NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

IA No.47 of 2020
IN
IA 73/2018 of 2020
IN
C.P. (IB)No.02/GB/2018

Coram:
Hon'ble Shri H. V. Subba Rao, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.08.2021

Name of the Company:	Kitply Industries Ltd.	… Applicant
	V/s	
	Sicom Ltd. & 12 others	… Respondents
Section of the Companies Act:	Under Section 7 of Insolvency and Bankruptcy Code, 2016.	

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. KARAN KOHLI	Advocate	Applicant	Present in Video Conference
2.	NONE	-	Respondents	

O R D E R
Date of Order: 31st August, 2021

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

Today, the present matter is kept for pronouncement of order.

The present matter i.e. **IA No.47 of 2020** is allowed and disposed of to the extent of Prayer (a) only.

The detailed order is recorded vide separate sheet.

Sd/-

(**Prasanta Kumar Mohanty)**
(Member (Technical)
& Adjudicating Authority

Sd/-

(H. V. Subba Rao)
Member (Judicial)
& Adjudicating Authority

/Deka - 31.08.2021/

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
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IA No.47 of 2020
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IA No.73/2018 of 2020
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In the matter of:

Kitply Industries Ltd. …Applicant
V/s
Sicom Ltd. & Twelve others …Respondents

Order delivered on 31st August, 2021

Coram:
Hon'ble Shri H. V. Subba Rao, Member (J): Hearing through
And
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

Appearance: Mr. Sanjay Bhatt, Advocate for the Applicant
Mr. D. Baruah, Advocate for the Respondents

O R D E R
[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present application has been preferred by the applicant U/s 60 (5) read with Section 74 (3) of IBC, 2016 and read with Rule 11 of the National Company Law Tribunals Rules, 2016 and it is submitted that the Applicant Kitply Industries Ltd. was admitted to CIRP in CP (IB) No.02/GB/2018 and the Hon'ble Adjudicating Authority vide order dated 07.12.2018 was pleased to approve a Resolution Plan, approved by the Committee of Creditors, which was put forth by SREI Multiple Asset Investment Trust for the purpose of insolvency resolution of the Applicant Company. The Resolution Plan as approved by the Hon'ble Adjudicating Authority has now attained finality, as except two creditors, namely "Kotak Mahindra Prime Limited" and "Kotak Mahindra Investment Ltd.", no other creditors or stakeholders of Kitply Industries Ltd. including Respondent herein has challenged the same before the Hon'ble National Company Law Appellate Tribunal. The challenge so raised by Kotak

Mahindra Prime Limited and Kotak Mahindra Investment Ltd. has also been rejected by the Hon'ble NCLAT vide order dated 13.11.2019.

That in terms of clause 3.8 of the Resolution Plan, on payment of Rs.31,000.00 (Rupees Thirty-One Thousand Only) as one-time settlement of the loan, the Respondents are/were obligated a duty bound to transfer the Igatpuri unit in the name of the Resolution Applicant or its nominee. In terms of the Resolution Plan the successful Resolution Applicant, vide its letter dated 10.01.2019, nominated the Corporate Debtor (Applicant herein) as the beneficiary for effecting the transfer in its name, in respect of Igatpuri Unit. However, even after receiving the payment as proposed under the Resolution Plan and despite several communications and requests for transferring the Igatpuri Unit of the Corporate Debtor in the name of the Resolution Applicant or its nominee, the Respondents have failed to transfer the same in complete disregard of the provisions of the Resolution Plan approved by this Hon'ble Adjudicating Authority.

Such non-compliance with the terms of the Resolution Plan by any creditor/stakeholder including the Respondents is not only a violation of the order passed by this Hon'ble Adjudicating Authority but also punishable under Section 74(3) (offences and penalties) of the I & B Code. Hence, the Petitioner has prayed for the following relief/s from this Bench:

a) **Direct the Respondents to transfer the Igatpuri Unit of the Corporate Debtor to the Applicant herein in compliance of the Resolution Plan and take steps to execute the transfer deed in favour of the Corporate Debtor including registration thereof before the concerned Registrar of Assurances;**

b) **Direct Insolvency & Bankruptcy Board of India to file a complaint against the Respondents for initiating appropriate penal proceedings against the Respondents and their concerned officers under Section 74(2) of the I & B Code for non-compliance of the Resolution Plan;**

c) **Pass any other or further orders / directions that may be deemed fit and appropriate in the above facts of the case.**

2. Details of the Parties in this case are that-

a) **The Applicant / Corporate Debtor**, Kitply Industries Ltd., is a company incorporated under the Companies Act, 1956 and having its registered office at Makum Pathar, A. T. Road, Margherita, Assam - 786181 represented herein by its authorised representative Shri Bikram Saha.

b) **Respondent No.1:** SICOM Ltd. is a company registered under the Companies Act bearing CIN – U65990MH1966PLC013459 and having its registered office at Solitaire Corporate Part, Building No.4, 4th Floor, Guru Hargovindji Road, Andheri – Ghatkopar – Link Road, Chakala, Andheri (East), Mumbai- 400093.

c) **Respondent No.2:** SICOM ASSET RECONSTRUCTION COMPANY LTD. (SICOM ARC LTD.) is registered under the Companies Act bearing CIN – U74999MH2001PTC131469 and having its registered office at Solitaire Corporate Part, Building No.4, 4th Floor, Guru Hargovindji Road, Andheri – Ghatkopar – Link Road, Chakala, Andheri (East), Mumbai- 400093.

d) **Respondent No.3**: Respondent No.3 is a Director of SICOM Ltd. bearing DIN No.00049269 and resident of Apt. 505, Nestle 1, B Wing, Pandurang, Budhkar Marg, Mumbai – 400013, Maharastra.

e) **Respondent No.4**: Respondent No.4 is a Director of SICOM Ltd. bearing DIN No.00420952 and resident of 193A, Kalpataru Habitat, Dr. S. S. Rao Marg, Parel, Mumbai – 400012.

f) **Respondent No.5**: Respondent No.5 is a Director of SICO Ltd. bearing DIN No.01559484 and is a resident of 2, Yashodhan Dinshaw Wachha Road, Churchgate, Maine Lines, Mumbai 400020.

g) **Respondent No.6**: Respondent No.6 is a Director of SICO Ltd. bearing DIN No. 03068111 and is a resident of 602, Signia Pearl, G Block, Next to US Consulate, Bandra Kurla Complex, Bandra East, Mumbai 400051.

h) **Respondent No.7**: Respondent No.7 is a Director of SICO Ltd. bearing DIN No.05117747 and is a resident of 13, Floor-4, Plot -23, Bel

Heaven Vitthaldas Thackarsey Marg, New Marine Lines, Churchgate, Mumbai - 400020.

i) **Respondent No.8**: Respondent No.8 is a Director of SICO Ltd. bearing DIN No.07183938 and is a resident of 602, Nilambari Apartment, Maharishi Karve Road, Nera Cooperage Telephone Exchnage,Nariman Point, Mumbai- 400021.

j) **Respondent No.9**: Respondent No.9 is shown as a Company Secretary of SICOM Ltd. in the Company Details and is a resident of A/8, Shree Sai Kripa CHS, Natwar Nagar Road No.5, Jogeshwari East, Mumbai – 400060.

k) **Respondent No.10**: Respondent NO.10 has been shown as the Chief Financial Officer (KMP) of SICOM Ltd. in the company details and is a resident of A-003, B-33, Nilgiri R M G Unit – 3 CHS, Gokuldham, Gen AKV Marg, near Krishnavatika Temple, Mumbai – 400063.

l) **Respondent No.11**: Respondent No.11 is the Managing Director of SICOM Ltd. and Director of SICOM ARC Ltd. bearing the DIN No.01679108 and is a resident of Flat No.21, 11th Floor, Belvedere, Bhulabhai Desai Road, Breach Candi, Mumbai – 400026.

m) **Respondent No.12**: Respondent No.12 is a Director of SICOM ARC Ltd. bearing DIN No.07387388 and is a resident of 76/B, 43, Vrindavan Society, Thane, Mumbai – 400601.

n) **Respondent No.13**: Respondent No.13 is a Director of SICOM ARC Ltd. bearing DIN No.07416649 and is a resident of 603, 6th Floor, Radha Krishna Niwas, Tejpal Scheme Road No.4, Vileparle East, Mumbai – 400057.

3. Facts of the case are that –

i. This Hon'ble Adjudicating Authority vide order dated 07.12.2018 has been pleased to approve a Resolution Plan put forth by SREI Multiple Asset Investment Trust (hereinafter "SMAIT") for the purpose of insolvency resolution of Kitply Industries Ltd. ("KIL") as approved by the Committee of Creditors ("CoC") of KIL by 92.74% votes under the

provisions of the Insolvency & Bankruptcy Code, 2016 ("I & B Code"). A copy of the order dated 07.12.2018 passed by this Hon'ble Adjudicating Authority is annexed with the application marked as **Annexure A-1**.

ii. It is relevant to mention that the Resolution Plan had come into force from immediate effect in terms of Clause 50(b) of the approved Resolution Plan on its approval by this Hon'ble Adjudicating Authority vide order dated 07.12.2018 and is thus binding inter alia on all creditors / stakeholders including the Respondents herein in terms of Section 31 (1) of the I & B Code.

iii. **On the approval of the Resolution Plan by this Hon'ble Adjudicating Authority, the entire management of KIL has been taken over by the successful Resolution Applicant and dues of all the financial creditors, operational creditors and all the other stakeholders including that of the Respondents have been settled and extinguished as per the Resolution Plan, so approved and ordered by this Hon'ble Adjudicating Authority.**

iv. **It is also pertinent to mention herein that the Resolution Plan as approved by this Hon'ble Adjudicating Authority has attained finality, as none of the creditors or stakeholders of KIL including the Respondents herein had challenged the same before the Hon'ble National Company Law Appellate Tribunal ("NCLAT") except two Creditors namely Kotak Mahindra Prime Ltd. ("KMPL") and Kotak Mahindra Investment Ltd. ("KMIL"). The challenge so raised by KMPL and KMIL has since been rejected by the Hon'ble NCLAT vide order dated 13.11.2019. KMPL and KMIL have so far not filed any civil appeal against the order passed by the Hon'ble NCLAT before the Hon'ble Supreme Court.**

v. In so far as the Respondents are concerned, the Resolution Plan approved by this Hon'ble Adjudicating Authority provided as under:

"Clause 3.8: Proposal for other Liabilities:

Secured Debenture of Rs.0.31 Cr held by SICOM/ SICOM ARC Ltd. (As approved in the IM)	• Resolution Applicant proposes to settle the liability by way of a payment of following amounts as a one-time settlement of the loan. • Rs.0.0031 Cr (Indian Rupees Thirty-One thousand) to SICOM/ SICOM ARC Ltd. • The said debenture holder shall not invoke, exercise or enforce any security interest and/or guarantees, in whatsoever and whatever manner, in so far as it related to the Corporate Debtor and shall immediately relinquish and release their rights ion all the assets of the Corporate Debtor held by them, in favour of the Resolution Applicant/SPV/its nominee upon approval of the Resolution Plan by the Hon'ble Adjudicating Authority and receipt of the certified copy of such approval order. • It is hereby clarified that the unit of Corporate Debtor located at Igatpuri is in dispute between the corporate Debtor and SICOM/SICOM ARC Limited. Post Approval of the Resolution Plan and settlement of all dues of SICOM/SICOM ARC Limited, SICOM/SICOM ARC Limited to transfer the Igatpuri unit in the name of the Resolution Applicant or its nominee.

vi. In terms of the clause, the successful Resolution Applicant, vide its letter dated 10.01.2019, nominated the Corporate Debtor itself to be the beneficiary for effecting the transfer in its name, in respect of the Igatpuri Unit of the Corporate Debtor. A copy of the letter dated 10.01.2019 from the successful Resolution Applicant is annexed with the application marked as **Annexure A-2.**

vii. In terms of the above clause of the Resolution Plan, on payment of Rs. 31,000.00 (Rupees Thirty-One Thousand Only) as one-time settlement of the loan, the Respondents are/were obligated and duty bound to transfer the Igatpuri unit in the name of the Resolution Applicant or its nominee. It is further submitted that the relevant extracts of the

Resolution Plan relating to the Respondents, as approved by this Hon'ble Adjudicating Authority were communicated to the Respondent, in response to the Respondent's request for the copy of the Resolution Plan herein vide email dated 06.02.2019. A copy of the email dated 06.02.2019 is annexed herewith and marked as **Annexure A-3**.

viii. In terms of the Resolution Plan, the Applicant has already paid the amount of Rs. 31,000.00 (Rupees Thirty-One Thousand Only) to the Respondents herein in full and final settlement of the outstanding amount to the Respondents by transferring the amount to the bank account of the Respondents. Relevant to note herein is that **the amount paid to the Respondents has been accepted.** A copy of the said payment receipt is annexed with the application marked as **Annexure A-4**.

ix. However, even after receiving the payment as proposed under the Resolution Plan and despite various communications and request from the Applicant/Corporate Debtor for transferring the Igatpuri Unit of the Corporate Debtor in the name of the Resolution Applicant or its nominee, the Respondents have failed to transfer the same in complete disregard of the provisions of the Resolution Plan approved by this Hon'ble Adjudicating Authority.

x. It is pertinent to mention herein that the Resolution Plan once approved under Section 31 (1) of the I & B Code, by this Hon'ble Adjudicating Authority, is binding on all the stakeholders of the Corporate Debtor, including the Respondents herein. The contents of Section 31 (1) of the I & B Code are reiterated herein for the purpose of reference:

> *"(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 the corporate debtor and its employees, members, creditors, including Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues*

are owed, guarantors and other stakeholders involved in the resolution plan."

xi. It is further submitted that the Hon'ble Supreme Court in its judgment in the matter of ***Committee of Creditors of Essar Steel India Ltd.*** **vs** ***Satish Kumar Gupta & Ors.,*** **has clearly held that once a resolution is approved by the Committee of Creditors it shall be binding on all stakeholders. The relevant potion of the judgement is reproduced below:**

"66. Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were."

xii. The Applicant emphatically states herein that the Resolution Plan is also binding upon the Respondents, being the creditors/stakeholder of the Corporate Debtor and accordingly in terms of the Resolution Plan as approved by this Hon'ble Adjudicating Authority, the Respondents are bound to transfer the Igatpuri Unit to the Applicant herein once they have received the amount provided to them in terms of the Resolution Plan, failing which the Respondents shall be liable for punishment under Chapter VII (Offences and Penalties) of the I&B Code.

xiii. **It is reiterated that any noncompliance with the terms of the Resolution Plan by any creditor/stakeholder including the Respondents is not only a violation of the order passed by this Hon'ble Adjudicating Authority but also punishable under Section 74 (3) (Offences and Penalties) of the I&B Code,** the provision of which are reproduced herein below for ready reference of this Hon'ble Adjudicating Authority:

"Section 74(3) Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such

contraventions, such corporate debtor officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both."

xiv. The approved Resolution Plan, in addition to the clause mentioned above, also provided the following:

"Para 50 (e): All the relevant parties are directed to extend all cooperation to SREI Multiple Asset Investment Trust (Vision India Fund) to carry out the terms and conditions of the Final Resolution Plan, the concerned parties / entities will be liable for punishment a per Chapter VII (Offences and Penalties) of the Code.

Para 50 (j): All concerned parties are hereby directed to strictly comply with the resolution plan approved by the Adjudicating Authority. If any deviation in implementing the Resolution Plan the concerned parties / entity will be liable for punishment as per the Chapter VII (Offences and Penalties) of the code."

xv. Evidently the Respondents are thus knowingly and wilfully, despite several requests and reminders including the letters mentioned aforesaid along with the letter dated 06.05.2019 have failed to comply with the terms of the Resolution Plan by not transferring the Igatpuri Unit to the Applicant as approved under the Resolution Plan. The Respondents have not even bothered to respond to such letters sent by the Applicant. A copy of the letter dated 06.05.2019 to the Respondents is annexed with the application marked as **ANNEXURE A -5 (Colly).**

xvi. In view of the failure of the Respondents to comply with the terms of the approved Resolution Plan, the Applicant is left with no option except to approach this Hon'ble Adjudicating Authority by way of the present Application for appropriate directions against the Respondents directing them to transfer the Igatpuri Unit to the Applicant and/or direction to the Insolvency & Bankruptcy Board of India to file a complaint against the Respondents and their concerned officers under Section 74 (2) of the I&B Code.

xvii. The instant application is being filed bonafide and in the interest of justice.

4. The Answering Respondents took the indulgence to submit the following preliminary objections as regards the maintainability of the Application as herein under:

i. The Application is not maintainable in law, on facts and in its present form.

ii. That the Applicant in complete abuse of the process of the Tribunal has filed the instant Application by arraying all the Directors of the Respondent Nos. 1 and 2 without any basis whatsoever. In this regard, it is relevant to mention that the Respondent No.3 was a non-executive independent Director of the Respondent No.1 and have resigned from the Board of Directors of the Respondent No.1 Company w. e. f. 26.09.2020. The Respondent No.4 was also a non-Executive Independent Director of the Respondent No.1 and has resigned from the Board of Directors of the Respondent No.1 w. e. f. 28.09.2020. The Respondent No.5 was a non-executive Government Nominee Director of the Respondent No.1 till 12.06.2020. The Respondent No.6 is a non-executive Director of the Respondent No.1. The Respondent No.7 is a non-executive Government Nominee Director of the Respondent No.1. The Respondent No.9 is an Ex Company Secretary of the Respondent No.1 who left the services w. e. f. 31.08.2020. The Respondent No.11 is the Ex Managing Director of the Respondent No.1 who retired w. e. f. 30.09.2020. The Respondent No.8 who was the Managing Director of the Respondent No.1 w. e. f. 01.10.2020 has also been transferred. The Respondent Nos. 12 and 13 are nominee Directors of the Respondent No.2. Under such circumstances, the Respondent Nos. 3, 4, 5, 6, 7, 8, 9, 11, 12 and 13 ought to be struck off from the instant proceedings.

iii. The instant Application is based upon misrepresentation of material facts and accordingly the instant Application is liable to be dismissed with exemplary costs.

iv. That it is relevant to mention that a perusal of the instant Application would go to show that the instant Application as well as the proceedings which resulted in the Resolution Plan being approved is nothing but a fraud committed by Kitply Industries Limited in concert and in collusion with the Interim Resolution Professional as well as the Resolution Applicant. In this regard, it is relevant to mention that pursuant to the publication of Form- A under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, the Respondent No.1 through its Manager submitted various documents which are detailed herein under:

(i) Form "C" along with necessary Annexures for claim of SICOM

(ii) Duly signed, stamped and Notarized Affidavit.

(iii) List of documents

a) Deal confirmation slip dated May 07, 1999 issued by SICOM Ltd. (Financial Creditor) in favour of Kitply Industries (Corporate Debtor herein)

b) Letter of acceptance of Corporate Debtor Dated May 10,1999

c) Guarantee Agreement of Shri P. K. Goenka (Director of Corporate Debtor) dated August 10,2009

d) Form No.8 and 13 in respect of charges created in favour of SICOM.

e) Demand Notice dated December 5, 2008 issued by SICOM to Kitply Industries

f) OTS withdrawal letter March 25, 2009

g) Winding up notice dated October 27, 2009 and March 6, 2010 issued by SICOM to Corporate Debtor.

On the basis of the said communication dated 18.07.2018 issued to the Interim Resolution Professional Shri Bijay Murmuria, the Respondent No.1 claimed as a Financial Creditor of Kitply Industries Limited.

Surprisingly, the Interim Resolution Professional in spite of receipt of the claim made by the Respondent No.1 did not include the Respondent No.1 as a Financial Creditor in the Committee of Creditors in violation of Section 21 (1) and 21 (2) of the Code. Consequently, everything was done behind the back of the Respondent No.1. Further to that, vide another communication dated 27.09.2018, the Resolution Professional, Shri Bijay Murmuria was informed that the Respondent No.1 was the absolute owner in as much as the Agreement for Sale dated 03.09.1998 was cancelled vide the communication dated 25.03.2009 with immediate effect in terms of Clause – 5 of the said Agreement. It was also mentioned in the communication dated 27.09.2018 that the Respondent No.1 was the absolute owner of the property and the said property should not be made a part of the Resolution Plan. Surprisingly enough, the Resolution Professional did not perform his duties as enshrined in Section 18 as well as its Explanation of the Code which clearly stipulated that assets shall not include assets owned by a third party.

The said collusive fraud being committed by the Corporate Debtor in collusion with the Resolution Professional and the Resolution Applicant is further apparent from the fact that it is the same set of lawyers who are representing the Interim Resolution Professional and now the Corporate Debtor. The nomination given to Kitply Industries Limited by the Resolution Applicant vide **Annexure-A (2)** of the Application is a clear testament of the collusive fraud being committed.

iv. It is further submitted in the same regard that in terms with the Judgment of the Hon'ble Supreme Court rendered in the case of ***Vijay Kumar Jain*** **vs.** ***Standard Chartered Bank & Ors***. **reported in AIR 2019 SC 2477**, **wherein at paragraph 12 it clearly stipulates that person interested in the outcome of the Resolution Plan and is entitled to file an Appeal against the order of the adjudicating authority and/or file Application**

under Section 60(5) of the Code to a copy of the Resolution Plan. In the instant case, the Resolution Professional did not include the Respondent No.1 as a Financial Creditor and thereby debarred to be included in the Committee of Creditors. The Resolution Professional even did not provide a copy of the Resolution Plan wherein the rights of the Respondent No.1 have been severely prejudiced thereby debarring the Respondent No.1 to prefer an Application under Section 60(5) of the Code or an Appeal under Section 61 of the Code. It is an admitted fact that the Respondents requested for a copy of the Resolution Plan but the same was denied as would be apparent from a perusal of paragraph 7 of the Application.

This Hon'ble Tribunal may be pleased to call for the records of the Resolution Professional in respect to the communications dated 18.07.2018 and 27.09.2018 and the manner in which the Committee of Creditors along with the Resolution Professional have dealt with the claim of the Respondents.

Copies of the communication dated 05.12.2008, 25.03.2009, 18.07.2018, 27.09.2018, copies of the trail mail dated 25.01.2019 and 26.04.2019 and a copy of the Judgement of the Hon'ble Supreme Court rendered in the case of Vijay Kumar Jain Vs Standard Chartered Bank & Ors. are enclosed herewith and marked as **Annexure – 1,2,3,4,5 and 6** respectively.

v. It is further submitted in this regard that on the basis of the Agreement for Sale dated 03.09.1998, the Respondent No.1 entered into an Agreement with the Corporate Debtor for sale of the Property at a price of Rs.2,25,00,000.00 (Rupees Two Crores Twenty-Five Lakhs Only) as is where is and what basis'. In terms of the said Agreement for Sale, the Corporate Debtor had to pay an amount of Rs.10,00,000.00 (Rupees Ten Lakhs Only) as earnest money, Rs.56,25,000.00 (Rupees Fifty-Six Lakhs Twenty-Five Thousand Only) within 30 days from the acceptance of the offer and Rs.1,58,75,000.00

(Rupees One Crore Fifty-Eight Lakhs Seventy-Five Thousand Only) in monthly instalments as indicated in Clause 2 of the said Agreement. The Corporate Debtor failed to pay the amount of Rs.1,58,75,000.00 (Rupees One Crore Fifty-Eight Lakhs Seventy-Five Thousand Only) for which by invoking Clause – 5 of the said Agreement, the Respondent No.1 cancelled and terminated the said Agreement for Sale by forfeiting the amount paid by the Corporate Debtor. This was done as far back as on 25.03.2009 **(Annexure – 2 herein).** There was no challenge to the said termination of the Agreement for Sale as well as forfeiting of the amounts paid by the Corporate Debtor. The said termination had attained finality and under such circumstances by no stretch of imagination, the same could have been included as an asset of the Corporate Debtor in the Resolution Plan more so, when the Explanation to Section 18 of the Code clearly stipulates that assets owned by a third party cannot come within the term of 'assets' as mentioned in Section 18 of the Code. It is also respectfully herein that in terms with Section 54 of the Transfer of Property Act, 1882, it is clear that a contract for sale of an immovable property is a contract that a sale of such property shall take place on terms settled between the parties and it does not, of itself, create any interest in or charge on such property. Further to that, a perusal of Section 54 of the Transfer of Property Act, 1882 would also go to show that sale of a tangible immovable property of a value of Rs.100.00 (Rupees One Hundred Only) or upwards can be made only by a registered instrument. It is apparent from the extract of the Resolution Plan as quoted in the Application as well as the prayer made in the Application itself that the Corporate Debtor was never the owner of the property and under such circumstance, the Resolution Plan could not have envisaged inclusion of the said property within the ambit of the Resolution Plan. In this regard, reference may also be drawn to the Judgment of the Hon'ble Supreme Court rendered in the case of ***Municipal Corporation of Grater Mumbai*** **vs.** ***Abhilash Lal & Ors.,*** **reported in**

MANU/SC/1580/2019 wherein the Hon'ble Supreme Court at paragraph 47 while dealing with Section 238 of the Code categorically held that Section 238 of the Code could be of importance when the properties and assets are of the Debtor and not when a third party is involved. It is also relevant herein to mention that the communication dated 27.09.2018 **(Annexure- 4 herein)** categorically opposes inclusion of the said property within the Resolution Plan in as much as the Respondent No.1 is the absolute owner of the said property. Therefore, there was no question of taking any approval also from the Respondents before including the said property within the fold of the Resolution Plan. This the Resolution Professional, the Corporate Debtor and the Resolution Applicant have collusively and fraudulently done in order to deprive the Respondent No.1 of its valuable rights in respect to the Property. It is also relevant herein to mention that the Resolution Professional in order to illegally and fraudulently deprive the Respondent No.1 of the property did not include the Respondent No.1 within the fold of the Committee of Creditors so that the Respondent No.1 could have opposed the said Resolution Plan. The said act on the part of the Resolution Professional is nothing but an act of fraud committee surreptitiously and in violation to the established principle of law. It is unheard of that an Agreement for Sale having been cancelled as far back as on 2009 itself, the Corporate Debtor in collusion with the Resolution Professional would include it within the ambit of the Resolution Plan that too without a challenge being put to the said cancellation and termination of the Agreement for Sale.

vi. That it is further humbly submitted that even without prejudice to what has been stated in paragraphs 6 and 7 herein above, a perusal of the instant Application would also go to show that the Application on the face of it is misleading, misconceived and have been deliberately made to mislead and hoodwink this Hon'ble Tribunal. This aspect of the matter is apparent from a perusal of the relevant portion of the

Resolution Plan as quoted in paragraph 5 of the Application. In fact, the Applicants have also not correctly quoted the relevant portion of Clause 3.8 which relates to proposal for other liabilities. The Respondent No.1 was furnished with the extract of the Resolution Plan in respect to Clause 3.8 as submitted by the Resolution Applicant and the said portion is quoted herein below.

Secured Debenture of: • Rs.1.11 Cr. held by SIDBI Venture Capital Limited. • Rs.0.17 Cr. held by Kotak Mahindra Bank Limited • Rs.061 Cr. held by Punjab National Bank • Rs.0.31 Cr. held by SICOM/SICOM ARC Limited (As provided in the IM)	• Resolution Applicant proposed to settle the liability by way of a payment of following amounts as a one-time settlement of the loan. • Rs.0.0111 Cr. (Indian Rupees One Lakh and Eleven Thousand) to SIDBI Venture Capital Limited • Rs.0.0017 Cr. (Indian Rupees Seventeen Thousand) to Kotak Mahindra Bank Limited • Rs.0.0061 Cr. (Indian Rupees Sixty-One Thousand) to Punjab National Bank Limited • Rs.0.0031 Cr. (Indian Rupees Thirty-One Thousand) to SICOM/SICOM ARC Limited • The said debenture holders shall not invoke, exercise of enforce any security interest and/or guarantees, in whatsoever and whatever manner, in so far as it relates to the Corporate Debtor and shall immediately relinquish and release their rights on all the assets of the Corporate Debtor held by them, in favour of the Resolution Applicant /SPV/it's nominee upon approval of the Resolution Plan by the Honourable Adjudicating Authority and receipt of the certified copy of such approval order. • It is hereby clarified that the unit of the Corporate Debtor located at Igatpuri is in dispute between the Corporate Debtor and SICOM/SICOM ARC Limited. Post approval of the Resolution Plan and settlement of all dues of SICOM/SICOM ARC Limited, to transfer the Igatpuri unit in the name of the Resolution Applicant or its nominee.

vii. A perusal of the above extracts would clearly go to show that against secured debentures of the various financial institutions including the Respondent No.1 certain one-time settlement of the loan was being made. As regards the Respondent No.1, although it is not known on what basis the Resolution Applicant unilaterally claimed an amount of Rs.0.31 Crores (Rs.31,00,000.00-Rupees Thirty-One Thousand) was due to the Respondent No.1 although as per the Respondent No.1, the total claim of the Respondent No.1 was Rs.40,86,47,641.00 (Rupees Forty Crores Eighty Six Lacs Forty Seven Thousand Six Hundred and Forty One) only as on 01.05.2018, an amount of Rs.31,000.00 (Rupees Thirty-One Thousand) was to be the amount paid as one-time settlement. Secondly, in the said Resolution Plan submitted by the Resolution Applicant, it was mentioned that the property in question was a unit of the Corporate Debtor which on the face of it was absolutely false and fabricated. It further stipulates that post approval of the Plan there has to be a settlement of all dues of the Respondent No.1 and thereupon the Respondent No.1 would transfer the property in the name of the Resolution Applicant. It is again reiterated that it is completely unheard of that by way of a Resolution Plan, rights in respect of a property belonging to a third party can be directed to be transferred. This happened on account of the fact that the Corporate Debtor, Resolution Applicant as well as the Resolution Professional had mislead the Hon'ble adjudicating authority in believing that the property in question was the property of the Corporate Debtor. Further, it is submitted that even a perusal of the extracts would also clearly go to show that the Respondent Nos. 1 and 2 is required to transfer after settlement of all dues which was independent of the one-time settlement of loan as would be apparent from a perusal of the above quoted extract of the Resolution Plan.

viii. That the Applicant has no authority to file the instant Application in as much as the Applicant has not been authorised by the Resolution Applicant to file the instant Application. The Applicant has no authority to

file the instant Application on the basis of **Annexure-A (2)** of the Application.

ix. In the backdrop of the aforementioned preliminary objections and without prejudice to the same, the Answering Respondents take the indulgence to submit to the parawise reply to the statements and allegations contained in the Application as herein under.

x. With regard to the statements made in paragraph 1 of the Application, it is stated that the statements made therein are matters of record and the Answering Respondents do not admit anything which are beyond the records. In this regard, it is reiterated that the Interim Resolution Professional had most illegally debarred the Respondent No.1 from the Committee of Creditors.

xi. With regard to the statements made in paragraph 2 of the Application, it is stated that the statements made therein are misconceived and incorrect in as much as the Resolution Professional adopted a pick and choose method in as much as on one hand the Resolution Professional did not include the Respondent No.1 who was a financial Creditor amongst the Committee of Creditors and on the other hand he has included a property belonging to the Respondent within the ambit of the Resolution Plan. Under such circumstances, as the property in question is the absolute property of the Respondent No.1, the Respondents herein cannot be brought within the fold of Section 31(1) of the Code.

xii. With regard to the statements made in paragraph 3 of the Application, it is stated that the statements made therein are incorrect in so far as the Respondents are concerned in as much as stated in paragraph 8 hereinabove, the Respondents have not settled and extinguished as per the Resolution Plan even assuming although not admitting that the Resolution Plan could have included the property of the Respondent No.1.

xiii. With regard to the statements made in paragraph 4 of the Application, it is stated that the statements made therein are within the special knowledge of the Applicant and without admitting to the same, the Applicant is put to the strictest proof thereof.

xiv. With regard to the statements made in paragraph 5 of the Application, it is stated that in order to mislead this Hon'ble Tribunal, the Applicant have even not extracted the Clause 3.8 of the Resolution Plan submitted by the Resolution Applicant. It is respectfully submitted that the Answering Respondents have reasons to believe that the same has been done only to hoodwink and mislead this Hon'ble Tribunal. In this regard, the Answering Respondents beg to refer and rely the paragraph 8 herein above as well as **Annexure-9** to the instant reply.

xv. With regard to the statements made in paragraph 6 of the Application, it is stated that the statements made therein are matters of record and the Answering Respondents deny anything which are beyond the records. In this regard, it is relevant to mention that the act of the Resolution Applicant nominating the Corporate Debtor for affecting the transfer of the property clearly goes to show the collusive attempt to fraudulently and surreptitiously swindle the property of the Respondents.

xvi. With regard to the statements made in paragraphs 7 and 8 of the Application, it is stated that the statements made therein are partly matters of record and partly incorrect and misconceived and the Answering Respondents deny to those statements which are beyond the records as well as those which are incorrect and misconceived. Without prejudice to the stand that the property could not have been a part of the Resolution Plan, it is stated that the amount of Rs. 31,000.00 (Rupees Thirty-One Thousand) was paid against the one-time settlement of loan of Rs.0.31 Crores and not in respect to the transfer of the property in question. A perusal of the extract would clearly go to show that it was categorically mentioned in so far as regards the Property that 'settlement of all dues' meaning thereby that there has to be a settlement of all dues of the Respondent No.1.

xvii. With regard to the statements made in paragraph 9 of the Application, it is stated that the statements made therein are incorrect and misconceived and accordingly denied. First and foremost, it is stated that the Property

being the absolute property of the Respondent No.1 could not have been a part of the Resolution Plan and the said aspect of the matter is also apparent from the fact that the Applicant itself is asking for transferring of the Property in the name of the Resolution Applicant. Without prejudice to the said, it is also stated that there has been no settlement of the dues as mentioned in the Resolution Plan.

xviii. With regard to the statements made in paragraph 10 of the Application, it is stated that the statements made therein relates to Section 31 of the Code and in that regard it is relevant to mention that as the Property in question is the absolute property of the Respondent No.1 and the same could not have been brought within the fold of the Resolution Plan, the Answering Respondents cannot be said to be a stake holder within the meaning of Section 31 (1) of the Code.

xix. With regard to the statements made in paragraph 11 of the Application, it is stated that the statements made therein are relating to the Judgment of the Hon'ble Supreme Court rendered in the case of ***Committee of Creditors of Essar Steel India Limited*** **vs** ***Satish Kumar Gupta & Ors***. It is relevant to mention that the said Judgment under no circumstances stipulates that the property of a third party can be included within a Resolution Plan.

xx. With regard to the statements made in paragraph 12, 13 and 14 of the Application, it is stated that the statements made therein are incorrect and misconceived and accordingly denied. First, it is reiterated that the Resolution Plan could not have been included the property which was the absolute property of the Respondent and the Agreement for Sale dated 03.09.1998 was cancelled and terminated on 25.03.2009. Without prejudice to the same, it is further stated that the Applicant and/or the Resolution Applicant have also not complied with the extract of the Resolution Plan as already explained in paragraph 8 herein above. Under such circumstances, the question of the Respondents being liable for punishment under Chapter – VII (Offences and Penalties) of the Code or under Section 74 (3) of the Code do not arises. It may not be out of place

to mention that on one and, the Applicant proposes to bring the Answering Respondents within the fold of stakeholders and on the other hand have refused to pass on the Resolution Plan. The proceedings under the Code have to be in compliance with the principles of natural justice and the rights of any person cannot be effected without hearing being given.

xxi. With regard to the statements made in paragraph 15 of the Application, it is stated that the statements made therein are misleading, misconceived and incorrect and accordingly denied. As already stated herein above that the Resolution Plan could not have been taken within its fold the Property of the Respondent No.1. Without prejudice to the same, it is reiterated that there is no compliance even to the Resolution Plan as already mentioned in paragraph 8 herein above.

xxii. With regard to the statements made in paragraph 16 of the Application, it is stated that the statements made therein are misconceived, not tenable as well as incorrect and accordingly denied. As already stated herein above the Applicant has no authority to file the instant Application. Under such circumstances, the filing of the instant Application is not maintainable. The directions so sought for in the paragraph under reply clearly contravene the provisions of the Transfer of Property Act, 1882, the Specific Relief Act, 1963 as well as the Limitation Act, 1963. Under such circumstances, the directions so sought for ought not to be passed. The penal proceedings ought not to be initiated against the Answering Respondents in as much as there is no contravention of the orders passed by this Hon'ble Tribunal and more so in view of the fact that the entire proceedings were an act of fraud committed upon this Hon'ble Tribunal as well as the Respondents.

xxiii. With regard to the statements made in paragraph 17 of the Application, it is denied that the Application has been filed bonafide and in the interest of justice.

xxiv. The grounds and legal provisions as mentioned in the Application are completely misconceived and not applicable to the facts and circumstances of the instant case.

xxv. That the reliefs so prayed are not maintainable in law, on facts as well as in the present form. It is respectfully submitted that the instant Application ought to be dismissed with exemplary cost.

5. The Applicant has further submitted that –

i. The above application being IA No.47 of 2020 in CP (IB) No.02/GB/2018 has been filed by the Applicant/Corporate Debtor before this Hon'ble Adjudicating Authority seeking a direction against the Non-Applicants/ Respondents to transfer the Igatpuri Unit of the Corporate Debtor and take steps to execute the transfer deed including registration thereof in favour of the Corporate Debtor in compliance of the Resolution Plan as approved by this Hon'ble Adjudicating Authority vide Order dated 07.12.2018. The contents of the said application are not being repeated for the sake of brevity and the same may be read as part and parcel of this Affidavit.

ii. That the name of Kitply Industries Ltd. in the past used to be a synonym for plywood in India. However, in the year 1996 the Hon'ble Supreme Court banned felling of trees in the north eastern region of the country and as a consequence thereof all the wood-based manufacturing units of the Corporate Debtor got closed down resulting into huge losses to the Corporate Debtor. Various attempts were made by the Financial Creditors of the Corporate Debtor from time to time to restructure the debt of the Corporate Debtor including through the Corporate Debt Restructuring Scheme pronounced by the Reserve Bank of India. However, nothing sustainable came to be achieved. In this scenario pursuant to enactment of the Insolvency and Bankruptcy Code ("IBC"), one of the financial creditors of the Corporate Debtor, namely IDBI Bank filed application under section 7 of the IBC before the Hon'ble Adjudicating Authority, National Law Company Tribunal, Guwahati Bench which came to be admitted vide order dated

01.05.2018 and the Corporate Insolvency Resolution process ("CIRP") in respect of the Corporate Debtor came to be initiated.

iii. It is an admitted position on the part of the Non-Applicants/Respondents that they did submit proof of claim before the Interim Resolution Professional / Resolution Professional ("RP"), however, **the same was not admitted by the RP**. It is also an admitted position on record that the Non-Applicants/Respondents chose not to challenge the decision of the RP before this Hon'ble Adjudicating Authority and thus accepted to remain outside the CIRP. **Thus, having not taken any steps and having accepted the decision of the RP, today at such belated stage the Non-Applicants/Respondents cannot be permitted in law to allege collusion or fraud or raise questions over the conduct of the CIRP by RP before this Hon'ble Adjudicating Authority with greatest humility, this Hon'ble Adjudicating Authority has become *functus officio* as regard consideration of the said questions and issues post approval of the Resolution Plan.**

iv. In any event, pursuant to approval of the Resolution Plan by this Hon'ble Adjudicating Authority, vide order dated 07.12.2018, the same has attained finality as the Non-Applicants/Respondents have chosen not to challenge the same and therefore, in terms of Section 31 of the IBC the same is binding inter alia on the Non-Applicants /Respondents.

v. In this regard, it is pertinent to mention that the Resolution Applicant immediately and as early as 10.01.2019 while intimating about the approval of the Resolution Plan to the Non-Applicants/Respondents clearly informed them that in terms of Claus 3.8 of the Resolution Plan, pursuant to payment of the resolution proceeds, the Non-Applicants/Respondent are mandatorily obliged to transfer the Igatpuri Unit in the name of the Corporate Debtor. Despite the above, admittedly the Non-Applicants/Respondents chose not to file appeal or raise any challenge as per the provisions of the IBC against the order dated 07.12.2018 and accepted the same. Therefore, in any event, at

such belated stage, the Non-Applicants/Respondents are estopped in law to raise any contention with regard to the terms of the Resolution Plan or raise any question with regard thereto. It is submitted that since the Resolution Plan has been fully implemented, the Non-Applicants/Respondents are estopped in law to make any allegation or resist in transferring the Igatpuri Unit in favour of the Corporate Debtor in compliance of the order dated 07.12.2018 passed by this Hon'ble Adjudicating Authority. More so when such allegations are being made by the Non-Applicants in response to an application filed by the Corporate Debtor binging on record the violation committed by the Non-Applicants in honouring the approved Resolution Plan and seeking relief under Section 74(3) of the IBC.

vi. Wholly without prejudice to above, in any event, the contentions raised by the Non-Applicants/Respondents are misconceived and are not tenable on the basis of the following factual position.

vii. That the unit located at Ghat No.260/B/261 at Village Takeghati, Igatpuri, Dist. Nashik together with the building and structure standing thereon and all the appurtenances thereto plant and machinery, electrical and other installations, equipment etc. has been in uninterrupted possession of the Corporate Debtor since 1998. Therefore, not only at the time of filing of Section 7 Petition under IBC in the year 2018 but right from the year 1998 the Applicant / Corporate Debtor has been in settled, uninterrupted and peaceful possession of the said unit and is a deemed owner of the same on account of the fact as reflected herein below and only the mere formality of formal transfer in the records is yet to take place on account of highhandedness and arbitrary actions on the part of the Respondents.

viii. That for the better understanding of this Hon'ble Adjudicating Authority it is pertinent to mention the background of the transaction between

the Applicant/Corporate Debtor and Non Applicants/Respondents which is as under:

a. **Than an agreement to sell dated 03.09.1998 ("Agreement") was entered into between the Corporate Debtor and the Respondents for purchase of the Igatpuri Unit. The Corporate Debtor being the purchaser had to pay Rs.2,25,00,000.00 (Rupees Two Crores Twenty-Five Lakhs only) as consideration for the said Unit. That out of Rs.2,25,00,000.00 (Rupees Two Crores Twenty-Five Lakhs only) the Corporate Debtor initially paid Rs.10 lakhs as earnest money and later on further paid a sum of Rs.56,25,000.00 (Rupees Fifty-Six Lakhs Twenty-Five thousand only). The Corporate Debtor on payment of the aforesaid consideration was put in possession of the said Unit by the Non-Applicants/Respondents in 1998 accordingly. The remaining consideration of Rs.1,58,75,000.00 (One crore Fifty-Eight Lakhs Seventy-Five thousand only) was to be paid in 31 monthly instalments under the "Deferred Payment Facility" ("DPF") till 15.08.2001. The copy of the said agreement dated 03.09.1998 has annexed by the Respondents with their reply.**

b. The Corporate Debtor was undergoing liquidity crunch at the relevant time on account of order passed by the Hon'ble Supreme Court banning felling of trees in the north eastern region of the country where the manufacturing units of the Corporate Debtor were located, it could not pay some of the monthly instalments under the Deferred Payment Facility, but assured the Respondents that it will pay/clear all the instalments. The Corporate Debtor on 07.05.1999 availed a financial assistance of Rs.8.90 Crores (Rupees Eight Crores and Nicety Lakhs Only) from the Respondents in the form of Inter

Corporate Deposit ("ICD"). The Respondents for the said ICD issued "Deal Confirmation Slip" dated 07.05.1999 ("DCS") which contained the terms and conditions for availing the said ICD. The Applicant /Corporate Debtor vide its letter dated 10.05.1999 accepted the said terms and conditions as stipulated in the said DCS. True copy of the Deal Confirmation Slip dated 07.05.1999 and its acceptance by the Corporate Debtor vide its letter dated 10.05.19099 are annexed.

c. That in furtherance to the availing of the said ICD, the Corporate Debtor made certain payments towards the said ICD as well as under the DPF as envisaged under the said Agreement dated 03.09.1998, however at that point of time due to acute financial distress, shortage of working capital, fragile economy and market conditions, the Corporate Debtor couldn't make the entire payment to the Respondents towards the said ICD and DPF. Consequently, the Applicant/Corporate Debtor approached the Respondents for One Time Settlement (OTS) as part of the Corporate Debt Restructuring in the year 2007-2008. The Respondents accepted the OTS proposal of the Applicant/ Corporate Debtor vide its letter dated 20.02.2008 wherein it agreed to accept an OTS amount of Rs. 231.00 Lakhs towards full and final settlement of all of its outstanding both under ICD dated 07.05.1999 and DPF under the said Agreement dated 03.09.1998 due from the Corporate Debtor. In terms of the agreed OTS, the Corporate Debtor was required to pay Rs.200 lacs in cash and Rs.31.00 lakhs by way of Allotment of Non-Convertible Debentures by 29.02.2008. At the request of the Corporate Debtor the Respondent extended the date to 19.03.2008 vide letter dated 04.03.2008 issued by them. It is pertinent to mention that as per clause 2 (vi) of the said letter dated 20.02.2008 the Respondents agreed to transfer/convey the property/unit at Igatpuri in favour of the Corporate Debtor.

True copy of the letter dated 20.02.2008 sent by the Respondents to the Applicant/Corporate Debtor accepting the OTS proposal of Rs.231.00 lakhs for all the outstanding amount due from Corporate Debtor towards the Respondents ICD and DPF is annexed with this Affidavit.

d. That the Applicant/Corporate Debtor in compliance of the said OTS dated 20.02.2008 paid an amount of Rs.200.00 lakhs vide Pay Order No.529886 dated 17.03.2008. The Corporate Debtor at the same time on 18.03.2008 also issued and forwarded the Non-Convertible Debentures of Rs.31.00 Lakhs in favour of the Respondents. Pursuant to having complied with the terms of the OTS, the Corporate Debtor requested the Respondents to issue a No Dues Certificate in favour of the Corporate Debtor. The Respondents, however despite receiving the said payment of Rs.200 lacs and the Debentures for Rs.31.00 lakhs as per the said OTS did not issue the No Dues Certificate to the Corporate Debtor. True copy of the Pay Order issued by the Corporate Debtor to the Respondents of Rs.200.00 lakhs vide letter dated 18.03.2008 are annexed with the affidavit.

e. That although the Applicant/Corporate Debtor had made the entire payment as per the OTS dated 20.02.2008, to the Respondents, strangely in a highhanded an arbitrary manner the Respondent vide its letter dated 25.03.2009 cancelled/revoked the OTS executed in favour of the Applicant/Corporate Debtor.

f. **The Respondents while cancelling/revoking the OTS dated 25.03.2009 erroneously had clubbed the OTS dated 20.02.2008 entered into between the Respondents and the Applicant/Corporate Debtor with another OTS dated 19.02.2008 entered into between the Respondents and one P. K. Commercial Co. which happened to be one of the Erstwhile Promoters of the Applicant/Corporate Debtor. The Respondents failed to**

understand while revoking/cancelling the OTS dated 20.02.2008 entered into between the Respondents and the Applicant/Corporate Debtor that the non-performance /non-fulfilment of OTS terms by the Erstwhile Promoter of the Corporate Debtor namely, P. K. Commercial cannot in any manner affect the OTS entered into between the Corporate Debtor and the Respondents. The Corporate Debtor and its said Erstwhile Promoter are two distinct and separate legal entities and since the Corporate Debtor in compliance of the OTS dated 20.02.2008 has paid the entire amount of Rs.231 lacs (including debentures) to the Respondents, it cannot later on revoke/cancel the said OTS dated 20.02.2008 merely on non-compliance OTS terms by its Erstwhile Promoter. The Respondents cannot blow hot and cool at the same time by first accepting the amount paid by the Corporate Debtor and later on by revoking the said OTS and unjustly forfeiting the amount paid to it.

g. The Respondents after revoking /cancelling of the said OTS dated 20.02.2008 issued a statutory notice under Section 431(1) (a) of the Companies Act, 1956 dated 06.03.2010 to the Applicant/Corporate Debtor wherein it demanded from the Corporate Debtor Rs.35,57,38,493.00 (Thirty-Five crore Fifty-Seven Lakhs Thirty-Eight Thousand Four Hundred Ninety-Three only). The Corporate Debtor vide its reply dated 10.03.2010 to the said notice apprised the Respondents that it had fully complied with the terms of the OTS dated 20.02.2008 and there is no amount due to pay by the Corporate Debtor. It also replied that rather Respondents' own fault in non-issuance of No Dues Certificate and further revoking/cancelling the same despite enjoying the benefit of OTS. True copy of the statutory notice

dated 06.03.2010 sent by the Respondents to the Corporate Debtor and reply of the Corporate Debtor dated 21.03.2010 to the said notice are annexed with the Affidavit.

h. The Respondents thereafter filed a Company Petition NO.95 of 2011 for winding up of the Corporate Debtor before the Hon'ble Calcutta High Court, however since the registered office of the Corporate Debtor is in Assam, the Hon'ble Court vide its order dated 14.11.2011 dismissed the said petition as withdrawn. The Respondents after the said dismissal of petition kept silent and did not file any petition for winding up against the Corporate Debtor before the Hon'ble Gauhati High Court.

i. That on account of negative net-worth and as mandatorily required under the provisions of the Sick Industrial Companies (Special Provision) Act, 1985 ("SICA"), the Applicant/Corporate Debtor made a reference registered as Case No.23/2012 under Section 15 of the SICA in the year 2012 before the Ld. Board of Industrial and Financial Reconstruction ("BIFR") to declare itself as "Sick Industrial Company". During the said proceedings before the Ld. BIFR certain orders were passed by the Ld. BIFR which were challenged by the Corporate Debtor before the Hon'ble Appellate Authority for Industrial and Financial Reconstruction ("AAIFR"). In one such appeal bearing NO.170/2014 filed by the Corporate Debtor before the Hon'ble AAIFR against the order dated 14.03.2014 passed by the Ld. AAIFR vide its order dated 09.10.2015 noted that the Respondents sought declaration of its title over the said Igatpuri Unit in proceedings before BIFR and Hon'ble AAIFR. **The said order dated 09.10.2015 the Hon'ble AAIFR held that "*...There is a dispute between the parties as to the fulfilment of obligation in terms of the aforesaid agreement. Neither BIFR nor AAIFR is the appropriate forum to adjudicate such disputes between the parties.***

As such this dispute is outside the scope of our consideration and should be appropriately perused before and adjudicated/decided by the concern Civil Court....".

That it has been more than 5 years since the said liberty was granted by the Hon'ble AAIFR to the Respondents, no proceedings of any nature for cancellation of the Agreement to sell dated 03.09.1998 or for deciding its title/ownership over the said Igatpuri unit/property has been filed or initiated by the Non-Applicants/Respondents.

j. That subsequently as noted above when nothing sustainable came to be achieved even after various attempts were made by the Financial Creditors of the Corporate Debtor from time to time to restructure the debt of the Corporate Debtor including through the Corporate Debt Restructuring Scheme pronounced by the Reserve Bank of India, one of the financial creditors of the Corporate Debtor, namely IDBI Bank filed application under section 7 of the IBC before this Hon'ble Adjudicating Authority which came to be admitted vide order dated 01.05.2018 and the CIRP in respect of the Corporate Debtor came to be initiated.

k. That after initiation of CIRP against the Corporate Debtor the Respondents wrote an email dated 18.07.2018 to the Resolution Professional of the Corporate Debtor wherein it apprised the said RP that the Corporate Debtor is not the owner of the said Igatpuri Unit as the Corporate Debtor failed to pay the purchase consideration and it requested the RP to handover the said unit/property to the Respondents. That the Respondents also submitted before the RP in Form 'C' it's time barred claim of Rs.40,86,47,641.00 (Rupees Forty Crores Eighty-Six Lakhs Forty-Seven Thousand Six Hundred Forty-One Only) based on the principal and interest amount of ICD issued on 07.05.1999

in favour of the Corporate Debtor. True copy of the said email dated 18.07.2018 sent by the Respondents to RP of the Corporate Debtor along with copy of form 'C' as submitted are annexed with the affidavit.

l. The RP vide his email dated 27.07.2018 to the Respondents asked the Respondents to file the form 'C' in proper manner and the words 'Operational Creditor' should be replaced with the words 'Financial Creditor'. True copy of the email dated 27.07.2018 is annexed with the affidavit.

m. **That when the Respondents filed the Form 'C', the RP of the Corporate Debtor after perusing the same wrote an email dated 28.08.2018 whereby it asked the Respondents as how the Respondents are claiming an amount of Rs.40,86,47,641.00 (Rupees Forty Crores Eighty-Six Lakhs Forty-Seven Thousand Six Hundred Forty-One Only) when the Balance Confirmation Letter dated 31.03.2015 as sent by the Respondents to the Corporate Debtor shown an outstanding amount of Rs.1,27,78,169.00 (Rupees One Crore Twenty Seven Lakhs Seventy Eight Thousand One Hundred and Sixty Nine Only) and also on perusal of the letter dated 18.03.2008 it reveals that Corporate Debtor has already settled with the Respondents by paying an amount of Rs.200.00 lacs and allotment of NCDs of Rs.31.00 Lakhs and requested for the No Dues Certificate. It therefore requested the Respondents to put forth all the facts along with documents in order to verify the claim. True copy of the email dated 28.08.2018 sent by the RP to the Respondents is annexed with the Affidavit.**

n. That vide an email dated 30.08.2018 the Respondents informed the RP that the OTS was in two parts one with the Applicant/Corporate Debtor vide OTS dated 20.02.2008 and

another with P. K. Commercial Co. vide OTS dated 19.02.2008. Although it received payment of Rs.2.00 Crores from the Corporate Debtor and Rs.3 crores from P. K. Commercial Co., however since it did not receive the entire payment as per both the OTS, therefore, it withdrew /cancelled the OTS. The RP on the same day replied to the said email dated 30.08.2018 of the Respondents wherein based on the records of the Corporate Debtor it apprised the Respondents that he is appointed as RP of only the Corporate Debtor i.e. **Kitply Industries Ltd. and hence he can verify claims pertaining to the said Corporate Debtor only. Since the Corporate Debtor already made payment of Rs.2.00 Crores and issued NCDs of Rs.31.00 Lakhs therefore he cannot process the amount of Rs.8.90 Crores. He has also requested to share the details of NCDs for verification. True copy of the email dated 30.08.2018 sent by the Respondents to the RP and RP's reply on the said email on same day are annexed with the Affidavit.**

o. The Respondents again wrote an email dated 26.09.2018 to the RP reiterating its stand that the said Igatpuri unit/property belongs to the Respondents only and if the said property is made part of any Resolution Plan then **it will be shortly approaching NCLT for necessary directions. However, it is pertinent to mention that the Respondents chose not to act on their email till filing of IA No.47 of 2020 by the Corporate Debtor before this Adjudicating Authority** and therefore it is not permissible for them to raise the issues in response to the IA No.47 of 2020. In view of the aforesaid the reliance placed by the Respondents on the Judgment of the Hon'ble Supreme Court rendered in the case of ***Vijay Kumar Jain* vs*. Standard Chartered Bank & others in*** **AIR 2019 SC 2477** is misplaced. The Respondents also requested the RP

to bring the said fact to notice of the Committee of Creditors ("CoC") and all Resolution Applicants ("RAs"). True copy of the email dated 26.09.2018 is annexed with the Affidavit. The RP acknowledged the said email dated 26.09.2018 and vide his email dated 29.09.2018 apprised the Respondents that necessary details have already been shared with the RAs. True copy of the reply dated 29.09.2018 is annexed with the Affidavit.

p. That the CoC approved the Resolution Plan by **92.74% votes vide e-voting dated 22.10.2018** and the RP thereafter filed application under Section 31 of the IBC before this Hon'ble Adjudicating Authority for approval of the said Resolution Plan on 24.10.2018 and the same has been approved vide order dated 07.12.2018 **which has not been challenged by the Respondents.**

q. **That from the above, it is evident that the contention of the Respondents that they are the owners of the Igatpuri unit of the Corporate Debtor is wholly misconceived and a lame excuse to resist and avoid any action against them under Section 74 of the IBC**. The Respondents in any event cannot resist or raise any issue as regard to the Resolution Plan as they have miserably failed to take any diligent steps to first become member of the Committee of Creditors and thereafter challenge the Resolution Plan, thus today they don't have any legs to stand on or take any defence whatsoever to resist in complying with the terms of the Resolution Plan as approved by this Hon'ble Adjudicating Authority as they are bound by the same in terms of the settled position of law.

r. **It is submitted that the Resolution Plan as approved by this Hon'ble Adjudicating Authority envisaged implementation of the same within 90 days from the**

date of approval and accordingly, the same has been fully implemented and therefore at this belated stage based on the mere allegations of the wholly sleeping and non-diligent party such as the Non-Applicants, the clock cannot be reversed. In other words, what the saying goes, "scrambled eggs cannot be unscrambled".

s. That it is pertinent to note that the Resolution Plan has dealt with the NCD issued to the Respondents on same terms as offered to similarly placed NCD issued to other creditors and an amount of Rs. 31,000.00 (Rupees Thirty-One Thousand Only) has been provided towards full and final settlement of the liability thereunder.

t. Pursuant to the approval of the Resolution Plan by this Hon'ble Adjudicating Authority the successful RA vide its letter dated 10.01.2019 appointed the Corporate Debtor as its beneficiary for effecting the formal transfer of Igatpuri Unit by the Respondents. The said letter has already been annexed with the IA No.47 of 2020 filed by the Applicant/Corporate Debtor. That thereafter on 18.01.2019, the Corporate Debtor while intimating the Respondents about the approval of the Resolution Plan, requested the Respondents to provide the bank account details for remitting the resolution proceed amount of Rs. 31,000/- as full and final consideration towards the Non-Convertible Debentures issued in favour of the Respondents.

u. Subsequently, the Corporate Debtor vide its letter dated 06.02.2019 (Annexure A-3 with IA No.47 of 2020) informed the Respondents that the amount of Rs. 31,000.00 (Rupees Thirty-One Thousand Only) in terms of the Resolution Plan has been duly paid towards the NCD on 06.02.2019. The Respondents vide email dated 26.04.2019 to the Corporate Debtor requested it to provide the copy of the Resolution Plan. However, since the Respondents were not member of the CoC of the Corporate

Debtor and the Resolution Plan is a confidential document in terms of the IBC, the Corporate Debtor vide its letter dated 06.05.2019 provided the relevant extracts of the Resolution Plan concerning the Respondents.

That despite having received the resolution proceeds under the Resolution Plan and having accepted the same, the Respondents failed to take any step for transfer of the Igatpuri Unit in favour of the Corporate Debtor despite repeated requests and thus the Corporate Debtor was constrained to file the IA No.47 of 2020 before this Hon'ble Adjudicating Authority.

v. **That in this background it is very much evident that the Igatpuri unit/property continues to remain an integral part and an asset of the Corporate Debtor but for high handedness and arbitrary conduct of the Respondents, formal transfer deed/sale deed of the same is still to be executed in favour of the Applicant/Corporate Debtor. Thus, the allegations and averments made by the Respondents in defence have apparently been taken only to safeguard themselves against possible consequences under Section 74 of the IBC which have no legs to stand on and thus deserve rejection and the Application filed by the Applicant deserves to be allowed.**

w. It is submitted that the Corporate Debtor has been in possession of the said unit since 1998 after pursuant to fully discharging its obligation under the OTS dated 20.02.2008, thus the Corporate Debtor is the 'deemed owner' of the said Igatpuri Unit in terms of Section 53-A of the Transfer of Property Act, 1882. In this regard, the Corporate Debtor relies on the judgment dated 05.03.1982 passed by the Hon'ble Supreme Court in ***State of Andhra Pradesh*** **vs.** ***Respondent: Mohd. Ashrafuddin***

(1982) 2 SCC 1 wherein the Hon'ble Supreme Court held as under:

> *"9. … In the instant case it has already been pointed out that the transferee came into possession in pursuance of an agreement for sale but no valid deed of title was executed in his favour. Therefore, the ownership remained with the respondent-transferor. But even in the absence of a valid deed of title the possession pursuant to an agreement of transfer cannot be said to be illegal and the transferee is entitled to remain in possession…".*

x. Further the Hon'ble Supreme Court in ***Shrimant Shamrao Suryavanshi and another*** **vs.** ***Prahlad Bhalroba Suryavanshi*** **(2002) 3 SCC 676** held that:

> *"16. But there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act. The necessary conditions are –*
> *1) There must be a contract to transfer for consideration any immovable property.*
> *2) The Contract must be in writing, signed by the transferor, or by someone on his behalf;*
> *3) The writing must be in such words from which the terms necessary to construe the transfer can be ascertained:*
> *4) The transferee must in part performance of the contract take possession of the property, or of any part thereof;*
> *5) The transferee must have done some act in furtherance of the contract; and*
> *6) The transferee must have performed or be willing to perform his part of the contract.*
> *17. We are, therefore, of the opinion that if the conditions enumerated above are complied with the law of limitation does not come in the way of a defendant taking plea under Section 53-A of the Act to protect his possession of the suit property even though a suit for specific performance of a contract has barred by limitation…."*

y. It is humbly submitted that before this Hon'ble Adjudicating Authority that since the Resolution Plan has been fully implemented including payment of the resolution proceed to the Respondent, therefore in compliance of the Resolution Plan the Respondent SICOM/SICOM ARC Limited is duty bound to

transfer the said unit in favour of the Corporate Debtor which has been appointed as nominee of the Resolution Applicant.

z. It is humbly submitted before this Hon'ble Adjudicating Authority that time is of great essence under the IBC as held by the Hon'ble Supreme Court and this Hon'ble Appellate Tribunal in catena of cases. The maxim ***"vigilantibus, non dermientibus, jura sub-veniunt"*** is the basic principle of the law which states that the laws give help to those who are watchful and not to those who sleep.

In view of the above the Applicant/ Corporate Debtor prays that this Hon'ble Adjudicating Authority be pleased to allow IA No.47 of 2020 filed in CP (IB) No.02/GB/2018 and grant reliefs to the Applicant/Corporate Debtor as sought in the said Interlocutory Application.

6. Further, it is submitted by the CD that as per clause 2 (vi) of the said letter dated 20.02.2008 the Respondent No.1 had unequivocally agreed to transfer/convey the property/unit at Igatpuri in favour of the CD once the said OTS amount was paid by the CD. The said clause 2 (vi) is reproduced for ready reference of this Hon'ble Adjudicating Authority.

"2(vi) …On receipt of the entire OTS amount and Cost and other charges as per (i) (ii) above on or before the due date, we are agreeable to convey the property at Igatpuri (presently given to you on Licensee basis) in your favour and release all our securities including the guarantor from his guarantee obligations…."

i. Pursuant to having complied with the terms of the OTS, the CD vide letter dated 18.03.2008 requested the Respondent No.1 to issue a No Dues Certificate in favour of the CD. The Respondent No.1, however despite receiving the said payment of Rs.200.00 Lakhs and the Debentures of Rs.31.00 Lakhs as per the said OTS did not issue the No Dues Certificate to the CD.

ii. **Revocation of the OTS dated 25.03.2009 by SICOM**

As stated above, in terms of the OTS dated 20.02.2008, the CD had paid an amount of Rs.200.00 Lakhs vide Pay Order No.529886 dated 17.03.2008 and issued Non-Convertible Debentures of Rs.31.00 Lakhs on 18.03.2008. The Respondent No.1 as stated in clause No.2 (vi) of the OTS dated 20.02.2008 had unequivocally and unconditionally agreed to convey/transfer the Igatpuri Unit to the CD on receipt of the aforesaid amount. However, instead of issuing a no dues certificate or conveying the Igatpuri Unit to the CD, the Respondent No.1 in a high handed and arbitrary manner issued a letter dated 25.03.2009 cancelling / revoking the OTS dated 20.02.2008 on account of alleged default in another OTS dated 19.02.2008 entered into between the Respondent No.1 and one P. K. Commercial Co who happened to be one of the Erstwhile Promoters of the CD. It is however pertinent to note that in the OTS letter dated 20.02.2008 no such condition was stipulated. The Respondent No.1 failed to understand as to how the non-performance/non-fulfilment of OTS terms by the Erstwhile Promoter of the Corporate Debtor namely P. K. Commercial can in any manner affect the OTS entered into between the Corporate Debtor and the Respondent No.1. The Corporate Debtor and its Erstwhile Promoter are two distinct and separate legal entities and since the Corporate Debtor in compliance of the OTS dated 20.02.2008 has paid the entire amount of Rs.2.31 Crores (including the Debentures) to the Respondent and the Respondent had no legal right at all to revoke/cancel the said OTS dated 20.02.2008 entered into by it with the CD. As an instrumentality of state SICOM cannot behave in such highhanded, whimsical and arbitrary manner.

Proceedings before Ld. BIFR & Hon'ble AAIFR

Based on its Audited Balance Sheet (ABS) as on 31.03.2012 the Applicant/ Corporate Debtor herein filed a Reference with BIFR u/s 15 (1) of the SICA. The reference was registered as case

No.23/2012 and the case was then taken up for consideration so as to determine the status of company's sickness on 27.06.2012. All the stakeholders/creditors were served with the notice of the reference and they participated in the proceedings also.

That the Ld. AAIFR finally after hearing the Applicant/Corporate Debtor and the Non-Applicant/Respondent No.1 vide order dated 09.10.2015 passed in Appeal No.170/2014 held as under:

> ""*…The Respondent sought declaration of its title over the said Igatpuri Unit in proceedings before Ld. BIFR and Hon'ble AAIFR. There is a dispute between the parties as to the fulfilment of obligation in terms of the aforesaid agreement (03.09.1998). Neither BIFR nor AAIFR is the appropriate forum to adjudicate such disputes between the parties. As such this dispute is outside the scope of our consideration and should be appropriately perused before and adjudicated/decided by the concerned Civil Court.*
>
> *Since the agreement between the parties which is the subject matter of the dispute has not been declared, by BIFR / AAIFR under Section 22(3) of SICA, to be suspended, the parties are at liberty to pursue appropriate legal remedies, as they may be so advised, to assert their rights and obligation in the concerned Civil Court …"*

That however, it has been more than 5 years since the said liberty was granted to the Respondent No.1, no proceedings of any nature for cancellation of the Agreement to Sell dated 03.09.1998 or for declaration of its title/ownership over the said Igatpuri unit/property has been filed by it. The possession of the Igatpuri unit remained uninterruptedly with the Applicant/Corporate Debtor from the date of the Agreement dated 03.09.19998 till date.

iii. **Provision made in the Resolution Plan i.e. dispute between CD and SICOM post approval of Resolution Plan and settlement of all dues of SICOM/SICOM ARC Ltd. to**

transfer the Igatpuri Unit in the name of the Resolution Applicant

That this Adjudicating Authority vide order dated 01.05.2018 admitted the Application under Section 7 of the IBC filed by one financial creditor of the Applicant and thus the CIRP came to be initiated against the CD. Thereafter, on 07.12.2018, this Adjudicating Authority approved the Resolution Plan which had been passed by the Committee of Creditors with 92.74% votes.

iv. Clause 3.8 of the Resolution Plan provided for **Proposal for other liabilities.** The settlement of the claims/liabilities of the Respondent No.1 was provided under the aforesaid clause. The said clause has clearly stated that there were certain unsecured loans and liabilities in the Information Memorandum (IM) against which either no claims were filed or the claims which were filed were rejected by the Resolution Professional, however the Resolution Applicant as a part of its moral responsibility and to balance the interest of all the stakeholders had proposed to settle the liabilities by way of payment of the specified amount as one-time settlement. The relevant extract of the Claus 3.8 already provided.

v. Thus, it is an established position that the claims submitted before the Interim Resolution Professional (IRP) / Resolution Professional (RP) were not admitted by the RP. In terms of the Resolution Plan the Resolution Applicant has already paid the amount of Rs. 31,000.00 (Rupees Thirty-One Thousand Only) to the Respondent No.1 herein in full and final settlement of the outstanding amount to the Respondent No.1. Thus, as per the aforesaid clause, on approval of the Resolution Plan and on payment of Rs. 31,000.00(Rupees Thirty-One Thousand Only) as one-time settlement of the loan, the Respondent No.1 is obliged and duty bound to transfer the Igatpuri unit in the name of the Resolution

Applicant or its Nominee. (CD has been nominated by the Resolution Applicant on 10.01.2019 as the beneficiary for effecting the transfer in its name, in respect of Igatpuri Unit).

vi. The Resolution Plan has given an unequivocal clarification that post approval of the Resolution Plan and settlement of all dues of SICOM/SICOM ARC, SICOM/SICOM ARC to transfer the Igatpuri unit in the name of the Resolution Applicant or its nominee. The said clarification is preceded by the words that "*Resolution applicant proposes to settle the liability by way of a payment of following amounts as a one-time settlement".* The Respondent No.1 is now trying to subvert compliance of the said clause and therefore attempting to misinterpret the clarification given in the Clause to mean settlement of all dues of the Respondent. It is not only incredulous but also utterly unconceivable to interpret the said clarification in the manner construed by the Respondent No.1, more so when it has been clearly stated in the said Resolution Plan as well as it is the admitted position of the Respondent No.1 that their claims were rejected by the Resolution Professional.

vii. The Respondent No.1 has chosen not to challenge the decision of the RP of not accepting their claims before this Hon'ble Adjudicating Authority. **Thus, having not taken any steps and having accepted the decision of the RP, today at such belated stage, the Non-Respondents cannot be permitted in law to allege collusion or fraud or raise questions regarding the Resolution Plan once it had been approved.** Pursuant to approval of the Resolution Plan by this Hon'ble Adjudicating Authority, vide order dated 07.12.2018, the same has attained finality as the Non-Applicant/Respondent has chosen not to challenge the same and therefore, in terms of Section 31 of the Insolvency & Bankruptcy Code, 2016, the same is binding inter alia on the Respondent.

viii. In view of above, it is submitted that since the Resolution Plan has been fully implemented including payment of resolution proceeds to the Respondent No.1, therefore, in compliance of the Resolution Plan the Respondent SICOM/SICOM ARC Ltd. is duty bound to transfer the said unit in favour of the Corporate Debtor who has been appointed as nominee of the Resolution Applicant.

7. The Respondents have further submitted that:-

i. The Applicant / Corporate Debtor had in pursuance to the Order dated 12.11.2020 belatedly filed an Affidavit on 15.12.2020. In the said Affidavit, the Corporate Debtor had selectively suppressed certain vital documents which has a bearing on the OTS proposal and the payments made in pursuance thereto. At this stage, it is relevant to mention that an Agreement for Sale dated 03.09.1998 was entered into by and between the Respondent No.1 and the Corporate Debtor for sale of the Igatpuri Unit ('the property') at a price of Rs.2,25,00,000.00 (Rupees Two Crores Twenty-Five Lakhs Only) in 'as is where is and what basis'. In terms of the said Agreement for Sale, the Corporate Debtor / Applicant had to pay an amount of Rs.10,00,000.00 (Rupees Ten Lakhs Only) as earnest money, Rs.56,25,000.00 (Rupees Fifty-Six Lakhs Twenty-Five Thousand Only) within thirty days from the acceptance of the offer and Rs.1,58,75,000.00 (Rupees One Crore Fifty-Eight Lakhs and Seventy-Five Thousand Only) in monthly instalments as indicated in the Clause -2 of the said Agreement for Sale. The said Agreement for Sale is already a part of the records of the instant case in as much as the same is enclosed to the Reply filed by the Non-Applicants/Respondents on 25.11.2020 as **Annexure-7**. The Applicant/Corporate Debtor failed to pay the amount of Rs.1,58,75,000.00 (Rupees One Crore Fifty-Eight Lakhs and Seventy-Five Thousand Only). At this stage it may be relevant herein to mention that on 07.05.1999 an amount of Rs.8,90,00,000.00 (Rupees Eight Crores Ninety Lakhs Only) was borrowed by the Applicant from the Respondent No.1 in the form of a

loan (Inter Corporate Deposit) and on the basis thereof, a Deal Confirmation Slip (DCS) containing various terms and conditions being ICD No.000451 dated 07.05.1999 was issued by the Respondent No.1.

ii. The Corporate Debtor / Applicant failed to pay the Inter Corporate Deposit as well as the due consideration in terms with the Agreement for Sale dated 03.09.1998. Situated thus, the Managing Director of the Applicant/Corporate Debtor who was also the Director of another Company namely P. K. Commercial Company vide a communication dated 25.01.2008 requested for a One Time Settlement for and on behalf of the Applicant/Corporate Debtor. In the said proposal so submitted and the discussions so held, it was agreed that the Inter Corporate Deposit would be settled upon receipt of Rs.852 Lakhs towards costs and charges on the terms and conditions as mentioned in communication dated 19.02.2008. It was specifically mentioned that Rs.852.00 Lakhs which included Rs.31.00 Lakhs by way of repurchase of Non-convertible debentures to be issued by Kitply Industries was to be paid on or before 27.02.2009 in the manner laid down in the communication dated 19.02.2008. Additionally, it was also mentioned that Kitply Industries Limited was to pay Rs.200.00 Lakhs on or before 19.03.2008 towards One Time Settlement. The Applicant /Corporate Debtor have selectively enclosed the communication dated 20.02.2008 but in order to mislead this Hon'ble Tribunal did not enclose the communication dated 19.02.2008 which was the basis of the communication dated 20.02.2008. In fact, a perusal of the communication dated 20.02.2008 clearly refers to the communication dated 19.02.2008 and the communication dated 20.02.2008 cannot be read in isolation without the communication dated 19.02.2008.

iii. A further perusal of Clause 2(ii), (v), (vi) and (vii) of the communication dated 20.02.2008 would also go to show the connection between the communication dated 19.02.2008 and the communication dated 20.02.2008.

iv. The above transactions would clearly show that the One Time Settlement was a composite one whereby it includes the payment towards the Inter Corporate Deposit and towards the remaining consideration in terms with the Agreement for Sale. The Applicant/Corporate Debtor by way of Affidavits filed before this Hon'ble Tribunal seeks to give an impression that the transaction relating to Inter Corporate Deposit and the remaining consideration towards the Agreement for Sale are separate and distinct in as much as P. K. Commercial Company was liable towards the Inter Corporate Deposit and the Applicant/Corporate Debtor was only liable towards the remaining part of the consideration value, which on the face of it, is misleading and misconceived. The communication dated 18.03.2008 marked as Annexure- A3 to the Affidavit filed by the Corporate Debtor/Applicant on 15.12.2020 clearly goes to show that the Letter of Allotment of Non-Convertible Debentures of an amount of Rs.31 Lakhs was in terms with the communication dated 19.02.2008 and forms a part of the One Time Settlement of the Inter Corporate Deposit. The further communication enclosed as Annexure –A4 to the Affidavit filed by the Corporate Debtor/Applicant clearly goes to show that the One Time Settlement was withdrawn and the Respondent No.1 enforced its rights in terms with Clause 5 of the Agreement for Sale dated 03.09.1998 by cancelling the arrangement and terminating the said Agreement with immediate effect. The Corporate Debtor is yet to challenge the communication dated 25.0.2009 whereby the Agreement for Sale dated 03.09.1998 was terminated. Article 54 of the Limitation Act, 1963 stipulates that the period of limitation for a suit for specific performance of the contract is three years from the date fixed for performance or if no such date is fixed when the Plaintiff has noticed that the performance is refused. The communication dated 25.03.2009 clearly stipulates that the Agreement for Sale dated 03.09.1998 stands terminated, meaning thereby, that the Respondent No.1 had refused performance of the said Agreement for Sale. The period of limitation

being three years, the Corporate Debtor/Applicant could have instituted a Suit on or before 24.03.2012. No suit yet has been filed by the Corporate Debtor/Applicant. By way of the instant proceedings, the Corporate Debtor/Applicant seeks specific performance of the said Agreement for Sale dated 03.09.1998 before this Hon'ble Tribunal by including the said property within the Resolution Plan which is not permissible in terms with Section 18 of the Insolvency and Bankruptcy Code, 2016 (IBC) and more particularly the Explanation (a) to the said Section clearly stipulates that 'assets' shall not include assets owned by a third party in possession of a Corporate Debtor held under trust or under contractual arrangements including bailment. However, strangely enough, the said property was brought within the fold of the Resolution Plan in spite of specific requests made as would be seen from Annexure –A12 an Annexure –A13 of the Affidavit filed by the Corporate Debtor/Applicant dated 15.12.2020. This is clearly not permissible in terms with the Specific Relief Act, 1963, the Limitation Act, 1963 as well as the Insolvency and Bankruptcy Code, 2016. At this stage, it may not be further out of place to state the scope and ambit of an Agreement for Sale and as to whether the said Agreement for Sale conveys the property. Section 54 of the Transfer of Property Act, 1882 makes it clear that a contract of sale, i.e., an Agreement for Sale does not, itself, create any interest in or charge on such property. A transfer of immovable property by way of a sale can only be by a Deed of Conveyance and in absence of a Deed of Conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred. The Judgment of the Hon'ble Supreme Court rendered in the case of *Suraj Lamp & Industries Private Limited* VS *State of Haryana & Anr.,* reported in (2012) 1 SCC 656 and more particularly at paragraphs 16,17,18 23 and 24 supports the stand of the Respondents herein. Merely because the Corporate Debtor was in possession of the property in question (though illegally and have included the same in its balance-sheets would not be enough to

include the said property as an asset of the Corporate Debtor in terms with Section 18 of the IBC as well as Section 54 of the Transfer of Property Act, 1882. In fact, a perusal of the Application i.e. I.A. No.47/2020 would clearly go to show that the relief prayed for at Sl. No. (a) is that the Respondents be directed to transfer the property to the Applicant by executing a Transfer Deed in favour of the Corporate Debtor including registration thereof before the concerned Registrar of Assurances clearly goes to show that the property in question cannot under any terms of imagination be considered as an asset of the Corporate Debtor. The Judgment of the Hon'ble Supreme Court rendered in the case of *Fatehji and Company & Anr.* Vs*. L. M. Nagpal & Ors.*, reported in (2015) 8 SCC 390 at paragraphs 5 and 6 categorically holds that Article 54 of the Limitation Act stipulates that the limitation for filing the suit for specific performance of the contract is three years from the date fixed for performance and if no such date is fixed when the Plaintiff has noticed that the performance is refused. It is further observed in the said Judgment that merely putting the Plaintiff in possession of the property agreed to be sold on the date of the agreement itself would make any difference with regard to the limitation of filing the suit for specific performance.

v. That above submissions would clearly go to show that a title in respect to the Igatpuri Unit as on the date of filing of the Application under Section 7 of the IBC as well as on the date of approval of the Resolution Plan continued with the Respondent No.1 and is still subsisting.

vi. It is further relevant herein to mention that the Applicant/Corporate Debtor seeks to draw the attention of the Hon'ble Tribunal to the effect that this Hon'ble Tribunal is acting as an Executing Court and as such this Hon'ble Tribunal cannot go behind the Resolution Plan. This proposition which the Applicant /Corporate Debtor seeks to contend on the face of it is misconceived in as much as this Hon'ble Tribunal is exercising the jurisdiction conferred upon it

by Section 60(5) of the IBC whereby this Hon'ble Tribunal has the jurisdiction to entertain or dispose of –

a. Any application or proceeding by or against corporate debtor or corporate person;
b. Any claim made by or against corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and
c. Any question of properties or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

In view of the above, the said convention so sought to be made by the Corporate Debtor /Applicant, on the face of it, is misconceived. Even assuming for argument sake but not admitting that the property in question is an asset of the Corporate Debtor, it is further stated and submitted herein that a perusal of the relevant portion of the Resolution Plan as submitted by the Resolution Applicant as enclosed as Annexure – 9 to the Reply filed by the Non Applicants/Respondents herein dated 25.11.2020 wherein it has been categorically mentioned that post approval of the Resolution Plan and settlement of all dues of SICOM/SICOM ARC Limited, SICOM/SICOM ARC to transfer the Igatpuri Unit in the name of the Resolution Applicant or its Nominee. The portion of the Resolution Plan as made available to the Non-Applicants/Respondents clearly goes to show that as regards settlement of all dues to SICOM/SCOM ARC and there is no mention in the Resolution Plan that Rs.200.00 lakhs have already been paid and Rs.31.00 lakhs have been paid by way of non-convertible debentures for the Igatpuri Unit for which no further payment is required and SICOM/SICOM ARC was to transfer the Igatpuri Unit without any further payment. Under such circumstances, the contention of the Corporate Debtor/Applicant to contend that no further payment is to be made in as much as this Hon'ble Tribunal is now required to hold

that Rs.200.00 lakhs in cash and Rs.31.00 lakhs in Non-Convertible Debentures has already been paid would be going against their own contention that this Hon'ble Tribunal being the Executing Court cannot go behind the Order dated 07.12.2018 approving the Resolution Plan. It may not be out of place to mention that as on 01.05.2018, the total claim/dues of the Respondent No1/Non-Applicant No.1 is Rs.40,86,47,641/- (Rupees Forty Crores Eighty-Six Lakhs Forty-Seven Thousand Six hundred and Forty-One only.)

vii. It is further stated that the proceedings before the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) are a part of the Affidavits filed by the Corporate Debtor/Applicant on 15.12.2020 and 19.02.2021. A perusal of the said Orders would clearly go to show that the said proceedings were initiated by the Corporate Debtor/Applicant against the Notice dated 01.10.2012 issued by the Non-Applicants/Respondents. The various orders in respect to both BIFR and AAIFR are already part of the record of the instant proceedings.

viii. In view of the above, the reliefs so prayed for in I.A. No.47 of 2020 in C.P. (IB) No.02/GB/2018 filed by the Corporate Debtor /Applicant are not maintainable in law, on facts as well as in the present form. It is respectfully submitted that the instant Application ought to be dismissed with exemplary costs.

8. The Applicant /Corporate Debtor has further submitted that:-

i. That this Hon'ble Adjudicating Authority vide Order dated 23.02.2021 afforded an opportunity to the Corporate Debtor to reply/rebut to the written submissions filed by the Respondents. In compliance of the said order the Corporate Debtor is filing the instant replay/rebuttal to the said submissions.

ii. The Applicant / Corporate Debtor reiterates the contents of IA No.47/2021, affidavits dated 15.12.2020, 18.02.2021 and

10.03.2021 filed by it and beseeches this Hon'ble Adjudicating Authority to rely upon the same as part of this written submissions which are not being repeated here for the sake of brevity.

iii. The reply / rebuttal to the said submissions is as under:

a) The submissions / averments made by the Respondents in para 1 under heading III of the written submissions are wrong and denied and the averments/contentions made by the Applicant Corporate Debtor in its application bearing IA No.47 of 2020, and the affidavits dated 15.12.2020,18.02.2021 and 10.03.2021 are reiterated and reaffirmed. The gist of submissions made by the Respondent in para 1 pertains to its reliance of Section 18 and 25 of IBC, 2016 as per which the Igatpuri Unit is an 'asset' allegedly belonging to the Respondent who is a third party and therefore its inclusion in the Resolution Plan ought not to have been made. It is humbly submitted that it is a matter of fact that in accordance with Section 18 of the I&B Code, the Igatpuri Unit is being shown as an asset of the Corporate Debtor in its balance sheets since 31.03.1999 till approval of the Resolution Plan and even thereafter in the balance sheet as on 31.03.2019. The Igatpuri unit is also reflected as an asset of the Corporate Debtor in its Fixed Asset Register as maintained in compliance with the requirement under the Companies Act, 2013. At no point in time, the Respondents ever raised any issue as regard Igatpuri unit being shown as the asset of the Corporate Debtor.

The said Igatpuri Unit is no longer a property/asset belonging to a 'third party' as contended by the Respondent. It had already given up its right/title/interest in the said Igatpuri Unit in terms of OTS dated 20.02.2008 entered into between the Corporate Debtor and the Respondent. The said Igatpuri Unit has been taken into consideration and dealt

with in the Resolution Plan submitted by the Successful Resolution Applicant. The Resolution Professional and the CoC were all aware about the dispute pertains to the said Unit and therefore once all these three parties have taken note of the said dispute and taken a conscious decision to go ahead with the Resolution Plan and once this Hon'ble Adjudicating Authority has put its stamp of approval on the said Resolution Plan after satisfying itself over its viability and feasibility, the Respondent as a stakeholder is bound by the same and act in accordance with the said Resolution Plan and cannot be permitted to make a backdoor entry to dispute and challenge the terms of the Resolution Plan especially when the said Resolution Plan attained finality as the Respondent didn't challenge he Order dated 07.12.2018 passed by this Hon'ble Adjudicating Authority approving the same. Further, the Resolution Plan once approved by this Hon'ble Adjudicating Authority under Section 31 of the I&B Code becomes binding on all the stakeholders (in this case the Respondent) as held by the Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited*** **vs.** ***Satish Kumar Gupta and Others*** **(2020) 8 SCC 531 (Eassar Judgment).** The relevant paras of the said judgment have been reproduced here for the sake of convenience:

"105. …. Section 31 (1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were …."

"107. ….. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority / Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60

(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count…."

b) The submissions / averments made by the Respondent in para 2 under heading III of the written submission are wrong and denied and the averments /contentions made by the Applicant /Corporate Debtor in its application bearing IA No.47 of 2020, and the affidavits dated 15.12.2020, 18.02.2021 and 10.032021 are reiterated and reaffirmed. The Respondent primarily contended that Corporate Debtor has not placed on record any document to show that said Igatpuri unit belongs to it. It also contended that only on the basis of Agreement to Sale property cannot be transferred. Further it also averred about non-compliance of OTS provisions by the Corporate Debtor, the proceedings held before the Hon'ble BIFR and AAIFR and cited few judgments relating to the manner in which immovable property is to be conveyed/transferred. The Corporate Debtor humbly submits that it will not reproduce each and every part of the pleadings here in the reply to written synopsis as it will prolix the synopsis which ought to be crisp. It will refer to pleadings already on record. That so far as OTS dated 20.02.2008 and 19.02.2008 are concerned the Corporate

Debtor has already drawn the attention of this Hon'ble Adjudicating Authority in our earlier Affidavit filed.

It is a matter of record that the Respondent neither challenged the rejection of its claim by the Resolution Professional before this Hon'ble Adjudicating Authority nor filed objections at the time of consideration of the application filed by the Resolution Professional for approval of the resolution plan. Further, it did it challenge the Order dated 07.12.2018 approving the Resolution Plan for the Corporate Debtor before the Hon'ble National Company Law Appellate Tribunal under Section 61 of the I&B Code. Thus, the Respondent is estopped in law to now raise any objection on the basis of its alleged ownership of Igatpuri Unit of the Corporate Debtor before this Hon'ble Adjudicating Authority in these proceedings initiated by the Corporate Debtor for violation of the Resolution Plan by the Respondent.

In fact, it is the settled position of law as held by the Hon'ble Supreme Court in the matter of ***Vasudev Dhanjibhai Modi*** **vs.** ***Rajabhai Abdul Rehman & Ors*****. [1970 AIR 1475]** that Respondent today is estopped in law from going behind the approved Resolution Plan and contend otherwise. In the said case the Hon'ble Supreme Court held as under:

"…. A Court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties."

The said position of law has been reiterated recently by the Hon'ble Supreme Court in the case titled as ***Sneh Lata Goel*** **Vs.** ***Pushplata & Ors.*** **[(2019) 3 SCC 594].**

That the allegations of the Respondent that Corporate Debtor has not placed on record any document to show that the said Igatpuri unit belongs to it is also unfounded. The Balance Sheets as mentioned aforesaid which goes on to show that right from 1.03.1999 till 31.03.2019, the Corporate Debtor treated the Igatpuri unit as its own and Respondent without any protest and demur has accepted the said stand of the Corporate Debtor by not filing any Civil Suit to reclaim the possession of the said Unit from the Corporate Debtor. On Respondent's failure to transfer the Unit, the Corporate Debtor was contained to move the said IA 47 of 2020 before this Adjudicating Authority. The Respondent cannot approbate and reprobate at the same time. It received the entire consideration as per OTS dated 20.02.2008. If it was felt that the Corporate Debtor failed in compliance of the OTS, it took no action to recover the said Unit from the Corporate Debtor. Now to dodge its obligation it vaguely after the approval of the Resolution Plan and in the reply to the application of the Corporate Debtor, trying to club the OTS dated 19.02.2008 which it had entered into with M/s. P. K. Commercial with the OTS dated 20.02.2008 which it had entered into with the Corporate Debtor. As already pointed in the series of Affidavits filed by the Corporate Debtor particularly Affidavit dated 10.03.2021 that both OTS are separate and individual in no manner were linked or dependent on each other.

That all the judgments as mentioned by the Respondent in the para under reply are not applicable to the facts of the case as those judgments would have been applicable if the special statue i.e. I&B Code would not be there in picture. Once the

proceedings to revive/restructure of the Corporate Debtor were initiated under the special act designated for that particular purpose then the jurisdiction of Civil Court is expressly barred by virtue of Section 63, 231 & 238 of the I&B Code and all reliefs qua/pertains to Corporate Debtor can only be provided by this Hon'ble Adjudicating Authority and not by Civil Court.

c) The allegation by the Respondent in para 3 under reply that since the copy of the Resolution Plan was not provided to it therefore it could not challenge the same before this Hon'ble Adjudicating Authority and is also ill founded and lacks substance. In this regard it is pertinent to mention that Respondent wrote an email dated 26.09.2018 to the Resolution Professional of Corporate Debtor reiterating its stand that the said Igatpuri unit / property belongs to Respondent only and if the said property is made part of any Resolution Plan then it will shortly be approaching NCLT for necessary directions. However admittedly the Respondent failed to approach this Hon'ble Adjudicating Authority challenging the said decision of Resolution Professional. It is again pertinent to mention that the Resolution Applicant immediately and as early as 10.01.2019 while intimating about the approval of the Resolution Plan to the Respondent clearly informed that in terms of Clause 3.8 of the Resolution Plan, pursuant to payment of the resolution proceeds, the Non-Applicants/Respondents are mandatorily obliged to transfer the Igatpuri unit in the name of the Corporate Debtor. Despite the above, admittedly the Respondent chose not to file appeal or raise any challenge as per the provisions of the I&B Code against the approval of the Resolution Plan dated 07.12.2018 and accepted the same. Therefore, in any

event, at such belated stage the Respondent is estopped in law to raise any contention with regard the terms of the Resolution Plan or raise any question with regard to non-availability of copy of the Resolution Plan. It is submitted that since the Resolution Plan has been fully implemented including resolution plan proceeds paid to the Respondent, the Respondent is now estopped in law to make any allegation or resist in transferring the Igatpuri Unit in favour of the Corporate Debtor in compliance of the Order dated 07.12.2018 passed by this Hon'ble Adjudicating Authority. More so when as on date Respondent is in violation of the approved Resolution Plan under Section 74 (3) of the I&B Code.

d) It is humbly submitted that the said objection relating to validity of Authority in favour of the Applicant in IA No.47 of 2020 is sham and vague. The Respondent is raising the technical issue instead of arguing on the matter. The said authority has been validly executed in favour of the Application and not subjected to question. It is now a settled law that government agency/company being the litigator cannot be placed on higher footing than the ordinary or private litigator. The Respondent cannot take the benefit of its own wrong under the grab of being the government entity. The law does not discriminate between the contesting parties and rule of law must prevail over identity of any litigating party.

e) That the Respondents as mentioned in the para 5 under reply are Directors and Company Secretary of the Respondent No.1 SICOM and they are responsible for day to day affairs of SICOM. They are fully aware about the transaction/issue involved in the present case therefore they

are equally responsible under Section 74(3) of the I&B Code for breach of their fiduciary duty and obligation. It is also a settled law that brain of the any Company lies in its Directors/Promoters.

f) It is humbly submitted that Respondent is well aware that it cannot now file any Suit for reclaiming the possession of the Igatpuri Unit as the time to initiate the said Suit is hopelessly barred by limitation. It also knows the fact that since the Corporate Debtor has already performed its part of obligation fully vide OTS dated 20.02.2008 and the Respondent has also appropriated the amount it received from the Corporate Debtor therefore it has no case to be made out before the Civil Court. It also did not file any application before this Hon'ble Adjudicating Authority on its own. Not after its rejection of claim by the Resolution Professional, not after when the Igatpuri Unit was dealt in the Resolution Plan. **It is only when the Corporate Debtor filed the said application bearing IA No.47 of 2020 the Respondent in its reply claimed its alleged ownership of the said unit.**

In view of the submissions made herein and in IA No.47 of 2020, and the affidavits dated 15.12.2020, 18.02.2021 and 10.03.2021 this Hon'ble Adjudicating Authority be pleased to allow the Application being IA No.47 of 2020 filed in CP (IB) No.02/GB/2018 filed by the Corporate Debtor and direct the Respondents to comply with the terms of approved Resolution Plan and transfer the Igatpuri Unit of the Corporate Debtor in its favour including registration thereof in terms of the Resolution Plan. This Hon'ble Adjudicating Authority may also be pleased to initiate appropriate proceedings against the Respondents under Section 74 of the I&B Code for violation of the Resolution Plan to set an

example so that no stakeholder takes the terms of Resolution Plan lightly and creates hurdles in honouring the terms of the Resolution Plan.

O R D E R

9. **Heard the learned Counsels appearing for both the sides at length, perused the documents, submissions made available. We are of the considered view that the Respondent No.1 has erred in not transferring the Igatpuri Unit to the Applicant / CD which are evident from the following:**

9.1 The Respondent No.1 had sanctioned a loan of Rs.1.95 Crores to one Company named M/S Crystal Laminates Ltd. and the said Company had mortgaged its property to the Respondent no 1. On failure of repayment of loan by the Crystal Laminates Ltd., the Respondent No.1 took over the possession of the mortgaged property of Crystal Laminates Ltd and thereafter advertised for sale of the said properties by inviting offers for the purchase of the same on "as is where is and what is basis" In response to the said advertisement, the CD offered to purchase the said properties at or for the price of Rs.2,25,00,000.00 (Rupees Two Crores Twenty-Five Lakhs Only) with certain conditions.

9.2 Thereafter, the Applicant/CD had entered into an agreement with the Respondent on 03.09.1998 for purchase of the Unit located at Village Takeghati, Igatpuri, District Nashik from the Respondent No.1 for a consideration of Rs.2.25,00,000.00 (Rupees Two Crores Twenty-Five Lakhs Only) only. The Respondent No.1, on receipt of the earnest money of Rs.10.00 lacs (Rupees Ten Lacs only) and a further sum of Rs.56,25,000/- (Rupees Fifty Six lacs Twenty Five thousand only) from the CD, had put the CD into possession of the said unit at Igatpuri in 1998. The CD since then has been in uninterrupted possession of the unit together with the building and structures, plant and machinery, electrical and other installation, equipment etc. standing thereon. The CD had reportedly made investments on plant and machinery aggregating to more than Rs.3,00,00,000.00

(Rupees Three Crores only) in creating the infrastructure and maintaining the unit since 1998.

9.3 In terms of the Agreement, the balance purchase consideration amount of Rs.1,58,75,000.00 (Rupees One Crore Fifty-Eight Lakhs Seventy-Five Thousand Only) for the said unit was to be paid in 31 monthly instalments under a Deferred Payment Facility (DPF) which was to culminate on 15.08.2001. However, due to the financial hardships faced by the CD at that time, it could not pay some of the instalments, but had assured the Respondent No.1 that it would pay the same.

9.4 In the meantime, the CD availed a financial assistance of Rs.8.90 Crores from the Respondent No.1 in the form of Inter Corporate Deposit (ICD) and was issued a Deal Confirmation Slip (DCS) by the Respondent No.1 which was accepted by the CD on 10.05.1999.

9.5 Subsequently, the CD made a proposal to the Respondent No.1 for one-time settlement (OTS) of the dues under the ICD as well as the balance outstanding under the DPF for purchase of the Igatpuri Unit. The Respondent No.1 accepted the OTS proposal of the CD vide letter dated 20.02.2008 wherein it had agreed to accept an amount of Rs.231.00 Lakhs from the CD towards full and final settlement of all outstanding dues. In terms of the OTS, the CD was required to pay Rs.200.00 Lakhs in cash and Rs.31.00 Lakhs by way of Allotment of Non-Convertible Debentures by 29.02.2008. The deadline for payment was extended to 19.03.2008 vide letter dated 04.03.2008 by the Respondent No.1. The CD in compliance of the said OTS dated 20.02.2008 paid an amount of Rs.200.00 Lakhs vide Pay Order No.529886 dated 17.03.2008 and also issued and forwarded the Non-Convertible Debentures of Rs.31.00 Lakhs in favour of the Respondent No.1 on 18.03.2008. Thus the CD fully complied and honoured the OTS well in time as stipulated by the Respondent No.1. The Respondent No.1 as stated in clause No.2 (vi) of the OTS dated 20.02.2008 had unequivocally and unconditionally agreed to

convey/transfer the Igatpuri Unit to the CD on receipt of the aforesaid amount.

9.6 This transaction of transfer of the Igatpuri Unit was complete and the Respondent 1 was required to transfer the Igatpuri Unit to the CD on that day itself but it has not been done till date. Hence the Respondent 1 has erred here in not transferring the Unit to the CD.

9.7 Pursuant to having complied with the terms of the OTS, the CD vide letter dated 18.03.2008 requested the Respondent No.1 to issue a No Dues Certificate in favour of the CD. The Respondent No.1, however despite receiving the said payment of Rs.200.00 Lakhs and the Debentures of Rs.31.00 Lakhs as per the said OTS, did not issue the No Dues Certificate to the CD. On the other hand, instead of issuing a No Dues Certificate or conveying the Igatpuri Unit to the CD, the Respondent No.1 issued a letter after one year dated 25.03.2009 cancelling / revoking the OTS dated 20.02.2008 on account of alleged default in another OTS dated 19.02.2008 entered into between the Respondent No.1 and one M/S P. K. Commercial Co., which happened to be one of the erstwhile Promoters of the CD. It is however clearly observed from the OTS letter dated 20.02.2008 that no such condition was stipulated. The Respondent No.1 failed to clarify as to how the non-performance/non-fulfilment of OTS terms by the Erstwhile Promoter of the Corporate Debtor namely M/s. P. K. Commercial can in any manner affect the OTS entered into between the Corporate Debtor and the Respondent No.1. The Corporate Debtor and its Erstwhile Promoter are two distinct and separate legal entities. Since the Corporate Debtor in compliance of the OTS dated 20.02.2008 has paid the entire amount of Rs.2.31 Crores (including the issue of Debentures), the Respondent No.1-**SICOM was not in order not to transfer the Unit to the CD just by revoking/cancelling, after so many months of the receipt of the agreed amount, the said OTS dated 20.02.2008 entered into by it with the CD.**

Even the Non-Convertible Debentures of Rs.31.00 Lakhs issued in favour of the Respondent No.1 by the CD has been dealt in the Resolution Plan approved by this Bench. In terms of the Resolution Plan, the

Applicant has already paid the amount as provided in the Resolution Plan to the Respondent and the Respondent has accepted that amount and accounted for. The Respondent has not preferred appeal against the order of the Resolution Plan approved. The Resolution Plan as approved by this Bench has attained finality. Hence the Respondent has committed further mistake at this stage also in not transferring the Unit to the CD.

10. **The Respondent had lodged total claim of Rs.40,86,47,641.00 which included the amount of ICD of Rs. 8.90 Crores, OTS & interest and the same has been rejected /declined by the IRP/RP and the only provision of settlement towards the Non-Convertible Debentures of Rs.31.00 Lakhs issued by the CD Kitply Industries Ltd was made in the Resolution plan approved. The Respondent accepted the amount of provision made in the Resolution Plan and accounted for which shows that the Respondent had accepted the rejection of its claim filed by the IRP/RP which is also further clear from the fact that the Respondent had not filed any appeal against the rejection of the amount claimed or approval of Resolution Plan submitted.**

10.1 The issue of claim not admitted during CIRP / not filed during the CIRP / before the approval of the approval of the Resolution Plan, is well settled.

10.2 The Hon'ble Supreme Court in the case of ***'Committee of Creditors of Essar Steel India Limited*** **vs.** ***Satish Kumar Gupta and others'*** (**2020) 8 SCC 531** (famously known as Essar Judgment) settled the position of law and held in para 105 & 107 as under:

> *"105. …. Section 31 (1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were …."*

"107. ….. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority / Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60 (6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count…."

10.3 Further, the Hon'ble Supreme Court in the case titled as "***Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory*** **vs.** ***Edelweiss Asset Reconstruction Company Limited through the Director & Ors.***' **Civil Appeal No.8129 of 2019 (delivered on 13.04.2021)** reaffirmed the settled position of law that once the Resolution Plan is approved by this Hon'ble Adjudicating Authority under Section 31 of the Insolvency & Bankruptcy Code (hereinafter 'I & B Code') in respect of the corporate debtor, it becomes binding on all the stakeholders (in this case the Operational Creditor/Petitioner, hereinafter 'OC'). The Hon'ble Supreme Court in Para 95 of the said judgment held as under:

"….. That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan….."

10.4 In view of the above decision of the Hon'ble Supreme Court, the demand of OTS amount/claim amount of Rs.40,86,47,641.00 (Rupees Forty Crores Eighty-Six Lakhs Forty-Seven Thousand Six Hundred and Forty-One Only) [(-) Rs.31.00 lacs] by the Respondent for transfer of the Igatpuri Unit to the RA/CD is irrelevant and illogical after the approval and implementation of the Resolution Plan on 07/12/2018. The Respondents' approach of not transferring the Unit to the CD and even after the approval of the Resolution Plan **is bad and not appreciated. They have erred here also.**

11. Proceedings before Ld. BIFR & Hon'ble AAIFR

Based on its Audited Balance Sheet (ABS) as on 31.03.2012 the Applicant/ Corporate Debtor herein filed a Reference with BIFR u/s 15 (1) of the SICA. The reference was registered as case No.23/2012 and the case was then taken up for consideration so as to determine the status of company's sickness on 27.06.2012. All the stakeholders/creditors were served with the notice of the reference and they participated in the proceedings also.

11.1 That the Ld. AAIFR finally after hearing the Applicant/Corporate Debtor and the Non-Applicant/Respondent No.1 vide order dated 09.10.2015 passed in Appeal No.170/2014 held as under:

> *"…The Respondent sought declaration of its title over the said Igatpuri Unit in proceedings before Ld. BIFR and Hon'ble AAIFR. There is a dispute between the parties as to the fulfilment of obligation in terms of the aforesaid agreement (03.09.1998). Neither BIFR nor AAIFR is the appropriate forum to adjudicate such disputes between the parties. As such this dispute is outside the scope of our consideration and should be appropriately perused before and adjudicated/decided by the concerned Civil Court. Since the agreement between the parties which is the subject matter of the dispute has not been declared, by BIFR / AAIFR under Section 22(3) of SICA, to be suspended, the parties are at liberty to pursue appropriate legal remedies, as they may be so advised, to assert their rights and obligation in the concerned Civil Court …"*

11.2 The Hon'ble BIFR/AIFR has not dealt this matter/dispute but has opined that neither BIFR nor AAIFR is the appropriate forum to adjudicate such disputes and the parties are at liberty to pursue appropriate legal remedies to assert their rights before the Civil Court.

11.3 It has been more than 5 years since the said liberty was granted to the Respondent No.1 and no proceedings of any nature for cancellation of the Agreement dated 03.09.1998 or for declaration of its title/ownership over the said Igatpuri unit/property has been filed by the Respondent. The possession of the Igatpuri unit remained uninterruptedly with the Applicant/Corporate Debtor from the date of the Agreement dated 03.09.19998 till date.

11.4 At this stage, it is appropriate to bring the following sections of IBC 2016 and the Companies Act 2013 with regard to the views of the Hon'ble BIFR/AIFR:

Section 63: Civil court not to have jurisdiction

63. No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil court not to have jurisdiction.

Section 231 – Bar Jurisdiction

231. No civil court shall have jurisdiction in respect of any matter in which the [Adjudicating Authority or the Board] is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such [Adjudicating Authority or the Board] under this Code

Section 238: Provisions of this Code to override other laws

238. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Section 430 of the Companies Act 2013 reads as under:

430. Civil court not to have jurisdiction.— No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

12. After the judgement of the Hon'ble BIFR/AAFIR, the IBC CODE 2016 is introduced and NCLT has been set up, Applications relating to the Company matters/ affairs/Insolvency are filed before NCLT.

13. In view of the failure of the Respondents to comply with the terms of the approved Resolution Plan, the present application has been preferred by the applicant U/s 60 (5) read with Section 74 (3) of IBC, 2016 and read with Rule 11 of the National Company Law Tribunals Rules, 2016 and it is submitted that the Applicant Kitply Industries Ltd. was admitted to CIRP in CP (IB) No.02/GB/2018 and the Hon'ble Adjudicating Authority vide order dated 07.12.2018 was pleased to approve a Resolution Plan, approved by the Committee of Creditors by 92.74%, which was put forth by SREI Multiple Asset Investment Trust for the purpose of insolvency resolution of the Applicant Company. **The Resolution Plan as approved by the Hon'ble Adjudicating Authority has now attained finality, as except two creditors, namely "Kotak Mahindra Prime Limited" and "Kotak Mahindra Investment Ltd.", no other creditors or stakeholders of Kitply Industries Ltd. including Respondent herein has challenged the same before the Hon'ble National Company Law Appellate Tribunal. The challenge so raised by Kotak Mahindra Prime Limited and Kotak Mahindra Investment Ltd. has also been rejected by the Hon'ble NCLAT vide order dated 13.11.2019.**

That in terms of clause 3.8 of the Resolution Plan, on payment of Rs.31,000.00 (Rupees Thirty-One Thousand Only) as one-time settlement of the loan, the Respondent is/was obligated a duty bound to transfer the Igatpuri unit in the name of the Resolution Applicant or its nominee. In

terms of the Resolution Plan the successful Resolution Applicant, vide its letter dated 10.01.2019, nominated the Corporate Debtor (Applicant herein) as the beneficiary for effecting the transfer in its name, in respect of Igatpuri Unit. However, even after receiving the payment as proposed under the Resolution Plan and despite several communications and requests for transferring the Igatpuri Unit of the Corporate Debtor in the name of the Resolution Applicant or its nominee, the Respondents have failed to transfer the same in complete disregard of the provisions of the Resolution Plan approved by this Hon'ble Adjudicating Authority.

14. **Hence, the issues raised by the Respondents and the Applicant have been heard and considering the arguments advanced by the learned Lawyers of both the sides and perusal of the documents, written submissions and the settled position of law, the Respondent SICOM is hereby directed to transfer the Igatpuri Unit to the nominee of the Resolution Applicant M/s. Kitply Industries Ltd. within 45 (forty-five) days from today.**

14.1 The entire expenses towards the stamp duty etc., if any, for transferring the Unit in the name of the CD shall be borne by the Applicant / CD only.

14.2 **The Respondents No.3 to 13, which include Directors, ex- Directors shall be relieved automatically from this case only on transfer of the Igatpuri Unit to the CD-Kitply Industries Ltd. and filing of the compliance report to such transfer with the Registry by the Respondent Company within 15 (fifteen) days from the date of transfer of the Unit to the CD or within 60 (sixty) days from today whichever is earlier.**

15. **IA No.47 of 2020 is allowed to the extent of Prayer (a) only and stands disposed of with the above Observations and Directions.**

Sd/-

(**Prasanta Kumar Mohanty)**
Member (Technical)
& Adjudicating Authority

Sd/-

(H. V. Subba Rao)
Member (Judicial)
& Adjudicating Authority

//Deka//Ravina// 31.08.2021//

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.A. (CAA)No.10/GB/2021

Coram:
Hon'ble Shri H. V. Subba Rao, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.08.2021

Name of the Company: Deepak Medical Private Limited …. Transferee Company
And
Durable Retail Private Limited …. Transferor Company No.1
IHR Medical Services Private Limited …. Transferor Company No.2

Section of the Companies Act: Under Section 230-232 of the Companies Act, 2013.

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. RIYA AGARWAL	Advocate	Petitioner	Present in Video Conference
2.				

O R D E R
Date of Order: 31st August, 2021

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

Today, the present matter is kept for pronouncement of order.

The present matter i.e. **C.A. (CAA) No.10/GB/2021** is allowed.

The detailed order is recorded vide separate sheet.

Sd/-
(**Prasanta Kumar Mohanty)**
(Member (Technical)

Sd/-
(H. V. Subba Rao)
Member (Judicial)

/tkd- 31.08.2021/

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.A. (CAA) No. 10/GB/2021

In the matter of:

DEEPAK MEDICAL PRIVATE LIMITED., a
Private Company incorporated on 27th of May, 1987
Under the provisions of the Companies Act, 1956
(CIN U85110AS1987PTC002705) and having
Registered Office at Institute of
Human Reproduction, Bharalumukh
Guwahati- 781009.

… **Transferee Company**

AND

DURABLE RETAIL PRIVATE LIMITED., a
Private Company incorporated on 2nd of December, 2010
Under the provisions of the Companies Act, 1956
(CIN U52190WB2010PTC155301) and having
Registered Office at 47, Syed Amir Ali Avenue,
4th Floor, Kolkata- 700019 in the State
Of West Bengal.

…**Transferor Company No. 1**

AND

IHR MEDICAL SERVICES PRIVATE LIMITED, a
Private Company incorporate on 4th of December, 2010
Under the provisions of the Companies Act, 1956
(CIN U74110WB2010PTC155401) and having
Registered Office at 47, Syed Amir
Ali Avenue, 4th Floor, Kolkata- 700019 in the State
Of West Bengal.

…**Transferor Company No. 2**

Order delivered on 31st August, 2021

Coram: Hon'ble Shri H. V Subba Rao, Member (J)
Hon'ble Shri Prasanta Kumar Mohanty, Member (T)

Hearing through Video Conference

ORDER
[Per se: Shri H.V. Subba Rao, Member (J)]

1. The present joint application is filed under Sections 230 to 232 of the Companies Act, 2013, seeking the following reliefs:

a) For admission of the application filed by the applicants before the Hon'ble Tribunal for being heard.

b) That appropriate orders and/ directions be passed by the Hon'ble bench for dispensing with the convening and holding separate meetings of Equity Shareholders of the Transferee Company and the Transferor Companies as the Shareholders of the Transferee Company and the Transferor Companies have given their written consent by way of affidavit adopting the Scheme of Amalgamation without any modification(s).

c) That appropriate orders and directions be passed by the Hon'ble bench for dispensing with the convening and holding separate meetings of Secured Creditors of the **'DEEPAK MEDICAL'/ TRANSFEREE COMPANY** as all the Secured Creditors have given their written consent by way of affidavit adopting the Scheme of Amalgamation without any modification(s).

d) That appropriate orders and/ directions be passed by the Hon'ble bench for dispensing with the convening and holding separate meetings of Unsecured Creditors of the **'DEEPAK MEDICAL'/ TRANSFEREE COMPANY** as Unsecured Creditors representing **more than 90%** of the total Unsecured Creditors in value of the Transferee Company have given their written consent by way of Affidavit adopting the Scheme of Amalgamation without any modification(s).

e) That appropriate orders and/ directions be passed by the Hon'ble bench declaring that there is no requirement for holding of meeting of Secured Creditors of the **'DURABLE RETAIL'**/ TRANSFEROR COMPANY NO. 1 and **'IHR MEDICAL'**/ TRANSFEROR COMPANY NO. 2 as there are **NIL** Secured Creditors.

f) That appropriate orders/directions be passed by the Hon'ble bench dispensing with the convening and holding separate meetings of Unsecured Creditors of the **'DURABLE RETAIL'/ TRANSFEROR COMPANY NO. 1 and 'IHR MEDICAL'/ TRANSFEROR COMPANY NO. 2** as Unsecured Creditors representing 100% of the total Unsecured Creditors in value of the above named Transferor Companies have given their written consent by way of Affidavit adopting the Scheme of Amalgamation without any modification(s).

g) That appropriate orders and/directions be passed by the Hon'ble bench for serving notice upon Central Government through

1. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata
2. Regional Director, North East Region, Ministry of Corporate Affairs, Guwahati.
3. Registrar of Companies, West Bengal
4. Registrar of Companies, Guwahati
5. Official Liquidator, Kolkata
6. Official Liquidator, Guwahati
7. Income Tax Authorities having jurisdiction over the affairs of all the Companies both Transferee & Transferors.

h) No one will be prejudiced if an order is made and/or directions are given as prayed for

i) Unless orders as prayed for herein are made, the applicants will suffer irreparable loss and injury and will gravely be prejudiced.

j) This application is made bona fide and in the interest of justice.

k) Appointed Date: 1st April, 2020

2. The benefits/reasons that have necessitated and/or justified the said Scheme of Amalgamation are, inter alia as follows:

a) The **TRANSFEREE COMPANY** is currently engaged in the business of providing medical services. Apart from pursuing the main object, all the **"TRANSFEROR COMPANIES"** have deployed their surplus fund which is not immediately required in other investable instruments. The business of the **TRANSFEROR COMPANIES** and the **TRANSFEREE COMPANY** can be combined/adjusted and carried forward conveniently with combined strength;

b) The amalgamation will enable the **TRANSFEREE COMPANY** to consolidate its line of business by restructuring and re-organizing its business activities and Capital Structure;

c) The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the **TRANSFEREE COMPANY**;

d) The amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources;

e) The business of the Companies can be conveniently and advantageously combined together in general business of the Company concerned and will be carried on more economically and profitably under the said Scheme;

f) The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the company concerned. The said scheme will also enable the undertakings and business of the said applicant company to obtain greater facilities possessed and enjoyed by one large company compared with a number of small Companies for raising capital, securing and conducting trade on favorable terms and other benefits;

g) The said scheme will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these businesses;

h) The said scheme will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability;

i) The said scheme will enable the undertaking concerned to pool their resources and to expand their activities;

j) The said scheme will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;

k) The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.

3. A copy of the Scheme of Amalgamation, for which this joint application is filled for sanctioning, is annexed with the application marked as **Annexure "G"** and the terms and conditions of the Scheme are set out in the Scheme of Amalgamation, a copy of which is annexed as mentioned herein above.

4. The Applicant Companies submit that the Board of Directors of all the Applicant Companies have passed resolution approving the Scheme of Amalgamation whereby the TRANSFEROR COMPANIES will amalgamate with the TRANSFEREE COMPANY on **19th February, 2021 in their respective Board meetings**. A copy of the Resolution passed by the Board of Directors of TRANSFEREE COMPANY and TRANSFEROR COMPANIES approving the Scheme of Amalgamation are annexed hereto and marked **as LETTER 'H'**.

5. In addition to above, it is submitted that the Board of Directors have at their respective Board Meetings held on **19.02.2021** have passed separate

Board Resolutions appointing **Sri Raj Kumar Agarwala**, Advocate to represent the Transferee Company and the Transferor Companies. Copy of the said resolutions are also attached with the application.

6. **It is stated that the assets of the Applicant Companies are sufficient to meet all their liabilities and the said Scheme will not adversely affect the rights of any of the creditors or any of the Applicant Companies in any manner whatsoever.**

7. **It is stated that there will not be any reduction of capital of TRANSFEREE COMPANY upon coming into effect of the Scheme, except cancellation of shares of TRANSFEREE COMPANY due to inter/cross holding of shares resulting from this amalgamation.**

8. **It is stated that the present Scheme of Amalgamation does not contain or provide for Corporate Debt Restructuring and the TRANSFEREE COMPANY as well as the TRANSFEROR COMPANIES have never issued nor agreed to issue any debenture.**

9. It is also stated that the Present Scheme does not provide for any compromise with the rights of the creditors of the Applicant companies and the applicant companies have made due provisions for payment of all liabilities as and when the same fell due. In this regard, all the applicant companies crave leave to refer to the accounts book and records of the applicant companies at the time of hearing, if necessary.

10. **It is stated that there are no proceedings pending under section 235 to 251 of the Companies Act, 1956 and Section 217, 219, 221, 224 and 225 of the Companies Act, 2013 against any of the Applicant Companies.**

11. It is stated that the Report determining the number of and exchange ratio of shares which, shall be issued and allotted to the equity shareholders of TRANSFEROR COMPANIES by TRANSFEREE COMPANY for implementation of

the terms of the Scheme has been prepared by the Registered Valuer and such recommendations has been accepted by the Board of Directors of the respective Companies. Copy of such report is annexed hereto and marked as **LETTER 'I'**.

12. It is submitted that the total number of Equity Shareholders in the **'DEEPAK MEDICAL'**/ TRANSFEREE COMPANY are 9 as on 31st January, 2021. All the shareholders of the **'DEEPAK MEDICAL PRIVATE LIMITED'**/ TRANSFEREE COMPANY have given their written consents by way of affidavits to the proposed Scheme of Amalgamation. A copy of list of Shareholders duly certified by the Statutory Auditor and affidavit by all the equity shareholders of the **'DEEPAK MEDICAL PRIVATE LIMITED'**/ TRANSFEREE COMPANY are annexed hereto and marked with **LETTER 'J'**.

13. It is also submitted that the total number of Equity Shareholders in the **'DURABLE RETAIL PRIVATE LIMITED'**/ TRANSFEROR COMPANY NO. 1 are 2 as on 31st January, 2021. All the shareholders of the **'DURABLE RETAIL PRIVATE LIMITED'**/ TRANSFEROR COMPANY NO. 1 have given their written consent by way of affidavit to the proposed Scheme of Amalgamation. A copy of list of Shareholders duly certified by the Statutory Auditor and affidavit by all the equity shareholders of the **'DURABLE RETAIL PRIVATE LIMITED'**/ TRANSFEROR COMPANY NO. 1 are annexed hereto and marked with **LETTER 'J1'**.

14. It is also submitted that the total number of Equity Shareholders in the **'IHR MEDICAL SERVICES PRIVATE LIMITED'**/ TRANSFEROR COMPANY NO. 2 are 3 as on 31st January, 2021. . All the shareholders of the **'IHR MEDICAL SERVICES PRIVATE LIMITED'**/ TRANSFEROR COMPANY NO. 2 have given their written consents by way of affidavits to the proposed Scheme of Amalgamation. A copy of list of Shareholders duly certified by the Statutory Auditor and affidavit by all the equity shareholders of the **'IHR MEDICAL SERVICES PRIVATE LIMITED'**/ TRANSFEROR COMPANY NO. 2 are annexed hereto and marked with **LETTER 'J2'**.

15. It is stated that the **'DEEPAK MEDICAL PRIVATE LIMITED'**/ TRANSFEREE COMPANY has 3 (Three) Secured Creditors amounting to Rs. 1, 84, 14,768.03/- (Rupees One Crore Eighty-Four Lakhs Fourteen Thousand Seven Hundred Sixty-Eight and Three paisa only) as on 31st January, 2021. All the Secured Creditors have given their letter of consent to the proposed Scheme of Amalgamation.

    Further **'DEEPAK MEDICAL PRIVATE LIMITED'**/ TRANSFEREE COMPANY has 4 (Four) Unsecured Creditors as on 31st January, 2021 amounting to Rs. 1,75,33,859.00 (Rupees One Crore Seventy-Five lakhs Thirty-Three Thousand Eight Hundred Fifty Nine only). Out of the 4 (Four) Unsecured Creditors, 1 (One) Unsecured Creditor aggregating to Rs. 1,75,00,000 (Rupees One Crore Seventy-Five lakhs only) representing to 99.80% of the Total Unsecured Creditors has given his affidavit of consent to the proposed scheme of Amalgamation. A certificate showing the list of Secured Creditors and Unsecured Creditors along with consents by the creditors of the **'DEEPAK MEDICAL PRIVATE LIMITED'**/ TRANSFEREE COMPANY together with a statement showing computation of percentage of consent of unsecured creditor thereof are annexed separately next to the auditors certificate is annexed hereto and marked as **LETTER 'K'**.

16. It is stated that the **'DURABLE RETAIL PRIVATE LIMITED'**/ TRANSFEROR COMPANY NO. 1 has NIL Secured as on 31st January, 2021.

    Further, **'DURABLE RETAIL PRIVATE LIMITED'**/ TRANSFEROR COMPANY NO. 1 has 1 (One) Unsecured Creditor amounting to RS. 1,00,000.00 (Rupees One Lakhs only) as on 31st January, 2021. The said unsecured creditor has given his consent by way of an affidavit to the proposed Scheme of Amalgamation without any modification. A Certificate from the Statutory Auditor of the **'DURABLE RETAIL PRIVATE LIMITED'**/ TRANSFEROR COMPANY NO. 1 certifying NIL Secured Creditors and list of unsecured creditors as on 31st January, 2021 together with affidavit of consent of

Unsecured Creditor are attached and annexed hereto and marked as **LETTER 'K1'**.

17. It is stated that the **'IHR MEDICAL SERVICES PRIVATE LIMITED'**/ TRANSFEROR COMPANY NO. 2 has NIL Secured Creditors as on 31st January, 2021.

    Further, **'IHR MEDICAL SERVICES PRIVATE LIMITED'**/ TRANSFEROR COMPANY NO. 2 has 1 (One) Unsecured Creditor amounting to Rs. 1,00,000.00 (Rupees One Lakhs only) as on 31st January, 2021. The said Unsecured Creditor has given his consent by way of an affidavit to the proposed Scheme of Amalgamation without any modification. A Certificate from the Statutory Auditor certifying NIL Secured Creditors and list of Unsecured creditors as on 31st January, 2021 together with affidavit of consent of Unsecured Creditor are attached and annexed hereto and marked as **LETTER 'K2'**.

18. It is stated that SRI DEEPAK GOENKA, SMT. RASHMI GOENKA AND SRI MOHAN LAL GOENKA are the present Directors of the **'DEEPAK MEDICAL PRIVATE LIMITED'/ TRANSFEREE COMPANY the Applicant Company No. 1**; **'DURABLE RETAIL PRIVATE LIMITED'/ TRANSFEROR COMPANY NO. 1, the Applicant Company No. 2; and 'IHR MEDICAL SERVICES PRIVATE LIMITED'/ TRANSFEROR COMPANY NO. 2, the Applicant Company No. 3 above named; save as aforesaid, none of the Directors of the said respective companies has any material interest in the proposed Scheme of Amalgamation except as Shareholders in General, the extent of which will appear from the Register of Director's Shareholding maintained by the respective applicant companies.**

19. It is submitted that the Statutory Auditors of the TRANSFEREE COMPANY and TRANSFEROR COMPANIES have certified that the Accounting treatment proposed in terms of Clause 15 of PART V of the Scheme is in conformity

with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. The certificate issued by the statutory Auditors is annexed hereto and marked as **LETTER 'L'.**

20. It is stated that the Applicant Companies are assessed to Income Tax under the following PAN NO.:

NAME OF THE APPLICANT COMPANIES	**PAN**
DEEPAK MEDICAL PRIVATE LIMITED	**AAACR9534P**
DURABLE RETAIL PRIVATE LIMITED	**AADCD6386J**
IHR MEDICAL SERVICES PRIVATE LIMITED	**AADCT6601N**

Copies of PAN cards are assessed to Income Tax is annexed hereto and marked with **LETTER 'M'**.

21. The Applicant Companies further submit that no prejudice would be cause to any one, if an order is made and/or directions are given as prayed for hereinabove and hence, appropriate orders/ directions be passed by this Tribunal for serving notice upon:

i. Regional Director, Eastern Region, Ministry of Corporate Affairs,
ii. Regional Director, North Eastern Region, Ministry of Corporate Affairs,
iii. The Registrar of Companies, West Bengal
iv. The Registrar of Companies, Guwahati
v. The Official Liquidator, Kolkata
vi. The Official Liquidator, Guwahati
vii. The Income tax Authorities, having jurisdiction over the affairs of the Company.

22. **Having heard the learned advocate, Mr. R.K. Agarwal for the Applicant Companies and by considering the consent affidavits filed on behalf of the shareholders and secured creditors as well as by**

the majority in debts value of unsecured creditors of the Applicants Companies to approve The Company Scheme and by waiving their right to participate in such meeting.

The meeting of the Shareholders, Secured and Unsecured Creditors of the Applicant Companies are hereby dispensed with as prayed for.

23. Therefore, in our view, the present Company Application deserves to be allowed. Accordingly, it is allowed in terms of the prayer clause and subject to following directions:

i. **The Applicant Companies to issue a notice, in Form No. CAA.3 along with disclosures mentioned under Rule 6, as per the provisions of Section 23 (5) read with Rule 8 of the Companies Act, to**

(1) The Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata

(2) Regional Director, North East Region, Ministry of Corporate Affairs, Guwahati

(3) The Registrar of Companies, West Bengal

(4) The Registrar of Companies, Guwahati

(5) The Official Liquidator, Kolkata

(6) The Official Liquidator, Guwahati

(7) Income Tax Authorities concerned and the Assessment Officers of Income Tax relating to both the Transferee and Transferor Companies by informing that their representations, if any, to be made within a period of 60 days from the date of receipt of such notice, failing which it would be presumed that they have no objections to make on the proposed Company Scheme/ Proposal. Such notices shall be sent forthwith by registered post or by speed post or by courier or by hand delivery at the office of the above

authorities as required by sub-rule (2) of the Rule 8 of the Companies (CAA) Rules, 2016. **The aforesaid authorities who desire to make any representation under sub-section (5) of Section 230, shall send the same to the Tribunal within a period of 60 (Sixty) days from the date of receipt of such notice, failing which it would be deemed that they have no representation to make on the proposed arrangement/proposals.**

24. The Applicant Companies shall also serve notice upon other sectoral regulators as may be applicable to the Applicant Companies pursuant to the section 230(5) of the Companies Act, 2013 and as per the rule 8 of the Companies (Compromises Arrangement & Amalgamation Rules, 2016. If no response is received by the Tribunal from such regulators within 60 (Sixty) days of receipt of the notice it will be presumed that such regulators have no objection to the propose scheme.

25. As per the judgment of the Hon'ble Supreme Court of India, all the Applicant Companies here are directed to file Affidavits that they are not illegible under section 29 A of IBC 2016 within 15 days from today.

26. The Applicant Companies shall file a compliance report with the Registry with regard to the directions given in this Order within 15 days from to-day.

27. With the aforesaid directions/observations, the present Company Application, **being first motion petition** stands allowed (in terms of its prayer clause) and disposed of.

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)

Sd/-
(H.V. Subba Rao)
Member (Judicial)

//td/deka//
31.08.2021

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P. No.02/GB/2021

Coram:
Hon'ble Shri H. V. Subba Rao, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.08.2021

Name of the Company: Union of India
V/s
Purbanchal Rolling Mills and Industries Pvt. Ltd.

Section of the Companies Act: Under Rule 241/242/246/339 of the Companies Act, 2013

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. SAMRAT S. ROY	Advocate	Petitioner	Present in
2.	MR. DHRUPAD DAS	Advocate	R-2 & 3	Conference
3.	MS. RANJANA ROY	Advocate	R-1	

O R D E R
Date of Order: 31.08.2021

This matter is taken up through Video Conferencing. Learned Counsels, Mr. Samrat S. Roy is present on behalf of the Petitioner, Mr. Dhrupad Das is present on behalf of the Respondents No.2 and 3. Ms. Ranjana Roy is present for the Respondent No.1 and she has submitted that the Respondent No. 1 has already filed an IA in the matter and the same may be listed for hearing.

2. The learned Counsel for the Petitioner has submitted that the Respondent here is not a party to the case filed before the Hon'ble High Court Delhi, earlier referred to, by the Respondent. He has prayed for hearing the matter. He has also confirmed that he has received the copy of the IA but he needs some time to file reply.

3. Heard the learned Counsels appearing on behalf of both the sides. The Respondents are directed to file synopsis in 5/6 pages with a copy to the Petitioner within 10 days from today.

4. **List the matter on 21.09.2021 along with the IA for hearing.**

Sd/-
(**Prasanta Kumar Mohanty)**
Member (Technical)

Sd/-
(H. V. Subba Rao)
Member (Judicial)

/Deka-31.08.2021/

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CA No.1 of 2021
IN
TP No.07/GB/2016
[CP No.969 of 2012]

Coram:
Hon'ble Shri H. V. Subba Rao, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.08.2021

Name of the Company: Khusimoy Karan & others
V/s
Gomukhi Construction Pvt. Ltd. and another

Under Section 397 & 398 of the Companies Act, 1956

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. A. K. SRIVASTAVA	Advocate	Petitioners	Present in Video
2.	MR. AKASH SHARMA	Advocate	Petitioners	Conference
3.	NONE	-	Respondents	

O R D E R
Date of Order: 31.08.2021

Matter is taken up through Video Conferencing.

2. Heard the Petitioners at length. The learned Counsel for the Petitioners has submitted that the Respondents are not appearing deliberately. He has confirmed that the information has been given to the Respondents through email for their appearance.

3. He has submitted and prayed to refer all the orders passed by the Hon'ble CLB, Kolkata and by this Bench. He has prayed for passing the order without giving further opportunity to the Respondents.

4. It is found to be appropriate to bring the earlier order dated 17.08.2021 passed by this Bench, which reads as under:

"O R D E R
Date of Order: 17.08.2021

Matter is taken up through Video Conferencing.

2. Heard the Petitioners at length. The learned Counsel for the Petitioners has submitted the entire details right from the beginning i. e. the proceedings before the Hon'ble CLB, Kolkata, referring to the order passed by the Hon'ble CLB, Kolkata dated 14.11.2014 and the subsequent orders of this Bench. The learned Counsel has submitted that the aircrafts could not be sold because of the obstructions from the side of the Respondent No.1 Company M/s. Gomukhi Constructions Pvt. Ltd. He has also further submitted that the Respondent No.1 Company has been avoiding to appear in this case in spite of the delivery of the notices to them. He has prayed for passing orders without further loss of time. The matter is not concluded today in the absence of the Respondent M/s. Gomukhi Constructions Pvt. Ltd. One more opportunity is given to the Respondent M/s. Gomukhi Constructions Pvt. Ltd. to appear and file its submissions, if any. The learned Counsel of the Petitioner is directed to convey the next date of hearing to the Respondents.

3. List the matter on 31.08.2021."

5. The Petitioner is directed to submit a detailed written submission right from the order passed by the Hon'ble CLB, Kolkata dated 14.11.2014 and the subsequent orders of this Bench. The Petitioners shall send a copy of the written submission to the Respondents within 10 days from today. The Petitioner shall file proof of service of the same.

6. Respondents are given liberty to file reply to the written submissions of the Petitioners, if any, in 4/5 pages within 7 days thereafter.

7. Matter is reserved for orders.

Sd/-
(**Prasanta Kumar Mohanty)**
Member (Technical)

Sd/-
(H. V. Subba Rao)
Member (Judicial)

/Deka-31.08.2021/

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

MA No.4 of 2021
IN
TP No.07/GB/2016
[CP No.969 of 2012]

Coram:

Hon'ble Shri H. V. Subba Rao, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.08.2021

Name of the Company: Shobha K. Mani

Under Section 447, 448 & 449 of Companies Act, 2013

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MS. SHOBHA K. MANI	in person	Petitioner	Present in Video Conference
2.	NONE	-	Respondent	

O R D E R
Date of Order: 31.08.2021

Matter is taken up through Video Conferencing.

2. List the matter on 07.09.2021.

Sd/-
(**Prasanta Kumar Mohanty)**
Member (Technical)
/Deka-31.08.2021/

Sd/-
(H. V. Subba Rao)
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

Cont. Appl. No.4 of 2021
IN
TP No.07/GB/2016
[CP No.969 of 2012]

Coram:
Hon'ble Shri H. V. Subba Rao, Member (J): **Hearing through**
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): **Video Conference**

ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.08.2021

Name of the Company: Mr. Phizo Nath

Under Section 447, 448 & 449 of Companies Act, 2013

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MS. PHIZO NATH	in person	Petitioner	Present in Video
2.	NONE	-	Respondent	Conference

O R D E R
Date of Order: 31.08.2021

Matter is taken up through Video Conferencing. Heard the Petitioner present in person.

2. List the matter on 07.09.2021.

Sd/-
(**Prasanta Kumar Mohanty)**
Member (Technical)
/Deka-31.08.2021/

Sd/-
(H. V. Subba Rao)
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P.No.02/GB/2019

Coram:
Hon'ble Shri H. V. Subba Rao, Member (J): **Hearing through**
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): **Video Conference**

ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.08.2021

Name of the Company:	Dr. (Mrs.) Natasha Gohain V/s M/s. G. M. Hospital Pvt. Ltd. & Others
Section of the Companies Act:	Under Section 213 of the Companies Act read with Rule 11 & 14 of the NCLT Rules, 2016

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. BIMAN DEBNATH	PCS	Petitioner	Present in Video
2.	MR. JUTUL ROY	Advocate	Petitioner	Conference
3.	NONE	-	Respondents	

O R D E R
Date of Order: 31.08.2021

Matter is taken up for hearing through video conferencing. The Learned Counsels for the Petitioner, Mr. Biman Debnath, PCS and Mr. Jitul Roy, Advocate are present. No one is present on behalf of the Respondents. Heard the learned Counsels of the Petitioner.

2. In the absence of the Respondents, the matter is not proceeded.

3. It is found that some replies filed by the Petitioner and the Respondents earlier are not clear with regard to their submissions and prayers. Hence, both the Petitioner and the Respondents including the Respondent No.3 are given liberty to file fresh reply within 10 days from today. Copy of the same be given to the other side.

4. The Petitioner is to convey the next date of hearing to the Respondents including the Respondent No.3 enclosing the copy of the today's order.

5. **List the matter on 23.09.2021 for hearing.**

Sd/- **Sd/-**

(**Prasanta Kumar Mohanty)**
Member (Technical)

(H. V. Subba Rao)
Member (Judicial)

/Deka-31.08.2021/

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

IA No.06 OF 2020
IN
C.P.No.02/GB/2019

Coram:
Hon'ble Shri H. V. Subba Rao, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.08.2021

Name of the Company:	Dr. (Mrs.) Natasha Gohain V/s M/s. G. M. Hospital Pvt. Ltd. & Others
Section of the Companies Act:	Under Section 213 of the Companies Act read with Rule 11 & 14 of the NCLT Rules, 2016

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. BIMAN DEBNATH	PCS	Petitioner	Present in Video Conference
2.	MR. JUTUL ROY	Advocate	Petitioner	
3.	NONE	-	Respondents	

O R D E R
Date of Order: 31.08.2021

Matter is taken up for hearing through video conferencing. The Learned Counsels for the Petitioner, Mr. Biman Debnath, PCS and Mr. Jitul Roy, Advocate are present. No one is present on behalf of the Respondents. Heard the learned Counsels of the Petitioner.

2. In view of the order passed in C.P.No.02/GB/2019 this matter is adjourned.

3. **List the matter on 23.09.2021 along with the Main Petition.**

Sd/- **Sd/-**

(**Prasanta Kumar Mohanty)** **(H. V. Subba Rao)**
Member (Technical) **Member (Judicial)**
/Deka-31.08.2021/