) above from its internal accruals, the Resolution Applicant shall fund such shortfall in a manner such that the Financial Creditors receive the entire amount as agreed. For this purpose, the Resolution Applicant shall subscribe to such instruments issued by the Company, including Equity Shares, convertible preference shares or convertible/non-convertible debentures or any debt funding as it may decide in its sole discretion.

- (iii) In addition to the Upfront Contribution and investment required under clause (ii) above, the Resolution Applicant proposes to infuse an additional amount of INR 35 crore over a period of within 12 months from the Transfer Date to meet the Company's capital expenditure and

working capital requirements. This infusion over 12 months period will be made by the Resolution Applicant either directly or through its Affiliates (such entity shall be compliant with Section 29A of IBC) on such dates and in instalments of such amounts as the Resolution Applicant considers appropriate based on business needs of the Company. For this purpose, the Resolution Applicant or its Affiliates, as the case may be, shall subscribe to such instruments issued by the Company, including Equity Shares, convertible preference shares or convertible/non-convertible debentures as the Resolution Applicant may decide in its sole discretion.

## **6. Other Mandatory Contents of the Resolution Plan**

**7.1** The Resolution Applicant confirms and represents that the provisions of Section 29A of the IBC or any other Applicable Law do not disqualify the Resolution Applicant in presenting this Resolution Plan. The relevant disclosures to establish the eligibility of the Resolution Applicant under Section 29A of the IBC are annexed as Annexure I.

**7.2** The Resolution Applicant confirms and represents that neither the Resolution Applicant nor any of its related parties have failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.

**7.3** The corporate authorization of the Resolution Applicant for undertaking this Resolution Plan are annexed as Annexure II.

## **7.4 Term and Implementation Schedule**

- (i) The term of the Resolution Plan shall commence on the date of submission of the Resolution Plan to the Resolution Professional and shall remain valid in line with the RFRP. Notwithstanding anything contained in this Resolution Plan (except to the extent specifically set out in this Resolution Plan), no part of this Resolution Plan shall become effective or enforceable until either (a) the Resolution Plan is approved by the Adjudicating Authority in the manner proposed by the Resolution Applicant and approved by the CoC; or (b) if approved by the Adjudicating Authority with any variance, then in the form and substance which does not impose any liability or obligation on either the Resolution Applicant or the Company over and above the liability or obligation agreed to be borne by the Resolution Applicant or the Company as part of this Resolution Plan. 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.
- (ii) The mechanism for the implementation of the provisions of this Resolution Plan is set forth in Schedule V.
- (iii) The Resolution Plan shall be considered to have been implemented on the payment of the CIRP Cost, the Financial Creditors and the Operational Creditors as set out in this Resolution Plan.

## **7.5 Management of the Company and Supervision of the Implementation of the Resolution Plan**

- (i) The management and supervision of the Company during the implementation phase of this Resolution Plan shall be in accordance with this Clause 7.5.
- (ii) Upon the approval of this Resolution Plan by the Adjudicating Authority, the following shall apply:
  - (a) By virtue of the order of the Adjudicating Authority approving this Resolution Plan, the existing directors of the Company other than Mr. Arvind Prasad shall vacate their directorship of the Company on the date of approval of this Resolution Plan. Mr. Arvind Prasad shall cease to have any executive responsibilities in the Company and shall continue as a non-executive director of the Company, on and from the date of the approval of this Resolution Plan by the Adjudicating Authority. During the implementation of this Resolution Plan, Mr. Arvind Prasad shall not be in the management or control of the business of the Company. As per the Information Memorandum, Mr. Prateek Gupta, Mrs. Suman Gupta and Mr. Arvind Prasad constitute the Board and Mr. Prateek Gupta and Mrs. Suman Gupta shall vacate the office of director as stated above. In addition to Mr. Arvind Prasad appointed as a non-executive director of the Company, IMA shall be entitled to nominate one other individual to act as a director of the Company on and from the date of the approval of this Resolution Plan by the Adjudicating Authority and until the Transfer Date.

- (b) On and from the date of approval of this Resolution Plan by the Adjudicating Authority, the Resolution Applicant shall have the right to nominate directors on the Board in accordance with the Act and other Applicable Laws. In addition to the right to appoint directors, the Resolution Applicant shall also have the right to replace the existing key managerial personnel including chief executive officer, chief financial officer, chief operating officer and company secretary with new appointees.
  - (c) By virtue of the order of the Adjudicating Authority approving this Resolution Plan, and on the date of approval of this Resolution Plan, the existing articles of association of the Company shall stand amended and modified, and the draft articles of association that are indicated or informed by the Resolution Applicant shall be in force and effect.
  - (d) Subject to the terms of Clause 7.5(iii), the Board shall have such powers and privileges in accordance with the articles of association of the Company and the Act.
  - (e) By virtue of the order of the Adjudicating Authority approving this Resolution Plan, and on the date of approval of this Resolution Plan, all existing authorisations for operating bank accounts of the Company (both physically and online) shall be withdrawn, and all such authorisations shall be granted to a person identified by the IMA for the period until the Transfer Date. On and from the Transfer Date, any authorisation for operating the bank accounts of the Company shall be as approved by the newly constituted Board.
- (iii) On and from the date of approval of this Resolution Plan by the Adjudicating Authority and until the Final Settlement Date (**Interim Period**), the Resolution Applicant and the CoC will constitute a monitoring agency (**IMA**) for the supervision of the implementation of this Resolution Plan and for the day-to-day operations and management of the Company. The composition of the IMA shall be such that the majority of its members are appointed by the Resolution Applicant, and the CoC shall have the right to appoint up to 2 members. IMA shall be required and entitled to do all such acts, deeds and things as may be desirable and expedient in order to implement and give effect to this Resolution Plan and supervise the management and operations of the Company, in a manner consistent with this Resolution Plan. During the Interim Period, any and all decisions of the Board shall be subject to the approval of the IMA. All costs and fee payable to the IMA (including any legal costs which have arisen or may arise out of or in connection with the corporate insolvency resolution process of the Company) shall be met out of internal accruals of the Company.

It is clarified that for the entire Interim Period, the Board (constituting the representative nominated by the Resolution Applicant) shall act on the instructions of or subject to the approval of the IMA and any action taken by the Board without the instructions or approval of the IMA shall be void.

- (iv) During the Interim Period, IMA shall:
- (a) not undertake any additional financial commitments of any nature whatsoever, borrow any amounts or incur any other liabilities or expenditure, issue any additional guarantees, indemnities, letters of comfort or commitment either for themselves or on behalf of its respective Affiliates or associates or any third party, or sell, transfer, alienate, charge, mortgage or encumber or deal in any of its properties/assets, except when written consent of the Resolution Applicant;
  - (b) except as provided in the Resolution Plan, not make any change in capital structure of the Company either by way of any increase (by issue of Equity Shares, bonus shares, convertible debentures or otherwise), decrease, reduction, reclassification, subdivision or consolidation, re-organisation or in any other manner, which would have the effect of re-organisation of capital of the Company;
  - (c) not alter or substantially expand the Company's business, or undertake (A) any material decision in relation to its business and affairs and operations other than that in the ordinary course of business; (B) any agreement or transaction (other than an agreement or transaction in the ordinary course of business); and (C) any new business, or discontinue any existing business or change the capacity of facilities other than that in the ordinary course of business; and
  - (d) be authorised to operate all bank accounts of the Company, provided that any debit from the bank accounts is pursuant to transactions undertaken in the ordinary course

of business of the Company and is in compliance with all other provisions of this Resolution Plan.

(e) Other terms:

(A) *Maintenance of the Company by the IMA as a going concern:* The IMA will on a best effort basis take all such actions and execute all such documents/agreements as may be required to maintain the Company as a going concern until the Resolution Applicant acquires control over the Company on and from the Transfer Date in the manner set out in this Resolution Plan.

(B) *Applications for approvals:* The IMA will sign all applications on behalf of the Company that are proposed to be made to any Governmental Authorities to obtain the necessary approvals (as specified in this Resolution Plan) for implementation of this Resolution Plan within the timelines set out herein, if any. Currently, no such approval is contemplated or is in the knowledge of the Resolution Applicant.

(v) The Resolution Applicant shall submit a report providing the cash recoveries from the Existing Receivables at the end of each year to the Monitoring Committee till the expiry of 3 years from the Transfer Date. During the period of 3 years from the Transfer Date, the Financial Creditors and/or the Monitoring Committee shall have the right to require the Resolution Applicant to provide such information as may be required by the Financial Creditors to ascertain the exact cash recoveries from the Existing Receivables.

(vi) On and from the Final Settlement Date, the operation and management of the Company shall be as desired by and under control of the Resolution Applicant, in accordance with the Applicable Law.

## **7.6 Management after CoC's Approval**

After approval by the CoC and until the approval of the Resolution Plan by the Adjudicating Authority, all major business decisions impacting the shareholders' value and the running of the Company along with its business shall be made by the Resolution Professional.

## **7.7 Concessions, Reliefs and Dispensation Sought**

The Resolution Applicant requests for the reliefs, concessions and dispensations set out in Schedule VII in order for the Resolution Plan to be successful and each of these may be included in the Adjudicating Authority order approving the Resolution Plan and if not expressly included, shall be deemed to be included in such order.

**7.8** In case the Adjudicating Authority does not grant any of the reliefs, concessions and dispensations as claimed under Schedule VII of this Resolution Plan, the Resolution Applicant shall implement the Resolution Plan without such reliefs, concessions and dispensations, unless such reliefs have been stated to be an integral part of this Resolution Plan and without which this Resolution Plan stands withdrawn. For clarity, the reliefs set out in Para 1, 2, 9, 13, 14, 15 and 16 of Schedule VII of this Resolution Plan shall be considered as an integral part of this Resolution Plan. Without prejudice to the above, the Resolution Professional, the CoC, the Company and the Resolution Applicant shall undertake all such steps as may be required to obtain such relief, concession and dispensation from the Adjudicating Authority, including making appropriate representations before the Adjudicating Authority.

## **7.9 Assumptions**

This Resolution Plan is based on certain expectations and assumptions as set out in Schedule VIII.

## **8 Filing of the Resolution Plan with the Adjudicating Authority**

After the approval of this Resolution Plan by the CoC pursuant to Section 30(6) of the IBC, the Resolution Professional shall submit this Resolution Plan to the Adjudicating Authority.

## **Part B: Miscellaneous**

### **9 No Actions Provision**

On and from the approval of this Resolution Plan by the Adjudicating Authority and until the Transfer Date, the Resolution Professional, any creditor (including the Financial Creditor or Operational Creditor), any stakeholder involved in this Resolution Plan or otherwise connected with this Resolution Plan, the Promoters of the Company, the CoC or the Company shall not (i) take any actions specified in Section 28 of the IBC; (ii) take any action or omission that could reasonably be expected to have a material adverse impact, directly or indirectly, on this Resolution Plan or its successful implementation; or (iii) institute or continue any proceedings against the Company or transfer, encumber, alienate or dispose of any of the assets or interest of the Company or enforce any encumbrance or security interest created by the Company or on the securities of the Company, without the prior written consent of the Resolution Applicant. It is clarified that the above Clause shall apply on and from the approval of this Resolution Plan by the Adjudicating Authority.

## **10 Statement on Treatment of All Stakeholders**

- 10.1** As set out above in Clause 3 of 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.
- 10.2** Unless otherwise expressly stated in this Resolution Plan, no creditor 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 or stakeholders as stated in this Resolution Plan.

## **11 Compliance with Applicable Law**

The Resolution Applicant hereby confirms that this Resolution Plan and performance of actions contemplated herein are not in contravention of the provisions of law for the time being in force and are in strict compliance with the IBC and the CIRP Regulations.

## **12 Binding Nature of the Resolution Plan**

- 12.1** Upon the approval of this Resolution Plan by the Adjudicating Authority, it shall be binding on the Resolution Applicant, Company and its employees, members, creditors, guarantors and other stakeholders involved in this Resolution Plan and / or otherwise concerned or connected with the Company.
- 12.2** Any breach of the terms of this Resolution Plan or default in the performance of the obligations hereunder by any of the foregoing persons shall cause irreparable damage to the Resolution Applicant and its proposal to revive the Company. Accordingly, in case of such breach or default, the Resolution Applicant shall have the right to an injunction or other equitable relief including specific performance of the terms hereof.
- 12.3** This Resolution Plan overrides all past discussions with the CoC and the Resolution Professional and the earlier resolution plans submitted by the Resolution Applicant, and all such earlier resolution plans shall be considered to have been nullified by this Resolution Plan.

## **13 Confidentiality**

- 13.1** The Resolution Professional and the members of the CoC of the Company agree and undertake that they shall and shall procure that each of their directors, officers, managers, employees (including those on secondment), Affiliates, legal, financial and professional advisors and bankers (collectively, **Representatives**) shall not without the prior written consent of the Resolution Applicant disclose to any person other than its advisors:
- (i) the fact of existence of and the contents of this Resolution Plan;
  - (ii) the information with respect to the Resolution Applicant and its Connected Persons provided pursuant to Regulation 38 of the CIRP Regulations including all documents or information provided pursuant to this Resolution Plan or prescribed information, as the case may be;
  - (iii) any information concerning the organisation, business, intellectual property, technology, trade secrets, know-how, finance, transactions or affairs of the Resolution Applicant; and
  - (iv) any information or materials prepared by or for any Person or its Representatives that contain or otherwise reflect, or are generated from the aforesaid information.

Provided however, that the Resolution Professional, the members of the COC and each of their Representatives, may disclose such information:

- (i) to any of their affiliates, head office, representative and branch office in any jurisdiction (together with the relevant party, the **Permitted Parties**) and to their respective employees, directors, officers, professional advisers, servants and agents; or
- (ii) as required by Applicable Law or by any Governmental Authority or by any applicable stock exchange or court or tribunal with jurisdiction over the Company, the Resolution Applicant or the Permitted Parties or in connection with any legal, arbitration or regulatory proceedings or procedure; or
- (iii) to any persons attending the meetings of the COC.

**13.2** The Resolution Applicant shall be entitled to injunctive relief, specific performance and other remedies to enforce this Clause 13.

#### **14 Amendments and Revisions**

**14.1** The amounts and payments committed by the Resolution Applicant under this Resolution Plan are subject to the information provided in the Information Memorandum and the information shared on the Data Room, and on the assumptions as set out in this Resolution Plan.

**14.2** In case of any changes or modifications to any of the foregoing, the Resolution Applicant shall be entitled to seek suitable amendments to this Resolution Plan.

#### **15 Severability and a challenge to this Resolution Plan**

**15.1** None of the provisions of this Resolution Plan are severable. If any provision of this Resolution Plan (or any part thereof) is declared invalid, unenforceable or illegal, all the other provisions of this Resolution Plan shall stand suspended. The Resolution Applicant may, however, in its absolute and sole discretion choose to implement the other provisions of the Resolution Plan which have not been declared illegal, invalid or unenforceable.

**15.2** If at any time the Resolution Applicant or Resolution Professional becomes aware of any circumstances that is or is likely to adversely impact the Resolution Plan or its implementation or fulfilment of any of the conditions or term of the Resolution Plan, such Person shall immediately and in any event not later than 2 Business Days give to the other Person written particulars of such circumstances, and thereafter, the Resolution Applicant and Resolution Professional shall cooperate fully with a view to resolve any adverse impact or fulfil the relevant condition or term.

**15.3** Except as otherwise provided in this Resolution Plan, no part of this Resolution Plan shall become effective or enforceable until either (a) the Resolution Plan is approved by the Adjudicating Authority in the manner proposed by the Resolution Applicant and approved by the CoC; or (b) if approved by the Adjudicating Authority with any variance, then in the form and substance which does not impose any liability or obligation on either the Resolution Applicant or the Company over and above the liability or obligation agreed to be borne by the Resolution Applicant or the Company as part of this Resolution Plan. If any part of this Resolution Plan is not approved or is modified by the CoC or the Adjudicating Authority, then such amended or modified Resolution Plan shall not be binding on the Resolution Applicant unless agreed in writing by the Resolution Applicant.

#### **16 Sunset Clause**

**16.1** This Resolution Plan is valid for a period of 6 months from the date of submission of this resolution plan (**Validity Period**) as set out in the RFRP. Once this Resolution Plan is accepted by the CoC in this Validity Period, this Resolution Plan shall continue to be valid as required by the RFRP.

**16.2** Except to the extent specifically provided, upon the rejection of this Resolution Plan by the CoC and/or the Adjudicating Authority, this Resolution Plan shall forthwith become inoperative and cease to have any binding effect on the Resolution Applicant. The above sentence is without prejudice to the right of the Resolution Applicant to get back Bid Bond (as submitted along with



this Resolution Applicant) and the Performance Bank Guarantee (as and when provided by the Resolution Applicant) in accordance with the RFRP.

## 17 Indemnification

The Resolution Applicant shall indemnify the Company, the Resolution Professional (and his representatives, advisers and agents), members of CoC and the Process Advisor in the event of any claims or actions which may arise against the Company, the Resolution Professional, members of CoC and/ or the Process Advisor in relation to the transactions contemplated under this resolution plan arising out of or pursuant to the obligations of the Resolution Applicant.

## 18 Definitions

Capitalised terms used in this Resolution Plan shall have meanings and definitions set out in Schedule I. If not defined in Schedule I, the capitalised terms used in this Resolution Plan shall have meanings as understood in the RFRP.

We understand that the members of the CoC have further right to renegotiate the terms of this Resolution Plan and the decision of the CoC in selection of the Successful Resolution Applicant shall be final and binding on us.

Yours faithfully,

Name: Amita Subhash Zaveri (Common Seal)

Date: 2 February 2019

Place: Mumbai

### SCHEDULE III

#### DETAILS OF CLAIMS PROVIDED IN INFORMATION MEMORANDUM

	Amount claimed	Claims verified and admitted
<i>Currency: INR crore</i>		
Financial creditors	3,301.70	3,292.52
Operational creditors (excluding employees and workmen)	913.04	912.15
Operational creditors (employee and workmen)	0.63	0.63
<b>Total</b>	<b>4,215.50</b>	<b>4,205.32</b>

### SCHEDULE IV

#### DETAILS OF OUTSTANDING EQUITY SHARES

**Equity Shares:** Details of the Equity Shareholding of the Company is represented in the table below:

Category of shareholder	Shareholding percentage
Promoter and Promoter Group	49.04
Public	50.96
<b>Total</b>	<b>100</b>

**SCHEDULE V**  
**IMPLEMENTATION SCHEDULE**

**1. Resolution Plan Implementation Actions**

On the approval of this Resolution Plan by the Adjudicating Authority and the Adjudicating Authority passing appropriate order and directions as required for the implementation of this Resolution Plan, the following steps shall be performed for the implementation of this Resolution Plan:

Step Number	Action Point	Indicative Timeline
1.	The Designated Bank Account, if not already opened, will be opened as contemplated in Paragraph 6 of this Schedule V.	Before the Transfer Date
2.	After completion of Step 1 above, the 25% of the Unpaid Debt held by the Financial Creditors will be converted into Equity Shares of the Company at the face value.	On the Transfer Date
3.	On the completion of Step 2, there will be capital reduction by way of cancellation of the following: (i) all Equity Shares held by the Promoters; (ii) all the Equity Shares held by any shareholder of the Company holding more than 5000 Equity Shares; and (iii) all the Equity Shares held by the Financial Creditors on conversion of Unpaid Debt set out in Step 2, against payment of Nil amount.  The terms of the capital reduction are mentioned in Paragraph 5 below of this Schedule V.	On the Transfer Date
4.	Simultaneous with Step 3, the Investment Amount (taking into account the Bid Bond and PBG paid by the Resolution Applicant, and as reduced by the CIRP Cost and payments due to Operational Creditors) will be transferred to the Designated Bank Account, which amount will be recorded by the Company against the issue and allotment of Equity Shares to the Resolution Applicant. The Equity Shares will be subscribed by the Resolution Applicant at their face value.	On the Transfer Date
5.	On the completion of Step 4, the following will be paid from the Investment Amount of INR 50 crore, in the priority mentioned in the Resolution Plan:  i. CIRP Costs;  ii. Operational Creditors Dues;  iii. After payment to all of the above, any balance remaining out of the Investment Amount shall be paid to the Financial Creditors.	On the Transfer Date
6.	25% of the Unpaid Debt held by the Financial Creditors will be converted into Equity Shares of the Company at the face value, and there will be capital reduction by way of cancellation of these Equity Shares held by the Financial Creditors against payment of Nil amount. The terms of the capital reduction are mentioned in Paragraph 5 below of this Schedule V.  Subject to above, INR 50 crore to be paid to Financial Creditors towards the Assigned Debt, in terms of this Resolution Plan.	On 30 <sup>th</sup> day from the Transfer Date*

Step Number	Action Point	Indicative Timeline
7.	25% of the Unpaid Debt held by the Financial Creditors will be converted into Equity Shares of the Company at the face value, and there will be capital reduction by way of cancellation of these Equity Shares held by the Financial Creditors against payment of Nil amount. The terms of the capital reduction are mentioned in Paragraph 5 below of this Schedule V.  Subject to above, payment of INR 50 crore to the Financial Creditors.	On 60 <sup>th</sup> day from the Transfer Date*
8.	25% of the Unpaid Debt held by the Financial Creditors will be converted into Equity Shares of the Company at the face value, and there will be capital reduction by way of cancellation of these Equity Shares held by the Financial Creditors against payment of Nil amount. The terms of the capital reduction are mentioned in Paragraph 5 below of this Schedule V.  Subject to the above, payment of INR 50 crore to the Financial Creditors.	On 90 <sup>th</sup> day from the Transfer Date*

\* If not a Business Day, then immediately next Business Day.

## 2. Shareholding Structure of the Company based on the Implementation Steps

- 2.1 The Resolution Applicant proposes that the shareholding structure of the Company shall be as follows based on the implementation steps of this Resolution Plan as indicated in Paragraph 1 of this Schedule V.

Step Number	Particulars of Step	Amount involved	Resolution Applicant's shareholding	Lenders shareholding	Promoter's shareholding	Public shareholding
1	Post Capital Reduction	NIL	NA	0	0	100%
2	Equity Infusion by Resolution Applicant	INR 50.00 crores	99.79%	0	0	0.21%

- 2.2 The Resolution Applicant shall procure a valuation report certified by a chartered accountant or a SEBI registered merchant banker or a practicing cost accountant, to support the subscription price for Equity Shares by the Resolution Applicant in accordance with Step 4, Step 7 and Step 8 (if relevant) above. It is clarified that for the purposes of Step 4, Step 7 and Step 8 (if relevant), the subscription price for the Resolution Applicant for each Equity Share shall be the face value of the new equity shares issued by the Company.

## 3. Conversion of Unpaid Debt into Equity Shares

- 3.1 On completion of Step 1 as set out in Paragraph 1 above, the amount of Unpaid Debt is proposed to be converted into Equity Shares (**New Equity Shares**) in four equal instalments, which shall be issued to the Financial Creditors in proportion to their respective portion of the Unpaid Debt. The New Equity Shares are proposed to be issued to the Financial Creditors at the face value of such Equity Shares.
- 3.2 It is clarified that the approval of the Adjudicating Authority and the COC shall constitute adequate approval for issuance of New Equity Shares in accordance with Section 42 and Section 62(1)(c) of the Act and other Applicable Law and accordingly, no approval or consent shall be necessary from any other Person/Governmental Authority in relation to either of these actions under any

agreement, the constitution documents of the Company or under any Applicable Law. The Resolution Applicant will comply with all the procedural requirements wherever applicable.

- 3.3 The Resolution Applicant proposes that no share certificate will be issued by the Company with respect to the New Equity Shares and only a letter of allotment will be issued by the Company to evidence issuance of the New Equity Shares. The New Equity Shares will not be dematerialized thereby not requiring compliance with the procedural requirements of the depositories and/or the stock exchanges. Provided, however, if there are any other mandatory requirements prescribed by the Reserve Bank of India as applicable for lenders for the treatment of New Equity Shares as mentioned herein, then the Resolution Applicant shall discuss those requirements with the Financial Creditors and address those requirements.
- 3.4 Any fee required to be paid to the ROC and the stamp duty, if any, for the increase in the authorized share capital to allow the conversion of Unpaid Debt into Equity Shares, shall be funded from the cash flows of the Company, and if cash is not available with the Company, then such expenses shall be funded by the Resolution Applicant and/or its Affiliates. For the purpose of determination of the stamp duty, the Resolution Applicant has assumed the following:
- (a) The New Equity Shares shall be issued at face value;
  - (b) The allotment of New Equity Shares shall be done by way of letter of allotment only, after which the New Equity Shares shall be cancelled in accordance with Clause 5 below; and
  - (c) The agreements (if needed) shall be executed in New Delhi or any other place as indicated by the Resolution Applicant.

The Resolution Applicant proposes that the Financial Creditors shall co-operate with the Resolution Applicant and the Company to give effect to the abovementioned plan.

#### **4. Security with respect to Assigned Debt**

- 4.1 The Resolution Applicant shall through the Identified Affiliate (**Assignee**) pay an amount aggregating to INR 50 crore forming part of the Admitted Debt directly to the Financial Creditors. Upon this assignment the Assignee shall hold all rights in respect of the Assigned Debt, as are available with the Financial Creditors including right to enforce the identified security that has been assigned along with the Assigned Debt. The assignment of the Assigned Debt and related security will occur pursuant to and as an integral part of this Resolution Plan, and shall not require any further actions and execution for any further documents by the Financial Creditors or any party concerned.
- 4.2 For this purpose, the Financial Creditors shall assign and transfer to the Assignee the Assigned Securities provided by the Promoters or third parties to the Financial Creditor as security. The Assigned Securities furnished by the Promoters or third parties shall continue to survive the assignment and/or settlement of debt of the Financial Creditors as proposed in this Resolution Plan.

Notwithstanding anything contained in any agreement or undertaking given by the Company and/or provisions of Applicable Law, the Excluded Securities retained by the Financial Creditors and/or the Assigned Securities obtained by the Assignee shall be free from any subrogation rights of the Promoters or respective guarantors/ security providers. By virtue of the approval of this Resolution Plan by the Adjudicating Authority, the Promoters or respective guarantors/ security providers shall have no claim of any right of subrogation, indemnity, security, recompense or any claim of whatsoever nature (whether under contract, equity or Applicable Law) against the Company, Assignee or the Resolution Applicant against recovery or reimbursement or any amounts paid by them pursuant to invocation of the Excluded Securities and/or Assigned Securities, and all such rights and obligations stand irrevocably and unconditionally extinguished in perpetuity.

- 4.3 The subscription by the Resolution Applicant or its Affiliates of the Equity Shares or any other instruments issued by the Company to fund (i) the Investment Amount of INR 50 crore on the Transfer Date, (ii) any part of the instalments of INR 50 crore each that may be funded by the Resolution Applicant on the failure of the Company to pay such instalment at the end of 60<sup>th</sup> day or 90<sup>th</sup> day from the Transfer Date, and (iii) INR 35 crore to meet the Company's capital expenditure and working capital requirements, shall be an integral part of this Resolution Plan and on the approval of this Resolution Plan by the Adjudicating Authority no separate approvals of the board of directors of the Company, shareholders of the Company, Securities and Exchange Board of

India, stock exchanges and/or any other Person or Governmental Authority shall be required, and the issuance of such instruments shall be done while availing all exemptions and relaxations provided in Applicable Law to give effect to the terms of this Resolution Plan including the following exemptions:

- (i) Exemptions from the provisions of Chapter V of the Issue of Capital And Disclosure Requirements) Regulations, 2018 (other than the provisions relating to lock-in of shares); and
- (ii) Exemption from the minimum public shareholding requirements as given in Rule 19A(5) of Securities Contracts (Regulation) Rules, 1957.

## **5. Capital Reduction and Cancellation of Shares**

### **5.1 Effectiveness**

The capital reduction of Equity Shares of the Company is effected as an integral part of the Resolution Plan, and shall come into effect on the Transfer Date by virtue of the approval of this Resolution Plan by the Adjudicating Authority under the IBC and shall not require any consent of shareholders, creditors or the Adjudicating Authority under the Act. The approval of this Resolution Plan by the Adjudicating Authority shall be sufficient compliance with the provisions of IBC, the Act, and Securities and Exchange Board of India Act, 1992 and related regulations.

### **5.2 Capital Reduction and Cancellation of Shares**

Upon the fulfilment of conditions as set out in Paragraph 5.3 below, (i) all Equity Shares held by the Promoter constituting 49.04% of the paid up share capital of the Company; (ii) all the Equity Shares held by any shareholder of the Company holding more than 5000 Equity Shares; and (iii) all the Equity Shares held by the Financial Creditors on conversion of Unpaid Debt shall be cancelled and there will be a consequent reduction in the Equity Share capital of the Company, against payment of Nil amount to such shareholders.

### **5.3 Conditions**

The capital reduction is subject to the completion of Step 1 and Step 2 as set out in Paragraph 1 above.

### **5.4 Accounting Treatment**

The amount of reduction in the share capital of the Company shall be credited to the capital reserve of the Company.

## **6. Designated Bank Account**

6.1 For the purpose of depositing the debt and equity investment made by the Resolution Applicant with the Company pursuant to Step 4, Step 7 and Step 8 of Paragraph 1 of this Schedule V and subsequent payments therefrom as per this Resolution Plan, the Resolution Professional shall or IMA shall require the Company to open a new and separate bank account of the Company (**Designated Bank Account**), from which bank account the payments will be made in accordance with the terms set out in this Resolution Plan.

6.2 The Designated Bank Account shall not be subject to any Encumbrance and/or any lien or security interest created in favor of the Financial Creditors, Operational Creditors or any other third party. The Resolution Professional shall ensure that the authorized representatives of the Designated Bank Account shall be changed to an authorized representative of the Resolution Applicant post the payment of Upfront FC Payment of INR 197 crores to the Financial Creditors.

6.3 The details of the Designated Bank Account shall be shared by the Resolution Professional with the Resolution Applicant for the purposes of implementation of this Resolution Plan.

## **7. RECOVERY OF EXISTING RECEIVABLES**

7.1 All cost and expenses incurred in making recoveries from the Existing Receivables, including the expenses for pursuing litigations, and appointing legal, financial and tax advisors, shall be borne by the Company.

- 7.2 There shall be a Monitoring Committee, comprising of two members where 1 member shall be appointed from amongst upto 5 professional consultants suggested by the Financial Creditors, and the other 1 member shall be nominated by the Resolution Applicant. From amongst the professional consultants suggested by the Financial Creditors, the Resolution Applicant shall discuss, negotiate terms of engagement and finalise 1 such consultant to be the member of the Monitoring Committee. The role of the Monitoring Committee shall be to generally oversee the recovery efforts made by the Resolution Applicant and/or the Company, and the exact scope shall be as specified by the Financial Creditors. The cost and expenses of engaging the professional consultant to be the member of the Monitoring Committee, or any other cost and expenses incurred by the members of the Monitoring Committee shall be borne by the Company, subject to a maximum amount of Rs. 75 lakhs. The term of the Monitoring Committee shall be until the completion of 3 years from the Transfer Date.
- 7.3 Any cash recoveries made by the Resolution Applicant and/or the Company within a period of 3 years from the Transfer Date of up to INR 75 crore (after payment all costs and expenses incurred in making cash recoveries as mentioned in Paragraph 7.1 above and costs and expenses incurred for the Monitoring Committee as mentioned in Paragraph 7.2 above) shall be retained by the Company, and the Financial Creditors shall not be paid any amounts from such recoveries. If, however, the cash recoveries made by the Resolution Applicant and/or the Company (net of debtors) within 3 years from the Transfer Date are in excess of INR 75 crore (after payment all costs and expenses incurred in making cash recoveries as mentioned in Paragraph 7.1 above and costs and expenses incurred for the Monitoring Committee as mentioned in Paragraph 7.2 above), such cash recoveries that are in excess of INR 75 crore (after payment of above mentioned cost and expenses) will be shared between the Company and the Financial Creditors in the ratio of 1:3. It is clarified that the Financial Creditors shall be paid amounts from cash recoveries only after all costs and expenses as mentioned in Paragraphs 7.1 and 7.2 above are paid or reimbursed (including the amounts incurred by the Company and/or the Resolution Applicant), and INR 75 crore in aggregate of cash recoveries are set aside for the Company.
- 7.4 The Financial Creditors shall be paid their portion, i.e. 75% of the cash recoveries above INR 75 crore, at the end of each year for 3 years from the Transfer Date, i.e. one tranche payment at the end of each year subject to cash recoveries made in that year.
- 7.5 The Company shall be free to use its portion of the cash recoveries made within 3 years from the Transfer Date, i.e. any cash recovery upto INR 75 crore, and it's 25% share of cash recoveries above INR 75 crore (after payment of above mentioned cost and expenses), at its discretion at all times including to pay such amounts to the Resolution Applicant.
- 7.6 Any cash recoveries made by the Resolution Applicant and/or the Company after the expiry of 3 years from the Transfer Date (including cash recoveries from the Existing Receivables) shall be retained by the Company and shall be available for use at its discretion at all times including to pay such amounts to the Resolution Applicant. In order to make recoveries from the Existing Receivables, the Company shall be entitled to execute power of attorney in favour of the Resolution Applicant in the form proposed by the Resolution Applicant.
- 7.7 All cash recoveries and costs and expenses as mentioned above shall be routed through a separate bank account opened by the Company with any of the scheduled bank who is a part of the Financial Creditors; however, it is clarified that the Financial Creditors shall not have any lien or charge, including bankers' lien, on such bank account.

## **8. OTHER PROVISIONS**

- 8.1 The Resolution Professional shall disclose the item wise CIRP Costs to the Resolution Applicant and provide the invoices evidencing payments of such costs to the Resolution Applicant.
- 8.2 The Company shall assist and undertake all such steps and actions as may be required to facilitate the implementation of this Resolution Plan including the filings of the necessary forms with the relevant Governmental Authority and undertaking all corporate actions as may be required.
- 8.3 The Resolution Applicant will, upon approval of this Resolution Plan by the Adjudicating Authority, execute such instruments, deeds and documents as may be necessary to implement this Resolution Plan and the parties thereto shall comply with the conditions set out therein from the date of their execution.
- 8.4 All contracts, deeds, bonds, agreements, indemnities or other similar rights or entitlements whatsoever, schemes, arrangements and other instruments, permits, rights, entitlements, licenses

(including the licenses granted by any Governmental Authority, statutory or regulatory bodies) for the purpose of carrying on the business of the Company, or the benefits which the Company may be eligible and which are subsisting or having effect immediately before the order of Adjudicating Authority initiating CIRP against the Company, including the accounts receivables and trade debtors of the Company shall on this Resolution Plan becoming effective be deemed to and continue to be valid and subsisting, except to the extent of any writing off or waiver of liability or obligations of the Company and/or the Resolution Applicant as set out in this Resolution Plan. The termination of any of the above, if any, whether actual or potential, pursuant to the initiation of the CIRP for any reason (including change of control or liquidation/insolvency related) shall be deemed to have not happened.

Subject to the terms thereof, such contracts, assets, rights and properties described above shall continue to be in full force and continue as if there were no default or liabilities accrued or to be accrued. In relation to the same, any procedural requirements required to be fulfilled solely by the Company (and not by any of its successors), shall be deemed to be fulfilled by the Company. The aforesaid is without prejudice to the right of termination available with each of the contracting parties under the respective contracts or Applicable Law.

Nothing stated above shall apply to related party transactions and other contracts that are proposed to be terminated as part of this Resolution Plan, as indicated in Schedule VII of this Resolution Plan.

- 8.5 With effect from the Transfer Date, all the permits held or availed of by, and all rights and benefits that have accrued to, the Company shall without any further act, instrument or deed be transferred to, and vest in, or be deemed to have been vested in, and be available to, the Company so as to become as and from the Transfer Date, the permits, estates, assets, rights, title, interests and authorities of the Company and shall remain valid, effective and enforceable on the same terms and conditions to the extent permissible in Applicable Laws.
- 8.6 In order to give effect to the Resolution Plan, any or all special rights available with the existing shareholders of the Company shall be withdrawn and shall be replaced with the special rights of the Resolution Applicant which the Resolution Applicant requires, and to implement this, any and all amendments to the articles of association of the Company will be considered as approved as part of this Resolution Plan.
- 8.7 Post the implementation of the Resolution Plan, the Company shall continue to be an entity listed on the Bombay Stock Exchange.

## SCHEDULE VI

### LIST OF LITIGATIONS

#### Cases filed by the Company as of 14 May 2018

S.No	Case Number	Forum	Respondent	Nature	Amount Ascertained	Status
1.	S/229/2015	High Court of Bombay	Ushdev International Limited Vs. Metalman Industries private Limited	Civil Suit	18,20,12,007	Pending hearing
2.	1089/SS/2011 To 1093/SS/2011	16th Ballard Pier Court	Ushdev International Limited Vs. Metalman Industries private Limited	Complaint Under Section 138 of Negotiable Instruments Act, 1881	96,543,976	Pending hearing
3.	COMSS/178/20 15	High Court of Bombay	Ushdev International Limited Vs. Duplex	Commercial Summary Suit	93,64,15,193	Pending hearing

S.No	Case Number	Forum	Respondent	Nature	Amount Ascertained	Status
			Industries Limited			
4.	Misc No. 51/2016 To 57/2016	58th Bandra Court	Ushdev International Limited Vs. Duplex Industries Limited	Complaint Under Section 138 of Negotiable Instruments Act, 1881	60,00,00,000	Pending hearing
5.	ARBP/09/2018	High Court of Bombay	Ushdev International Limited Vs. Kenersys India Private Limited	Application Under Section 9 of Arbitration and Conciliation Act 1996	_____	Pending hearing
6.	S/19/2014	High Court of Bombay	Ushdev International Limited Vs. Bhuwalka Steel Industries Limited	Civil Suit	128,00,58,438	Pending hearing
7.	4422/SS/2015	64th Esplanade court	Ushdev International Limited Vs. Bhuwalka Steel Industries Limited	Complaint Under Section 138 of Negotiable Instruments Act, 1881	3,00,00,000	Pending hearing
8.	3606/SS/2013 To 3617/SS/2013	33rd Ballard Pier Court	Ushdev International Limited Vs. Bhuwalka Steel Industries Limited	Complaint Under Section 138 of Negotiable Instruments Act, 1881	40,00,00,000	Pending hearing
9.	COMSS/331/2017	High Court of Bombay	Ushdev International Limited Vs. Highlander Corporation Limited	Commercial Summary Suit	\$47,116,822	Pending hearing
10.	CP/363/2017	Hong-Kong High Court	Ushdev International Limited Vs. Highlander Corporation Limited	Company Petition	\$ 47,116,822	Pending hearing
11.	CP/364/2017	Hong-Kong High Court	Ushdev International Limited Vs. Titan Asia Pte Ltd	Company Petition	\$ 73,355,785	Pending hearing
12.	COMSS/192/2018	High Court of Bombay	Ushdev International Limited Vs.	Civil Suit	\$ 25,287,872	Pending hearing



S.No	Case Number	Forum	Respondent	Nature	Amount Ascertained	Status
			Culross Mayfair Limited			
13.	COMSS/191/2018	High Court of Bombay	Ushdev International Limited Vs. Edenbridge Limited	Civil Suit	\$ 22,264,654	Pending hearing
14.	COMSS/189/2018	High Court of Bombay	Ushdev International Limited Vs. Rosscull Limited	Civil Suit	\$ 18,763,289	Pending hearing
15.		NCLT Ahmadabad bench	Ushdev International Limited Vs. Wind world (India) Limited	NCLT	122,80,35,148	Pending hearing
16.	COMS/543/2017	High Court of Bombay	Ushdev International Limited Vs. Gunvor Singapore Pte Ltd	Civil Suit	\$ 522,508,334.35	Pending hearing
17.	S/2060/2012	High Court of Bombay	Ushdev International Limited Vs. Sims Copper SDN BHD &Ors.	Civil Suit	\$ 1,500,000.00	Pending hearing
18.	2150/SS/2015 to 2153/SS/2015	64th Esplanade court	Ushdev International Limited Vs. Vikash Metals & Power Ltd. &Ors.	Complaint Under Section 138 of Negotiable Instruments Act, 1881	9,00,00,000	Pending hearing

**Cases Filed Against the Company as on 14 May 2018**

S.No	Case Number	Forum	Respondent	Nature	Amount Ascertained	Status
1.	COMS/719/2018	High Court of Bombay	New Zone Intertrade FZE Vs. Ushdev International Limited	Civil Suit	Not known	Pending hearing
2.	COMS/718/2018	High Court of Bombay	New Alloys Trading Ltd. Vs. Ushdev International Limited	Civil Suit	Not known	Pending hearing
3.	COMS/720/2018	High Court of Bombay	Mine Craft Ltd. Vs. Ushdev International Limited	Civil Suit	Not known	Pending hearing

## SCHEDULE VII

### RELIEFS, CONCESSIONS AND DISPENSATIONS

1. The Central Board of Direct Taxes (CBDT) or any other relevant Governmental Authority to exempt the Resolution Applicant and the Company from the applicability of and payment of all Taxes under the Income Tax Act, 1961 (including Section 115JB), including any liability under the Minimum Alternate Tax which may arise on account of the transactions envisaged under this Resolution Plan either on the Resolution Applicant or the Company or any other Person who is likely to be impacted due to implementation of the Resolution Plan, and the Adjudicating Authority shall pass an order to that effect.
2. The Collector of Stamps, Revenue Department, Government of Maharashtra (or any other relevant stamp authority) and the Ministry of Corporate Affairs to exempt the Resolution Applicant, the Company and other stakeholders in this Resolution Plan, from the levy of stamp duty and fees applicable in relation to this Resolution Plan and its implementation, including any stamp duty applicable on the issue of shares by the Company, increase in authorised share capital of the Company, transfer of immovable properties and assignment of guarantees.
3. The Ministry of Environment and Forest of the Government of India, the Central Pollution Control Board and/or the relevant State Pollution Control Board, and all other relevant Governmental Authorities concerned to waive any non-compliances by the Company under Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 or any other environmental legislations, and the rules, regulations made thereunder and consents granted thereunder.
4. The relevant State Pollution Control Board to approve renewal of the consents to operate obtained by the Company in relation to its power generation plant under applicable provisions of the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981.
5. RBI to exempt the valuation at which the equity investment is made by the Resolution Applicant into the Company from the pricing guidelines prescribed under Foreign Exchange Management Act, 1999.
6. The relevant Governmental Authorities to waive all past non-compliances of the Company in relation to any delayed filing or non-filing of relevant mandatory forms or returns or any other documents, including any undertakings or acknowledgements to be filed in relation thereto, under the Act, Foreign Exchange Management Act, 1999 and any other Applicable Law.
7. The Ministry of Corporate Affairs of the Government of India, the Registrar of Companies, Mumbai and the Collector of Stamps, Revenue Department, Government of Maharashtra to waive all the past non-compliances of the Company in relation to the issue and allotment of the Equity Shares by the Company.
8. The relevant Governmental Authorities to waive all past non-compliances of the Company in relation to obtaining required corporate authorisations for undertaking related party transactions.
9. The relevant Governmental Authority to exempt the Resolution Applicant and the Company from the applicability of and payment of all Taxes under the Central Goods and Services Tax Act, 2017, and other indirect taxes, which may arise on account of the transactions envisaged under this Resolution Plan either on the Resolution Applicant or the Company or any other Person who is likely to be impacted due to implementation of the Resolution Plan, and the Adjudicating Authority shall pass an order to that effect.
10. The approval of the Adjudicating Authority shall constitute adequate and final approval of the Adjudicating Authority for all actions and purposes of this Resolution Plan including (a) reduction of share capital of the Company in terms of Section 66 of the Act along with any applicable provisions; (b) for the issuance of new equity shares/preference shares and/or convertible securities in terms of the Act and other Applicable Law, and no approval/consent shall be necessary from any Person in relation to any actions including any agreement, the constitutional documents of the Company and under Applicable Law.
11. As the Resolution Applicant was not provided entire information sought while preparing the Resolution Plan in relation to the permits, consents and approvals required for undertaking the business of the Company, it is probable that some of such permits, consents and approvals may

- have lapsed, expired, suspended, cancelled, revoked or terminated or the Company has certain non-compliances in relation thereto. Accordingly, all Governmental Authorities to provide reasonable time period after the Transfer Date in order for the Resolution Applicant to assess the status of these permits, approvals and consents and to ensure that the Company is compliant with them without initiating any investigations, actions or proceedings in relation to such non-compliances.
12. The Adjudicating Authority to approve the capital reduction as contemplated under this Resolution Plan without requiring compliance with the provisions of Section 66 and other applicable provisions of the Act.
  13. The Adjudicating Authority to waive any liability of the Company in entirety with respect any transactions with any of its related party prior to the Insolvency Commencement Date, and the Company shall have no liability to make any payments or supply any goods under any such related party transactions.
  14. The Adjudicating Authority to waive any financial or monetary liability of the Company in entirety with respect to any matters set out in Clause 3.3, Clause 3.4 and Clause 3.5 of Part A of this Resolution Plan (including in relation to claims (as defined in IBC) from the Operational Creditors, Financial Creditors, workmen, employees, Governmental Authorities) or any amounts that are due and payable on account of any ongoing litigation against the Company, which relates to the period prior to the Insolvency Commencement Date, and neither the Company nor the Resolution Applicant shall have any liability to make any payments to such Person with respect to such liability.
  15. All Governmental Authorities to waive any non-compliances by the Company prior to the Transfer Date including without limiting the failure of the Company to obtain any approval from such Governmental Authority with respect to the change in control of the Company pursuant to the implementation of this Resolution Plan.
  16. The Company shall be entitled to modify or terminate contracts (including the shareholders agreement and any other agreements) with related parties of the Company and/ or the Promoters entered into prior to the Insolvency Commencement Date.
  17. RBI to confirm that, on and from the Transfer Date, all accounts of the Company shall stand regularised and their asset classification shall be “standard” for the purposes of all Applicable Laws.
  18. Without prejudice to the above-mentioned provisions, the relevant Governmental Authorities to waive all past non-compliances of the Company under any Applicable Law, including but not limited to provisions of the Industrial Disputes Act, 1947, the Factories Act, 1948 and the relevant Shops and Establishment Acts and any rules, circulars and regulations framed thereunder.
  19. Other than as disclosed under the Information Memorandum, there are no Persons having the benefit of “security interest” as defined under Section 3(31) of the IBC over the assets of the Company.
  20. Other than the payments as set out under this Resolution Plan, the Resolution Applicant and/or the Company shall not be liable to make any payments for any and all claims, demands, liabilities or obligations owed or payable as on the Transfer Date to any Operational Creditor, Financial Creditor, Government Authority or to any other stakeholder of the Company in relation to any period between the Insolvency Commencement Date and the Transfer Date and all such claims, demands, liabilities or obligations shall be deemed to be permanently extinguished.
  21. All Governmental Authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the Resolution Plan in accordance with its terms and conditions.
  22. In case of all litigation filed by the Company, an appropriate direction be ordered by the Adjudicating Authority for early disposal of said case within 3-6 months of the approval of the Resolution Plan.
  23. The Adjudicating Authority to direct that, on approval of the Resolution Plan by the Adjudicating Authority, (i) provisions of Chapter V of the Issue of Capital And Disclosure Requirements) Regulations, 2018 (other than the provisions relating to lock-in of shares) shall not apply to such

issuance of equity shares by the Company; (ii) in terms of Regulation 10(1)(da) of the Substantial Acquisition of Shares and Takeovers Regulations, 2011, the Resolution Applicant will be exempt from the obligation of making an open offer pursuant to such acquisition, (iii) the minimum public shareholding requirements as given in Rule 19A(5) of Securities Contracts (Regulation) Rules, 1957, wherein a fall in public shareholding of a listed company below 25% can be rectified within a period of three years from such fall, will apply; (iv) under Regulation 31A of the Listing Obligations and Disclosure Requirements Regulations, 2015 (**LODR Regulations**), reclassification of the existing Promoters will be permitted, and (v) approval of SEBI, designated stock exchange or any court for reduction of capital of Equity Shares as contemplated by the Resolution Plan, is not required pursuant to the exemption granted under Regulation 37(7) of the LODR Regulations.

## **SCHEDULE VIII**

### **ASSUMPTIONS**

Notwithstanding anything contained in this Resolution Plan or any other related documents, this Resolution Plan has been prepared on the basis of the Information Memorandum and on the reliance that all information contained in the Information Memorandum and the Data Room as of filing this Resolution Plan, is true, correct, complete and not misleading in any respect. The details for the Financial Creditors, Operational Creditors and claims from workmen and employees of the Company as set out in Schedule III of this Resolution Plan is true, correct, complete and not misleading in any respect.

### **Strategy of The Resolution Applicant to ramp up operations of Company**

Resolution Applicant has presence in commodity trading where it trades into ferrous & non-ferrous metals, precious metals and stones. It has operations in Singapore, Hong Kong, Australia and UAE.

Resolution Applicant has consolidated annual turnover of approximately USD 295,000,000 (United States Dollars two hundred and ninety five million) and net assets of approximately USD 58,000,000 (United States Dollars fifty eight million). Resolution Applicant has financing lines available of USD 42,000,000 with a financial institution in addition to the equity support of USD 58,000,000 from Promoter.

Resolution Applicant has good client base in India and Company's trading platform can support the growth plan of Resolution Applicant in India. Trading operations similar to Company can facilitate the entry of Resolution Applicant into Indian commodity distribution market and capturing significant market share.

Resolution Applicant is confident about the future growth and revival of the business of Company in synergy with its international business operations and the excellent team support of stalwarts who would be instrumental in implementing their re-structuring advises backed by their wide range of experience, which would ensure that the Company is revived expeditiously.

## **SCHEDULE XI**

### **TERMS FOR ASSIGNED DEBT**

The Resolution Applicant proposes that an amount aggregating to INR 50 crore shall be paid by the Resolution Applicant through Taguda India Private Limited (referred as the Identified Affiliate) to the Financial Creditors on 30<sup>th</sup> day from the Transfer Date (and is date is not a Business Day, on immediately next Business Day). In consideration of the payment of INR 50 crore to the Financial Creditors, the Financial Creditors hereby assign Financial Debt of the Company of equal amount out of the Admitted Debt (referred as the Assigned Debt) to Taguda India Private Limited by way of this Resolution Plan.

Upon the payment of INR 50 crore to the Financial Creditors, the Identified Affiliate shall hold all rights, title and interest in respect of the Assigned Debt, as are available with the Financial Creditors including right to enforce the identified security (as mentioned below) that has been assigned along with the Assigned Debt. The assignment of the Assigned Debt and related security will occur pursuant to and as an integral part of this Resolution Plan and shall not require any further actions and execution for any further documents by the Financial Creditors or any party concerned.

However, for the purpose of any procedural requirement or for clarity on any aspect of the assignment of Assigned Debt or related security, the Resolution Applicant will be willing to enter into assignment deed to record the assignment and/or novation as contemplated herein including the assignment and/or novation of the identified security held by the Financial Creditors.

### **Security for Assigned Debt**

As part of the assignment of the Assigned Debt, the Financial Creditors also assign and transfer to the Identified Affiliate the Assigned Securities provided by the Promoters or third parties to the Financial Creditor as security. The Assigned Securities shall not be deemed to be extinguished or waived under this Resolution Plan and all rights, title and interest therein of the Financial Creditors is hereby assigned to Taguda India Private Limited by way of this Resolution Plan, simultaneously with the payment of INR 50 crore constituting the Assigned Debt by Taguda India Private Limited.

All Encumbrances provided by the Company (for clarity, other than Assigned Securities) including on the fixed assets of the Company shall be extinguished as on the Final Settlement Date.

Notwithstanding anything contained in any agreement or undertaking given by the Company and/or provisions of Applicable Law, the Assigned Securities obtained by the Assignee shall be free from any subrogation rights of the Promoters or respective guarantors/ security providers. By virtue of the approval of this Resolution Plan by the Adjudicating Authority, the Promoters or respective guarantors/ security providers shall have no claim of any right of subrogation, indemnity, security, recompense or any claim of whatsoever nature (whether under contract, equity or Applicable Law) against the Company, Assignee or the Resolution Applicant against recovery or reimbursement or any amounts paid by them pursuant to invocation of the Assigned Securities, and all such rights and obligations stand irrevocably and unconditionally extinguished in perpetuity.

Taguda India Private Limited shall have the exclusive right to invoke any Assigned Securities.

The Financial Creditors shall provide all original documents and agreements relating to the Assigned Debt, and underlying Assigned Securities, to the Identified Affiliate, and cooperate with the Identified Affiliate to implement and enforce the terms of this Schedule XI.”

43. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 of I & B Code shall not have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Miscellaneous Application if required in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Mumbai.

44. The Resolution Professional is further directed to handover all records, premises/factories/documents to Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through Resolution Professional to finalise the further line of action required for starting of the operation.

45. The directions embodied and period of implementation provided hereinabove shall be effective from the date of receipt of this order.

46. Resultantly MA 626 of 2019 for liquidation is hereby rejected, MA 517 of Canara Bank stood merged with the resolution plan, MA 716 supporting the resolution plan is allowed, MA 989 filed by a promoter has become redundant, MA 857 as a consequence is allowed and MA 762 by the resolution applicant allowed and the Resolution Plan of Taguda stands approved.

47. Ordered accordingly.

**Dated : 07.11.2019**

Js/gopal/jagdish

**SD/-  
M. K. SHRAWAT  
MEMBER (JUDICIAL)**