

TEAM CODE: 161

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION

2017

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, _____ BENCH

CP (IB) No. __/2017



IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED

AS CORPORATE DEBTOR

ON BEHALF OF

RST BANK AS FINANCIAL CREDITOR

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

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1.	¶	Paragraph
2.	AC Law Reports	Appeal Cases (Third Series) (England and Wales)
3.	All ER	All England Law Reports (England and Wales)
4.	ALR	American Law Report
5.	Art.	Article
6.	Bankr. D. Del	Bankruptcy Court for the District of Delaware
7.	CEO	Chief Executive Officer
8.	CFO	Chief Financial Officer
9.	CIR(P)	Corporate Insolvency Resolution (Process)
10.	CoC	Committee of Creditors
11.	CoMI	Centre of Main Interests
12.	EC Regulations	Council of the European Union Regulations
13.	Edn.	Edition
14.	Eq	Equity Cases United Kingdom
15.	Et Al.	And others
16.	FCCB	Foreign Currency Convertible Bond
17.	FCR	Family Court Report
18.	HC	High Court
19.	Hon'ble	Honourable
20.	IBBI	Insolvency and Bankruptcy Board of India
21.	<i>In Re</i>	In the legal matter of
22.	Insol	Insolvency
23.	IRP	Interim Resolution Professional
24.	JV	Joint Venture
25.	LR	(New South Wales) Law Report
26.	MD	Managing Director
27.	NCLAT	National Company Law Appellate Tribunal

VIII

28.	NCLT	National Company Law Tribunal
29.	NSE	National Stock Exchange
30.	NSWSC	New South Wales Supreme Court
31.	Ors	Others
32.	P.	Page
33.	PLC	Public Limited Company
34.	Pty	Proprietary Company
35.	Q.B.	Queen's Bench
36.	Reg.	Regulation
37.	RHPL	Radha Hospitality Pvt. Ltd.
38.	RP	Resolution Professional
39.	S(C)RA	Securities (Contracts) Regulations Act
40.	S.	Section
41.	THSPL	Ten Hospitality Services Pvt. Ltd
42.	U.K	United Kingdom
43.	UNCITRAL	United Nations Commission on International Trade Law
44.	V.	Versus
45.	VSC	Victoria Supreme Court

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STATEMENT OF JURISDICTION

The National Company Law Tribunal has jurisdiction to admit this application filed by the financial creditor (RST bank) for initiation of Corporate Insolvency Resolution Process on default of payment by the Corporate Debtor (New Age Technology Limited) under s.7 of the Insolvency and Bankruptcy Code, 2016.

STATEMENT OF FACTS

BACKGROUND

New Age Technology Limited (*herein after referred as New Age*) is the fourth largest manufacturer of solar panels in the world and the largest in India. The registered and corporate offices of New Age are in New Delhi and Mumbai respectively, whereas it has sales offices in Rajasthan and Hyderabad. It has three plants of which one was located in Gujarat and the other two in Karnataka. In 2015, New Age diversified into the hotel and real estate business and its promoters set up a company RHPL. It also bought an operational hotel in Jaipur. New Age entered into a J.V. with RHPL to develop a hotel on a piece of land owned by itself in Raipur. The terms of the JV mentioned that RHPL would construct the hotel and commercial tower on the land by contributing 50% cost while New Age will pay for the balance. It further added that New Age would receive revenue from the commercial tower and RHPL from the hotel. In 2016, promoters of New Age acquired THSPL, a Singapore based company, which owns a 5-star hotel. In January 2017 THSPL raised capital through private equity fund for its development and expansion to the tune of USD 50 million.

THE DEBT CONCERN

The clientele of New Age mainly comprised two major corporations, Morris and TPI. In September Morris asked New Age put its order on hold and conveyed its inability to pay for the next purchase. TPI expressed its inability to take delivery of solar panels which was ready for delivery and for which payment had already been made. In December, the High Court of Karnataka allowed Customs Dept. to attach Rs. 55, 00,000 lying in New Age bank account in Mumbai, for concealment of the real value of a plant imported from France in 2011.

COMMENCEMENT OF CIRP

New Age started to default on its loans taken from consortium of banks in 2008. RST Bank filed an application before NCLT, which was admitted, and a moratorium was declared and Mr. Amit Thakur was appointed as Interim Resolution Professional (*herein after referred as IRP*) was appointed on the recommendation of IBBI.

INTERIM RESOLUTION PROFESSIONAL

Despite opposition by local political leaders along with union workers, IRP took possession of the Gujarat plant and appointed XYL security for preserving the unit. The request of the IRP to People's Bank to deposit rentals from April 2015 to February 2017 was refused as it informed IRP that it adjusted the lease amount to write off a portion of the debts of New Age. IRP received the claims from its lenders, creditors and statutory authorities. IRP had also added Marvel Organics Ltd to the list of creditors without there being any substantiation to its claim. IRP appointed M/S KGB valuers and M/s. AKP valuers to determine the liquidation value. IRP filed an application before NCLT to take possession of the Mumbai flat that was in possession of the Director. IRP constituted the committee of creditors, to which RHPL was excluded and it raised its objection to its exclusion.

RESOLUTION PROFESSIONAL

The COC resolved to appoint Mr. Dhivesh Sharma as Resolution Professional (*herein after referred as RP*) and the same was informed to NCLT. NCLT vide its order recommended the name to IBBI, and the board confirmed the appointment. RP refused to renew the lease of the guest house in Hyderabad and terminated the lease, in response to which New Age filed an application before NCLT. Mr. Chew John informed RP about default by THSPL to AFB and the initiation of insolvency proceedings in Singapore, and requested to consider the Singapore proceedings as the centre of main interest to which RP denied and he filed an application to NCLT for recognition of Singapore proceedings.

RESOLUTION PLAN

RP prepared the Information Memorandum and invited expression of interest for resolution plan. RP gave a copy of IM to New Age and Blue Plaza, but it was denied to JKL Pvt. Ltd on the grounds that it was not a serious party. Plans were submitted by New Age and Blue Plaza. RP found defects in both the plans. During the meeting of the Committee of Creditors, the New Age plan was approved with certain modifications and RP filed the plan with NCLT.

ISSUES RAISED

CORPORATE DEBTOR

- I. WHETHER THE APPLICATION FILED BY FINANCIAL CREDITOR, RST BANK, ON INSTANCE OF DEFAULT, IS MAINTAINABLE OR NOT?
- II. WHETHER RP WAS JUSTIFIED IN TERMINATING LEASE WITH REGARDS TO GUEST HOUSE OF NEW AGE?
- III. WHETHER THE RESOLUTION PASSED BY B.O.D TO SELL THE MUMBAI HOUSE TO ITS M.D AMOUNTS TO AN UNDER VALUE TRANSACTION? IF YES, WHETHER IRP WAS JUSTIFIED IN TAKING POSSESSION OF THE FLAT IN MUMBAI?
- IV. WHETHER THE CORPORATE DEBTOR IS LIABLE FOR THE ACTIONS OF THE POLITICAL LEADERS ALONG WITH UNION WORKERS?
- V. WHETHER IRP WAS JUSTIFIED IN ADDING MARVEL ORGANICS LTD AS A CLAIMANT WITHOUT HAVING SUBSTANTIAL DOCUMENT TO SUPPORT THE CLAIM?

INTERIM RESOLUTION PROFESSIONAL AND RESOLUTION PROFESSIONAL

- VI. WHETHER RP WAS JUSTIFIED IN TERMINATING LEASE WITH REGARDS TO GUEST HOUSE OF NEW AGE?
- VII. WHETHER THE RESOLUTION PASSED BY B.O.D TO SELL THE MUMBAI HOUSE TO ITS M.D AMOUNTS TO AN UNDER VALUE TRANSACTION? IF YES, WHETHER IRP WAS JUSTIFIED IN TAKING POSSESSION OF THE FLAT IN MUMBAI?
- VIII. WHETHER THE RESOLUTION PLAN PREPARED BY BLUE PLAZA IS VALID OR NOT?
- IX. WHETHER CORPORATE DEBTOR IS LIABLE FOR ACTIONS OF POLITICAL LEADERS ALONG WITH UNION WORKERS?
- X. WHETHER THE IRP IS JUSTIFIED IN ADDING CLAIM OF MARVEL ORGANICS?
- XI. WHETHER PUBLIC DEPOSITORS COME UNDER THE PURVIEW OF OPERATIONAL CREDITORS?
- XII. WHETHER RHPL IS ENTITLED TO MEMBERSHIP AND VOTING RIGHTS INCoC?

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

- XIII. WHETHER THE APPLICATION FILED BY CHEW JOHN FOR RECOGNITION OF SINGAPORE PROCEEDINGS IS MAINTAINABLE?
- XIV. WHETHER APPLICATION FILED BY JKL PVT. LTD BEFORE NCLT FOR SEEKING A COPY OF INFORMATION MEMORANDUM IS MAINTAINABLE OR NOT?
- XV. WHETHER THE VALUATION CONDUCTED BY M/S AKP VALUERS TO DETERMINE LIQUIDATION VALUE OF CORPORATE DEBTOR IS ACCEPTABLE OR NOT?
- XVI. WHETHER XI MAO IS JUSTIFIED IN REFUSING SUPPLY OF RAW MATERIALS TO CORPORATE DEBTOR?
- XVII. WHETHER GSES AND JSEW ARE JUSTIFIED IN CUTTING OFF SUPPLY OF POWER AND RAW MATERIALS RESPECTIVELY?
- XVIII. WHETHER THE DIRECTIONS OF IRP CAN BE REFUSED BY PEOPLE'S BANK DURING MORATORIUM PERIOD?

OPERATIONAL CREDITORS

- XIX. WHETHER XI MAO IS JUSTIFIED IN REFUSING SUPPLY OF RAW MATERIALS TO CORPORATE DEBTOR?
- XX. WHETHER GSES AND JSEW ARE JUSTIFIED IN CUTTING OFF SUPPLY OF POWER AND RAW MATERIALS RESPECTIVELY?

FINANCIAL CREDITORS

- XXI. WHETHER THE APPLICATION FILED BY FINANCIAL CREDITOR, RST BANK, ON INSTANCE OF DEFAULT, IS MAINTAINABLE OR NOT?
- XXII. WHETHER THE DIRECTIONS OF IRP CAN BE REFUSED BY PEOPLES BANK DURING MORATORIUM PERIOD?
- XXIII. WHETHER CREDITORS CAN CHALLENGE CLAIMS OF OTHER CREDITORS IN CIRP- PEOPLE'S BANK?
- XXIV. WHETHER CREDITORS CAN CHALLENGE CLAIMS OF OTHER CREDITORS-RST BANK?

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

XXIII

XXV. WHETHER THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS TO SELL THE MUMBAI HOUSE TO ITS MANAGING DIRECTOR FOR RS 5 CRORE AMOUNTS TO UNDER VALUE TRANSACTION?

OTHER PARTIES

XXVI. WHETHER THE RESOLUTION PLAN PREPARED BY BLUE PLAZA IS VALID OR NOT?

XXVII. WHETHER PUBLIC DEPOSITORS COME UNDER THE PURVIEW OF OPERATIONAL CREDITORS?

XXVIII. WHETHER THE APPLICATION FILED BY CHEW JOHN FOR RECOGNITION OF SINGAPORE PROCEEDINGS IS MAINTAINABLE?

XXIX. WHETHER APPLICATION FILED BY JKL PVT. LTD BEFORE NCLT FOR SEEKING A COPY OF INFORMATION MEMORANDUM IS MAINTAINABLE OR NOT?

SUMMARY OF ARGUMENTS

ON BEHALF OF CORPORATE DEBTOR

- THE APPLICATION BY RST BANK IS NOT MAINTAINABLE DUE TO INCOMPLETE APPLICATION.
- THE IRP WAS NOT JUSTIFIED IN TERMINATING THE LEASE OF HYDERABAD GUESTHOUSE, AS IT WAS AGAINST THE INTERESTS OF THE CORPORATE DEBTOR. THE SALE OF HOUSE TO MANAGING DIRECTOR WAS A BONA FIDE TRANSACTION, AND THE IRP HAS NO RIGHTS TO TAKE POSSESSION OF THE HOUSE.
- THE CORPORATE DEBTOR IS NOT VICARIOUSLY LIABLE FOR THE ACTIONS OF THE POLITICAL LEADERS AND UNION WORKERS. THE IRP IS NOT JUSTIFIED IN ADMITTING CLAIM OF MARVEL ORGANICS BECAUSE THEY HAVE NOT SUBSTANTIATED THEIR CLAIMS WITH PROOF.

ON BEHALF OF INTERIM RESOLUTION PROFESSIONAL AND RESOLUTION PROFESSIONAL

- THE IRP WAS JUSTIFIED IN TERMINATING LEASE ON THE HYDERABAD GUESTHOUSE AS IT WAS IN THE BEST INTERESTS OF THE CORPORATE DEBTOR. THE IRP CAN TAKE BACK POSSESSION OF THE MUMBAI HOUSE AS IT WAS AN UNDERVALUED TRANSACTION.
- BLUE PLAZA'S RESOLUTION PLAN IS NOT SUITABLE FOR PRESENTATION TO THE COMMITTEE OF CREDITORS. JKL IS NOT ELIGIBLE FOR A COPY OF INFORMATION MEMORANDUM, AND IRP WAS JUSTIFIED IN NOT ACQUIESCING TO ITS REQUEST.
- THE CORPORATE DEBTOR IS LIABLE FOR THE ACTS OF ITS PERSONNEL AMONG THE UNION OF WORKERS.
- THE IRP IS WITHIN HIS POWERS TO ALLOW MARVEL ORGANICS TO SUBMIT ITS CLAIMS AND BE PART OF THE COMMITTEE OF CREDITORS. THE IRP WAS JUSTIFIED IN TURNING DOWN THE PUBLIC DEPOSITORS FROM ENTRY INTO THE CLASS OF OPERATIONAL CREDITORS. RHPL IS NOT A CREDITOR THEREBY BEING DISQUALIFIED FROM THE COC. CHEW JOHN'S APPLICATION FOR RECOGNITION OF SINGAPORE PROCEEDINGS AS THE CENTRE OF MAIN INTERESTS MUST BE REJECTED.
- AKP VALUERS IS A RELATED PARTY AND HENCE MUST BE BARRED FROM VALUATION OF NEW AGE.

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

- XI MAO, GSES AND JSEW ARE BOUND AGAINST STOPPING SUPPLY OF GOODS AND SERVICES DUE TO MORATORIUM ON THE SAME. PEOPLE'S BANK IS OUT OF LINE IN NOT LISTENING TO THE IRP AND INSTEAD ADJUSTING LEASE AMOUNT TO SETTLE DEBTS.

ON BEHALF OF OPERATIONAL CREDITORS

- XI MAO'S RAW MATERIALS ARE NOT ESSENTIAL GOODS AND SERVICES SUCH THAT SUPPLY HAS TO BE MAINTAINED DURING MORATORIUM.
- GSES AND JSEW ARE JUSTIFIED IN DISCONTINUING SUPPLY OF POWER AND FOIL BEFORE MORATORIUM.

ON BEHALF OF FINANCIAL CREDITORS

- THE APPLICATION BY RST BANK IS BASED ON APPROPRIATE PROCEDURE AND IS HENCE VALID.
- THE DIRECTIONS OF THE IRP CAN BE CONTRAVENED BECAUSE PEOPLE'S BANK IS NOT A PART OF THE CORPORATE DEBTOR.
- PEOPLE'S BANK CLAIMS THAT A CREDITOR CANNOT CHALLENGE THE CLAIMS OF ANOTHER CREDITOR IN CIRP AND RST BANK CLAIMS THE OPPOSITE.
- THE RESOLUTION TO SELL THE HOUSE IS CLAIMED TO HAVE BEEN A MALA FIDE TRANSACTION BY THE CORPORATE DEBTOR BECAUSE IT IS AN UNDERVALUED TRANSACTION.

ON BEHALF OF OTHER PARTIES

- BLUE PLAZA'S RESOLUTION PLAN IS VALID AND SHOULD BE PUT TO THE FLOOR BEFORE THE CoC.
- PUBLIC DEPOSITORS FILED A MISTAKEN APPLICATION AND MUST BE MOVED OVER TO THE CLASS OF FINANCIAL CREDITORS.
- MR. JOHN'S APPLICATION FOR RECOGNITION OF SINGAPORE PROCEEDINGS IS VALID BECAUSE IT IS THE CENTRE OF MAIN INTERESTS.
- JKL HAS A RIGHT TO A COPY OF INFORMATION MEMORANDUM, AND HENCE IRP WAS NOT JUSTIFIED IN DECLINING THIS RESPECT.

ARGUMENTS ADVANCED

- **ISSUES RAISED BY THE CORPORATE DEBTOR**

Issue 1. WHETHER THE APPLICATION FILED BY FINANCIAL CREDITOR, RST BANK, ON INSTANCE OF DEFAULT, IS MAINTAINABLE OR NOT?

A. THE CORPORATE DEBTOR IS CAPABLE OF REPAYING DEBTS.

1. It is submitted that New Age was in a position to repay its debts. There are various tests to determine the insolvency of corporate debtors, which are: the test of inability to pay debts¹, the cash flow test² and the balance sheet test³. Inability to pay debts may be assessed either by analyzing the cash flow, which compares revenue and outgoing cash; or by analyzing the balance sheet's assets and liabilities. Either way, in a year the Five Star Hotel in Jaipur will commence, and profits from the commercial tower will come to New Age, which means that a consistent heavy flow of cash profits will be received that will help repay debts. Besides, the statement of assets and liabilities of the corporate debtor can be found in *Annexure I*. New Age still owns a commercial tower, three plants, cars, houses and office spaces, the sales of which can settle debts as well. Hence, it is beseeched that the corporate debtor is held as not insolvent and the application by RST Bank must be dismissed.

B. THE FINANCIAL CREDITORS FAILED TO PROVIDE A NOTICE OF CIRP.

¹ A KEAY & P. WALTON, *INSOLVENCY LAW: CORPORATE AND PERSONAL*, 17 (2nd ed., Jordan Publishing House London, 2008) ; *In re European Life Assurance Society (1869-70)* LR 9 Eq 122.

² RODRIGO OLIVARES-CAMINAL, et al., *DEBT RESTRUCTURING*, (1st ed. Oxford University Press, 2011); *Southern Cross Interiors Pty. v. Deputy Commissioner of Taxation*, 188 ALR 114 (Supreme Court of New South Wales); *White ACT (in liquidation) v. White GB, et al.* (2004) NSWSC 71 p. 291-93 (Supreme Court of New South Wales); *Iso Lilodu Aliphumeleli Pty Ltd. (In Liquidation) v. Commissioner of Taxation* (2002) NSWSC 644 p. 14 (Supreme Court of New South Wales); *In Re New World Alliance Pty Ltd.* (1994) 51 FCR 425; 122 ALR 531; *Sycotex Pty Ltd. v. Baseler* (1994) 51 FCR 425 at 434 (Federal Court of Australia); *Tru Floor Service Pty Ltd. v. Jenkins* (No 3) 2006) 232 ALR 532, p. 45-48 (Federal Court of Australia); *ASIC v. Plymin, et al.* [2003] VSC 123 p. 380 (Supreme Court of Victoria); *Shakespeares Pie Co. v. Multipye* [2006] NSWSC 930, p. 89 (Supreme Court of New South Wales).

³ RM GOODE, *PRINCIPLES OF CORPORATE INSOLVENCY* 88 (3rd ed., Sweet and Maxwell, London, 2005); *In Re Waccamaw's Homeplace*, 325 BR 524, 529 (Bankr. D Del 2005); *Matter of Taxmann Clothing Co.*, 905 F 2d 166, 170 (7th CIR 1990); *BNY Corporate Trustees Service Pvt. Ltd. v. Eurosail-UK 2007-3BL Plc and Ors.*[2010] All ER (D) 351 (Jul); [2010] EWHC 2005 (Ch.); *Cheyne Finance Plc* (2008) BCC 182.

2. It is mandated⁴ that the applicant must dispatch a copy of the application for CIRP. Notice must be given to the corporate debtor *after* filing application. This is for giving the corporate debtor adequate notice so that the Corporate Debtor may bring to the notice of Adjudicating Officer ‘mitigating factor/records before the application is accepted even before formal notice is received⁵.’ The CIR Process has serious consequences not only on the corporate debtor but also on its directors and shareholders, because once the application is admitted the charge of the affairs of the company is given to the resolution professionals⁶. Therefore, the applicant is bound to issue limited notice to the corporate debtor before admitting a case. It is submitted that the non-issuance of notice to the corporate debtor will have had an adverse consequences on the welfare of the Company and it amounted to violation of natural justice⁷ which the tribunal is required to provide under section 420 of the Companies Act, 2013. The presumption is that legal provisions were intended in harmony with principles of natural justice.

C. THE TRIBUNAL MUST RECTIFY THE ORDER PASSED ON 5TH APRIL, 2017.

3. Before initiating CIRP, the ‘adjudicating authority’ is required to satisfy three gears- one of which is whether the application is complete⁸. It is submitted that the application is incomplete as delivery of notice to corporate debtor constitutes an integral part of CIRP⁹ and the time limit of seven days for the applicant to do this has expired¹⁰. It is submitted that the appointment of IRP and the order declaring moratorium should be declared void and the corporate debtor must be released from CIRP.

Issue 2. WHETHER RP WAS JUSTIFIED IN TERMINATING LEASE WITH REGARDS TO GUEST HOUSE OF NEW AGE?

⁴ The Application to Adjudicating Authority Rules, 2016, Sub-Rule (3) of Rule 4 of I & B, Act of Parliament, 2016 (India).

⁵ *Innoventive Industries Ltd. v. ICICI Bank et al.* (2017) SCC NCLAT 70; *Standard Chartered Bank Ltd, et al. v. Essar Steels India Ltd.*, C.P. No. (IV) 40/7/NCLT/AHM/2017, NCLT Ahmedabad; *Canara Bank, Prime Corporate Branch v. Deccan Chronicle Holdings Ltd.*, C.P. No. IB 41/7/HBD/2017, NCLT Hyderabad; *RBL Bank Ltd. v. MBL Infrastructures Ltd.*, Company Petition No. 170/2017 NCLT Kolkata.

⁶ *Sree Metaliks Ltd., et al. v. UOI* (Writ Petition 7144 (W) of 2017).

⁷ *Starlog Enterprises Ltd. v. ICICI Bank Ltd.* (2017) SCC NCLAT 13.

⁸ *M/s. Bhass Software Labs Pvt. Ltd. v. M/s. Mobmi wireless Solution Ltd.*, Company Appeal (AT) (Insol.) No. 79 of 2017, National Company Law Appellate Tribunal New Delhi; *Innoventive Industries Ltd. v. ICICI Bank, et al.* (2017) SCC NCLAT 70.

⁹ *Kaliber Associates Pvt. Ltd v. Mrs. Tripat Kaur*; (2017) SCC NCLAT 77.

¹⁰ The Companies Act, Act No.18 of 2013, s.420, Act of Parliament, 2013 (India).

A. THAT THE RP HAS TERMINATED THE LEASE WITHOUT BEING AS EFFICIENT AS POSSIBLE.

4. The Resolution professional terminated the lease on guesthouse of debtor instead of extending it. The company was running an integral function in the said guest house, clearly, considering that it had not terminated its lease of Rs.12,00,000 per month despite having defaulted to banks. It is clear that apart from the guesthouse a major business office of the corporate debtor is in Hyderabad, for making sales, and considering the international nature of the clientele of New Age, a guesthouse is very important for clients, to conduct business. This was the only guesthouse leased out to New Age. The RP did not endeavour to maximise the continued business operations of the corporate debtor, and terminated the lease instead. The RP's responsibilities require the highest level of integrity and objectivity¹¹. This is further illustrated by The Resolution Professional, having a statutory duty to 'preserve and protect the business operations' of the corporate debtor¹². Property includes company's interest as a lessee too¹³. Hence, the RP has terminated the lease without having utmost efficiency. The Termination of lease was not in best interests¹⁴ of the Company.

Issue 3. WHETHER THE RESOLUTION PASSED BY B.O.D TO SELL THE MUMBAI HOUSE TO ITS M.D AMOUNTS TO UNDER VALUE TRANSACTION? IF YES, WHETHER IRP WAS JUSTIFIED IN TAKING POSSESSION OF THE FLAT IN MUMBAI?

A. THE SALE OF THE HOUSE IS IN THE BEST INTERESTS OF THE COMPANY.

5. The primary duty of the directors is to act in a way they consider to be in good faith, would be most likely to promote the success of the company, for the benefits of its members as a whole¹⁵. It is submitted that when the company is about to enter the zone of insolvency, the board should take interests of all the stakeholders in the company and promote the success of

¹¹ The Model Bye-Laws and Governing Board of Insolvency Professional Agencies Regulations, Regulation 16, Act of Parliament, 2016 (India).

¹² The Insolvency and Bankruptcy Code, Act. No. 31 of 2016, s. 25(1), Act of Parliament, 2016 (India).

¹³ Bristol Airport Ltd. v. Powdrill [1990] Ch 744, [1990] 2 All ER 493, CA.

¹⁴ *Id.*, [1990] 2 All ER 493, CA; *In Re International Bulk Commodities Ltd.* [1992] BCC 463; *Thornhill v. Atherton* (No. 2) [2008] BPIR 691; *Sanders v. Donovan* [2012] BPIR 219; *In Re Paramount Airways Ltd.* [1990] Ch 744, [1990] BCC 130; *Official Receiver v. Environment Agency* [1999] BPIR 986, CA; *In Re Bluestone Chemicals Ltd.* (in liquidation) [2001] 3 WLR 662.

¹⁵ *West Mercia Safety Ware Ltd. v. DoDD* [1988] 4 BCC 30, CA; *Kinsela v. Russell Kinsela Pty. Ltd.*, 4 NSWLR 722.

the company¹⁶. It is submitted that the Corporate Debtor was not able to pay its debts to its lenders. On 4th November New Age paid the balance amount of 10% to RHPL for completing the construction works. The company did not have the instalment of Rs. 35,00,000 due on 31st December, 2016. Therefore, it was in the best interest of the company to sell its assets and pay the necessary dues on time. It was one of the primary duties of the board to promote the success of the company¹⁷. The test of Reasonable prospect is one of the criteria to determine the success of the company¹⁸. Therefore, it was necessary to promote the success of the company by protecting its best interests¹⁹.

B. THE NATURE OF THE TRANSACTIONS WAS IN *BONAFIDE* NATURE.

6. Protection is given to transactions which company enters into in good faith for legitimate business reasons. The court looks into good faith for the purpose of carrying business²⁰ and the reasonable grounds for believing that the transaction would benefit the company²¹.
7. The act was *bonafide* in nature and transaction for sale of the property may be at a lower rate, but it was made to meet all or part of a liability under a maintenance agreement²². Alternatively, the burden rests upon of the IRP to prove if the transaction was of *malafide* in nature²³.

C. THE IRP DOES NOT HAVE AUTHORITY TO TAKE POSSESSION OF THE FLAT.

8. It has already been established that sale of the flat was in *bonafide* interests of the company and hence cannot be set aside. *Arguendo*, the IRP does not have the authority to take

¹⁶ North American Catholic Educational Programming Foundation, INC v. Gheewalla, 930 A 2d 92, 99 (Del) 2007.

¹⁷ *Supra* note 10, s. 180.

¹⁸ *In Re* Produce Marketing Consortium Ltd. (No. 2) [1989] BCLC 520, [1989] 5 BCC 569; *In Re* Purpoint Ltd. [1991] BCLC 491, [1991] BCC 121; BNY Corporate Trustee Services Ltd. v. Eurosail-UK 2007 3BL Plc [2013] 1 WLR 1408; *In Re* Onslow Ditching Ltd [2012] BCC 407.

¹⁹ Nanalal Zaver, et al. v. Bombay Life Assurance Co. Ltd; 1950 AIR 172; Travancore Rayons Ltd. v. Registrar of Companies, (1988) 64 CompCas 819 Ker.

²⁰ *In Re* M C Bacon Ltd. [1990] BCLC 324, 340; National Bank of Kuwait v. Menzies [1994] 2 BCLC 306, 319; Agricultural Mortgage Corp v. Woodward [1995] 1 BCLC 1, CA.

²¹ *In Re* Barton Manufacturing Co. Ltd. [1999] 1 BCLC 740, [1998] BCC 827; Rolled Steel Products v. British Steel Corp [1984] BCLC 466; Brown v. Cork [1985] BCLC 363.

²² *In Re* Bank of Credit and Commerce International SA (No.3) [1993] B.C.L.C. 1490.

²³ *Supra* note 20,21; Hill v. Spread Trustee Company [2007] 1 WLR 2404, CA.

possession anyway, because the IRP has authority to manage only the assets of the Corporate Debtor²⁴. The flat in question belongs to the Managing Director and hence not to the Corporate Debtor, New Age Limited. This is because New Age had sold the house to its MD in a board resolution²⁵.

9. The Managing Director's assets are separated from the assets of the company as the company is a separate legal entity. Hence, the IRP does not have the authority to take possession of that flat.

Issue 4. WHETHER THE CORPORATE DEBTOR IS LIABLE FOR THE ACTIONS OF THE POLITICAL LEADERS AND UNION WORKERS?

A. THE AGITATION WAS NOT A FUNCTION THAT WAS PERFORMED WITHIN CAPACITY OF EMPLOYMENT.

10. The agitation was carried out by political leaders and the union of workers. The union workers did not act in the scope of its terms of employment²⁶, and hence, the Corporate Debtor is not vicariously liable for the acts of the union workers.
11. Only those functions performed as emergency functions to take care of some problem would make the corporate employer liable, and not something done solely on the employee's volition for their own ends²⁷. Further, acts of employees committed *ultra vires* make the company liable only if express authorization exists²⁸, which is not the case here.
12. Vicarious liability depends upon the control test²⁹, it is unclear from the facts whether the workers in the union were employed by the corporate debtor or an independent contractor. Hence, it cannot be held that New Age Limited is liable for the acts of the workers.

²⁴ The Insolvency and Bankruptcy Code, Act. No. 31 of 2016, s. 18(1)(f), Act of Parliament, 2016 (India).

²⁵ Moot proposition ¶1, p. 5.

²⁶ Ready Mixed Concrete v. Minister of Pensions and National Insurance.(1968) 2 QB 497.

²⁷ Keppel Bus Co Ltd v. Ahmad (1914) 2 All ER 700 PC.

²⁸ Tiruveriamuthu v. Municipal Council, Shencottah AIR 1961 Mad 230.

²⁹ Dharangadhara Chemical Works Ltd. v. State. (1957) AIR 264, (1957) SCR 152.

Issue 5. WHETHER IRP WAS JUSTIFIED IN ADDING MARVEL ORGANICS LTD AS A CLAIMANT WITHOUT HAVING SUBSTANTIAL DOCUMENT TO SUPPORT THE CLAIM?

A. THAT THE IRP DID NOT SEEK ANY CLARIFICATION FROM MARVEL ORGANICS FOR SUBSTANTIATING THE ESCALATED CLAIM.

13. The RP has a duty to investigate the veracity of each debt and determine whether it may be properly admitted or not. He should examine every proof and consider whether the debt is valid or not³⁰. The IRP or RP is bound to verify claims³¹. The IRP is expected to showcase financial integrity³². The absence of this can be detrimental to the interests of the debtor³³. The IRP in the case at hand added the escalated claim amount of Rs.136,00,00,000 from Rs. 20,00,00,000 of Marvel Organics and invited it to the CoC without having received the documents to substantiate it further³⁴, as opposed to raising objections³⁵. Thus, it is clear that IRP has not discharged its functions with due integrity³⁶.

• **ISSUES RAISED BY INTERIM RESOLUTION PROFESSIONAL AND RESOLUTION PROFESSIONAL**

Issue 6. WHETHER RP WAS JUSTIFIED IN TERMINATING LEASE WITH REGARDS TO GUEST HOUSE OF NEW AGE?

A. THE RP TERMINATED LEASE IN BEST INTERESTS OF CORPORATE DEBTOR.

³⁰ *In Re Home and Colonial Insurance Co* [1930] 1 Ch 102; *In Re Van Laun, ex p Chatterton* [1907] 2 KB 23, CA; *In Re Lupkovics, ex p Trustee v. Freville* [1954]2 All ER 125, [1954]1 WLR 1234; *In Re National Wholemeal Bread and Biscuit Co* [1892] 2 Ch 457; *Bellmex International Ltd. v. British American Tobacco Ltd* [2001] 1 BCLC 91.

³¹ The Insolvency Resolution Process for Corporate Persons, Regulation 13(1), Act of Parliament, 2016 (India).

³² The Securities Contracts (Regulations) (Stock Exchanges and Clearing Corporations) Regulations, Regulation 20, 2012 (India); *UP Stock Exchange Brokers v. SEBI* [Civil Writ Petition 45893 of 2012].

³³ The Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004, Regulation 3, Act of Parliament, 2006 (India).

³⁴ *Supra* note 31, Regulation 12(2)(3).

³⁵ *Id.*

³⁶ *Supra* note 11, Insolvency and Bankruptcy Board of India Notification, New Delhi, 21st November 2016.

14. He is well within his rights to exercise his own judgement in service to the Corporate Debtor³⁷. Thus, the decision was taken in good faith and with no ulterior motives or personal stakes and it was best suited for the interest³⁸ of the Corporate Debtor.
15. An asset can be sold³⁹ during the moratorium period, (by resolution professional). The benefit of these proceeds was held as enough to justify the sale. In the case at hand too, the guesthouse is not essential to conduct business, as the solar energy plants are the main business of the Corporate Debtor. Hence, it is beneficial to terminate such a costly lease. Therefore, the Resolution Professional is justified in cancelling the lease.

Issue 7. WHETHER THE RESOLUTION PASSED BY B.O.D TO SELL THE MUMBAI HOUSE TO ITS M.D AMOUNTS TO UNDER VALUE TRANSACTION? IF YES, WHETHER IRP WAS JUSTIFIED IN TAKING POSSESSION OF THE FLAT IN MUMBAI?

A. THE RESOLUTION AMOUNTS TO AN UNDERVALUED TRANSACTION.

16. A transaction can be said as undervalued⁴⁰ if the sale value is significantly lesser⁴¹ than the original value⁴². In case of undervalued transactions, the court must look into two interrelated elements, first the transaction and secondly, why the transaction is something the company entered into⁴³. The resolution passed by the board for selling the Mumbai house is an undervalued transaction because the Corporate Debtor enters into the transaction to sell the house at significant lower rate, where the market rate is speculated to be much higher⁴⁴ and

³⁷ *Supra* note 24, s. 17.

³⁸ *In Re* Lubin, Rosen and Associates Ltd [1975] 1 All ER 577, [1975] 1 WLR 122; *In Re* House Property and Investment Co. Ltd. [1954 Ch 576], [1953] 2 All ER 1525; *In Re* Paraguassu Steam Tramroad Co. Black and Co. (1872) 8 Ch App 254; *In Re* X Co. Ltd. [1907] 2 Ch 92; *In Re* Windsor Steam Coal Co. (1901) Ltd [1929] 1 Ch 151; *In Re* P Turner (Wilsden) Ltd. [1987] BCLC 149, 2 BCC 99, 567; *In Re* Charterl and Goldfields Ltd. (1909) 26 TLR 132.

³⁹ M/s Gujarat NRE Coke Ltd. Company petition 182 of 2017, NCLT Kolkata.

⁴⁰ *Supra* note 21.

⁴¹ *The Trustee In Bankruptcy Of Gordon Robin Claridge v. Claridge & Claridge et al.* [2011] EWHC 2047 (Ch); *Phillips, et al. v. Brewin Dolphin Bell Lawrie Ltd. et al., House of Lords*, [1999] 1 WLR 2052.

⁴² The U.K Insolvency Act, 1986, s. 238(4) (B).

⁴³ *Supra* note 42, *In Re* Ovenden Colbert Printers Ltd Hunt v. Hosking [2013] EWCA Civ 1408, [2014] 1 BCLC 291, [2014] BPIR 285; *Manson v. Smith* [1997] 2 BCLC 161; *Defra v. Feakings* [2004] EWHC 2735 (Ch) [2005] BPIR 292 at [45]; *In Re* Brabon [2000] BPIR 537.

⁴⁴ *Supra* note 25, ¶1, p.5.

this never happens in the transaction of the Corporate Debtor⁴⁵. Therefore, this transaction amounts to an undervalued transaction.

B. THE TRANSACTION CAN BE AVOIDED AS IT IS UNDERVALUED.

17. As it is previously submitted that, the transfer was an undervalued transaction. The Code lays down a twofold test to undo or avoid⁴⁶ the transaction; whether the transaction was within the last year and if it was a related party whether it was within the last two years. It is evident from the fact that, the sale of Mumbai house took place on 4th December, 2016 and the CIRP was initiated on 4th March, 2017 and the transaction took place between Corporate Debtor and its Managing Director. This concludes that the two-fold test is satisfied and therefore, the transaction must be avoided⁴⁷.

C. IRP HAS RIGHT TO TAKE POSSESSION OF MUMBAI FLAT.

18. It is the duty of the IRP to avoid transactions that were to the benefit of the party which contracted with the Corporate Debtor⁴⁸, such as undervalued sales outside course of ordinary business⁴⁹, under which comes the sale of Mumbai house by New Age to its MD. Now, to avoid a transaction, there is a look-back period⁵⁰, which is minimum one year, and the sale falls within this timeframe counting backwards from admission of insolvency application. Thus, this transaction can be set aside.

19. In the case at hand, the IRP wrote the director to taking possession of Mumbai Flat but it didn't receive any reply nor was the possession handed over. This disobedience also makes the MD liable for prosecution⁵¹. Therefore, it can be inferred that the application of IRP for taking possession of Mumbai Flat was justified.

Issue 8. WHETHER THE RESOLUTION PLAN PREPARED BY BLUE PLAZA IS VALID OR NOT?

⁴⁵ *Supra* note 24, s. 46(2) (b).

⁴⁶ *Id.*, s. 46(1) (ii).

⁴⁷ *Supra* note 44.

⁴⁸ *Supra* note 24, s.26.

⁴⁹ *Id.*, s. 45(2) (b).

⁵⁰ *Id.*, s. 46.

⁵¹ *Id.*, s. 70.

A. PLAN DID NOT MEET THE STATUTORY REQUIREMENTS.

20. A Resolution Plan is one of the key and differential elements of the IBC. A very precise and multi-dimensional understanding of the concept of Resolution Plan is inevitable keeping in mind all attached legal, compliance strings⁵². It can be defined as “*a plan proposed by any person for insolvency resolution of the Corporate Debtor as a going concern in accordance with Part IP*”. The Code lays down various measures which may be included in the resolution plan⁵³. The resolution plan proposed by Blue Plaza did not stipulate the term⁵⁴, its implementation schedule⁵⁵, proper means of supervising and the control and management of the business⁵⁶ of the Corporate Debtor which are mandates⁵⁷ of a plan. The plan also did not mention illustrative list⁵⁸ such as the sale or transfer of assets of the Corporate Debtor, substantial acquisition or merger of shares of the Corporate Debtor, etc. which are required. The plan only mentioned the procuring capacity of Blue Plaza in purchasing the Raipur, Singapore and Jaipur hotel for USD 125 million⁵⁹. Therefore, it is submitted that the plan did not meet the statutory requirements⁶⁰. Hence the Resolution Professional was correct in not placing this plan before the committee for creditors⁶¹.

Issue 9. WHETHER CORPORATE DEBTOR IS LIABLE FOR ACTIONS OF POLITICAL LEADERS AND UNION WORKERS?

A. EMPLOYEES OF CORPORATE DEBTOR ARE OBLIGATED TO COOPERATE WITH IRP, AND COMPANY IS LIABLE FOR THE SAME.

21. It is preliminarily submitted that New Age is vicariously liable for the acts of the union workers, as even in the absence of express authorization from itself, the union workers acted in furtherance of the company’s interests, by rooting for the company to maintain autonomy

⁵² *Supra* note 51, s. 30(2) (e).

⁵³ The Insolvency Resolution Process for Corporate Persons Regulations, Regulation 38, Act of Parliament, 2016 (India).

⁵⁴ *Id.*, Regulation 38 (2).

⁵⁵ *Id.*, Regulation 38(2) (c).

⁵⁶ *Id.*, Regulation 38(2) (b).

⁵⁷ *Supra* note 54.

⁵⁸ *Supra* note 53, Regulation 37.

⁵⁹ *Supra* note 25 ¶6, p. 10.

⁶⁰ *In Re* Cajun Elec Power Coop. Inc 230 (BR) 715, 728 (Bankr. MD La 1999); *In Re* Cypresswood Land Partners I 409 BR 396, 424 (Bankr SD Tex 2009); *In Re* Landing Assocs Ltd 157 BR 791, 811 (Bankr WD Tex 1993).

⁶¹ *Supra* note 53, Regulation 39(2).

over its assets as opposed to handing over management to the IRP⁶². Also, a corporation can be made liable for offences which it does not have the capacity to commit, even⁶³ and this is one of such instances.

22. The IRP visited Gujarat to take possession of Corporate Debtor's assets as is his right.⁶⁴ The IRP has an inherent power to take custody and monitor any asset which the Corporate Debtor has an ownership right on.⁶⁵ But, he was not allowed to enter the unit by various political leaders along with the workers.

23. The NCLT has held⁶⁶ that the IRP shall perform all his functions contemplated in the Code and that all the personnel connected with the Corporate Debtor are under legal obligation⁶⁷ to extend all assistance and cooperation to the IRP as required by him in managing the affairs of Corporate Debtor. Therefore, this is a clear violation of rights of IRP in management of Corporate Debtor and hence, IRP rightly took appropriate steps to taking over the possession of Corporate Debtor's assets.

Issue 10. WHETHER IRP IS JUSTIFIED IN ADDING CLAIM OF MARVEL ORGANICS?

A. MARVEL ORGANICS HAD SOME MORE TIME BEFORE SUBMITTING PROOF OF ITS CLAIMS.

24. The proof of claims has to be submitted before the date mentioned by Resolution Professional, and if this hasn't been complied with, by the time the resolution plan is approved⁶⁸. It is unclear whether Marvel Organics has submitted proof since its inclusion into the CoC. Therefore, the addition of the claims made by Marvel Organics to the IRP is valid and substantiation could be done before the plan is approved. The claims submitted by

⁶² KN Nithyananda v. State Agro Industries (1973) AIR Mys 314; Keppel Bus Co Ltd. v. Ahmad (1914) 2 All ER 700 PC.

⁶³ Madras Port Trust v. Safiulla (1962) AIR Mad 781.

⁶⁴ *Supra* note 24, s. 17(1) (a).

⁶⁵ *Id.*, s. 18(f), Act of Parliament.

⁶⁶ Reliance Commercial Finance Ltd. v. Ved Cellulose Ltd., C.P. No. (IB)- 156(PB)/2017. NCLT New Delhi Principal Bench; M/s Incredible Unique Build Con Ltd. v. Clutch Auto Ltd. IB-20 PB/2017, (2017) SCC NCLT 94 NCLT Principal Bench New Delhi.

⁶⁷ *Supra* note 24, s. 19.

⁶⁸ *Supra* note 53, Regulation 12(2), Notification dated 30th Nov. 2016.

Marvel Organics to IRP are marked as *Annexure III* and the claims of other Creditors are marked from *Annexure IV-XI*.

Issue 11. WHETHER PUBLIC DEPOSITORS COME UNDER THE PURVIEW OF OPERATIONAL CREDITORS?

A. PUBLIC DEPOSITORS ARE NOT OPERATIONAL CREDITORS:

- 25.** Operational creditors are defined as the creditors to whom operational debt is owed⁶⁹. An operational debt is a claim in respect of the provision of goods and services⁷⁰, be it employees or creditors. Deposits by definition excludes advances paid for production of goods and services, (be it in cash or kind)⁷¹. This shows that deposits are as per statutory definition is not operational credits⁷². Claims may be submitted to the Interim Resolution Professional or the Resolution Professional with proof attached, in classes that do not comply with financial credit, operational credit *or* employees/work persons.
- 26.** Either way, the IRP rejected their claims as they were in improper form, and the Public Depositors are welcome to apply under any other class of creditors.
- 27.** Since, Public Depositors have been proven to not come under the class of Operational Creditors, they have the remedy of seeking admission to the CIR Process via this provision⁷³.

Issue 12. WHETHER RHPL IS ENTITLED TO MEMBERSHIP AND VOTING RIGHTS IN COC?

A. RHPL HAS NO LOCUS STANDI:

- 28.** RHPL and New Age Limited formed a Joint Venture Company⁷⁴ for construction of hotel on Raipur Land. Thus, if at all any claims are to be made with regard to the joint venture

⁶⁹ *Supra* note 24, s. 5(20).

⁷⁰ *Id.*, s. 5(21).

⁷¹ The Reserve Bank of India Act 1934, s. 45I (bb), Act No. 2 of 1934.

⁷² In the matter of M/s Sukam Power System Pvt. Ltd., Company Petition No. (IB)-168 (ND)/2017, NCLT, New Delhi.

⁷³ *Supra* note 53, Regulation 8, Notification dated 30th Nov. 2016

⁷⁴ *Supra* note 25, ¶2 p.2

business, it must be made against New Age Limited from the capacity of the Joint Venture Company itself. (Either way, the Joint Venture Company *also* would have no claims as New Age Limited has discharged its obligations.)

B. ARGUENDO, RHPL CAN REPRESENT THE JOINT VENTURE COMPANY, RHPL IS A RELATED PARTY TO NEW AGE.

29. The promoters of New Age are the owners of RHPL. This makes the two companies related parties. Related parties are excluded from the CoC⁷⁵.

30. Promoters have direct or indirect control over a company⁷⁶. Control is defined as significant influence, which in turn is defined as participation in the financial and operating policy decisions of an enterprise⁷⁷. Now a promoter's command is illustrated as something which directors are *accustomed* to following⁷⁸, and this connotation fits finely with the aforementioned explanation of significant influence. Thus, the qualitative control over New Age Limited by its promoters is enough to ensure that RHPL is a related party. Besides, related parties statutorily include those who Corporate Debtor's directors are *accustomed* to listen to, which also include promoters⁷⁹.

C. ARGUENDO, RHPL IS NOT A RELATED PARTY; IT IS STILL NOT A CREDITOR IN THE FIRST PLACE.

31. New Age Limited has settled the last of its financial obligations to RHPL⁸⁰ Hence, RHPL is the party that is yet to discharge the entirety of its obligations, and in no way is it a creditor of the corporate debtor during the time of initiation of CIR Process.

⁷⁵ *Supra* note 24, s. 21(2) Proviso.

⁷⁶ *Supra* note 10, s. 16(b).

⁷⁷ Accounting Standard 18, Institute of Chartered Accountants of India.

⁷⁸ *Supra* note 10, s. 16.

⁷⁹ *Supra* note 24, s. 5(24) (h).

⁸⁰ *Supra* note 25, ¶5 Pg.4

Issue 13. WHETHER THE APPLICATION FILED BY CHEW JOHN FOR RECOGNITION OF SINGAPORE PROCEEDINGS IS MAINTAINABLE?

A. NEW AGE HAS ITS PLACE OF REGISTERED OFFICE AS NEW DELHI.

32. It is the place of registered office that is considered the Centre of main interests of a corporation⁸¹. The place of registered office of New Age is New Delhi, India. Hence, it is not maintainable that Singapore could be adjudged as the Centre of main interests of New Age.

B. NCLT DOES NOT HAVE JURISDICTION TO HEAR THIS MATTER.

33. It is submitted that, a foreign representative may apply directly to a court in ‘this State’⁸². However, The NCLT is not a court, but an administrative body/tribunal. Hence, the application by Mr. Chew John to the NCLT is not maintainable. Now, it is a matter of law that even administrative proceedings are ‘courts’⁸³, but this is not in the context of art. IX⁸⁴.

C. SUBSIDIARY IS A SEPARATE LEGAL ENTITY.

34. For this application by Mr. John to be maintainable before the NCLT, it is required that the two Corporate Debtors are the same debtors.⁸⁵ Ten Hospitality Services Pvt. Ltd. however is a separate legal entity, and is not the same as New Age Ltd⁸⁶. It is submitted that rights and duties of THSPL are totally different⁸⁷ from that of New Age once it is incorporated⁸⁸. It is further submitted that, despite the insolvency proceedings of the parent and subsidiary running concurrently⁸⁹, the conditions⁹⁰ required for a foreign representative to commence insolvency proceedings are not met as they are totally different legal entity.

⁸¹ The UNCITRAL Model Law on Cross Border Insolvency, 1997, art. XVIII(3).

⁸² *Id.*, art. IX.

⁸³ The UNCITRAL Model Law on Cross Border Insolvency and EC Regulations, ¶87.

⁸⁴ *Id.*, ¶ 108.

⁸⁵ *Supra* note 81, art. I.

⁸⁶ GOWER & DAVIES, PRINCIPLES OF MODERN COMPANY LAW, (Prof. Paul Davies & Prof. Sarah Worthington eds., 10th ed., Sweet and Maxwell, London, 2016); REINIER KRAAKMAN, et al., THE ANATOMY OF CORPORATE LAW: A COMPARATIVE AND FUNCTIONAL APPROACH-1.2.1, (2nd ed., Oxford University Press, 2009).

⁸⁷ *Salomon v. Salomon & Co Ltd.* [1896] UKHL 1, [1897] AC 22; *Andar Transport Pty Ltd. v. Brambles Ltd.* (2004) 206 ALR 387; (2004) HCA 28; *Macaura v. Northern Assurance Co Ltd.* (1925) AC 619; *In Re: The Kondoli Tea Co. Ltd. v. Unknown*; (1886) ILR 13 Cal 43; *Lee v. Lee’s Air Farming Ltd.* [1960] UKPC 33.

⁸⁸ *Life Insurance Corporation of India v. Hari Das Mundra, et al.*, Special Appeal Nos. 296 and 299 of 1961, High Court of Allahabad.

⁸⁹ *Supra* note 81, art. I(c).

⁹⁰ *Id.*, art. XI.

D. SUBSIDIARY CANNOT BE THE CENTRE OF MAIN INTERESTS.

- 35.** THSPL is not the Centre of main interests of the Corporate Debtor, as it is merely a subsidiary, whereas the holding company itself is insolvent. An explanatory report⁹¹ prepared with respect to the European Convention, provided guidance on the concept of “main insolvency proceedings”. New Age carries out no administration in THSPL. Administration of interests on a regular basis in a manner ascertainable by third parties is essential for consideration of a place as Centre of main interests.⁹²
- 36.** *Arguendo*, such involvement exists in THSPL’s affairs by New Age, even so, there exists precedent to consider New Age itself as the Centre of main interest, as notwithstanding the place of business operations, and the place of management is also eligible for consideration as the Centre of main interest⁹³.

E. ARGUENDO, FOREIGN PROCEEDINGS ARE RECOGNIZED, CENTRE OF MAIN INTEREST IS STILL INDIA.

- 37.** *Arguendo*, the THSPL insolvency proceedings are recognized, even so, the Centre of Main Interests would be India, as there exist rules of priority. Those cross-border insolvency proceedings which commence first are prioritized, and the verdict of these proceedings must be respected⁹⁴, herein those of New Age Limited.

Issue 14. WHETHER APPLICATION FILED BY JKL PVT. LTD BEFORE NCLT FOR SEEKING A COPY OF INFORMATION MEMORANDUM IS MAINTAINABLE OR NOT?

A. THAT PROVIDING A COPY OF INFORMATION MEMORANDUM WILL BE AGAINST THE INTERESTS OF THE CORPORATE DEBTOR.

⁹¹ Miguel Virgos, The Virgos-Schmit, Report on the Convention on Insolvency Proceedings, 1996.

⁹² Recital (13) of the Insolvency Regulation (EC) 1346/2000, 2000.

⁹³ *In Re Daisytek-ISA Ltd.*[2003] BCC 209, [2004] BPIR 30; *In Re ARN Asset Backed Securities SA*[2013] EWHC 3351 (Ch); *Shierson v. Vlieland-Boddy* [2005] EWCA Civ 974, [2005] 1 WLR 3966 p. 52; *French Republic v. Klempka* [2006] BCC 841; *In re Saad Investments Finance Company (No 5) Ltd.* Case No 09-13985 (KG) (Bankr. D Del, 4 Dec 2009).

⁹⁴ *Eurofood IFSC Ltd*, 2006 E.C.R.(Eurofood.ECJ), Case 341/04.

38. Information memorandum⁹⁵ is a document prepared by the Resolution Professional which contains certain relevant information such as its financial position, all information related to disputes by or against the corporate debtor. The Information Memorandum contains certain privileged information's such as:

“Transfer or sale of all or part of the assets whether subject to any security interest or not, Substantial acquisition of shares, merger or consolidation of the, Satisfaction or modification of any security interest; Curing or waiving of any breach of the terms of any debt, Reduction in the amount payable to the creditors; Extension of a maturity date or a change in interest rate or other terms of a debt; Amendment of the constitutional documents, Issuance of securities for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose; Obtaining necessary approvals from the Central and State Governments and other authorities⁹⁶”.

39. Sharing privileged information to a possible competitor will affect the growth of the corporate debtor. Exchange of business-related information is beyond the purview of the scope of the resolution professional. These constitute sensitive business information which will allow a potential competitor to use them for its own gain. JKL Pvt. Ltd was one of the largest manufacturers of the solar panels in India⁹⁷ and New Age was the largest manufacturers of solar panels in India and fourth largest in world⁹⁸. Therefore, it is submitted that, revealing such information to a competitor shall be against the interests of the Corporate Debtor and against the ethics of the Resolution Professional.

Issue 15. WHETHER THE VALUATION CONDUCTED BY M/S AKP VALUERS TO DETERMINE LIQUIDATION VALUE OF CORPORATE DEBTOR IS ACCEPTABLE OR NOT?

A. THAT THE VALUATION CONDUCTED BY THE VALUERS IS VOID.

⁹⁵ *Supra* note 25, s. 29.

⁹⁶ *Supra* note 54, Regulation 37, Notification dated 30th Nov. 2016.

⁹⁷ *Supra* note 26, ¶2, p. 10.

⁹⁸ *Id.*, ¶1, p. 1.

40. In the case at hand, M/s AKP Valuers being the registered valuers⁹⁹ of the Corporate Debtor is identified as a related party which is a disqualification for the conduct of CIR process¹⁰⁰. In addition to this, s. 247 of the Companies Act, 2013 governs that, the registered valuer should not undertake any valuation in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets¹⁰¹. Thus, the valuation conducted by M/s AKP Valuers is void as they are a related party to the Corporate Debtor. Therefore it is submitted that a revaluation¹⁰² must be done.

B. INTEGRITY AND FAIRNESS IS EXPECTED OF THE VALUERS.

- 41.** Valuers must follow high standards of integrity and fairness in all dealings by being honest, straight forward, and forthright, and that no facts are misrepresented¹⁰³.
- 42.** Further, a valuer must act with objectivity in professional dealings by disclosing interests such as possible sources of conflict¹⁰⁴.

Issue 16. WHETHER XI MAO IS JUSTIFIED IN REFUSING SUPPLY OF RAW MATERIALS TO CORPORATE DEBTOR?

A. DURING THE MORATORIUM SUPPLY OF ESSENTIAL GOODS CANNOT BE STOPPED.

- 43.** During the moratorium period, the supply of essential goods cannot be terminated¹⁰⁵. Without raw materials, the basic business of the corporate debtor cannot be carried out, and so they are among these essential goods.

⁹⁹ The Companies (Registered Valuers and Valuation) Rules, s. 2(f), Act of Parliament, 2017 (India).

¹⁰⁰ *Supra* note 53, Regulation 27(b), Notification dated 30th Nov. 2016.

¹⁰¹ *Supra* note 10, s. 247(2) (d).

¹⁰² Rajasthan State Financial Corporation v. Official Liquidator 2005 8 SCC 190, 2005 128 Comp CAS 387; Union Bank of India v. Official Liquidator, High Court of Kolkata-2005 SCC 274 AIR 2000 SC 3642; Cayjay Industries Pvt. Ltd. v. Asnew Drums Pvt. Ltd. 1974 2 SCC 213; Ram Maurya v. Kailash Nath-1999 9 SCC 276.

¹⁰³ The Companies Registered Valuers and Valuation Rules, 2017, Rule 12(e) Schedule I, 2017 (India).

¹⁰⁴ *Id.*

¹⁰⁵ *Supra* note 24, s. 14(2) ; Mechano Engineering Works Versus Propel Valves Pvt. Ltd. TCP/258/(IB)/CB/2017, NCLT 454 J1; Lakshmana N. v. M/s. SAPL Engineering Consultants Pvt. Ltd. CP/501(IB)/CB/2017, NCLT Chennai.

Issue 17. WHETHER GSES AND JSEW ARE JUSTIFIED IN CUTTING OFF SUPPLY OF POWER AND RAW MATERIALS RESPECTIVELY?

A. NCLT CAN BAR HALT OF SUPPLY OF ESSENTIAL GOODS AND SERVICES.

44. The NCLT can declare a moratorium on actions against the corporate debtor and certain other legal events¹⁰⁶. There is a bar on ceasing supply of essential raw materials¹⁰⁷. There can be no doubt that either power supply¹⁰⁸ or the foil¹⁰⁹ is essential according to the doctrine of necessity¹¹⁰. Thus contravening this moratorium will lead to prosecution¹¹¹.

B. ARGUENDO, MORATORIUM DOES NOT APPLY AT TIME OF HALT OF SUPPLY, ALTERNATIVE REMEDIES WERE AVAILABLE TO THE OPERATIONAL CREDITORS.

45. GSES and JSEW had the alternative remedy of approaching the court to rescind their contracts¹¹² in their favor; where judicial decrees exist to serve their purpose it is wrong for them to have terminated supply on their own authority.

C. THE MORATORIUM IS RETROSPECTIVE FROM THE TIME OF APPLICATION.

46. It is, however, unclear whether this bar on preventing supply has a retrospective effect from the time of application for CIRP. The actions of GSES and JSEW are after the application is made by RST Bank, though before the declaration of Moratorium. This is what determines whether the stop of supply of power/raw materials is justified or not. To assess parliamentary intent¹¹³, the report of the Viswanathan committee can be referred.

¹⁰⁶ *Supra* note 24, s. 14(1).

¹⁰⁷ *Id.*

¹⁰⁸ *Supra* note 53, Regulation 32, Notification dated 30th Nov. 2016.

¹⁰⁹ Canara Bank, Prime Corporate Branch v. Deccan Chronicle Holdings Ltd., CP No IB/41/7/HBD/2017.

¹¹⁰ *In re* Kmart Corp., 359 F.3d 866 (7th Cir. 2004); *In re* Delphi Corp., No. 05-44481 (RDD) (Bankr.S.D.N.Y.Mar. 8, 2006); *In re* Dana Corp., No. 06-10354 (BRL) (Bankr.S.D.N.Y.Mar. 29, 2006); *In re* Just for Feet, Inc., 242 B.R. 821, 825 (Bankr.D. Del. 1999); *In re* Lehigh and New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981); *In re* Penn Cent. Transp. Co., 467 F.2d 100, 102 (3d Cir. 1972); *In re* Columbia Gas Sys.Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994); *In re* Just for Feet, Inc., 242 B.R. 821, 825 (Bankr.D. Del. 1999); *In re* United Am., Inc., 327 B.R. 776, 782 (Bankr. E.D. Va. 2005); 8 *In re* CEI Roofing, Inc., 315 B.R. 50, 59 (Bankr.N.D.Tex. 2004); 2 *In re* Tropical Sportswear Int'l Corp., 320 B.R. 15, 17 (Bankr. M.D. Fla. 2005).

¹¹¹ *Supra* note 24, s. 74.

¹¹² BAILEY & GROVES, CORPORATE INSOLVENCY: LAW AND PRACTICE 22.56 (4th ed., , Lexis Nexis London, 2015).

¹¹³ *Grey v. Pearson*, [1857] 6 HL Cas 61, [1857] EngR 335, (1857) 6 HLC 61, (1857) 10 ER 1216.

47. A moratorium will commence as soon as the application is filed, to avoid the possibility of action against the Corporate Debtor between the filing and acceptance of the application¹¹⁴. The Code was recommended to envisage two kinds of moratoriums. The first is the moratorium that takes effect at the time of application¹¹⁵. The second commences on acceptance of application¹¹⁶. Thus, moratorium applies from when the application of RST Bank was filed.

D. RATIONALE BEHIND THE CONCEPT OF MORATORIUM IS TO BOOST THE GROWTH OF THE CORPORATE DEBTOR.

48. It is submitted¹¹⁷ that the motivation behind the moratorium is that it is value maximizing for the entity to continue operation and to avoid additional stress on the business. From this it is observed that the Code drafted provisions keeping in mind the need for the Corporate Debtor to carry on business as best as it could. It is hence concluded that, essential goods and services such as power and foil should continue being supplied by GSES and JSEW respectively.

Issue 18. WHETHER THE DIRECTIONS OF AN IRP CAN BE REFUSED BY PEOPLE'S BANK DURING MORATORIUM PERIOD?

A. PEOPLES BANK CAN'T SETTLE OFF DEBTS WITHOUT EXPRESS AUTHORIZATION OF IRP.

49. It is submitted that New Age owed Rs.790 crore as on 31.12.16 to People's Bank. However People's Bank also had taken New Age's property on lease, and the lease rental amount was Rs 15,06,900/- per month payable. In the factual matrix of the case there exists no default by New Age to all its debt until its first default started in the month of January, 2017. Therefore, it concludes that, the Peoples' Banks claim is inflated and there is even no authorization of settling off dues by adjusting the lease amount due to New Age.

¹¹⁴ T.K. Viswanathan, Bankruptcy Law Reforms Committee, Report to the Parliament, 2015., p. 117.

¹¹⁵ In the Matter of Raman ISPAT Pvt. Ltd. CP No. 23 ALD 2017.

¹¹⁶ *Supra* note 114, p. 118.

¹¹⁷ *Id.*, p. 82.

50. *Arguendo*, in cases of reciprocal monetary obligations owed by each of the parties, there is no room for legal set-off. The principle applies where the claimant has existing liability to contribute to the fund, but also where the fund¹¹⁸ has a right to be indemnified by the claimant against a liability which the fund may have to meet in future¹¹⁹. This rule applies equally to a liability of misfeasance as well as for a liability of lease and any other liquidated sums.

51. Any such set off can only be done by the Corporate Debtor, for repayment of debts. If the Creditor and Corporate Debtor have reciprocal debts, then the Creditor must make payment first¹²⁰. Therefore, the act of People's Bank is liable for prosecution¹²¹.

- **ISSUES RAISED BY OPERATIONAL CREDITORS**

Issue 19. WHETHER XI MAO IS JUSTIFIED IN REFUSING SUPPLY OF RAW MATERIALS TO CORPORATE DEBTOR?

A. BAR ON THE SUPPLY OF ESSENTIAL RAW MATERIALS REQUIRES LEGAL SPECIFICATION WHICH DOESN'T EXIST IN THE CASE AT HAND.

52. The code only establishes that stopping supply of essential raw materials can be barred by specifying so¹²². The facts do not mention any such specification at all. Hence the provision does not apply, and operational creditors are free to stop supply of raw materials¹²³.

B. ARGUENDO, THE MORATORIUM APPLIES; RAW MATERIALS DO NOT COUNT AS ESSENTIAL GOODS.

¹¹⁸ *Jeffer v. Wood* (1723) 2 P Wms, 128 24 ER 668.

¹¹⁹ *In re Rhodesia Goldfields Ltd.* (1910) 1 CH 239, p. 247.

¹²⁰ *Cherry v. Boulton* (1839) 4 My & Cr 442.

¹²¹ *Supra* note 24, s. 74.

¹²² *Id.*, s. 14(2).

¹²³ *In re Kmart Corp.*, 359 F.3d 866 (7th Cir. 2004); *In re Delphi Corp.*, No. 05-44481 (RDD) (Bankr.S.D.N.Y.Mar. 8, 2006); *In re Dana Corp.*, No. 06-10354 (BRL) (Bankr.S.D.N.Y.Mar. 29, 2006); *In re Just for Feet, Inc.*, 242 B.R. 821, 825 (Bankr.D. Del. 1999); *In re Lehigh and New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981); *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 (3d Cir. 1972); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994); *In re Just for Feet, Inc.*, 242 B.R. p. 826; *In re United Am., Inc.*, 327 B.R. 776, 782 (Bankr.E.D. Va. 2005); *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr.N.D.Tex. 2004); *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 17 (Bankr. M.D. Fla. 2005).

53. Essential goods are defined¹²⁴ as power, water, telecommunication services and information technology. The raw materials for manufacturing in solar plants come under none of these categories. Hence, moratorium does not cover these goods.

Issue 20. WHETHER GSES AND JSEW ARE JUSTIFIED IN CUTTING OFF SUPPLY OF POWER AND RAW MATERIALS RESPECTIVELY?

A. HALT OF SUPPLY OF POWER AND RAW MATERIALS BY OPERATIONAL CREDITORS WAS BEFORE COMMENCEMENT OF MORATORIUM PERIOD.

54. The Viswanathan committee report can be referred to assess the legislative intention. NCLT will issue an order for a moratorium from the time that the IRP case is registered against the debtor entity. The moratorium will be active for the period over which the IRP is active¹²⁵. According to it, there should be no additional stress on the business, *after* the public announcement of the IRP¹²⁶. Here we see that moratorium is tied to the formalities of the CIR Process. Further, it is also submitted that it makes no logical sense to apply moratorium retrospectively, as there are equal chances of an insolvency application being rejected, and Operational Creditors cannot be expected to learn by themselves whenever they cease supply whether an application for insolvency proceedings has been filed. Hence, the halt of supply of power and foil by GSES and JSEW respectively is not barred by a moratorium.

• **ISSUES RAISED BY FINANCIAL CREDITORS**

Issue 21. WHETHER THE APPLICATION FILED BY FINANCIAL CREDITOR, RST BANK, ON INSTANCE OF DEFAULT, IS MAINTAINABLE OR NOT?

A. THERE IS A DEFAULT BY THE CORPORATE DEBTOR TO THE APPLICANT.

¹²⁴ *Supra* note 53, provision 32(1), Notification by IBBI in 2016.

¹²⁵ *Supra* note 114, p. 82.

¹²⁶ *Supra* note 9, ASTRA Offshore SDN BHD v. Swiber Offshore (India) Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 16 of 2017; M/s. IFFCO TOKIO General Insurance Co. Ltd. v. M/s. SKC Retail Ltd. TCP/319(IB)/2017.

55. The most important function in CIR Process is to ascertain the existence of a default and that a default has occurred¹²⁷. The term default can be defined as “*non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid*”¹²⁸. After the High Court of Karnataka had allowed customs department to attach the amount of Rs. 55,00,000 lying in New Age Bank Account, New Age had started to default to the banks¹²⁹. The non- payment of existing debt by the Corporate Debtor constitutes a default under the code.

B. THE DEFAULT IS A FINANCIAL DEBT OWED TO THE APPLICANT.

56. In the year 2008, Corporate Debtor had obtained financial assistance from a consortium of banks to set up the Gujarat Plant and subsequently in the year 2011, Corporate Debtor had borrowed to set up Karnataka Plants. The outstanding due as on 31.12.16 to the applicant was Rs. 650,00,00,000¹³⁰. In the Matter of *Nikhil Mehta & Sons (HUF) & Ors v. AMR Infrastructure Ltd*¹³¹, the Principal Bench of the NCLT in New Delhi held that “*The definition of the term financial debt is a debt along with interest which is disbursed against the consideration for the time value of money*”. On thread bare review of section 5(8) it constitutes a financial debt, as it was money borrowed against the payment of interest¹³² in future. Therefore, the debt owed to the applicant is under the purview of financial debt.

C. THE APPLICANT IS A FINANCIAL CREDITOR UNDER THE PURVIEW OF THE CODE.

57. It is evident from the earlier submissions that the debt owed to the applicant was a financial debt. This concludes that if a financial debt is owed to a person, he is under the purview of Financial Creditor. Financial Creditors are those whose relationship with the entity is a pure

¹²⁷ M/s State Bank of India, Colombo v. Western Refrigeration Pvt. Ltd, 17/7/NCLT/AHM/2017, delivered on 26.05.2017; Madhusudhan Gordhandas & Co. v. Madhu Woolen Industries Pvt. Ltd; AIR 1971 SC 2600.

¹²⁸ *Supra* note 24, s. 3(12), ICICI Bank Ltd. v. ABG Shipyard Ltd. C.P. No. (IB 53/7/NCLT/AHM/2017) NCLT, Ahmedabad.

¹²⁹ *Supra* note 25, ¶2, p. 5.

¹³⁰ *Id.*, Table, p. 3.

¹³¹ CP no. (ISB)-03(PB)/2017 – Order dated 23 Jan 2017, NCLT, *Supra* note 128, SREI Infrastructure Finance Ltd. v. K.S. Oils Ltd., C.P. (IB) No. 32/7/NCLT/AHM/2017, NCLT Ahmedabad; Bank of India v. Tirupathi Infra Projects Pvt. Ltd, C.P. No. (IB-104) (PV/2017) NCLT, New Delhi, Principal Bench; Reliance Commercial Finance Ltd. v. Ved Cellulose Ltd., C.P. No. (IB-156) (PB/2017), NCLT, New Delhi, Principal Bench.

¹³² *Supra* note 24, s. 5(8).

financial contract, such as a loan or a debt security¹³³. On an instance of default committed by the Corporate Debtor, the Financial Creditor themselves or jointly with other financial creditors can initiate the resolution before the NCLT¹³⁴. The act of default of the financial debt by the Corporate Debtor had forced the applicant to initiate the Insolvency Resolution Process as a Financial Creditor. Therefore, it is humbly submitted that the applicant filed by the applicant as Financial Creditor is maintainable.

D. PREREQUISITES OF ADMISSION OF APPLICATION HAVE BEEN COMPLIED WITH.

58. It is statutorily required that the adjudicating authority must verify that there has been default, that due notice has been given to the debtor and that no actions exist against the IRP¹³⁵. RST Bank has complied with all these requirements. The application is thus complete and filed as *Annexure II*.

Issue 22. WHETHER THE DIRECTIONS OF AN IRP CAN BE REFUSED BY PEOPLES BANK DURING MORATORIUM PERIOD?

A. PEOPLES BANK ARE IN NO WAY UNDER THE OBLIGATIONS OF CORPORATE DEBTOR.

59. Once IRP is appointed, the management of the affairs of Corporate Debtor rests with him¹³⁶. The power of the board of directors shall stand suspended, managers of the Corporate Debtor shall report to IRP, and financial institutions maintaining accounts shall act vide the directions of IRP. However, it is our humble submission that the lessee, in this case People's Bank, is not one of the persons on whom the IRP has an influence and command. Therefore, the directions passed by IRP to people's bank to deposit lease rentals in terms of the lease in not sustainable.

B. ARGUENDO, THE BURDEN RESTS UPON IRP TO SHOW THAT THERE HAS BEEN IMPROPER ADJUSTMENT OF FUNDS.

¹³³ *Supra* note 114, ¶2, p. 77.

¹³⁴ *Supra* note 24, s. 7(1).

¹³⁵ *Id.*, s.7.

¹³⁶ *Id.*, s. 17.

60. The burden of proof relates to the manner in which a case is tried and by long usage has become reasonable and natural method¹³⁷. It has been as follows: “on every issue, there is an obligation on one party to convince of the truth of some proposition of fact which is in issue and which is vital¹³⁸ to his case”.¹³⁹ In all forms of civil cases¹⁴⁰, the person who alleges the fact has to show that truth of its allegations through the preponderance of evidence¹⁴¹. Thus, it is submitted that if there has been improper adjustment towards its dues then the burden rests upon IRP to prove his allegations.

Issue 23. WHETHER CREDITORS CAN CHALLENGE CLAIMS OF OTHER CREDITORS IN CIRP?

A. NCLT DOES NOT HAVE JURISDICTION TO TRY THIS DISPUTE.

61. The Viswanathan Committee Report on CIR Process did mention the rights of creditors to challenge the claims of others¹⁴². However, *no* provision affirming the same exists in the Insolvency and Bankruptcy Code of 2016. From this it is clear that there is no ambiguity regarding parliamentary intent, but rather such a legal position has explicitly been rejected by legislators. This was affirmed judicially too¹⁴³. If Peoples’ Bank has inflated its claims, it is an injury meted out to New Age and hence, liability for the same has to be pursued by the Resolution Professional. Applying the principle of *Ubi Jus Ibi Remedium*, it is inferred analogically that *where there is no wrong there is no remedy*.

B. BURDEN OF PROOF IS ON THE CREDITOR ISSUING THE CHALLENGE.

62. Allegations are made by RST Bank. This means that the burden of proof is on alleging party to prove it by pre-ponderance of evidence. Thus, the burden of proof that People’s Bank has committed such an inflation of its claims is upon the RST Bank¹⁴⁴.

¹³⁷ JOHN JAY MCKELVEY, HANDBOOK IN THE LAW OF EVIDENCE, 94 (5thed., West Publishing Company USA, 1994).

¹³⁸ SIR JOHN WOODROFFE & SYED AMIR ALI, LAW OF EVIDENCE, 2164 (16th ed., Lexis Nexis India, 1996).

¹³⁹ S.L Phipson & D.W. Elliot, MANUAL OF LAW OF EVIDENCE, 70 (11th ed., Sweet and Maxwell, London, 2001).

¹⁴⁰ DPP v. Morgan, [1975] 2 All E.R. 347.

¹⁴¹ P.B. CARTER, CASES AND STATUTES ON EVIDENCE, 28 (2d. ed., Sweet and Maxwell, London, 1990).

¹⁴² *Supra* note 114, p. 118.

¹⁴³ Innoventive Industries Ltd. v. ICICI Bank et al. (2017) SCC NCLAT 70.

¹⁴⁴ The Indian Evidence Act 1872, s. 101.

Issue 24. WHETHER CREDITORS CAN CHALLENGE CLAIMS OF OTHER CREDITORS?

A. ALLOWING CLAIMS BY PEOPLE'S BANK IS DIRECTLY INJURIOUS TO RST BANK.

63. All Financial Creditors have a voting share in the CoC, based on the size of credit extended¹⁴⁵. Peoples' Bank is the second largest creditor to New Age Limited. With 28.11% of the total value of the recognized claims against the Corporate Debtor, Peoples' Bank can itself sustain a little over a third of the votes needed to approve any resolution¹⁴⁶. Besides, it can all by itself disapprove of any resolution! Thus, Peoples' Bank effectively exercises veto power over the CoC with respect to the resolution plan. From this we can derive that inflation of claims by either of these two afore mentioned creditors is a direct injury to any other Creditor, and hence *Locus Standi* exists for RST Bank to consider itself aggrieved.

B. RIGHTS OF CREDITORS TO CHALLENGE OTHER CLAIMS.

64. It is not stated in the Insolvency and Bankruptcy Code whether a Creditor can challenge the claim of another Creditor. However, it was submitted in a report to the Parliament that the same be allowed¹⁴⁷. Since, the same has not been explicitly barred, it is submitted that the NCLT considers this dispute as being one related to the debt directly, and gives appropriate orders to the Resolution Professional to investigate into the veracity of the credit amount claimed by People's Bank.

Issue 25. WHETHER THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS TO SELL THE MUMBAI HOUSE TO ITS MANAGING DIRECTOR FOR RS 5 CRORE AMOUNTS TO UNDER VALUE TRANSACTION?

A. THE RESOLUTION AMOUNTS TO AN UNDERVALUED TRANSACTION.

65. A transaction can be said as undervalued¹⁴⁸ if the sale value is significantly lesser¹⁴⁹ than the original value¹⁵⁰. The resolution passed by the board for selling the Mumbai house is an

¹⁴⁵ *Supra* note 24, s. 24(6).

¹⁴⁶ *Id*, s. 12(2), Act of Parliament, 2016 (India).

¹⁴⁷ *Supra* note 114, p. 118.

¹⁴⁸ *Supra* note 20.

¹⁴⁹ *Supra* note 41.

¹⁵⁰ *Supra* note 42, s. 238(4) (B).

undervalued transaction because the Corporate Debtor enters into a transaction to sell the house at a significantly lower rate, whereas the market rate is speculated to be much higher¹⁵¹ and this has never happened in the transaction of the Corporate Debtor¹⁵². Therefore, this transaction amounts to an undervalued transaction.

B. THE TRANSACTION CAN BE AVOIDED AS IT IS UNDERVALUED.

66. As it is submitted that the transfer was an undervalued transaction, The Code lays down a twofold test to undo or avoid¹⁵³ the transaction because the Managing Director of the Company is a related party¹⁵⁴ to the Corporate Debtor. The transaction was made within two years of the date of the commencement of the resolution process. As it is evident from the fact that, the sale of Mumbai house took place on 4th December, 2016 and the CIR Process was initiated on 4th March, 2017 and the transaction took place between Corporate Debtor and its Managing Director. This concludes that the two-fold test is satisfied and therefore, the transaction can be avoided¹⁵⁵.

- **ISSUES RAISED BY OTHER PARTIES**

Issue 26. WHETHER THE RESOLUTION PLAN PREPARED BY BLUE PLAZA IS VALID OR NOT?

A. PLAN PROPOSED BY BLUE PLAZA WAS WITHIN THE CONTOURS OF STATUTE.

67. The Plan proposed by Blue plaza was a mere outline of substantial acquisition of shares of New Age by Blue Plaza¹⁵⁶. The Plan was not in contravention to any of the provisions of the law for the time being in force, and it did not amount to bypassing or breaching any provision of any other law¹⁵⁷. It is further submitted that, once the acquisition of hotel business of the New Age is done by Blue Plaza, it will necessarily cover the CIR Process costs and repayment of debts within a frame of 5 years¹⁵⁸ to the debtors and it is evident that once the

¹⁵¹ *Supra* note 25, ¶1, p.5.

¹⁵² *Supra* note 24, s. 45 2(B).

¹⁵³ *Id.*, s. 46 1(ii).

¹⁵⁴ *Id.*, s. (24) (a).

¹⁵⁵ *Supra* note 43.

¹⁵⁶ *Supra* note 53, Regulation 37 (1)(c).

¹⁵⁷ *Supra* note 24, s. 30(2).

¹⁵⁸ *Supra* note 25, ¶2, p. 11.

acquisition is done, Blue Plaza will manage the corporate affairs of New Age¹⁵⁹. The Code or its regulations do not mention any time frame for the repayment mechanism. Therefore, it is submitted that the plan was within the contours of law¹⁶⁰.

B. THE RP WAS NOT JUSTIFIED IN NOT PLACING IT BEFORE CoC.

68. It has been submitted earlier that, the plan proposed by Blue Plaza was within the contours of the statute and once it suffices the requirements, the Resolution Professional shall present it to the CoC for its approval. Therefore, it is submitted that the RP was not justified in excluding the plan from the CoC as it had fulfilled the requirements as mandated by the code.

Issue 27. WHETHER PUBLIC DEPOSITORS COME UNDER THE PURVIEW OF OPERATIONAL CREDITORS?

A. ADMITTEDLY PUBLIC DEPOSITORS ARE NOT OPERATIONAL CREDITORS, BUT ADMISSION IS SOUGHT UNDER THE CLASS OF FINANCIAL CREDITORS.

69. The claims of Public Depositors herein were filed mistakenly under the class of Operational Creditor. This is now humbly withdrawn, and it is submitted apologetically that Public Depositors are Financial Creditors, and that accordingly, they should be admitted into the CoC.

70. ‘Deposits’, by definition, exclude advances paid for the production of goods and services, (be it in cash or kind)¹⁶¹. They are in fact defined as financial service explicitly¹⁶². A deposit is a receipt of money by way of deposit or loan.

71. This shows that deposits are as per statutory definition not operational credits, because the term ‘loan’ means financial credit and operational credit is related to the production of goods and services directly, in the contract of credit itself. This is substantiated by pointing out that

¹⁵⁹ *Supra* note 10, s. 30(2).

¹⁶⁰ LAWRENCE P. KING & HENRY J. SOMMER, COLLINER ON BANKRUPTCY, ¶1129.03, (15th ed. Revised), LexisNexis USA, 1999; *In Re Sentinel Management Group Inc* 398 BR 281, 296-97 (Bankr ND Ill 2008); *In Re Source Enters Inc.* 392 BR 541, 555-56 (SDNY 2008); *In Re Mid-state Raceway Inc.* 343 BR 21, 31.

¹⁶¹ *Supra* note 71, s. 45I (bb).

¹⁶² *Supra* note 24, s. 3(16)(a).

the very definition of a financial institution is one who makes loans to other persons¹⁶³. Thus, the term ‘loan’ connotes financial credit, and deposits themselves are defined as loans.

Issue 28. WHETHER THE APPLICATION FILED BY CHEW JOHN FOR RECOGNITION OF SINGAPORE PROCEEDINGS IS MAINTAINABLE?

A. NCLT IS A COURT WITHIN THE PURVIEW OF THE MODEL LAW.

72. Applications for recognition of foreign proceedings under the UNCITRAL Model law for Cross Border Insolvency are allowed only before the ‘courts’¹⁶⁴, but the interpretation of this law has to be in good faith¹⁶⁵. Moreover, it is explicit in Guide to Enactment and Interpretation that a foreign court can be a foreign proceeding¹⁶⁶ commenced by either judicial or administrative bodies¹⁶⁷. Therefore, NCLT is a court within the purview of model law¹⁶⁸.

B. SINGAPORE SHOULD BE CENTRE OF MAIN INTEREST.

73. The tag of ‘economic activities’¹⁶⁹ explained in the interpretation of the Code allows that Singapore is the COIM because THSPL is one of the major economic activities of New Age.

74. Also, mere administration, from a place where no assets exist, makes that place a non-main proceeding¹⁷⁰, which in our case makes Singapore the Centre of main interests, even if New Age manages it from afar. Also, the rebuttal of the presumption of New Age that its registered office is its Centre of main interest does not mean that this presumption must be rebutted by a party for New Age to justify its presumption, and the court itself may ask for persuasion¹⁷¹.

¹⁶³ *Supra* note 71, s.45I(c)(i).

¹⁶⁴ *Supra* note 81, art. IX.

¹⁶⁵ *Id.* art. VIII.

¹⁶⁶ *In Re Betcorp Ltd.* 400 BR 266, 277 (Bankr D NEV 2009); HR Rep No 109-31, p. 118 (2005); Paolini v. Albertson’s Inc, 482 F 3d 11149, 1152 n 2 (9th Cir 2007); Lohnes v. Level 3 Comm’ Inc, 272 F 3d 49, 56 (1st Cir 2001).

¹⁶⁷ *Supra* note 83, ¶87 (e).

¹⁶⁸ *B Johnson and Co (Builders) Ltd v. Minister of Health* [1947] 2 All Er 395.

¹⁶⁹ *Supra* note 83, ¶75.

¹⁷⁰ *In Re Spinx Ltd.* 371 BR 10 (SDNY 2007).

¹⁷¹ *In Re Bear Stearns High-Grade Structured Credit Strategies Master Fund Ltd.* 374 BR 122 (Bankr. SDNY 2007).

C. SUBSIDIARY CAN BE CENTRE OF MAIN INTEREST.

75. The corporate veil must be lifted¹⁷² to consider THSPL as an economic activity of New Age. It is undisputed that THSPL and New Age are separate legal entities. However, it is the obligation of the parent company to consider the well-being and stability of the subsidiary company.
76. The whole concept of separate legal entity for a subsidiary is incorporated for the purpose of protecting the subsidiary from having its profits appropriated by the holding company itself¹⁷³. Thus, it would beat the point if this separate legal entity is used *against* the interest of the subsidiary.
77. Further, the corporate veil itself is not absolutely opaque but can be opened by judges if essential to dispense justice. A corporation will be looked upon as a legal entity as a general rule, but when the notion of legal entity is used to defeat public convenience, justify wrong, the law will regard the company as an association of persons¹⁷⁴. It is undisputed that the creditors of THSPL are being wronged here. Thus, there are grounds for piercing the corporate veil.
78. A holding company exercises control over voting power, assets and board of directors of a subsidiary¹⁷⁵. Thus its aid and involvement is essential for THSPL to proceed efficiently. One of the major auditing requirements of a company is the financial statements of its subsidiaries too, to avoid sending a false message of well-being¹⁷⁶. From this it is evident that a company's financial status is tied intricately to that of its subsidiaries.

¹⁷² *Supra* note 86, HENRY HANSMANN & REINIER KRAAKMAN, et al. eds., THE ANATOMY OF CORPORATE LAW: A COMPARATIVE AND FUNCTIONAL APPROACH (2d. ed, Oxford University Press, 2009).

¹⁷³ *Industrial Equity Ltd. v Blackburn* [1977] HCA 59 - 137 CLR 567.

¹⁷⁴ *Littlewoods Mail Order Stores v. Inland Revenue Commissioners* 1970 75 ITR 327 Cal.

¹⁷⁵ *Supra* note 10, s. 87.

¹⁷⁶ *Id.*, s. 129.

79. It is submitted that the NCLT must determine whether Creditors are being wronged or not before dismissing such an application was submitted by Mr. John¹⁷⁷. It must not pass decrees detrimental to Creditors¹⁷⁸. Therefore, it is submitted that, NCLT must recognize Singapore as the Centre of main interest for New Age.

Issue 29. WHETHER APPLICATION FILED BY JKL PVT. LTD BEFORE NCLT FOR SEEKING A COPY OF INFORMATION MEMORANDUM IS MAINTAINABLE OR NOT?

A. THE CODE ENTITLES JKL PVT. LTD A COPY OF INFORMATION MEMORANDUM.

80. JKL Pvt. Ltd had requested a copy of the IM from the RP after Mr. Dhivesh Sharma had invited expression of interest for resolution plan. The Code does not place¹⁷⁹ a measure for a person to access¹⁸⁰ the information memorandum put together by Insolvency Professional¹⁸¹, except to comply with provisions of law for the time being in force and to prevent insider trading, protect intellectual property and not to share information with a third party¹⁸². It is submitted that the Resolution Professionals were not justified in denying a copy of information memorandum to JKL Pvt. Ltd; to which they were legally entitled to. Therefore, the application filed by JKL Pvt. Ltd is maintainable.

B. ARGUENDO, THE CODE DOES NOT BAR A COMPETITOR FROM A COPY OF INFORMATION MEMORANDUM

81. JKL Pvt. Ltd is one of the largest manufacturers of the solar panels in India¹⁸³ and New Age Technology Ltd. is the largest manufacturers of solar panels in India and fourth largest in world¹⁸⁴. It is imperative to note that the both the parties were working in the same sector of business and they may be or may not be competitors. However, in order to be eligible to get a

¹⁷⁷ *Supra* note 81, art. XXII.

¹⁷⁸ *Id.*, art. XXIII.

¹⁷⁹ Edelweiss Asset Reconstruction Company Ltd. v. Mamta Binani, et al., CA No. 70 of 2017 in CP (IB) No. 01/HDB/2017.

¹⁸⁰ Radhika Merwin, *Success of resolution plan critical for investors under Insolvency and Bankruptcy Code*, IBCODE, (Sept. 5th, 2017, 01.00 AM), <http://ibcode.ind.in/2017/08/02/success-resolution-plan-critical-investors-insolvency-bankruptcy-code/>.

¹⁸¹ Goda Raghavan, *No level playing field*, THE HINDU, (Sept. 5th, 2017), <http://www.thehindu.com/opinion/op-ed/no-level-playing-field/article19476401.ece/>.

¹⁸² *Supra* note 81, art. XXIX.

¹⁸³ *Supra* note 25, ¶2, p. 10.

¹⁸⁴ *Id.*, ¶1, p. 1.

copy of the information memorandum, the party has to be a Resolution Applicant. The definition of the Resolution Applicant¹⁸⁵ is constrained to persons who submit resolution plan to the Resolution Professional. However, if the Applicant is abiding by the restrictions, then it is imperative that the Resolution Professional shall provide a copy of information memorandum to the person. The provisions of the Code do not explicitly or implicitly bar a competitor from getting a copy of information memorandum.

¹⁸⁵ *Supra* note 24, s. 5(25).

PRAYER

In view of the facts set out above, documents produced and the legal propositions submitted, it is respectfully prayed before this Tribunal, on behalf of the parties, that it rules as follows -

CORPORATE DEBTOR

- That the application filed by RST Bank is not maintainable, and that all the actions IRP are illegal, and to release the corporate debtor from the rigours of law and allow it to function through its own Board of Directors.

INTERIM RESOLUTION PROFESSIONAL AND RESOLUTION PROFESSIONAL

- Xi Mao, GSES and JSEW continue the supply of goods and services, due to the Moratorium on/against stopping the same;
- Corporate debtor is liable for the acts of its personnel among the union of workers hindering the IRP in discharging his duty;
- People's Bank be directed to deposit the lease rentals from April 2015- February 2017
- The IRP was justified in terminating lease on the Hyderabad guesthouse;
- IRP can take back possession of the Mumbai house as it was an undervalued transaction;
- Re-evaluation of assets of corporate debtor be done, as M/s. AKP Valuers was found to be a related party;
- IRP is within his powers to allow Marvel Organics to submit its claims;
- The IRP was justified in rejecting the application of public depositors;
- RHPL cannot be added to CoC as it is not a creditor;
- The application filed by Chew- John for recognition of Singapore proceedings is not maintainable;
- JKL Pvt. Ltd. is not eligible for a copy of information memorandum;
- Blue Plaza's resolution plan was not apt according to mandates of the Code.

OPERATIONAL CREDITORS

- The raw materials supplied by Xi Mao are not essential goods and services such that supply has to be maintained during Moratorium.

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

- GSES and JSEW are justified in stopping supply of power and foil respectively before moratorium.

FINANCIAL CREDITORS

- The application filed by RST Bank for initiation of CIRP is maintainable;
- The resolution passed by BOD to sell the house amounts to an undervalued transaction.
- RST Bank is entitled to challenge People's Bank's claims or that it is not entitled so
- People's Bank is not bound by the instructions of IRP

OTHER PARTIES

- Resolution plan proposed by Blue Plaza was within the contours of law;
- Public depositors filed a mistaken application and must be moved over to the class of financial creditors;
- Mr. Chew John's application for recognition of Singapore proceedings is maintainable;
- JKL has a right to a copy of Information Memorandum.

ANNEXURES

ANNEXURE I
STATEMENT OF ASSETS AND LIABILITIES OF NEW AGE TECHNOLOGY LIMITED AS ON
22.4.2017
ASSETS:**FIXED ASSETS:**

- i) Gujarat Plant
- ii) Karnataka Plant 1
- iii) Karnataka Plant 2
- iv) Registered Office at New Delhi
- v) Corporate Office Mumbai
- vi) Sales Office Rajasthan
- vii) New Age House Rajasthan
- viii) Land, Raipur
- ix) Hotel, Raipur
- x) Mercedes Benz
- xi) Audi
- xii) BMW
- xiii) 3 other Cars

CURRENT ASSETS:

- i) Cash of Rs. 55,000 received as advance from sale of house
- ii) EVA Film

LIABILITIES:**NON-CURRENT LIABILITIES:**

i) Indo Bank Term Loan	Rs. 1650,00,00,000
ii) RST Bank Term Loan	Rs. 650,00,00,000

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

iii) People's Bank Term Loan	Rs. 790,00,00,000
iv) Bank of North India Working Capital Loan	Rs. 279,00,00,000
v) Public Deposits	Rs. 45,00,00,000
vi) Marvel Organics' Loan	Rs. 20,00,00,000
➔ TOTAL	Rs. 3,434,00,00,000

CURRENT LIABILITIES:

i) Shares (BSE and NSE)	
ii) GSES	Rs. 1,20,00,000
iii) JSEW	Rs. 20,00,00,000
iv) Xi Mao	Rs. 15,00,00,000
v) EPF Dues	Rs. 12,00,00,000
vi) Customs	Rs. 2,00,00,000
➔ TOTAL	Rs. 50,20,00,000

TOTAL LIABILITIES: Rs. 3,484,20,000

ANNEXURE II

FORM 1

(See sub-rule (1) of rule 4)

**APPLICATION BY FINANCIAL CREDITOR TO INITIATE CORPORATE
INSOLVENCY RESOLUTION PROCESS UNDER THE CODE.***(Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*4th March, 2017

To:

The National
Company Law
Tribunal

From:

RST BANK

In the matter of NEW AGE TECHNOLOGY
LIMITEDSubject: Application to initiate corporate insolvency resolution process in the matter of NEW
AGE TECHNOLOGY LIMITED under the Insolvency and Bankruptcy Code, 2016.

Sir,

RST BANK hereby submits this application to initiate a corporate insolvency resolution
process in the matter of NEW AGE TECHNOLOGY LIMITED. The details for the
purpose of this application are set out below:**Part-I**

PARTICULARS OF APPLICANT (PLEASE PROVIDE FOR EACH FINANCIAL CREDITOR MAKING THE APPLICATION)		
1.	NAME OF FINANCIAL CREDITOR	RST BANK

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

2.	DATE OF INCORPORATION OF FINANCIAL CREDITOR	
3.	IDENTIFICATION NUMBER OF FINANCIAL CREDITOR	
4.	ADDRESS OF THE REGISTERED OFFICE OF THE FINANCIAL CREDITOR	
5.	NAME AND ADDRESS OF THE PERSON AUTHORISED TO SUBMIT APPLICATION ON ITS BEHALF	
6.	NAME AND ADDRESS OF PERSON RESIDENT IN INDIA AUTHORISED TO ACCEPT THE SERVICE OF PROCESS ON ITS BEHALF	

Part-II

PARTICULARS OF THE CORPORATE DEBTOR		
1.	NAME OF THE CORPORATE DEBTOR	NEW AGE TECHNOLOGY LIMITED
2.	IDENTIFICATION NUMBER OF CORPORATE DEBTOR	
3.	DATE OF INCORPORATION OF CORPORATE DEBTOR	
4.	NOMINAL SHARE CAPITAL AND THE PAID-UP SHARE CAPITAL OF THE CORPORATE DEBTOR AND/OR DETAILS OF GUARANTEE CLAUSE AS PER	

	MEMORANDUM OF ASSOCIATION (AS APPLICABLE)	
5.	ADDRESS OF THE REGISTERED OFFICE OF THE CORPORATE DEBTOR	NEW DELHI

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

Part-III

PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL		
1.	NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL	Mr. S. Mahesh

Part - IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED	Rs. 500,00,00,000
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED	Rs. 650,00,00,000 (31-12-2017)

I, hereby certify that, to the best of my knowledge, **Mr. S. Mahesh**, is fully qualified and permitted to act as an insolvency professional in accordance with the Insolvency and Bankruptcy Code, 2016 and the associated rules and regulations.

RST BANK has paid the requisite fee for this application through ___ on 4th March 2017.

Yours sincerely,

Signature of person authorised to act on behalf of the financial creditor
Name in block letters
Position with or in relation to the financial creditor
Address of person signing

ANNEXURE III

SCHEDULE

FORM C

PROOF OF CLAIM BY FINANCIAL CREDITORS

[Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

[Date]

To:

The Interim Resolution Professional

AMIT THAKUR

From:

MARVELS ORGANICS LTD.

Subject: Submission of proof of claim.

Sir,

MARVEL ORGANICS LTD. hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of NEW AGE TECHNOLOGY LTD. The details for the same are set out below:

PARTICULARS		
1.	NAME OF FINANCIAL CREDITOR	MARVEL ORGANICS LTD.

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

2.	IDENTIFICATION NUMBER OF FINANCIAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION. IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
3.	ADDRESS AND EMAIL ADDRESS OF FINANCIAL CREDITOR FORCORRESPONDENCE.	
4.	TOTAL AMOUNT OF CLAIM INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)	Rs. 136,00,00,000
5.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED	
6.	DETAILS OF HOW AND WHEN DEBT	
7.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	
8.	DETAILS OF ANY SECURITY HELD, THE VALUE OF THE SECURITY, AND THE DATE IT WAS GIVEN	
9.	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

10.	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE OPERATIONAL CREDITOR	
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Signature of financial creditor or person authorised to act on his behalf

[Please enclose the authority if this is being submitted on behalf of an operational creditor]

Name in BLOCK LETTERS

Position with or in relation to creditor

Address of person signing

ANNEXURE IV

SCHEDULE

FORM C

PROOF OF CLAIM BY FINANCIAL CREDITORS

[Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency - Resolution Process for Corporate Persons) Regulations, 2016]

[Date]

To:

The Interim Resolution Professional,

AMIT THAKUR

From:

BANK OF NORTH INDIA

Subject: Submission of proof of claim.

Sir,

BANK OF NORTH INDIA hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of NEW AGE TECHNOLOGY LTD. The details for the same are set out below:

PARTICULARS		
1.	NAME OF FINANCIAL CREDITOR	BANK OF NORTH INDIA

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

2.	IDENTIFICATION NUMBER OF FINANCIAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION. IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
3.	ADDRESS AND EMAIL ADDRESS OF FINANCIAL CREDITOR FORCORRESPONDENCE.	
4.	TOTAL AMOUNT OF CLAIM INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)	Rs. 279,00,00,000
5.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED	
6.	DETAILS OF HOW AND WHEN DEBT INCURRED	Working Capital Loan
7.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	
8.	DETAILS OF ANY SECURITY HELD, THE VALUE OF THE SECURITY, AND THE DATE IT WAS GIVEN	

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

9.	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	
10.	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE OPERATIONAL CREDITOR	

Signature of financial creditor or person authorised to act on his behalf <i>[Please enclose the authority if this is being submitted on behalf of an operational creditor]</i>
Name in BLOCK LETTERS
Position with or in relation to creditor
Address of person signing

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

ANNEXURE V**SCHEDULE****FORM C****PROOF OF CLAIM BY FINANCIAL CREDITORS**

[Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

[Date]

To:

The Interim Resolution Professional,

AMIT THAKUR

From:

PEOPLE'S BANK

Subject: Submission of proof of claim.

Sir,

PEOPLE'S BANK hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of NEW AGE TECHNOLOGY LTD. The details for the same are set out below:

PARTICULARS	
1.	NAME OF FINANCIAL CREDITOR PEOPLE'S BANK

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

2.	IDENTIFICATION NUMBER OF FINANCIAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION. IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
3.	ADDRESS AND EMAIL ADDRESS OF FINANCIAL CREDITOR FOR CORRESPONDENCE.	
4.	TOTAL AMOUNT OF CLAIM INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)	Rs. 790,00,00,000
5.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED	
6.	DETAILS OF HOW AND WHEN DEBT INCURRED	Term Loans borrowed in 2008 and then in 2011 to the tune of Rs. 500,00,00,000
7.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	Lease Amount of Rs. 79,41,026 from April 2015 to February 2017 payable to New Age Limited
8.	DETAILS OF ANY SECURITY HELD, THE VALUE OF THE SECURITY, AND THE DATE IT WAS GIVEN	
9.	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

10.	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE OPERATIONAL CREDITOR	
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Signature of financial creditor or person authorised to act on his behalf

[Please enclose the authority if this is being submitted on behalf of an operational creditor]

Name in BLOCK LETTERS:

Position with or in relation to creditor

Address of person signing

ANNEXURE VI**SCHEDULE****FORM C****PROOF OF CLAIM BY FINANCIAL CREDITORS**

[Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

[Date]

To:

The Interim Resolution Professional,

AMIT THAKUR

From:

INDO BANK

Subject: Submission of proof of claim.

Sir,

INDO BANK hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of NEW AGE TECHNOLOGY LTD. The details for the same are set out below:

PARTICULARS		
1.	NAME OF FINANCIAL CREDITOR	INDO BANK

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

2.	IDENTIFICATION NUMBER OF FINANCIAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION. IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
3.	ADDRESS AND EMAIL ADDRESS OF FINANCIAL CREDITOR FOR CORRESPONDENCE.	
4.	TOTAL AMOUNT OF CLAIM INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)	Rs. 1,650,00,00,000
5.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED	
6.	DETAILS OF HOW AND WHEN DEBT INCURRED	Term Loans borrowed in 2008 and 2011
7.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	
8.	DETAILS OF ANY SECURITY HELD, THE VALUE OF THE SECURITY, AND THE DATE IT WAS GIVEN	
9.	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

10.	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE OPERATIONAL CREDITOR	
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Signature of financial creditor or person authorised to act on his behalf

[Please enclose the authority if this is being submitted on behalf of an operational creditor]

Name in BLOCK LETTERS:

Position with or in relation to creditor

Address of person signing

ANNEXURE VII

SCHEDULE

FORM C

PROOF OF CLAIM BY FINANCIAL CREDITORS

[Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

[Date]

To:

The Interim Resolution Professional / Resolution Professional,

AMIT THAKUR

From:

RST BANK

Subject: Submission of proof of claim.

Sir,

RST BANK hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of NEW AGE TECHNOLOGY LTD. The details for the same are set out below:

PARTICULARS		
1.	NAME OF FINANCIAL CREDITOR	RST BANK

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

2.	IDENTIFICATION NUMBER OF FINANCIAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION. IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
3.	ADDRESS AND EMAIL ADDRESS OF FINANCIAL CREDITOR FOR CORRESPONDENCE.	
4.	TOTAL AMOUNT OF CLAIM INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)	Rs. 650,00,00,000
5.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED	
6.	DETAILS OF HOW AND WHEN DEBT INCURRED	Term loans in 2008 and 2011
7.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	
8.	DETAILS OF ANY SECURITY HELD, THE VALUE OF THE SECURITY, AND THE DATE IT WAS GIVEN	
9.	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

10.	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE OPERATIONAL	
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Signature of financial creditor or person authorised to act on his behalf

[Please enclose the authority if this is being submitted on behalf of an operational creditor]

Name in BLOCK LETTERS

Position with or in relation to creditor

Address of person signing

ANNEXURE VIII

SCHEDULE

FORM B

PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND
EMPLOYEES

*[Under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency
Resolution Process for Corporate Persons) Regulations, 2016]*

[Date]

To:

The Interim Resolution Professional

AMIT THAKUR

From:

JSEW LTD.

Subject: Submission of proof of

claim.

Sir,

JSEW LTD. hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of NEW AGE TECHNOLOGY LTD. The details for the same are set out below:

PARTICULARS		
1.	NAME OF OPERATIONAL CREDITOR	JSEW LTD.

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

2.	IDENTIFICATION NUMBER OF OPERATIONAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION. IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
3.	ADDRESS AND EMAIL ADDRESS OF OPERATIONAL CREDITOR FOR CORRESPONDENCE	
4.	TOTAL AMOUNT OF CLAIM (INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)	Rs. 20,00,00,000
5.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BESUBSTANTIATED.	
6.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OR ORDER OF SUIT OR ARBITRATION PROCEEDINGS	
7.	DETAILS OF HOW AND WHEN DEBT INCURRED	SUPPLY OF EVA FILMS FOR MANUFACTURING OF SOLAR PANELS
8.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE	

PARTICULARS	
	DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

9.	DETAILS OF ANY RETENTION OF TITLE ARRANGEMENTS IN RESPECT OF GOODS OR PROPERTIES TO WHICH THE CLAIM REFERS	
10	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	
11	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE OPERATIONAL CREDITOR	
Signature of operational creditor or person authorised to act on his behalf <i>[Please enclose the authority if this is being submitted on behalf of an operational creditor]</i>		
Name in BLOCK LETTERS		
Position with or in relation to creditor		
Address of person signing		

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

ANNEXURE IX

SCHEDULE

FORM B

PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND
EMPLOYEES

*[Under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency
Resolution Process for Corporate Persons) Regulations, 2016]*

[Date]

To:

The Interim Resolution Professional

AMIT THAKUR

From:

GSES

Subject: Submission of proof of
claim.

Sir,

GSES, hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of NEW AGE TECHNOLOGY LTD. The details for the same are set out below:

PARTICULARS		
1.	NAME OF OPERATIONAL CREDITOR	GSES

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

2.	IDENTIFICATION NUMBER OF OPERATIONAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION. IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
3.	ADDRESS AND EMAIL ADDRESS OF OPERATIONAL CREDITOR FOR CORRESPONDENCE	
4.	TOTAL AMOUNT OF CLAIM (INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)	Rs.1,20,00,000
5.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED.	
6.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OR ORDER OF SUIT OR ARBITRATION PROCEEDINGS	
7.	DETAILS OF HOW AND WHEN DEBT INCURRED	SUPPLY OF ELECTRICITY FROM JUNE 2016-FEBRUARY 2017
8.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE	
PARTICULARS		
	DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE	

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

9.	DETAILS OF ANY RETENTION OF TITLE ARRANGEMENTS IN RESPECT OF GOODS OR PROPERTIES TO WHICH THE CLAIM REFERS	
10	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	
11	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE OPERATIONAL CREDITOR	
Signature of operational creditor or person authorised to act on his behalf		
<i>[Please enclose the authority if this is being submitted on behalf of an operational creditor]</i>		
Name in BLOCK LETTERS:		
Position with or in relation to creditor:		
Address of person signing		

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

ANNEXURE X

SCHEDULE

FORM B

PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND
EMPLOYEES

*[Under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency
Resolution Process for Corporate Persons) Regulations, 2016]*

[Date]

To:

The Interim Resolution Professional

AMIT THAKUR

From:

XI MAO

Subject: Submission of proof of

claim.

Sir,

XI MAO hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of NEW AGE TECHNOLOGY LTD. The details for the same are set out below:

PARTICULARS		
1.	NAME OF OPERATIONAL CREDITOR	XI MAO

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

2.	IDENTIFICATION NUMBER OF OPERATIONAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION. IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
3.	ADDRESS AND EMAIL ADDRESS OF OPERATIONAL CREDITOR FOR CORRESPONDENCE	
4.	TOTAL AMOUNT OF CLAIM (INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)	Rs.15,00,00,000
5.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED.	
6.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OR ORDER OF SUIT OR ARBITRATION PROCEEDINGS	
7.	DETAILS OF HOW AND WHEN DEBT INCURRED	SUPPLY OF RAW MATERIAL
8.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE	

PARTICULARS	
	DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

9.	DETAILS OF ANY RETENTION OF TITLE ARRANGEMENTS IN RESPECT OF GOODS OR PROPERTIES TO WHICH THE CLAIM REFERS	
10	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	
11	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE OPERATIONAL CREDITOR	

Signature of operational creditor or person authorised to act on his behalf

[Please enclose the authority if this is being submitted on behalf of an operational creditor]

Name in BLOCK LETTERS

Position with or in relation to creditor

Address of person signing

ANNEXURE XI**SCHEDULE****FORM B****PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND EMPLOYEES**

[Under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

[Date]

To:

The Interim Resolution Professional

AMIT THAKUR

From:

PUBLIC DEPOSITORS

Subject: Submission of proof of

claim.

Sir,

PUBLIC DEPOSITORS, hereby submit this proof of claim in respect of the corporate insolvency resolution process in the case of NEW AGE TECHNOLOGY LTD. The details for the same are set out below:

PARTICULARS		
1.	NAME OF OPERATIONAL CREDITOR	PUBLIC DEPOSITORS

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

2.	IDENTIFICATION NUMBER OF OPERATIONAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION. IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
3.	ADDRESS AND EMAIL ADDRESS OF OPERATIONAL CREDITOR FOR CORRESPONDENCE	
4.	TOTAL AMOUNT OF CLAIM (INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)	Rs.45,00,00,000
5.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BESUBSTANTIATED.	
6.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OR ORDER OF SUIT OR ARBITRATION PROCEEDINGS	
7.	DETAILS OF HOW AND WHEN DEBT INCURRED	
8.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE	

WRITTEN SUBMISSION ON BEHALF OF THE CONCERNED PARTIES

PARTICULARS		
	DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	
9.	DETAILS OF ANY RETENTION OF TITLE ARRANGEMENTS IN RESPECT OF GOODS OR PROPERTIES TO WHICH THE CLAIM REFERS	
10	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	
11	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE OPERATIONAL CREDITOR	
Signature of operational creditor or person authorised to act on his behalf		
<i>[Please enclose the authority if this is being submitted on behalf of an operational creditor]</i>		
Name in BLOCK LETTERS		
Position with or in relation to creditor		
Address of person signing		