ASHAPURA
MINECHEM LIMITED

Ref No.: Minechem/Stock Exch/Letter/7844

19th March, 2019

The Dy. General Manager,
Bombay Stock Exchange Limited
Corporate Relations & Services Dept.,
P. J. Towers, Dalal Street,
Mumbai - 400 023

Scrip Code: 527001

The Dy. General Manager,
National Stock Exchange of India Ltd.,
Corporate Relations Dept.,
Exchange Plaza, Bandra-Kurla Complex,
Bandra (E), Mumbai – 400 051

Scrip Code: ASHAPURMIN

Dear Sir/Madam,

Sub.: Copy of National Company Law Tribunal (NCLT) Order

This has reference to your email asking for the order copy of Hon'ble NCLT, Mumbai. In this regard, please be informed that Company has applied for and awaiting a certified copy of NCLT order.

Nevertheless, as required attached herewith please find copy of order as downloaded from the website of NCLT.

Kindly take the same on record.

Thanking you,

Yours faithfully,
For **ASHAPURA MINECHEM LTD**

SACHIN POLKE
COMPANY SECRETARY & VP (Group)

Regd. Office :
Jeevan Udyog Building, 3rd Floor, 278, D. N. Road, Fort, Mumbai - 400 001. (India)
Tel. : +91-22 6665 1700 Email : info@ashapura.com www.ashapura.com
CIN No. L14108MH1982PLC026396

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P.(IB)-4508/MB/2018 & **MA 303/2019**

Under Section 10 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 7 and **U/s 30 / U/s 31** of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Ashapura Minechem Limited

…Petitioner/Corporate Applicant.

Date of Hearing : 21.02.2019
Date of Order : 15.03.2019

Coram: M. K. Shrawat, Member, (Judicial)

For the Petitioner:-
Advocate Rajesh Bohra.

Per: M. K. Shrawat, Member (Judicial)

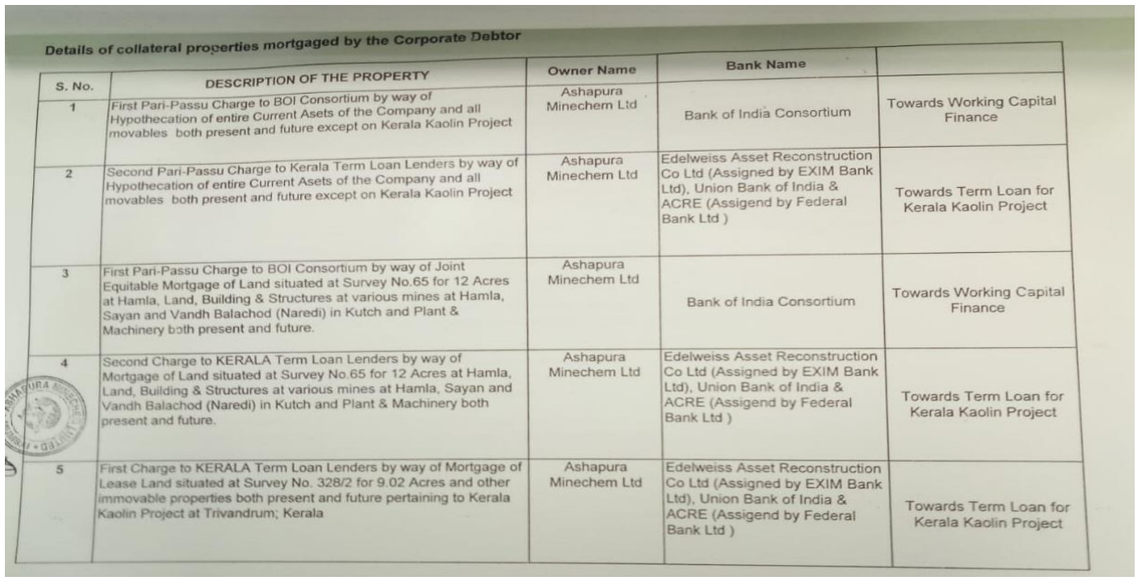
ORDER

1. This is an application wherein Ashapura Minechem Limited (hereinafter as '**Petitioner'**) has furnished Form No. 6 under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Corporate Applicant" on 12.12.2018 by invoking the provisions of Section 10 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. Simultaneously the Petitioner has also submitted a Miscellaneous Application (MA 303/2019) on 23.01.2019 seeking Order u/s.30 and Section 31 of Insolvency Code. The main Petition and MA both are decided by this common Order.
3. In the requisite Form No.6, under the Head "Particulars of Corporate Applicant" the description of the petitioner is stated to be having registered address at Jeevan Udyog Building, 3rd Floor, 278, D.N. Road, Fort, Mumbai-400001.
4. Further under the Head "Particulars of Financial/Operational Debt" the total amount of **Financial Debt** is stated as ₹37,611.32 Lacs and **Operational Debt** stated to be of ₹59,075.35 Lacs are outstanding and in default.
5. The Petitioner filed this application owing to its inability to repay the Debt claimed by various Financial & Operational Creditors as hereunder:

Sr. No.	Name of the Financial Creditor	Facility	Outstanding Amount (₹ in Lacs)
A. Secured Creditors (Banks & Financial institutions)			
1.	HDFC Bank Ltd.	Working Capital Demand Loan	4,455.32
2.	Edelweiss Asset Reconstruction Co. Ltd.	Working Capital & Term Loan – Assigned by Export Import Bank of India	2,658
3.	Bank of India	Recompense Claim vide Terms of Settlement Agreement	2,500
Total			**9,613.32**
B. Unsecured Creditors			
4.	J.P. Morgan Chase Bank	Term Loan towards Conversion of Forex Derivative Claims	12,375
5.	HDFC Bank Ltd.	Includes Term Loan towards Conversion of Forex Derivative Claims	8,727
6.	ICICI Bank Canada	Letter of Comfort (Guarantee)	6,896.34
Total:			**27,998**

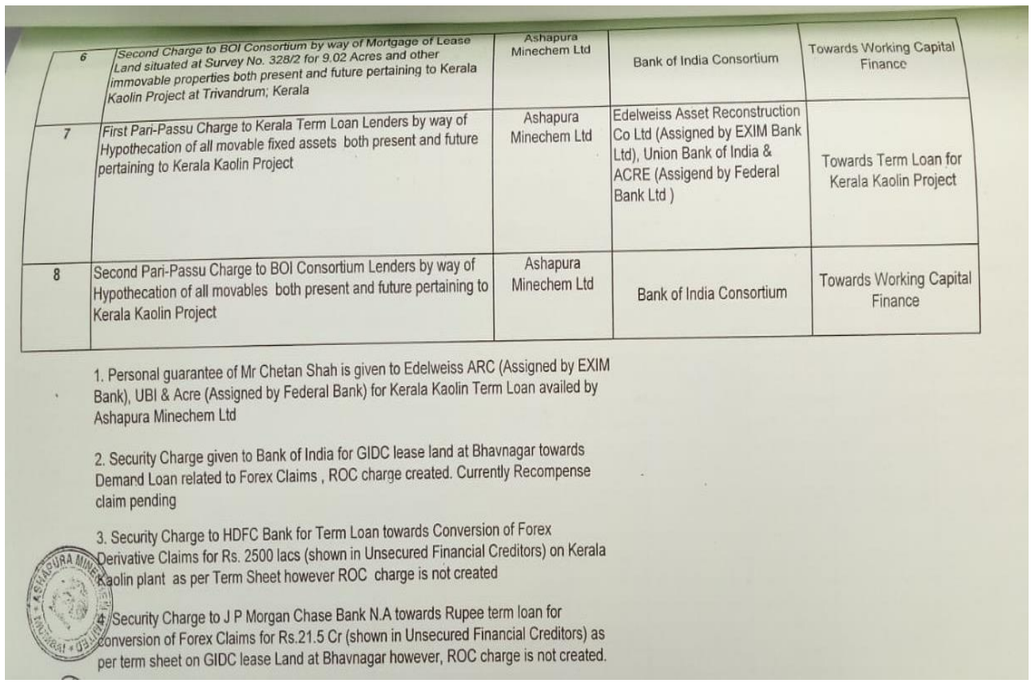
6. As far as the details of the Operational Creditors are concerned, the Debt is in connection of Goods and Services provided and since the List is very long hence keeping brevity in mind not reproduced. The Petition contains list of "operational Creditors". The total amount outstanding towards the Operational Creditors for goods & services is ₹28,00,37,266/-. The dues towards Other Operational Creditors are to the extent of ₹559,66,05,636/-.

6.1. The Corporate Applicant has given the details of collateral properties mortgaged with the Financial Creditors. The list is given herein below:



Details of collateral properties mortgaged by the Corporate Debtor

S. No.	DESCRIPTION OF THE PROPERTY	Owner Name	Bank Name	
1	First Pari-Passu Charge to BOI Consortium by way of Hypothecation of entire Current Asets of the Company and all movables both present and future except on Kerala Kaolin Project	Ashapura Minechem Ltd	Bank of India Consortium	Towards Working Capital Finance
2	Second Pari-Passu Charge to Kerala Term Loan Lenders by way of Hypothecation of entire Current Asets of the Company and all movables both present and future except on Kerala Kaolin Project	Ashapura Minechem Ltd	Edelweiss Asset Reconstruction Co Ltd (Assigned by EXIM Bank Ltd), Union Bank of India & ACRE (Assigend by Federal Bank Ltd)	Towards Term Loan for Kerala Kaolin Project
3	First Pari-Passu Charge to BOI Consortium by way of Joint Equitable Mortgage of Land situated at Survey No.65 for 12 Acres at Hamla, Land, Building & Structures at various mines at Hamla, Sayan and Vandh Balachod (Naredi) in Kutch and Plant & Machinery both present and future.	Ashapura Minechem Ltd	Bank of India Consortium	Towards Working Capital Finance
4	Second Charge to KERALA Term Loan Lenders by way of Mortgage of Land situated at Survey No.65 for 12 Acres at Hamla, Land, Building & Structures at various mines at Hamla, Sayan and Vandh Balachod (Naredi) in Kutch and Plant & Machinery both present and future.	Ashapura Minechem Ltd	Edelweiss Asset Reconstruction Co Ltd (Assigned by EXIM Bank Ltd), Union Bank of India & ACRE (Assigend by Federal Bank Ltd)	Towards Term Loan for Kerala Kaolin Project
5	First Charge to KERALA Term Loan Lenders by way of Mortgage of Lease Land situated at Survey No. 328/2 for 9.02 Acres and other immovable properties both present and future pertaining to Kerala Kaolin Project at Trivandrum; Kerala	Ashapura Minechem Ltd	Edelweiss Asset Reconstruction Co Ltd (Assigned by EXIM Bank Ltd), Union Bank of India & ACRE (Assigend by Federal Bank Ltd)	Towards Term Loan for Kerala Kaolin Project



6	Second Charge to BOI Consortium by way of Mortgage of Lease Land situated at Survey No. 328/2 for 9.02 Acres and other immovable properties both present and future pertaining to Kerala Kaolin Project at Trivandrum; Kerala	Ashapura Minechem Ltd	Bank of India Consortium	Towards Working Capital Finance
7	First Pari-Passu Charge to Kerala Term Loan Lenders by way of Hypothecation of all movable fixed assets both present and future pertaining to Kerala Kaolin Project	Ashapura Minechem Ltd	Edelweiss Asset Reconstruction Co Ltd (Assigned by EXIM Bank Ltd), Union Bank of India & ACRE (Assigend by Federal Bank Ltd)	Towards Term Loan for Kerala Kaolin Project
8	Second Pari-Passu Charge to BOI Consortium Lenders by way of Hypothecation of all movables both present and future pertaining to Kerala Kaolin Project	Ashapura Minechem Ltd	Bank of India Consortium	Towards Working Capital Finance

1. Personal guarantee of Mr Chetan Shah is given to Edelweiss ARC (Assigned by EXIM Bank), UBI & Acre (Assigned by Federal Bank) for Kerala Kaolin Term Loan availed by Ashapura Minechem Ltd

2. Security Charge given to Bank of India for GIDC lease land at Bhavnagar towards Demand Loan related to Forex Claims , ROC charge created. Currently Recompense claim pending

3. Security Charge to HDFC Bank for Term Loan towards Conversion of Forex Derivative Claims for Rs. 2500 lacs (shown in Unsecured Financial Creditors) on Kerala Kaolin plant as per Term Sheet however ROC charge is not created

4. Security Charge to J P Morgan Chase Bank N.A towards Rupee term loan for conversion of Forex Claims for Rs.21.5 Cr (shown in Unsecured Financial Creditors) as per term sheet on GIDC lease Land at Bhavnagar however, ROC charge is not created.

7. **In respect of MA 303 of 2018** it is worth to mention that the same has been filed by the Corporate Applicant, wherein impleaded Edelweiss Asset Reconstruction Co. Ltd. (Respondent 1), The Chairman & Managing Director, HDFC Bank (Respondent 2), Bank of India (Respondent 3), praying for the following directions:

> "
> *(a) The Proceedings pertaining to the Scheme of Rehabilitation filed by the Applicant before the Hon'ble BIFR be treated as transferred to this Hon'ble Tribunal,*
> *(b) The MDRS submitted by the Applicant before Hon'ble BIFR be treated as Resolution Plan in terms of Section 30 of the Insolvency and Bankruptcy Code, 2016,*
> *(c) After the above MDRS (duly updated) is treated as Resolution Plan in terms of Section 30 of the Insolvency and Bankruptcy Code, 2016, the said Resolution Plan is to be approved in terms of Section 31 of the Insolvency and Bankruptcy Code, 2016.*
> *(d) To grant moratorium u/s 14 of the Insolvency and Bankruptcy Code, 2016 till the Resolution Plan is approved."*

8. To deal with MA 303/2018, it is necessary to go into the background of this case. The Corporate Applicant filed reference on 02.06.2011 before BIFR as case No. 34/2011. **BIFR vide order dated 12.03.2012** declared the Corporate

Applicant as **'sick industrial company'** and appointed Bank of India to act as Operating Agency (O.A.) for formulation of the Draft Rehabilitation scheme (DRS). A Modified DRS (MDRS) was submitted to the OA and BIFR on 01.07.2016. Certain Miscellaneous Applications were pending at the time when **Sick Industrial Companies Act was repealed on 2.11.2016** vide Notification No. S.O. 3568E. The proceedings before BIFR stood abated after coming into force section 4(b) of the SICA Repeal Act.

9. The case of the Corporate Applicant was that the dues of approximately 95% secured creditors were already settled. The said DRS submitted was already substantially implemented but could not be sanctioned due to vacancy in the bench of BIFR. The remedy offered in the notification dated 28.05.2016 for filing insolvency proceedings within 180 days of commencement of IBC i.e. 01.12.2016 was not availed.
10. Thereafter, a Writ Petition was filed in the Hon'ble Bombay High Court being W.P.(C) 9674/2017 on 28.10.2017 for challenging the validity of amended Section 4(b) of the Sick Industrial Companies (Special provisions) Repeal Act, 2003 as notified in Notification No. S.O. 3568(E) dated 25.11.2016 mainly on the ground that provisions of Section 4(b) of Sick Industrial Companies (Special Provisions) Repeal Act, 2003 was unconstitutional as it has made an arbitrary classification of the sick companies, wherein the DRS was sanctioned and which were protected by treating them as approved resolution plan, and whereas there was no remedy offered for the sick companies registered with the Hon'ble BIFR, whose DRSs were pending for sanction at an advance stage. This classification was challenged.
11. The Writ Petition was dismissed with a direction that the Corporate Applicant may apply for condonation of delay in filing insolvency proceedings within 180 days to the NCLT. Hence this petition. Along with this, a miscellaneous Application is filed to consider the DRS Scheme as resolution plan for revival of this Corporate Applicant.
12. The Corporate Applicant states that NCLT has already granted similar relief to **S.M Dyechem Limited,** in C.P. No. 1054 and MA 177 of 2017/I&BC/NCLT/MB/MAH/2017 Order dated 13.10.2017, wherein modified DRS was also pending for consideration for sanction of BIFR, and BIFR got dissolved thereafter.

FINDINGS

13. Heard the Corporate Applicant. Documents on record perused. The questions which are to be decided by this Bench are the following:

i. Whether the present Section 10 application is to be treated as continuation of BIFR proceedings on repeal of SICA ?

ii. Whether the DRS Scheme is to be treated as a resolution plan for the revival of this corporate applicant?

iii. Whether this petition deserves admission?

14. To answer these questions it is worth to examine the background of the case, especially the judicial proceedings conducted under the SICA 1985. From the side of this Petitioner, dates and events are narrated, for ready reference, reproduced below:-

*"**LIST OF EVENTS AND DATES***

02.06.2011	*The Corporate Applicant filed before the Hon'ble BIFR its reference under Section 15(1) of the SICA, 1985 based on statutory relation, which came to be registered as Case No. 34/2011.*
12.03.2012	*In exercise of powers conferred under S. 17(3) of SICA, vide its order dated 12.03.2012, the Hon'ble BIFR declared the Corporate Applicant to be a Sick Industrial Company*
30.06.2012 to 31.10.2012	*As per the directions of the Hon'ble BIFR and in furtherance of the DRS of the SICA, the Corporate Applicant submitted its Draft Rehabilitation Scheme to the Hon'ble BIFR, the lenders and concerned parties. Thereafter several changes were incorporated in the Draft Rehabilitation Scheme (DRS) pursuant to the discussions with the Operating Agency (OA) i.e. Bank of India and a revised DRS was submitted to the Hon'ble BIFR and the lenders on 31.10.2012.*
31.03.2013	*The Hon'ble BIFR pursuant to provisions of Section 16(4) appointed and inducted Mr. Arun Chadha as a Special Director on the Board of the Corporate Applicant with immediate effect.*
02.07.2013	*A revised DRS was submitted on 02.07.2013 to the Hon'ble BIFR and to the OA after including financials for FY 2012-13.*
07.08.2013	*Thereafter, the Corporate Applicant addressed a letter dated 07.08.2013 to the Hon'ble BIFR updating it on the settlements concluded by the Corporate Applicant as on that date.*
24.09.2013	*The Corporate Applicant also presented its latest version of the DRS to the OA on 24.09.2013.*
01.10.2013	*In a subsequent hearing dated 01.10.2013, the Hon'ble BIFR took on record the fact that the Corporate Applicant has entered into settlement with some of its creditors. The Corporate Applicant continued to negotiate the settlement with the remaining secured creditors in the interregnum period.*
08.09.2014	*Since 08.09.2014, on account of reconstitution of the Hon'ble BIFR Bench, no hearing had been scheduled at the Hon'ble BIFR for more than 2 years.*
31.03.2016	*The Corporate Applicant has duly complied with all the directions of the Hon'ble BIFR whereby the Hon'ble BIFR had directed the Corporate Applicant to submit a revised DRS from time to time after incorporating and taking into consideration the accounts ending particular financial years. Subsequently, the Corporate Applicant has also submitted the DRS on the basis of the cut off dated of 31.03.2016 vide letter dated 30.06.2016 after considering the developments upto the said date, wherein the Corporate Applicant had settled the majority of the secured creditors and the undisputed unsecured creditors.*
28.05.2016	*The Insolvency and Bankruptcy Code, 2016 (Insolvency & Bankruptcy Code) received Presidential Assent. S. 1 whereof mandated that it would come into force on such date as and the Central Government may, by notification, appoint. Furthermore, it stipulated that different dates may be appointed for different provisions of the Code.*
01.07.2016	*Once the Bench of BIFR was reconstituted, the Corporate Applicant submitted its latest DRS with the said Bench and the OA vide letter dated 30.06.2016 on 01.07.2016. However, on account of the substantial back-log of hearings / cases at BIFR emanating from its eight month hiatus, the Corporate Applicant's DRS could not come up for hearing.*
October, 2016	*The said newly constituted Bench of the Hon'ble BIFR was once again dissolved due to the existence of a vacancy on the Bench on account of absence of a member till 3rd week of October, 2016.*
01.11.2016	*Section 252 of the IBC, which provides for amendment was to be carried out in the Repeal Act, was notified by the Central Government and therefore, came into force. Accordingly, Section 4(b) of the Repeal Act was amended as provided under the Eighth Schedule of the IBC. Consequently, where once the Repeal Act provided for a reference to Chapter XIX of the Companies Act, 2013, meant specifically for the revival and rehabilitation of such companies, it now provided merely for a reference under the IBC which does not provide for any mechanism for revival and rehabilitation of sick companies.*
15.11.2016	*The Corporate Applicant had submitted the MDRS dated 30.06.2016, which was not heard for considerable time. Therefore the Corporate Applicant vide letter dated 15.11.2016 requested for its consideration immediately and submitted once again the said MDRS along with some changes as required by incorporating the latest position of settlements.*
15.11.2016	*Notification No. 3453(E) notifying Section 255 of the IBC with immediate effect and as a consequence Chapter XIX (Section 253 of 269) of the Companies Act, 2013, relating to the revival and rehabilitation of Sick Industrial Companies has been omitted altogether.*
25.11.2016	*Notification no. S.O. 3568(E) dated 25.11.2016, issued in exercise of powers conferred by Section 1(2) of the Repeal Act, was published in the Official Gazette thereby bringing into force the Repeal Act w.e.f. 01.12.2016.*
25.11.2016	*Notification no. S.O. 3569 (E) dated 25.11.2016 issued in exercise of powers conferred by Clause (b) of Section 4 of the Repeal Act whereby the Central Government notified 01.12.2016, as the date for the purposes of clause (b) of Section 4 of the Repeal Act.*
01.12.2016	*SICA was repealed in furtherance of the above mentioned notifications issued by Central Govt. of India. Consequently, BIFR and AAIFR stood dissolved in terms of Section 4(b) of the Repeal Act. It is pertinent to mention here that in view of the aforesaid, the protection granted under various provisions of the SICA also stood revoked.*
28.10.2017	*Consequent upon dissolution of the Hon'ble BIFR, the Corporate Applicant had approached to this Hon'ble High Court under Writ bearing W.P. (C) 9674/2017 for challenging the validity of amended Section 4(b) of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 as notified in*

	Notification No. S.O. 3569(E) dated 25.11.2016 mainly on the ground that provisions of Section 4(b) of Sick Industrial Companies (Special Provisions) Repeal Act, 2003 was unconstitutional as it has made an arbitrary classification of the sick companies, wherein the DRS was sanctioned and which were protected by treating them as approved resolution plan, and whereas there was no remedy offered for the sick companies registered with the Hon'ble BIFR, whose DRSs were pending for sanction at an advance stage. This classification was challenged.
01.11.2017	*The Hon'ble High Court has dismissed the writ Petition vide Order dated 01.11.2017 and directed that "The Petitioner, if it is so advised may avail of the remedy provided under the Code. As the time period of 180 days has already lapsed, if the Petitioner approaches the NCLT, the request for condonation of delay, if any, be considered if permissible in law. Hence the Corporate Applicant is filing the present Application / Petition under Section 30 & 31 of the IBC code in CP (FORM 6)NO. of 2016 under section 10 of the IBC Code.*

"

15. This Corporate Debtor had put up his case before the Respected BIFR with the intention that by offering a Resolution Plan the Debt liability of various Banks could be settled under those provisions. In support of the Resolution Plan, the Corporate Debtor has narrated its background that :

"1.0 <u>INTRODUCTION & BACKGROUND</u>

1.1. M/s. Ashapura Minechem Limited (AML) was originally incorporated on 19.02.1982 as M/s. Ashapura Minechem Private Limited and subsequently converted on 05.01.1993 into M/s. Ashapura Minechem Limited. AML is promoted by Shri Chetan N. Shah and its registered office located at Jeevan Udyog Building, 3rd Floor, 278, D.N. Road, Fort, Mumbai. AML has its units for processing of Bauxite, Bentonite, GCC, Kaolin, and value added clays at (a) Baraya- Bhuj Gujarat, (b), Kerala & Dharur Village, , Andhra Pradesh, which presently has been shifted to Bhuj, Gujarat in view of ongoing agitation in the region and (d), Baikampady, New Mangalore, Karnataka.

1.2. AML is the flagship company of the Ashapura group which was founded more than 50 years ago. The company enjoys an excellent standing amongst all of its stake holders including the customers, employees and amongst the society in the regions from which it operates. Commercially the company is a well-known global supplier of quality industrial minerals and ores.

1.3. AML was doing reasonably well upto 2007-08 and was earning good profits and had peak turnover in 2007-08 for Rs.1491.64 crores with a group turnover of Rs. 1,743.37 crores.

1.4. However, since 2008-09, the AML has witnessed drastic reduction profits and also incurred huge losses subsequently owing to various reasons including claims raised by shipping companies and foreign exchanged derivatives losses which are disputed. Finally Net Worth of AML was completely eroded as per the financial results reflected in the Audited Balance Sheet (ABS) as at 31.03.2011. Hence, AML filed a reference application u/s 15(1) of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) with the BIFR seeking registration of the unit as a Sick Industrial Company and requesting for appropriate measures to revive it. The said reference is registered as Case No. 34/2011.

1.5. The BIFR vide order of the hearing held on 12.3.2012, declared the company as sick industrial company in terms of Section 3(1)(o) of SICA and appointed Bank of India (BOI), as the Operating Agency (OA) under Section 17(3) of SICA with directions to submit Draft Rehabilitation Scheme (DRS) to the OA.

1.6. In accordance to the directions, the company prepared the DFRS and submitted the same to the OA and subsequently based on the suggestions of OA and other lenders, the company has made due modifications and submitted the revised DRS on 02.11.2012 to the OA.

1.7. Subsequent to filing the above DRS, in view of substantial subsequent developments and on the basis of the settlement of most of the secured & certain unsecured creditors, the company has since revised the DRAS on the basis of financial year ended March 31, 2016 keeping in view the payments of the remaining liabilities both for secured & unsecured creditors as sell as liabilities under litigation / contingency liabilities.

16. From the side of the Corporate Debtor One Time Settlement was proposed as under:-

"<u>Details of One Time Settlement arrived at with the Secured and Unsecured Creditors are as under</u>:-

Sr. No.	***Bank Name***	***Liability/Claim (Principal)***	***Settlement Amt.***	***Amount paid as onMar 31, 2018***
1	*Bank of India*	*174.79*	*125.00*	*125.00*
2	*Asset Care & Reconstruction Enterprise Ltd (Assigned by Axis Bank Ltd, DBS Bank Ltd & Federal Bank)*	*96.31*	*38.00*	*38.0*
3	*HSBC BANK*	*13.23*	*7.20*	*7.20*
4	*Union Bank of India*	*38.10*	*19.00*	*19.00*
5	*Edelweiss A`RC (Assigned by EXIM Bank Ltd)*	*61.00*	*61.00*	*28.34*
6	*Deutsche Bank*	*79.94*	*18.00*	*18.00*
7	*Axis Bank Ltd*	*36.58*	*13.00*	*13.00*
8	*DBS Bank Ltd*	*45.32*	*12.00*	*12.00*
9	*Citibank*	*15.80*	*1.55*	*1.55*
	Total	***561.07***	***294.75***	***262.09***

"

17. The Corporate Debtor had made several DRS since the year 2012 which were modified several times on the basis of discussions with the secured and unsecured creditors. The last such **Modified DRS ("MDRS")** was submitted to the OA and the Hon'ble BIFR on 1.07.2016. Similarly, certain Miscellaneous Applications were also pending at the time when the provisions of the SICA were repealed by the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 ("SICA Repeal Act") which came into force by virtue of the **Notification No. S.O. 3568E dated 25.11.2016.** *Fait accompli*, BIFR and AAIFR stood dissolved and SICA was repealed. Further, the proceedings in respect of the Applicant before the Hon'ble BIFR stood abated after coming into force of the provisions of Section 4(b) of the SICA Repeal Act which were brought into force by virtue of the Notification No. S.O. 3569E dated 25.11.2016. The background for the enactment and introduction of the Insolvency Code was that the existing law relating to Insolvency were ineffective. There were certain enactments in the past viz. SICA 1985, Recovery of Debts Due to Banks and Financial Institutions Act 1993, Violation and Reconstruction of Financial Provision and Security Interest Act, 2002, etc. had, as per the Legislature, proved to be ineffective and inefficacious, and were considered to be inadequate. Despite the aforesaid enactments there was a spiral increase and jump in the quantum of loans falling in the category of non-performing assets (NPA), adversely impacting financial institutions and banking section with negative fiscal repercussions on the economy. Delays and failure of the existing quasi-judicial mechanism in dealing with the aforesaid problem was a cause of grave concern and anxiety. This was adversely impacting India's rating on ease of doing business and investments. Need was felt to replace the said enactments with the Code, having improved and practical provisions with strict and fixed time lines. The objective of the Code is to consolidate and amend the laws relating to insolvency resolution of corporate persons, as per preamble of The Code, in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of 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 and incidental thereto.

18. At the cost of repetition, on 2nd June 2011, the Corporate Debtor had made a reference before BIFR and vide Order dated 12.03.2012 declared as Sick Company under Sick Industrial Companies (Special Provisions) Act, 1985. Thereupon a draft Rehabilitation Scheme and Modified DRS were submitted.

At that stage vide Notification No. SO 3568(E) dated 25.11.2016 was enforced with effect from 01.12.2016. There was another Notification also dated 25.11.2016 (Notification No. S.O. 3569(E)). The SICA was repealed and seized to be operative. The proceedings before BIFR stood abated. Section 4(b) of Repeal Act had made the consequential provisions introduced according to which any reference made to BIFR or any proceeding of whatever nature pending stood abated. It was provided that in respect of a reference or enquiry stood abated could make a reference to National Company Law Tribunal under IBC 2016 within one hundred and eighty days. As per Section 4(b) **"the removal of difficulty order"** S.O. 1683(E) has a proviso which provides that any scheme sanctioned under sub-section (4) or any scheme under **implementation** under sub-section (12) of section 18 of the repealed enactment i.e. the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) shall be deemed to be an approved Resolution Plan u/s.31(1) of the IBC 2016 and the same to be dealt with in accordance with the provisions of Part-II of the Code.

19. Since the said notification is an important piece of Legislation S.O. 1683(E) dated 24.05.2017 therefore, reproduced for ready reference:-

> *"S.O. 1683(E).—Whereas, the Insolvency and Bankruptcy Code, 2016 (31 of 2016) (hereinafter referred to as the said Code) received the assent of the President on 28th May, 2016 and was published in the official Gazette on the same date;*
>
> *And, whereas, section 252 of the said Code amended the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (1 of 2004) in the manner specified in the Eighth Schedule to the said Code;*
>
> *And, whereas, the un-amended second proviso to clause (b) of section 4 of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 provides that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the repealed enactment i.e., the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) shall be deemed to be a scheme under implementation under section 424D of the Companies Act, 1956 (1 of 1956) and shall be dealt with in accordance with the provisions contained in Part VIA of the Companies Act, 1956;*
>
> *And, whereas, section 424D of the Companies Act, 1956 provided for review or monitoring of schemes that are sanctioned or are under implementation;*
>
> *And, whereas the Companies Act, 1956 has been repealed and re-enacted as the Companies Act, 2013 (18 of 2013) which, inter alia, provides for scheme of revival and rehabilitation, sanction of scheme, scheme to be binding and for the implementation of scheme under sections 261 to 264 of the Companies Act, 2013;*

And, whereas, sections 253 to 269 of the Companies Act, 2013 have been omitted by Eleventh Schedule to the Insolvency and Bankruptcy Code, 2016;

And, whereas, clause (b) of section 4 of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 has been substituted by the Eighth Schedule to the Code, which provides that any appeal preferred to the Appellate Authority or any reference made or inquiry pending to or before the Board or any proceeding of whatever nature pending before the Appellate Authority or the Board under the Sick Industrial Companies (Special Provisions) Act, 1985 shall stand abated. Further, it was provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make a reference to the National Company Law Tribunal under the Code within one hundred and eighty days from the date of commencement of the Code;

And, whereas, difficulties have arisen regarding review or monitoring of the schemes sanctioned under subsection (4) or any scheme under implementation under sub-section (12) of section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) in view of the repeal of the Sick Industrial Companies (Special Provisions) Act, 1985, substitution of clause (b) of section 4 of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 and omission of sections 253 to 269 of the Companies Act, 2013;

Now, therefore, in exercise of the powers conferred by the sub-section (1) of the section 242 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby makes the following Order to remove the above said difficulties, namely:—

1. *Short title and commencement.—(1) This Order may be called the Insolvency and Bankruptcy Code (Removal of Difficulties) Order, 2017.*
In the Insolvency and Bankruptcy Code, 2016, in the Eighth Schedule, relating to amendment to the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, in section 4, in clause (b), after the second proviso, the following provisos shall be inserted, namely:—

"Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall be deemed to be an approved resolution plan under sub-section (1) of section 31 of the Insolvency and Bankruptcy Code, 2016 and the same shall be dealt with, in accordance with the provisions of Part II of the said Code:
Provided also that in case, the statutory period within which an appeal was allowed under the Sick Industrial Companies (Special Provisions) Act, 1985 against an order of the Board had not expired as on the date of notification of this Act, an appeal against any such deemed approved resolution plan may be preferred by any person before National Company Law Appellate Tribunal within ninety days from the date of publication of this order."

20. All these latest changes have duly been considered by the Hon'ble Delhi High Court in W.P. (C) 9674/2017 Order dated 01st November, 2017 titled as **"Ashapura Minechem Ltd. Vs. Union of India"**. As per the final verdict, the Petitioner was advised that if deem fit may avail the remedy provided under the Insolvency Code, however, 180 days had lapsed hence could move request for condonation of delay to NCLT. This is one of the prime reasons that the Petitioner is now before NCLT u/s.10 of The Code and simultaneously seeking an Order u/s. 30 of The Code.

21. An interesting litigation cropped up revolving around the question of validity of the said Notification. In the case of **M/s. Spartek Ceramics India L**td., the Hon'ble NCLAT in an Order dated 28.05.2018 [*Company Appeal (AT) (Insolvency) 160 of 2017*] has taken a view that, quote :

> *"42. The time period of 180 days given therein is for making a reference to the National Company Law Tribunal to treat the application under 'I&B Code' without payment of fees, only in respect to cases, where appeal or reference stands abated. It does not mean that the Company cannot file application under Section 10 of the 'I&B Code' after 180 days. If the Company prefers any application under Section 10 beyond 180 days, it is required to pay the requisite fee.*
>
> *43. If the legislature thought it fit that no appeal Against the Scheme already framed or any proceeding before the Board or any proceeding of whatever nature pending before the Appellate Authority or the Board under the 'SICA Act, 1985', including the proceedings for monitoring under sub-section (12) of Section 18 shall stand abated, the question of giving effect to the Scheme by treating the Scheme as a 'Resolution Plan' approved by the Adjudicating Authority does not arise.*
>
> *44. If the intention of the legislature/Parliament substituting sub-clause (b) of Section 4 (by Eighth Schedule) is looked into, we find that the executive instruction issued by the Central Government under Section 242 is contrary to the provisions of sub-clause (b) of Section 4 of the 'SICA Repeal Act, 2003'.*
>
> *45. In view of the aforesaid discussion, we find that the grounds shown by the Central Government in Notification S.O. 1683(E) dated 24th May, 2017 for exercising powers conferred under Section 242 are in conflict with the amended sub-clause (b) of Section 4 of the 'SICA Repeal Act, 2003'." unquote.*

22. The aforesaid view of the Hon'ble NCLAT was challenged before the Hon'ble Supreme Court wherein held vide Order dated 25.10.2018 in the case of M/s. Spartek Ceramics India Ltd. (Civil Appeal No.7291-7292 of 2018 as under:-

> *"2) Having heard learned counsel in all the three appeals before us for some time, and having gone through the judgment dated 28.05.2018 passed by the National Company Law Appellate Tribunal (NCLAT), we are of the view that the judgment of the NCLAT holding that the appeal filed by the Central Government in that case not maintainable in view of the fact that the Notification dated 24.05.2017 travels beyond the scope of the removal of difficulties provision is correct. We are of the view that, having held that the appeal is not maintainable, the appellate Tribunal should not have adjudicated upon either the limitation aspect of the case or the merits of the particular Scheme before it. Therefore, while upholding the judgment passed by the appellate Tribunal on the ground that the appeal itself was not maintainable, we set aside the judgment insofar as it purports to deal with the*

limitation aspect of the case and the merits including the declaration of the Scheme as being illegal.

3) Insofar as Civil Appeal No. 8247 of 2018 and Civil Appeal D. No. 33241/2018 are concerned, it is clear that on the facts in these cases, originally., the appellants had approached the High Court of Delhi in writ Petitions. The High Court of Delhi, by judgment dated 22.,02.2018 (as modified by order dated 17.04.2018) and 14.09.2017, respectively ordered the parties to avail of the alternative remedy of filing an appeal before the NCLAT in view of the Notification dated 24.05.2017 which was done by the appellants in these appeals.

4) As the impugned judgment dated 28.05.20018 has set aside this Notification, and which has been upheld by us, the NCLAT, in both these cases, has dismissed the two appeals so filed, following the main judgment of 28.05.2018. This being the case, we revive the two writ petitioners that had been before the High Court of Delhi in both the appeals before us with liberty to the appellants to amend the aforesaid Writ petitions within a period of four weeks from today.

5) We request the High Court of Delhi to take up the writ petitions at the earliest. It is made clear that pleadings may be completed in both the writ petitions expeditiously, and all points available in fact and law to all parties shall be kept open."

23. Therefore, the latest position of law is that the Hon'ble Supreme Court in the case of M/s. Spartek Ceramics India Ltd. (*supra*) has upheld the validity of the Notification and directed to revive the writ petition with the direction to take up at the earliest by the Hon'ble High Court.

24. Be that as it is, one of the important precedent which on all fours is identical with the facts and situation of this case is squarely applicable to arrive at an appropriate and realistic decision. In the case of S.M. Dyechem Limited, [*C.P. No. 1054 and MA 177 of 2017/I&BC/NCLT/MB/MAH/2017*] Order dated 13.10.2017, the legal questions framed were as under:-

"

a) Whether the Petition is 'Maintainable under section 10' of The Code when the Board for Industrial and Financial Reconstruction (BIFR) proceedings were finalised in respect of part of the outstanding debt?

b) Whether the Insolvency Resolution Process be commenced in respect of the entire Debt or confined to the part of the Debt which is not considered or adjudicated upon by the authorities of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) ?"

24.1. In the said precedent as well, a MDRS was under consideration before BIFR authorities. In that case as well, pursuant to a Scheme the Debtor Company had made a substantial payment, stated to be to the tune of Rs.150.71 Crores which was about 98.61% of the total liability. In the said decision it was acknowledged that during the pendency of the proceedings a Notification was pronounced (Notification No. S.O. 3568(E) dated 25.11.2016) through which SICA 1985 was repealed and SICA Repeal Act 2003 was promulgated wherein it was prescribed that the proceedings pending before BIFR were to be transferred to NCLT. In the said decision, there was a reference of one more Notification dated 24.05.2017 (S.O. 3569(A)) which was reproduced in the Order through which Sick Industrial Companies (Special Provisions)

Repeal Act 2003 came into effect from 01.12.2016. On due consideration of all those Notifications it was held as under:-

*"5. **FINDINGS : -** On due consideration of the facts of this case and the Law applicable as discussed in the foregoing paragraphs, we have further noticed that there is a similarity in certain provisions now enacted as I & B Act, 2016 with the SICA provisions. There is also similarity in the intension for incorporation of these two Acts viz. Sick Industries Companies (Special Provisions) Act 1985 and Insolvency and Bankruptcy Code 2016, some of them as noted by us are as under :-*

(a) *Under the **SICA** it was provided for timely detection of potentially sick Companies and therefore a speedy determination by a **Board of Experts** to explore remedial or ameliorative measures. Under the **IB Code** almost on the same lines the intention is to consolidate and formulate a procedure to reorganize the affairs of a Corporate Body to be proposed by **Insolvency Resolution Professional** in a time-bound manner. Therefore, under the SICA Act, it was to be formulated by a Board. However, under IB Code, restructuring is to be formulated by an IRP.*

(b) *Under SICA Act, Financial Institutions, Banks etc. were termed as **"Operating Agencies" (O.A.)**, whereas under IB Code, the terminology is **"Resolution Professional".** However, there is a key departure because the IRP is an independent person as against the O.A. Under Section 15 of SICA Act, the matter was required to be referred to a Board whereas under the provisions of The Code, Insolvency Process is commenced by Insolvency Professional.*

(c) *Under **SICA Act**, vide section 18(2) it is prescribed that as expeditiously as possible and ordinarily within a **period of 90 days** a scheme is to be proposed for financial reconstruction of the sick Unit and also to take measures for proper management. Likewise, under sections of **The Code within 180 days** the Scheme is to be proposed, however the Management of the Company vests with the IP immediately on commencement.*

(d) *Measures for **revival of stressed Company** are almost identical under the provisions of SICA Act and under IB Code.*

(above illustrations are not exhaustive but only demonstrative)

*5.1. The above comparison thus leads us to a conclusion that if there are certain proceedings or measures have already been taken place under the SICA Act or by an order of BIFR or AAIFR, then those Resolutions or Directions are not to be ignored, rather, helpful for speedy resolution under the I&B Code, because the intention and the process involved can be said to be akin to each other. This view has also been expressed in the case of **Hyderabad Abrasives & Minerals Vs. Andhra Cements Ltd. (2003 42 SCL 748 AP)**, as follows :-*

> *"13. As seen from the above synopsis, a scheme which has been sanctioned and made enforceable after duly complying with various provisions of Section 18 of SICA, can even be modified by BIFR in accordance with Clause (b) of Sub-section (3) of Section 18 of SICA. Therefore, the implementation of rehabilitation scheme is a continuous process and can never be said to have been completely implemented with reference to one step or steps in the process of rehabilitation. By reason of the fact that by 15-6-2001, the time granted by BIFR for discharging other creditors is over, the protection under Section 22(1) is not taken away. In the case of SICA, having regard to Section 18(3)(b), where power inheres in the BIFR-to modify the scheme, it is always possible for the respondent-company or others to seek extension of time for accomplishing an important stage in the process of rehabilitation. That a provision prescribing time schedule is not mandatory but directory is a settled proposition of law. A reference may be made to a Full Bench judgment of Patna High Court in Shiveshwar v. District Magisrate . The full Bench after referring to Montreal Street Railways Co. v. Normandin AIR 1917 pc 142 and State of U.P. v. Manbodhan Lal Srivastava and various authorities including Maxwell on Interpretation of Statutes laid down that a provision regarding time limit is directory and not mandatory. The rehabilitation scheme binds the industrial company, the promoter, the participants of the company and the creditors*

and is in the nature of contract. Therefore, the same principle of statutory interpretation would equally apply in interpreting the rehabilitation scheme as well. Thus, under Section 22(1) of SICA, on expiry of seven years time schedule prescribed in the scheme for settlement of dues of all the other creditors, the protection granted to the respondent-company does not in any manner diminish or is taken away. By reason of non obstante clause under Sub-section (1) of Section 22 of SICA, the company petitions cannot be entertained and there cannot be an order for advertisement of the petitions."

5.2 *Likewise, on due analysis of a decision of the* ***Hon'ble Supreme Court pronounced in the case of Madura Coats Limited Vs. Modi Rubber Limited (2016) 7 Supreme Court Cases 603),*** *we have noticed that a legal proposition has been laid down that :-*

"19. One such situation is where winding-up proceedings are pending and a reference is made to BIFR. This situation occurred in Real Value [(1998)5 SCC 554] where winding-up proceedings were pending and the appointment of a provisional liquidator was under challenge. At that stage, steps were taken by Real Value [(1998)5 SCC 554] for making a reference under Section 15 of SICA to BIFR. Under these circumstances, one of the questions agitated for considered by this Court was whether on the registration of a reference, the Division Bench of the High Court could pass orders in an appeal against an interim order passed by the Company Court."

"23. Another situation is where a winding-up order is passed by the Company Court but it is stayed in appeal. In Rishab Agro [(2000)5 SCC 515] the company was ordered to be wound-up but his order was stayed by the Division Bench of the High Court concerned. Thereafter the company made a reference to BIFR under Section 15 of SICA."

"..... leave no doubt in our mind that the effect of the section would be applicable even after the winding-up order is passed as no proceeding even thereafter can be proceeded with further under the Companies Act. The High Court appears to have not taken note of the aforesaid words i.e. to be proceeded with further. As the impugned judgment is based upon wrong assumption of the provision of law and completely ignoring the vital words noticed hereinabove the same cannot be sustained."

"27. From the above it is quite clear that different situations can arise in the process of winding up a company under the Companies Act but whatever be the situation, whenever a reference is made to BIFR under Sections 15 and 16 of SICA, the provisions of SICA would come into play and they would prevail over the provisions of the Companies Act and proceedings under the Companies Act must give way to proceedings under SICA."

5.3. *In our considered opinion the language of the Notification, comparison of the two statutes, facts of the case and the legal proposition laid down by the Hon'ble Courts, it is deemed expedient to take into account the proceedings already held in the case of this Company by BIFR/AAIFR. We have taken due cognizance of the guidelines issued by the Ministry of Corporate Affairs in the* ***Notification dated 24.05.2017*** *as copied supra that the resolution process under the Insolvency Code can be taken up from the stage it was completed or left for further action under the SICA Act. It appears to be very logical that if a Company had undertaken a rehabilitation plan which for some reason or the other could not be finalized and any of the Party of the said DRS/MDRS is not satisfied thus moved Insolvency Petition before NCLT, then because of the impugned action of that solitary party should not hamper or thwart the steps taken so far for rehabilitation or rearrangement of the Debts in question.* ***An altogether fresh exercise is not warranted*** *which may lead to undue embarrassment to the new Investors who have proposed for rehabilitation and restructuring of the Company and its Debts. The comparative study as per above paragraphs have also demonstrated that the steps for rehabilitation of a stressed Company are almost identical, therefore, now it is clear that the repetition of those very steps has no logic and shall not going to get a legal sanctity. Up to that stage where certain steps have already been taken and that the Debts have been restructured, now expected to be honoured and recognized by the newly enacted Code.*

5.4 The Petitioner has placed on record the consent letter of most of the Creditors affirming therein that although the amount is owed by the Company to them but have no objection if MDRS dated 25.04.2015 being passed as the approved 'Resolution Plan' under the I&B Code 2016. In any case, direction can be given to the appointed IRP to examine this aspect as well from the records of the case so that the Creditors of this Company should not be adversely affected by this Order.

5.5 We finally conclude that considering the provisions of section 10 of The Code that the Debtor Company had in fact committed a default in not repaying the outstanding Debt to certain parties, the Petition under consideration deserves to be "admitted".

6. Since the Petition is "admitted" hence the IRP viz. Mr. Anish Kanodia, B-9/10, Ekta Apartment, LBS MARG, Opp: Santoshi Mata Mandir, Mulund-West, Mumbai-400080, Email id: ashishkanodia1972@gmail.com, Registration No.918IBBI/IPA001/IP-00650/2016-17/2131 is hereby appointed.

7. The provisions of section 14 is commenced henceforth and the Moratorium shall take place as under :-

(a) On enforcement of Moratorium certain prohibitions are applicable such as Institution of any Suit before a Court of Law, transferring of any Asset of the Debtor, encumbering any rights over the assets of the Debtor, however, the supply of essential goods or services to the Corporate Debtor shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan as prescribed under section 31 of The Code.

(b) The IRP appointed shall act upon as prescribed under the provisions of section 13 of The Code by making a public announcement immediately hereafter within a period prescribed therein. The IRP so appointed shall also comply with the provisions of section 15 onwards of The Code by collating all the claims submitted by other Creditors by constituting a Committee of Creditors. We hereby direct the IRP to inform the progress of the Resolution Plan along with a compliance report within 30 days on receipt of this Order. However, a liberty is granted to intimate the progress even at an early date, if need be.

*8. To conclude, the Petition is hereby "admitted" and the commencement of the Corporate Insolvency Resolution Process is hereby declared with effect from the receipt of this Order. The IRP is hereby directed that, the **Scheme Sanctioned** under SICA shall be deemed to be an **Approved Resolution Plan** as prescribed U/s. 31 (1) of the I & B Code, 2016. However, rest of the compliances are to be made as per the provisions of the Code, some of them specified hereinabove.*

*9. Accordingly, **this CP 1054/I & BC/NCLT/MAH/2017 stood admitted. The MA 177/2017 is also hereby made absolute only to the extent as directed."***

25. The peculiarity and distinctiveness of this case from other routine cases is that on one hand the Corporate Debtor has moved the impugned petition U/s 10 (CP 4508 of 2018) of the Code i.e. commencement of Corporate Insolvency Resolution Process by declaring itself as insolvent. Simultaneously, on the other hand, this applicant has also moved one Miscellaneous Application (M.A. No. 303 of 2018) invoking S. 30 and 31 of the Insolvency Code. Due to this reason both, i.e. Application as well as the Petition are considered conjoint and decided vide this single judgment.

26. Prima-facie it is evident that due to the repeal of SICA Act the proceedings pending stood abated. On abatement, the proceedings pending are required to be transferred to NCLT within 180 days. So, the Petitioner had no option but to take action by filing a petition U/s 10 of the Insolvency Code. As a consequence, filed this petition on 12.12.2018 with all necessary

information such as the position of financial debts and the step taken under SARFAESI provisions. Simultaneously, this petitioner has to inform the Adjudicating Authority the steps taken before BIFR Authority so that a due cognizance of resolution plans, earlier submitted, can be/ must be taken into account. For this reason, in my opinion, it is correct on the part of the Corporate Debtor/Applicant to move separately an application U/s 30 of IBC which is meant for **"submission of resolution plan".** In other words, this Applicant has made an attempt by filing this Application to place on record the 'Resolution Plan' already considered and taken into account by the BIFR Authorities. In my humble opinion, there should not be any ambiguity that once the proceedings are to be transferred from BIFR authorities to NCLT authorities, it is but natural that those resolution plans must also be treated as transferred and thereupon **ought to be treated as "resolution plan" falling within the ambits of S. 30** of the Code.

27. As far as the petition U/s 10 is concerned, it is almost mechanical for the Adjudicating Authority to admit the same because in all such cases there is hardly any objector. Same is the position at present. On admission, Corporate Insolvency Resolution Process shall commence henceforth, and IRP shall be appointed. He shall constitute COC and convene the meeting. For the purpose of collection of necessary details for preparation of **"Information Memorandum" as prescribed U/s 29 o**f the Code, it is hereby directed that the Corporate Debtor /petitioner shall immediately furnish the documents and financial data to the appointed IRP so that the requisite information memorandum can be prepared and to be placed before the COC. Fundamental reason of this observation and direction is that substantial exercise had already been done before the BIFR Authority therefore in less time the required I.M. can get finalised. In any case the appointed IRP is at liberty to collect data from other authorities so as to complete the process under IBC as per law.

28. However, this Bench is of the view that there is no requirement of publication to invite EoI. It can be said to be a path-breaking view, but according to my understanding, it is the only recourse available because in this case that exercise had already been completed under SIC Act. There is no requirement for inviting Resolution Plans in this case. As far as the applicability of S. 30 is concerned, a resolution plan is to be submitted by a Resolution Applicant on the basis of the Information Memorandum. But the situation in this case is that a Resolution Plan is already in existence. Not only that the said resolution plan is in existence, but it was duly acted upon. The said resolution plan was already considered by the bankers during SARFAESI

proceedings. Those very bankers are now going to constitute CoC under Insolvency Code. This very 'Consortium' has already acknowledged and accepted the resolution plan, hence, the right recourse available is to consider that Resolution Plan as if a resolution plan U/s 30 of the Code. If we adopt this line of action obviously the procedure of Corporate Insolvency Resolution Process shall get simplified and certainly get finalised expeditiously. It is worth to supplement at this juncture that the time is the essence for implementation and finalisation of the process of the Insolvency.

29. Last question to be addressed is whether this petition be admitted or not stands answered in view of the fact that the petitioner being a '*Corporate Person'* U/s 3(7), having outstanding debts, therefore, falls within the definition of '*Corporate Debtor'* U/s 3(8) & there was a '*Default'* of non-payment of outstanding debt as per the terms of Sec. 3(12). Therefore, this petition is fit for admission U/s 10 of the Code.

30. The Corporate Applicant has proposed the name of Interim Resolution Professional. Consequentially, this Bench hereby appoints **Mr. Arun Chadha,** having registration no. as IBBI/IPA-001/IP-P00165/2017-18/10334, as Interim Resolution Professional for initiation of CIRP.

31. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

32. That the provisions of **Section 13 of The Code about Public Announcement** are to be carried out as per the instructions pronounced in foregoing paragraphs**.**

33. The appointed IRP shall also comply the other provisions of the Code including **Section 16 to Section 18** of The Code, however, before taking any step required to obtain direction from this Bench to avoid any conflict among the view taken hereinabove and the Corporate Insolvency Resolution Process. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.

34. The Petition is hereby **"Admitted"**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

35. Ordered Accordingly.

Sd/-

Date: 15.03.2019 **(M. K. Shrawat)**
Member (Judicial)

JS