

**TEAM CODE: 003**

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION**

**2018**

---

**IN THE MATTER OF**

ARVIND CEMENT LIMITED, CORPORATE DEBTOR

---

**WRITTEN SUBMISSIONS ON BEHALF OF THE CONCERNED PARTIES**

**TABLE OF CONTENTS**

---

Part-I

<b>LIST OF ABBREVIATIONS .....</b>	<b>F</b>
<b>INDEX OF AUTHORITIES.....</b>	<b>H</b>
LIST OF CASES .....	H
<b>A. Supreme Court Cases.....</b>	<b>H</b>
<b>B. High Court Cases.....</b>	<b>H</b>
<b>C. NCLAT Cases.....</b>	<b>J</b>
<b>D. NCLT Cases .....</b>	<b>J</b>
<b>E. Foreign Cases .....</b>	<b>K</b>
ARTICLES AND REPORTS.....	L
STATUTES.....	M
RULES AND REGULATIONS.....	M
BOOKS.....	M
LEXICONS.....	N
<b>STATEMENT OF FACTS.....</b>	<b>O</b>
<b>ISSUES RAISED.....</b>	<b>Q</b>
<b>ANALYSIS OF ISSUES .....</b>	<b>1</b>

---

**ISSUES ON BEHALF OF THE CORPORATE DEBTOR AND ITS PROMOTER**

---

<b><i>ISSUE: 1 THAT NCLT SHOULD PUT A STAY ON CIRP PROCEEDINGS. ....</i></b>	<b><i>1</i></b>
<b>1.1 THAT THE DELAY IN PAYMENT OF INTEREST WAS A RESULT OF FORCE MAJEURE. ....</b>	<b>1</b>
<b>1.2 THAT THE INITIATION OF CIRP WILL ADVERSELY AFFECT THE FUTURE PROSPECTS OF ACL.....</b>	<b>1</b>
<b><i>ISSUE: 2 THAT PAYMENT MADE BY ACL TO TTCL IS NOT AN AVOIDABLE TRANSACTION... 1</i></b>	
<b><i>ISSUE: 3 THAT THE MORTGAGE CREATED BY APL OVER ITS LAND IS NOT AN AVOIDABLE TRANSACTION.....</i></b>	<b><i>2</i></b>
<b>3.1 THE TRANSACTION HAD BEEN EFFECTED IN THE ORDINARY COURSE OF BUSINESS ....</b>	<b>2</b>
<b>3.2 THERE IS NO DOMINANT MOTIVE ON THE PART OF ACL. ....</b>	<b>3</b>
<b><i>ISSUE:4 THAT THE APPLICATION FOR ENFORCEMENT OF PERSONAL GUARANTEE AGAINST MR. ARVIND KUMAR IS NOT SUSTAINABLE. ....</i></b>	<b><i>3</i></b>

**ISSUES ON BEHALF OF INSOLVENCY PROFESSIONALS**

---

***ISSUE:1 THAT RP JUSTIFIED IN REJECTING THE CLAIM OF GKCL AS FINANCIAL CREDITOR*** ..... 4

***1.1 THAT THE MAJOR REQUIREMENTS OF FINANCIAL DEBT STAND DISPUTED*** ..... 4

***1.2 THAT THERE IS NO PARITY BETWEEN THE AMOUNT OF CLAIM AND ACTUAL DEFAULT***  
    ..... 5

***ISSUE:2 THAT PAYMENT MADE TO TTCL OUT OF INTERIM FINANCE IS NOT CONTRARY TO LAW***..... 5

***ISSUE:3 THAT THE APPLICATION FOR RECOGNITION OF FOREIGN PROCEEDING SHOULD NOT BE ACCEPTED*** ..... 6

***ISSUE 4: THAT THE RP IS JUSTIFIED IN REJECTING THE CLAIM OF APL*** ..... 8

***ISSUE 5: THAT EXCESS PAYMENT MADE TO APL MUST BE AVOIDED*** ..... 8

***5.1 THERE LIES INSTANCE OF AVOIDABLE TRANSACTION***..... 8

***5.2 SET-OFF CANNOT BE SUSTAINED IN PURSUANCE OF AN AVOIDABLE TRANSACTION***.. 9

***ISSUE 6: THAT RP IS JUSTIFIED IN REJECTING THE REVISED RESOLUTION PLAN***..... 9

**ISSUES ON BEHALF OF OPERATIONAL CREDITORS**

---

***ISSUE:1 THAT THE CLAIM OF GKCL AS A FINANCIAL CREDITOR SHOULD BE ACCEPTED***10

***1.1 THAT THE MAJOR REQUIREMENTS OF FINANCIAL DEBT STAND UNDISPUTED*** ..... 10

***1.2 IN ARGUENDO, THE PURCHASE AGREEMENT IS AKIN TO A FINANCIAL LEASE AGREEMENT*** ..... 11

**ISSUES ON BEHALF OF FINANCIAL CREDITORS/CoC**

---

***ISSUE:1 THAT PAYMENT MADE TO TTCL FROM INTERIM FINANCE WAS CONTRARY TO LAW***  
..... 11

***ISSUE: 2 THAT PAYMENT MADE BY ACL TO TTCL BEING FRAUDENTLY INTENDED IS AN AVOIDABLE TRANSACTION.*** ..... 12

***2.1 DIRECTORS WERE AWARE ABOUT THE TWILIGHT ZONE*** ..... 13

***2.2 TRANSACTION RESULTED IN LOSS TO CREDITORS***..... 13

***ISSUE: 3 THAT PERSONAL GUARANTEE SHOULD BE ENFORCED AGAINST MR. ARVIND KUMAR.*** ..... 13

**ISSUES ON BEHALF OF OTHER PARTIES**

---

***ISSUE: 1 THAT RECOGNITION & COOPERATION MUST BE PROVIDED IN RESPECT TO THE FOREIGN PROCEEDINGS..... 15***

***1.1 CENTRE OF MAIN INTEREST PERTAINING TO ALSL LIES IN USA ..... 15***

***1.2 THE MODEL LAW AIDS TO COOPERATION BETWEEN TWO STATES. .... 16***

***ISSUE: 2 THAT CLAIM OF APL BEING AN ESSENTIAL SUPPLIER MUST SUBSIST ..... 17***

***ISSUE: 3 THAT EXCESS PAYMENT MADE TO APL SHOULD BE ALLOWED TO SET-OFF. .... 17***

***ISSUE: 4 THAT THE MORTGAGE CREATED BY APL OVER ITS LAND SHOULD BE AVOIDED. .... 18***

***ISSUE: 5 THAT REVISED PLAN PROPOSED BY JMCL SHOULD BE ACCEPTED. .... 19***

***ISSUE: 6 THAT RP OF APL BEING A NECESSARY PARTY SHOULD BE IMPEADED ..... 20***

**PRAYER..... S**

**ANNEXURE/FORMS/REPORTS.....I-CI**

**Part-II**

**ANNEXURE/FORMS/REPORTS**

---

<b>MEMO OF THE PARTIES .....</b>	<b>I</b>
<b>PART – I FILING OF CIRP APPLICATION .....</b>	<b>II</b>
APPLICATION BY FINANCIAL CREDITOR TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE CODE .....	II
<i>Annexure in support of the Application for Initiating CIRP .....</i>	<i>VII</i>
Loan Agreement of 1994 .....	VII
Authorization Letter to people bank .....	IX
Written Communication By Proposed Interim Resolution Professional .....	XII
<b>PART II - ACCEPTANCE OF INSOLVENCY PROCEEDING/PROCEDURE CONDUCTED BY IRP/RP.....</b>	<b>XIV</b>
PUBLIC ANNOUNCEMENT.....	XIV
PROOF OF CLAIM BY FINANCIAL CREDITOR.....	XVI
1 - Claim by People’s Bank (FORM C).....	XVI
Annexure in support of Proof of Claim of People Bank.....	XIX
2 – Claims by Bank of North India (FORM C).....	XXI
Annexure in support of Proof of Claim of Bank of North India.....	XXIV
3 – Claim by PSP Bank (FORM C) .....	XXVI
Annexure in support of Proof of Claim of PSP Bank.....	XXIX
4 – Claim by SCB Bank (FORM C) .....	XXXI
Annexure in support of Proof of Claim of SCB Bank.....	XXXIV
5 – Claim by RST Bank (FORM C).....	XXXVI
Annexure in support of Proof of Claim of RST Bank .....	XXXVII
PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND EMPLOYEES .....	XLIV
1 – Claim by GKCL (FORM B) .....	XLIV
Annexure in support of Proof of Claim of GKCL .....	XLVII
2 – GKL and Other Dealers (FORM B).....	XLIX
3 – Imperium Carriers Ltd, FORM B .....	LII

4 – Raw Material Suppliers (FORM B)..... LV  
5– XYL Securities Agency (FORM B)..... LVIII  
6– T&T Construction Ltd (FORM B)..... LXI  
7 – Electricity Discom in Rajasthan (FORM B)..... LXIV

PROOF OF CLAIM BY A WORKMAN OR AN EMPLOYEE (FORM D) .....LXVII  
LIST OF CREDITOR PREPARED BY THE IRP ..... LXIX  
REPORT OF MINUTES OF COC MEETING HELD ON 27.04.2018 ..... LXX  
REPORT OF 7<sup>TH</sup> MINUTES OF COC MEETING HELD ON 27.08.2018 ..... LXXIII

**PART III - APPLICATION FILED BEFORE THE TRIBUNAL ON BEHALF OF THE CONCERNED PARTY DURING CIRP.....LXXIV**

1 – APPLICATION BY GKCL..... LXXIV  
*Document Annexed for the Support of the Application of GKCL..... LXXVI*  
2 – APPLICATION OF RST BANK FOR AVOIDANCE OF INTERIM FINANCE .....LXXVIII  
3 – APPLICATION OF RST BANK FOR AVOIDANCE OF 20 LAKH RUPEES TO TTCL .....LXXX  
4 – APPLICATION OF RST BANK FOR ENFORCEMENT OF PERSONAL GUARANTEE .....LXXXII  
*Document Annexed for the Support of the Application ..... LXXXIV*  
5 – APPLICATION OF RP OF ACL FOR AVOIDANCE OF 20 CRORE TO APL..... LXXXVI  
6 – APPLICATION OF APL FOR CLAIMING ITSELF AS OPERATION CREDITOR.....LXXXVIII  
*Document Annexed for the Support of the Application of APL..... LXXXIX*  
7 – APPLICATION OF APL FOR AVOIDANCE OF 100 ACRES MORTGAGE LAND ..... XCI  
*Document Annexed for the Support of the Application .....XCIV*  
8 –APPLICATION FOR RECOGNIZING THE FOREIGN PROCEEDINGS .....XCVI  
9 – APPLICATION OF APL FOR IMPLEADMENT..... XCVIII  
10 – APPLICATION OF JMCL FOR ACCEPTANCE OF RESOLUTION PLAN ..... C  
11 – APPLICATION OF RP FOR EXTENSION OF CIRP PROCESS ..... CII

**LIST OF ABBREVIATIONS**

<b>ABBREVIATION</b>	<b>EXPANSION</b>
§	Section
¶	Paragraph
&	And
ACL	Arvind Cement Limited
AIR	All India Reporter
ALSL	AQUA Logistics and Shipping Limited
Anr.	Another
APL	Arvind Power Limited
AS	Accounting Standard
AT	Appellate Tribunal
BLRC	Banking Law Reform Committee
BOD	Board of Directors
CA	Court of Appeal
C.P.	Company Petition
CIRP	Corporate Insolvency Resolution Process
CoC	Committee of Creditors
ECR	European Court Reports
Ed.	Editor
EWCA	England and Wales Court of Appeal

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

<b>GKCL</b>	GK Constructions Limited
<b>HC</b>	High Court
<b>Hon'ble</b>	Honourable
<b>IAS</b>	Indian Accounting Standard
<b>IBBI</b>	Insolvency and bankruptcy board of India
<b>IBC</b>	Insolvency and Bankruptcy Code
<b>IRP</b>	Interim Resolution Professional
<b>JMCL</b>	JM Cements Limited
<b>Ltd.</b>	Limited
<b>NCLAT</b>	National Company Law Appellate Tribunal
<b>NCLT</b>	National Company Law Tribunal
<b>No.</b>	Number
<b>OL</b>	Official Liquidator
<b>Ors.</b>	Others
<b>Reg.</b>	Regulation
<b>RP</b>	Resolution Professional
<b>SC</b>	Supreme Court
<b>SPV</b>	Special Purpose Vehicle
<b>TTCL</b>	T&T Constructions Limited
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>UOI</b>	Union of India
<b>US</b>	United States
<b>v</b>	Versus
<b>WLR</b>	Weekly Law Report



INDEX OF AUTHORITIES

~LIST OF CASES~

A. Supreme Court Cases

1. *Assn of Leasing & Financial Services Co v Union of India* (2011) 2 SCC 352 (SC)... 11
2. *Bank of Bihar v Damodar Prasad* (1969) SCR 297..... 15
3. *Industrial Investment Bank of India Ltd v Bishwanath Jhunjhunwala* (2009) 9 SCC 478 (SC)..... 15
4. *N Parthasarthy v Controller Capital Issues* (1991) 2 SCR 329 (SC)..... 18
5. *OL High Court of Karnataka v Smt V Lakshmikutty* [1981] 51 Comp Case 566 (SC).. 18
6. *Ramesh Chandra Mal v Municipal Corpn of Greater Bombay* (1992) 2 SCC 524 (SC).  
..... 20
7. *State Bank of India v V Ramakrishnan* [2018] 96 taxmann.com 271 (SC)..... 14
8. *Vodafone International holding BV v Union of India* [2012] 17 taxmann.com 202 (SC)  
..... 15

B. High Court Cases

1. *Abdul Hamid Sahib & Ors v Rahmat Br* (1964) SCC Online Mad 316..... 11
2. *American Express Bank Ltd v Core Health Care Ltd* (1999) 96 Comp Cas 841 (GUJ HC).  
..... 2
3. *Asea Brown Baveri Ltd v Industrial Finance Corporation of India* Appeal (civil) 3574 of  
1998 ..... 11
4. *Bank of Baroda in re vs.* [2018] 93 taxmann.com 331 (NCLT - Kolkata)..... 20
5. *Bank of Maharashtra v OL Navjivan Trading Finance Pvt Ltd* [1999] 96 CompCas 234  
(GUJ HC)..... 4
6. *Bikkina Gopalkrishna Rao v Seavalley Resorts Pvt Ltd* (2001) 104 Comp Cas 267 (AP  
HC). ..... 2
7. *Daulat Mokalal Luthria v Solitaire Hotels Pvt Ltd* (1993) 76 Comp Cas 215 (BOM HC)  
..... 2
8. *Edelweiss Asset Recons Co Ltd v Synergies Dooray Automotive Ltd* [2017] 85  
taxmann.com 136 (NCLT - Hyd). ..... 9
9. *Globe Forex & Travels Ltd v Siddharth Sett* [2015] 53 taxmann.com 456 (Cal HC)... 10
10. *Hind Iran bank Ltd v Raizada Jagan Nath Bali* (1959) 29 ComCas 418 (PUN HC) ..... 4

## **INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

---

11. <i>Indian Associates v Shivendra Bahadur Singh</i> (2003) SCC OnLine Del 180. ....	20
12. <i>M/s Sicom Investments &amp; Finance Ltd v Rajesh Kumar Drolia &amp; Anr</i> (2017) SCC Online Bom 9725 (Bom HC). ....	14
13. <i>Madho Sah v Sitaram</i> (1961) SCC OnLine Pat 101 (Pat HC). ....	15
14. <i>Motorola India Ltd v DSS Mobile Communications Ltd</i> [2006] 65 SCL 107 (Delhi HC).....	20
15. <i>Monrak Enterprises v Kishan Tulpule</i> (1992) 74 ComCas 89 (Bom HC). ....	3
16. <i>Morpen Finance Ltd v RBI</i> (2004) 4 CompLJ 357 (Delhi HC) ....	3
17. <i>OL Kerala High Court v Victory Hire Purchasing Co Pvt Ltd</i> [1982] 52 Comp Cas 88 (Ker HC).....	20
18. <i>OL of Piramal Financial Services Ltd v RBI</i> [2004] 51 SCL 691 (GUJ HC).....	2,20
19. <i>OL of Piramal Financial Services v Decimal Systems</i> (2009) 91 SCL 31 (GUJ HC). ..	20
20. <i>OL of Trimline Health &amp; Resort Ltd v GSFC &amp; 4</i> [2009] 92 SCL 323 (GUJ HC).....	2
21. <i>OL v Ashok Kumar Dalmia &amp; Ors</i> [1999] 98 Comp Cas 269 (Raj HC).....	20
22. <i>OL v MD State Financial Corp</i> (2000) 26 SCL 303 (AP HC).....	3
23. <i>OL v Ram Swarup</i> (1997) 2 Comp LJ 221 (Allahabad HC) ....	20
24. <i>OL Victor Chit Fund Pvt Ltd v Kanhiya Lal &amp; Ors</i> (1972) 42 Comp cas. 396 (Delhi HC). ....	4
25. <i>Oshi Foods Ltd v State Bank of India</i> (1997) SCC OnLine MP 160 ....	4
26. <i>Ramdeo Ranglal v Ghooronia Tea Co Pvt Ltd</i> (2005) 126 Comp Cas 193 (Gauhati HC). ....	2
27. <i>Re Company A</i> (1990) BCC 526 (HC) ....	20
28. <i>Re Concast Exim Ltd</i> [2015] 64 taxmann.com 140 (Cal HC). ....	10
29. <i>Re Parasrampur Trading &amp; Finance Ltd</i> [2006] 70 SCL 342 (All HC) ....	20
30. <i>Re Peerdan Juharmal Bank Ltd</i> [1954] 24 COMP CASE 41 (Mad HC).....	20
31. <i>Re Popular Bank Ltd (In Liquidation)</i> [1969] 39 Comp Case 685 (Ker HC). ....	20
32. <i>Re Prudential Capital Markets Ltd (In Liquidation)</i> (2008) 84 SCL 239 (Cal HC).....	3
33. <i>Re Trustee Ex Parte</i> (1924) (2) Ch D 515 ....	20

34. <i>S. Krishnan v. Rathinavel Naicker &amp; ors.</i> (2006) SCC OnLine Mad 749. ....	20
35. <i>Sanjeev Shriya v State Bank of India &amp; others</i> [2017] 87 taxmann.com 309 (Allahabad HC) .....	4
36. <i>Santilata v Saraju Bala Devi</i> (1955) SCC OnLine Cal 272 .....	11
37. <i>State of Madras v OKM Zakina Bivi &amp; Ors</i> (1957) SCC OnLine Mad 21 .....	11
38. <i>Subankhan v Lalkhan</i> AIR 1947 Nag. 643. ....	15
39. <i>Sunder Lal Jain v Sandeep Paper Mills Pvt Ltd</i> [1986] 60 Comp Case 77 (P&H HC).20	
40. <i>Suresh Narain v Akhauri</i> (1957) SCC OnLine Pat 7 (Pat HC) .....	15
41. <i>Terai Tea Co Pvt Ltd v Kumkum Mittal</i> (1993) SCC OnLine Cal 270. ....	20
42. <i>VGP Finances Ltd v Official Liquidator</i> [2018] 89 taxmann.com 209 (Mad HC). ....	2

**C. NCLAT Cases**

1. <i>BCL Homes Ltd v Canara Banks</i> [2018] 93 taxmann.com 279 (NCL-AT).....	8,12
2. <i>Nikhil Mehta and Sons v Amr Infrastructure Ltd</i> [2017] 84 taxmann.com 163 (NCL-AT) .....	10
3. <i>PEC Ltd v Sree Ramakrishna Alloys Ltd</i> [2018] 92 taxmann.com 21 (NCLAT). ....	1
4. <i>Schweitzer Systemtek India v Phoenix ARC Pvt Ltd</i> (2018) 91 taxmann.com 139 (NCL-AT) .....	14

**D. NCLT Cases**

1. <i>Col Vinod Awasthy v AMR Infrastructures Ltd</i> [2017] 80 taxmann.com 268 (NCLT - New Delhi). ....	4, 17
2. <i>ICICI Bank Ltd v Innoventive Industries Ltd</i> [2017] 88 taxmann.com 230 (NCLT – Mum). ....	10
3. <i>IDBI Bank Ltd v Jaypee Infratech Ltd</i> [2018] 93 taxmann.com 308 (NCLT - Allahabad). ....	2
4. <i>M/s VDS Plastics Pvt Ltd v M/s Pal Mohan Electronics Pvt Ltd</i> (CP No. (IB)-37(ND)/2017) (NCLT - New Delhi). ....	5
5. <i>Punjab National Bank v Vindhya Vasini Industries Ltd</i> CP (IB0-1170(MB)/2017 (NCLT Mumbai). ....	14
6. <i>Ravindra Gopal v Tattva &amp; Mittal Lifespaces Pvt Ltd</i> [2018] 91 taxmann.com 378 (NCLT - Mum).....	18

7. <i>RDC Concrete India Pvt Ltd v Bengal Unitech Universal Infrastructure Pvt Ltd</i> [2018] 89 taxmann.com 405 [NCLT-Delhi]. .....	18
8. <i>Re Gupta Energy Pvt Ltd</i> [2018] 93 taxmann.com 391 (NCLT - Mum). .....	9
9. <i>State Bank of India v Bhushan Steel Ltd</i> [2018] 93 taxmann.com 307 (NCLT- New Delhi).....	10

**E. Foreign Cases**

1. Case C-341/04 <i>Re Eurofood IFC Ltd</i> [2006] ECR I-3813 .....	7,16
2. Case C-396/09 <i>Interedil Srl v Fallimento Interedil Srl</i> [2011] ECR I-9915 .....	8
3. <i>Downs Distributing Co Pty Ltd v Associated Blue Star Stores Pty Ltd</i> [1948] HCA 14 3	
4. <i>Gainsford v Tannenbaum</i> (2012) 293 ALR 699.....	16
5. <i>Lister v Hooson</i> [1908] 1 KB (CA). .....	10
6. <i>Otte v United States</i> 419 US 43 (1974). .....	13
7. <i>Powdrill v Watson</i> (1995) 2 AC 394 (HL) .....	13
8. <i>Re Angiotech Pharmaceuticals Ltd</i> (2011) 76 CBR (5th) 317.....	7
9. <i>Re Beacon Leisure Ltd</i> (1992) BCLC 565. ....	3
10. <i>Re Bear Stearns High-Grade Structured Credit Strategies Master Fund Ltd</i> 389 BR 325 (SDNY 2008).....	8, 17
11. <i>Re Betcorp Ltd (in liquidation)</i> 400 B.R. 266 (Bankr D Nev 2009). .....	16
12. <i>Re Bevill Bresler &amp; Schulman Asset Mgmt. Corp</i> 896 F 2d 54, 59 (3d Cir 1990) (CA)19	
13. <i>Re Club Development &amp; Management Corp</i> 27 BR 610 (1982).....	12
14. <i>Re Continental Assurance Co</i> (2001) BPIR 733 .....	13
15. <i>Re Dylex Ltd</i> (1995) CanLII 7370. ....	6
16. <i>Re Fairfield Sentry Ltd</i> 714 F 3d 127 (2 <sup>nd</sup> Cir 2013) (CA) .....	16
17. <i>Re Fairview Industries Ltd</i> 1991 CanLII 4287 (NS SC).....	6
18. <i>Re Grand Chevrolet Inc</i> 25 F 3d 728 (9th Cir. 1994) (CA). ....	3
19. <i>Re Healthcentral.com</i> 504 F 3d 775, 790 (9th Cir. 2007) (CA).....	3
20. <i>Re Lightsquared LP</i> (2012) ONSC 2994.....	16

## INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018

---

21. <i>Re M Kushler Ltd</i> (1943) 13 Comp Case 219 (CA) .....	3
22. <i>Re Massachusetts Elephant &amp; Castle Group Inc</i> (2011) 81 CBR (5th) 102.....	7
23. <i>Re Northsea Base Investment ltd &amp; Ors</i> [2015] EWHC 121 (Ch).....	8, 16
24. <i>Re OPM Leasing Services Inc</i> 23 BR 104 (1982) .....	13
25. <i>Re Patch Graphics Inc</i> 58 BR 743 (1986).....	12
26. <i>Re Probe Resources Ltd</i> (2011) 79 CBR (5th) 148 .....	17
27. <i>Re Stanford International Bank Ltd &amp; Ors</i> [2010] EWCA Civ 137 .....	16
28. <i>Re Washington Diamond Mining Co</i> [1893] 3 Ch 95 (CA).....	10
29. <i>Tucker v Aero Inventory (UK) Ltd</i> [2009] ONSC 63138 .....	8
30. <i>Woods v City Nat Bank &amp; Trust Co</i> 312 US 262 (1941).....	13

### ~ARTICLES & REPORTS~

1. Akpareva Wendy Aruoriwo, 'Business funding in corporate rescue: the UK perspective' (DPhil thesis, Nottingham Trent University 2014). .....	5
2. Gerard McCormack, 'Corporate restructuring law - a second chance for Europe?' (2017) EL Rev 4.....	11
3. Insolvency and Bankruptcy Board of India (Disciplinary Committee) Order 2018, IBBI/DC/07/2018.....	8
4. Jennifer Payne & Janis Sarra, <i>Tripping the Light Fantastic: A comparative analysis of the European Commission's proposals for new and interim financing of insolvent businesses</i> (2017) .....	5
5. John C. McCoid, II, 'Set-off: Why Bankruptcy Priority?' (1989) Vol 75 Virginia Law Review 15 .....	9
6. Neil Hannan, <i>Cross Border Insolvency: The Enactment and Interpretation of the UNCITRAL Model Law</i> (Springer Nature Singapore 2017) 119 .....	16
7. Patrick O'Callaghan, 'Set-Off on Insolvency' (1998) Commercial Law Practitioner ...	9
8. <i>Report of Bankruptcy Law Reform Committee</i> , Ministry of Finance, Government of India (November 2015). .....	4
9. Shishir Mehta & Ors, 'Restructuring and insolvency in India: overview' (2017) Global Guide Restructuring on Insolvency in India. ....	9
10. United Nation Commission on International Law, <i>UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective</i> (The Judicial Perspective UN 2014)...	15

**~STATUTES~**

1. Companies Act, 2013 [Act 18 of 2013].
2. The Insolvency & Bankruptcy Code, 2016 [Act 31 of 2016].
3. UNCITRAL Model Law on Cross-Border Insolvency, 1997.
4. The Transfer of Property Act [Act 4 of 1882].
5. Indian Contract Act [Act 9 of 1872].
6. The Code of Civil Procedure [Act 5 of 1908].

**~RULES AND REGULATIONS~**

1. Accounting Standard (AS) 18.
2. Companies (Acceptance of Deposits) Rules, 2014.
3. Indian Accounting Standard (Ind AS) 24.
4. Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
5. Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.
6. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

**~BOOKS~**

1. A Ramiya, *Guide to the Companies Act 2013*, vol 3 (18th edn, Lexis Nexis 2015).
2. CR Datta, *Company Law*, vol 3 (7th edn, Lexis Nexis 2017).
3. *Guide to Insolvency and Bankruptcy Code 2016* (Taxmann's 2018).
4. Sir D F Mulla, *The Law of Insolvency Law in India* (Sathaya Narayan ed, 5th edn, LexisNexis 2013).
5. Sir Dinshaw Fardunji Mulla, *The Code of Civil Procedure*, vol 2 (BM Prasad and SK Sarvaria ed, 17th edn, Lexis Nexis 2007).
6. Sumant Batra, *Corporate Insolvency Law and Practice* (EBC 2017) 306, 311.

7. United Nation Commission on International Trade Law, General Assembly, *Legislative Guide on Insolvency Law* (UNCITRAL Legislative Guide) (UN Publication Sales No E05.V.10 205).
8. Vanessa Finch and David Milman, *Corporate Insolvency Law: Perspectives and Principals* (3rd edn, Cambridge University Press 2017).
9. Gerard McCormack, *Corporate rescues- Anglo American perspective* (Edward Elgar Ltd 2008).
10. Susan Block-Lieb Latham & Ors, *Post-Commencement Finance Excerpts from Draft Uncitral Legislative Guide on Insolvency Law International Insolvency Institute* (2004).
11. United Nation Commission on International Trade Law, *UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation* (UN Publication Sales No. E.14.V.2 2014).
12. United Nation Commission on International Law, *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective* (The Judicial Perspective) (UN 2014).
13. Justice GP Singh, *Principles of Statutory Interpretation* (11th edn, Wadhwa and Company 2008).

**~LEXICONS~**

1. Bryan A. Garner (ed), *Black's Law Dictionary* (9th edn, Thomson West 2009).
2. P Ramanatha Aiyar's, *The Law Lexicon* (Shakil Ahmad Khan ed, 3rd edn, Lexis Nexis 2012).

**STATEMENT OF FACTS**

---

**~BACKGROUND~**

Arvind Cement Limited (ACL) established in the year 1993 is the largest cement manufacturing unit in India. ACL's registered office is in Hyderabad and corporate offices are located in Delhi & Mumbai respectively. Though ACL had a number of dealers, the biggest dealer is GK Limited with a share of 35% of ACL's sales in the last financial year.

**~FINANCIAL ASSISTANCE TO ACL~**

ACL sought financial assistance amounting to INR 2,000 crores from a consortium headed by People's Bank on 12.12.1994 and created securities by way of hypothecation of property. First charge was created on the land & building of ACL in Rajasthan and second on the manufacturing plant & machinery. In 2005, ACL also obtained working capital facility of INR 200 crores from RST Bank and created first charge on its plant & machinery at the Rajasthan unit. Subsequently, Mr. Arvind Kumar also gave a personal guarantee.

**~APPLICATION TO INITIATE CIRP~**

In March 2017, ACL started facing issues with the supply of raw materials. In September 2017, ACL proceeded to set up a plant in Karnataka, however, in February 2018, Court directed the Central Government to issue mining licenses through a fresh process of competitive bidding. This came as a severe blow to ACL as it had already engaged T&T Constructions Limited (TTCL) to build the basic infrastructure for the plant in Karnataka but due to uncertainty over payments for its service, TTCL had done only minimal off-site work so far and was awaiting an assurance of future payment. In March 2018, ACL had INR 20 lakhs left in one of its bank accounts, it therefore chose to default to banks and instead paid the money to TTCL. Consequently, People's Bank, filed an application before the Adjudicating Authority for initiating CIRP against ACL. The Adjudicating Authority admitted the application and appointed Ms. Pooja as Interim Resolution Professional (IRP) on 30.03.2018.

**~APPLICATION BY GKCL~**

The 85 storage facilities owned by ACL all over India were built by GKL's group Company, GK Constructions Limited (GKCL) as per the agreement dated 05.07.2010. GKCL were to be paid its consideration, amounting to INR 500 crore, in instalments along with interest over a period of 10 years hence on invitation of claims by RP, GKCL submitted its claim as a Financial Creditor where RP rejected the same stating that it is not a Financial Creditor. GKCL



filed an application before the NCLT, contesting the decision of RP to reject its claim.

**~APPLICATION BY RST BANK~**

In the first CoC meeting of ACL, RP proposed to raise an interim finance of INR 5 crores. RST Bank contested that RP's proposal for interim finance, to the extent that payment was proposed to be made to TTCL, RST Bank filed an application before the Adjudicating Authority to prevent the RP from making any payment to TTCL and also alleged that the payment of INR 20 lakhs to TTCL is an avoidable transaction. RST bank also filed an application before the Adjudicating Authority to enforce personal guarantee against Mr. Arvind Kumar.

**~APPLICATION BY FOREIGN REPRESENTATIVE~**

In 2007, ACL set up a fully-owned subsidiary, Aqua Logistics and Shipping Limited (ALSL) which during 2015 and 2016, provided loans of USD 100 million to ACL. Citi Fin filed an involuntary bankruptcy petition while Mr. Kelvin Murray (interim trustee) applied as a foreign representative to the NCLT in India for recognition of the foreign proceedings and cooperation in relation to the amount of USD 100 million loaned by ALSL to ACL.

**~APPLICATION BY RP OF ACL AND APL ~**

In 2003, Arvind Power Limited (APL), a Special Purpose Vehicle (SPV) was constituted by ACL. Subsequently, in 2006, ACL & APL entered into Power Purchase Agreements (PPAs). Meanwhile, the CIRP of APL also commenced and Mr. Mahesh (IRP of APL) submitted a claim for 95 crores to the RP of ACL. This claim was rejected by the RP where it filed an application for avoidance of certain transactions that led to payment of excess amount of INR 20 crores to APL which was further opposed by APL. In September 2017, when ACL expanded its credit facilities, APL decided to mortgage 100 acres of land. The RP also filed an application for release of land of APL. They also filed an application for impleadment in the suit filed by RP of APL of ACL for approval of Resolution Plan.

**~APPLICATION BY JMCL~**

RP of ACL invited Resolution Plans. The deadline for submission of plan was 15.10.2018 where Resolution Plan of Rambo Cements Limited (RCL) emerged as the plan with the highest score and JM Cements Limited (JMCL) came second on 19.10.2018. JMCL submitted the revised Resolution Plan which was rejected by RP. Aggrieved by this, JMCL filed an application to the Adjudicating Authority to have its Resolution Plan accepted by the RP of ACL.

The Adjudicating Authority finally listed all applications arising in this matter, including the applications filed by RP of APL, for hearing on 16<sup>th</sup> November 2018.

**ISSUES RAISED**

---

**ISSUES ON BEHALF OF THE CORPORATE DEBTOR AND ITS PROMOTER**

*ARVIND CEMENT LIMITED*

**Issue:1** Whether NCLT should put a stay on CIRP Proceedings?

**Issue:2** Whether payment made by ACL to TTCL is an avoidable transaction?

**Issue:3** Whether Mortgage created by APL over its land is an Avoidable Transaction?

*MR. ARVIND KUMAR (Promoter)*

**Issue:4** Whether application for enforcement of personal guarantee against Mr. Arvind Kumar is sustainable?

**ISSUES ON BEHALF OF INSOLVENCY PROFESSIONALS (IRP/RP)**

*MISS POOJA PRAKASH*

**Issue:1** Whether RP justified in rejecting the claim of GKCL as Financial Creditor?

**Issue:2** Whether payment made to TTCL out of Interim Finance is contrary to law?

**Issue:3** Whether Application for Recognition of Foreign Proceedings is maintainable?

**Issue:4** Whether RP is justified in rejecting the revised Resolution Plan?

**Issue:5** Whether RP is justified in rejecting the claim of APL?

**Issue:6** Whether excess payment made to APL is an avoidable transaction?

**ISSUES ON BEHALF OF THE FINANCIAL CREDITORS**

*GK CONSTRUCTIONS LIMITED*

**Issue:1** Whether the claim of GKCL as a Financial Creditor is sustainable?

**ISSUES ON BEHALF OF OPERATIONAL CREDITORS**

*RST BANK*

**Issue:1** Whether payment made to TTCL from interim finance was contrary to law?

**Issue:2** Whether payment made by ACL to TTCL being fraudulently intended is an Avoidable Transaction?

**Issue:3** Whether Personal guarantee should be invoked against Mr. Arvind Kumar?

**ISSUES ON BEHALF OF OTHER PARTIES**

*MR. KELVIN MURRAY (FOREIGN REPRESENTATIVE)*

**Issue:1** Whether Recognition & Cooperation should be provided in respect to the Foreign Proceedings?

*ARVIND POWER LIMITED*

**Issue:2** Whether claim of APL as an Operational Creditor is sustainable?

**Issue:3** Whether excess payment made to APL should be allowed to set-off?

*MR. MAHESH KUMAR (RP OF APL)*

**Issue:4** Whether Mortgage created by APL over its land is avoidable?

**Issue:5** Whether RP of APL should be impleaded in the proceedings?

*JM CEMENTS LIMITED (RESOLUTION APPLICANT)*

**Issue:6** Whether revised plan proposed by JMCL should be accepted.

**ANALYSIS OF ISSUES**

---

**ISSUES ON BEHALF OF THE CORPORATE DEBTOR AND ITS PROMOTER**

**ISSUE: 1 THAT NCLT SHOULD PUT A STAY ON CIRP PROCEEDINGS.**

---

[¶ 01] It is humbly submitted that the application filed under §7[Refer to p. II-VII under part III Enclosures] of the Insolvency and Bankruptcy Code, 2016 should not be accepted. This will be further substantiated on the following grounds.

**1.1 THAT THE DELAY IN PAYMENT OF INTEREST WAS A RESULT OF FORCE MAJEURE.**

[¶ 02] It is submitted that ACL had been servicing its debts regularly but unfortunately faced some issues regarding supply.<sup>1</sup> Hence, there was no unjustifiable delay in the payments. The delay in payment made by ACL was due to certain unforeseen circumstances which had occurred due to hardship and not due to commercial insolvency of the Company.<sup>2</sup>

**1.2 THAT THE INITIATION OF CIRP WILL ADVERSELY AFFECT THE FUTURE PROSPECTS OF ACL.**

[¶ 03] It is pertinent to note that ACL's manufacturing capacity is the highest in India<sup>3</sup>, thereby making it a growth-oriented Company.<sup>4</sup> Therefore, it is clear that the interest of a large number of employees could not be obliterated only to satisfy the claims of certain creditors.<sup>5</sup> Hence, in order to protect the interest of employees & workmen, the CIRP should not be initiated.<sup>6</sup>

---

**ISSUE: 2 THAT PAYMENT MADE BY ACL TO TTCL IS NOT AN AVOIDABLE TRANSACTION.**

---

[¶ 04] It is humbly submitted that the transaction of 20 lakhs could not be avoided as it was done in good faith and in ordinary course of business.<sup>7</sup> Although, the burden of proof lies on the Applicant to show that the transaction in question was neither *bona fide* nor it was for a

---

<sup>1</sup> Moot Proposition, Pg 4.

<sup>2</sup> *Daulat Mokalal Luthria v Solitaire Hotels Pvt Ltd* (1993) 76 Comp Cas 215 (BOM HC); *Bikina Gopalkrishna Rao v Seavalley Resorts Pvt Ltd* (2001) 104 Comp Cas 267 (AP HC).

<sup>3</sup> Moot Proposition, Pg 1.

<sup>4</sup> *American Express Bank Ltd v Core Health Care Ltd* (1999) 96 Comp Cas 841 (GUJ HC).

<sup>5</sup> *Ramdeo Ranglal v Ghooronia Tea Co Pvt Ltd* (2005) 126 Comp Cas 193 (Gauhati HC).

<sup>6</sup> *PEC Ltd v Sree Ramakrishna Alloys Ltd* [2018] 92 taxmann.com 21 (NCLAT).

<sup>7</sup> *IDBI Bank Ltd v Jaypee Infratech Ltd* [2018] 93 taxmann.com 308 ((NCLT - Allahabad).

valuable consideration<sup>8</sup>, mere preference is not sufficient for drawing an inference that the preference is fraudulent.<sup>9</sup> In case, the transaction lies in the interest of the Company and its creditors, the transaction is considered *bona fide*.<sup>10</sup> Subsequently, payment made for goods or services that are regularly delivered are not considered preferential, even if made within proximity to the commencement of insolvency proceedings.<sup>11</sup>

[¶ 05] In the present case, TTCL having its operations in Karnataka, the payment made for services had been regularly delivered<sup>12</sup>, therefore, the transaction cannot be called preferential.

---

**ISSUE: 3 THAT THE MORTGAGE CREATED BY APL OVER ITS LAND IS NOT AN AVOIDABLE TRANSACTION.**

---

[¶ 06] It is humbly submitted that the application filed by RP of APL is not maintainable [*Refer to p. XC under part III Enclosures*] as the said transaction cannot be preferential or undervalued. This will be further substantiated as follows.

**3.1 THE TRANSACTION HAD BEEN EFFECTED IN THE ORDINARY COURSE OF BUSINESS**

[¶ 07] It is submitted that to define “*ordinary course of business*”, focus must be placed on prior conduct of the parties and their professional relationship.<sup>13</sup> The transaction must also fall into the undistinguished common flow of business.<sup>14</sup> In the instant case, ACL gave 100 acres of land by way of capital contribution & provided the much-needed corporate guarantee to APL.<sup>15</sup> Similarly, when ACL was in need, APL did the same by way of creating mortgage in favour of ACL, thereby effecting the ordinary course of its operations.

---

<sup>8</sup> *OL of Trimline Health & Resort Ltd v GSFC & 4* [2009] 92 SCL 323 (GUJ HC).

<sup>9</sup> *OL of Piramal Financial Services Ltd v RBI* [2004] 51 SCL 691 (GUJ HC).

<sup>10</sup> *VGP Finances Ltd v Official Liquidator* [2018] 89 taxmann.com 209 (Mad HC).

<sup>11</sup> United Nation Commission on International Trade Law, General Assembly, *Legislative Guide on Insolvency Law* (UNCITRAL Legislative Guide) (UN Publication Sales No E05.V.10 205) 144 [179].

<sup>12</sup> Moot Proposition, Pg 5.

<sup>13</sup> UNCITRAL Legislative Guide, 140 [166]; *Re Healthcentral.com* 504 F 3d 775, 790 (9th Cir. 2007) (CA).

<sup>14</sup> *Downs Distributing Co Pry Ltd v Associated Blue Star Stores Pry Ltd* [1948] HCA 14; *Re Grand Chevrolet Inc* 25 F 3d 728 (9th Cir. 1994) (CA).

<sup>15</sup> Moot Proposition, Pg 2.

**3.2 THERE IS NO DOMINANT MOTIVE ON THE PART OF ACL.**

[¶ 08] It is submitted that mere preference is not sufficient to draw inference that the transaction was fraudulent.<sup>16</sup> Dominant motive coupled with the element of dishonesty needs to be established.<sup>17</sup> If the circumstances proven are equally consistent with guilt or innocence, the benefit of doubt goes to the accused, thus charge needs to be proved beyond reasonable doubt.<sup>18</sup> Suspicion, however strong, will not be sufficient; if there is room for any explanation pertaining to Debtor's conduct.<sup>19</sup>

[¶ 09] In the present case, there is no direct evidence to prove intention on the part of APL to give favoured treatment to ACL. This section, therefore, cannot be invoked.<sup>20</sup> Further, APL was bound by a legal obligation which doesn't amount to fraudulent preference.<sup>21</sup>

---

**ISSUE:4 THAT THE APPLICATION FOR ENFORCEMENT OF PERSONAL GUARANTEE AGAINST  
MR. ARVIND KUMAR IS NOT SUSTAINABLE.**

---

[¶ 10] It is humbly submitted that the present application filed by RST Bank before the Hon'ble Tribunal regarding enforcement of personal guarantee against Mr. Arvind Kumar [*Refer to p. LXXXI under part III Enclosures*] should not be accepted as a personal guarantee cannot be enforced until & unless the liability of Corporate Debtor has been crystallised.<sup>22</sup> In the present scenario, the liability of Corporate Debtor shall only be crystallised, when NCLT approves of the Resolution Plan under §31 or passes an order of liquidation under §33 of the Code.<sup>23</sup> Also, an application for proceeding against a personal guarantor cannot be accepted as the liability

---

<sup>16</sup> *OL v MD State Financial Corp* (2000) 26 SCL 303 (AP HC); *Morpen Finance Ltd v RBI* (2004) 4 CompLJ 357 (Delhi HC); A Ramiya, *Guide to the Companies Act 2013*, vol 3 (18th edn, Lexis Nexis 2015) 5195.

<sup>17</sup> *Re Prudential Capital Markets Ltd (In Liquidation)* (2008) 84 SCL 239 (Cal HC); *Monrak Enterprises v Kishan Tulpule* (1992) 74 ComCas 89 (Bom HC).

<sup>18</sup> *Re M Kushler Ltd* (1943) 13 Comp Case 219 (CA); *Re Beacon Leisure Ltd* (1992) BCLC 565.

<sup>19</sup> *Bank of Maharashtra v OL Navjivan Trading Finance Pvt Ltd* [1999] 96 CompCas 234 (GUJ HC).

<sup>20</sup> *Hind Iran bank v Raizada Jagan Nath* (1959) 29 ComCas 418 (PUN HC); CR Datta, *Company Law*, vol 3 (7th edn, Lexis Nexis 2017) 3.1505; *OL Victor Pvt Ltd v Kanhiya Lal* (1972) 42 Comp cas. 396 (Delhi HC).

<sup>21</sup> Sir D F Mulla, *The Law of Insolvency Law in India* (Sathaya Narayan ed, 5th edn, LexisNexis 2013) 574.

<sup>22</sup> *Oshi Foods Ltd v State Bank of India* (1997) SCC OnLine MP 160 [10].

<sup>23</sup> *Sanjeev Shriya v State Bank of India & others* [2017] 87 taxmann.com 309 (Allahabad HC); Rishi Thakur, 'Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code and the Dilemma Surrounding Guarantee' (January 2017) <<https://www.livelaw.in/corporate-insolvency-resolution-process-insolvency-bankruptcy-code-dilemma-surrounding-guarantee/>> accessed August 30 2018.

of ACL is still in fluid situation & the same has not been crystallised as of now till the time CIRP is going against the Corporate Debtor.<sup>24</sup>

[¶ 11] **In Arguendo**, even in terms of equity, the Applicant, RST Bank would not suffer any prejudice by non-enforcement of personal guarantee as it has already claimed the amount of debt in the CIRP of Corporate Debtor & his interest is protected in the form of Resolution Plan which will be approved by COC which may also include provisions as to the payments made by such guarantor.<sup>25</sup> Further, it is pertinent to note that BLRC envisages as an adjudicator to lead the bankruptcy process in the event insolvency resolution process fails.<sup>26</sup> Direct application for bankruptcy is not possible.<sup>27</sup> Therefore, direct application for bankruptcy of personal guarantor should not be accepted as it will defeat the very purpose of the code.

### **ISSUES ON BEHALF OF THE INSOLVENCY PROFESSIONAL**

#### **ISSUE:1 THAT RP JUSTIFIED IN REJECTING THE CLAIM OF GKCL AS FINANCIAL CREDITOR**

---

[¶ 12] It is humbly submitted that GKCL submitted its claim as a secured Financial Creditor [Refer to p. XLIV under part II Enclosures]. However, the claim is arising out of provision of services, i.e. construction of storage facilities. GKCL, presently is an Operational Creditor whose liability from the entity comes within its operations.<sup>28</sup> The components of operational debt were laid down by Ld. Tribunal in AMR Infrastructures,<sup>29</sup> viz. debt arising out of provision for services.<sup>30</sup>

##### *1.1 THAT THE MAJOR REQUIREMENTS OF FINANCIAL DEBT STAND DISPUTED*

[¶ 13] It is humbly submitted that purchase agreement as contemplated by §5(8) (f) may or may not be regarded as a financial transaction.<sup>31</sup> A forward contract to sell a product at the end

---

<sup>24</sup> Moot Proposition, Pg 6.

<sup>25</sup> Insolvency and Bankruptcy Code 2016 (I&B Code 2016), s 31(1).

<sup>26</sup> *Report of Bankruptcy Law Reform Committee*, Ministry of Finance, Government of India (November 2015) para 6.5.1 [BLRC Report].

<sup>27</sup> Guide to Insolvency and Bankruptcy Code 2016 (Taxmann's 2018) I-42.

<sup>28</sup> *BLRC Report* para 5.2.1.

<sup>29</sup> *Col Vinod Awasthy v AMR Infrastructures Ltd* [2017] 80 taxmann.com 268 (NCLT - New Delhi).

<sup>30</sup> I&B Code 2016, s 5(21).

<sup>31</sup> *AMR Infrastructures* (n 30).

of a specified period is not a financial contract. It is essentially a contract for sale of specified goods. Furthermore, it is worthy to note that 'assured return' has got nothing to do with the requirement of §5(8), it is only associated with the delivery of possession of property.

Therefore, it is clear that there is nothing on record to suggest that the amount had been 'disbursed' in favour of 'Corporate Debtor' against 'consideration for the time value of money'. The contesting Respondents have also failed to bring on record any evidence to suggest that the money was 'borrowed' or 'raised' by the Corporate Debtor under any other transactions including sale or purchase or other mode having 'commercial effect of borrowing'.

***1.2 THAT THERE IS NO PARITY BETWEEN THE AMOUNT OF CLAIM AND ACTUAL DEFAULT***

[¶ 14] It is submitted that where a claim is alleged to be doubtful and questionable in the factual matrix, the application must be rejected.<sup>32</sup> Mere guarantee of an assured amount does not give rise to a financial debt. In the instant case, the outstanding amount of INR 250 Crores is an unmatured amount. Subsequently, taking into consideration the agreement being entered in 2010, the outstanding amount stands inflated as the transaction will mature in 2020<sup>33</sup> & it is not possible under any circumstance to have such an extortionate amount payable currently.

---

**ISSUE:2 THAT PAYMENT MADE TO TTCL OUT OF INTERIM FINANCE IS NOT CONTRARY TO LAW.**

---

[¶ 15] It is humbly submitted that the interim finance provided to TTCL was not unnecessary & contrary to the provisions of law as it was for the continuation & survival of ACL's business. Interim finance constitutes any fund that is reasonably & necessary for the Debtor's business to survive its operations.<sup>34</sup> Continuing finance is fundamental to any corporate rescue plan and often regarded when a Company is financially distressed & inevitably finds itself in a situation where access to finance is limited.<sup>35</sup>

[¶ 16] Further, interim finance may inspire confidence in vendors to keep supply lines open, skilled manpower to remain in their jobs and customers to keep patronising the Debtor for

---

<sup>32</sup> *M/s VDS Plastics Pvt Ltd v M/s Pal Mohan Elec Pvt Ltd* (CP No. (IB)-37(ND)/2017) (NCLT - New Delhi).

<sup>33</sup> Moot Proposition, Pg 2.

<sup>34</sup> Jennifer Payne & Janis Sarra, *Tripping the Light Fantastic: A comparative analysis of the European Commission's proposals for new and interim financing of insolvent businesses* (2017) 1.

<sup>35</sup> Akpareva Wendy Aruoriwo, 'Business funding in corporate rescue: the UK perspective' (DPhil thesis, Nottingham Trent University 2014).



goods and services.<sup>36</sup> It is pertinent to note that interim financing provides companies with all sorts of necessary tools required to give them a fighting chance of survival.<sup>37</sup>

[¶ 17] Presently, RP was correct in raising interim finance so as to maintain the business operations of ACL in order to pay for crucial supply of goods & services in Rajasthan and Karnataka site. This included the salary of workers & employees and an attempt to avoid the value erosion of ACL's assets which was also approved by COC.<sup>38</sup> Thus, it is very much clear that RP raised interim finance in good faith and for the smooth functioning of ACL's business.

---

**ISSUE:3 THAT THE APPLICATION FOR RECOGNITION OF FOREIGN PROCEEDING SHOULD NOT BE ACCEPTED**

---

[¶ 18] It is humbly submitted that the facts on record furnish that Mr. Kelvin Murray, who had been appointed as an interim trustee of ALSL for insolvency proceedings in USA had applied for recognition of same<sup>39</sup> [*Refer to p. XCVII under part III Enclosures*] in India as per the Model Law. The present proceedings under Art. 17<sup>40</sup> should not be recognized as the Model Law prescribes non-recognition where foreign proceedings fall outside the State which may not be construed as Centre of Main Interest (COMI)<sup>41</sup> of the Debtor.

[¶ 19] It is worthy to appreciate the main factors for determination of COMI which include, the place where *central administration* of Debtor takes place which is *also ascertainable by third parties*.<sup>42</sup> Herein, the term central administration means the place from where the

---

<sup>36</sup> S D Cousins, 'Post-petition Financing of Dot-coms' (2002) Del J Corp L 759; *Re Fairview Industries Ltd* 1991 CanLII 4287 (NS SC).

<sup>37</sup> B A Henoch, 'Post petition Financing: is There Life After Debt?' (1991) BANKR DEV J 575; *Re Dylex Ltd* (1995) CanLII 7370.

<sup>38</sup> Susan Block-Lieb Latham & Ors, *Post-Commencement Finance Excerpts from Draft UNCITRAL Legislative Guide on Insolvency Law International Insolvency Institute* (2004); Gerard McCormack, *Corporate rescues-Anglo American perspective* (Edward Elgar Ltd 2008); Moot Proposition, Pg 07.

<sup>39</sup> Moot Proposition, Pg. 8.

<sup>40</sup> Model Law on Cross-Border Insolvency of the United Nation Commission on Trade Law (UNCITRAL Model Law), GA Res 52/158, UN GAOR, 6<sup>th</sup> Comm, 52<sup>nd</sup> Sess, Agenda Item 148, UN DOS A/RES/52/158 (30 January 1998) Art 17.

<sup>41</sup> United National Commission on International Trade Law '*Interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency relating to centre of main interests (COMI)*' 41 session, UN Doc A/CN.9/WG.V/WP.103 (28 February 2012) 8 [37A].

<sup>42</sup> Case C-341/04 *Re Eurofood IFC Ltd* [2006] ECR I-3813, para 32; Council Regulation (EC) 1346/2000 of 20 May 2000 on insolvency proceeding [2000] OJ L160/1, recital 13; *Re Massachusetts Elephant & Castle Group Inc* (2011) 81 CBR (5th) 102 [30]-[31]; *Re Angiotech Pharmaceuticals Ltd* (2011) 76 CBR (5th) 317 [7].

Company relevant organ i.e. Director, according to its own constitution document takes decisions which are essential for the operation's of Company.<sup>43</sup> In the present case, India can be construed as a place for central administration of ALSL as the Director of ALSL manages the Company from India which also fulfils the command & control test.

[¶ 20] Furthermore, when Company's central administration is not at the same place as its registered office, then some other factors i.e. the place where the Debtor holds its assets and the place from where Company pursues its major economic activities are majorly taken into consideration as these factors are ascertainable by third parties.<sup>44</sup> In the present case, ALSL earned majority of its profit from office other than USA<sup>45</sup> which proves the fact that its major economic activity was carried from other states which can be ascertainable by its creditors.<sup>46</sup>

[¶ 21] Reliance can also be placed on the *Tucker case*, where the Court propounded, "COMI of a Company to be in UK where it had its registered office in Canada but had its business interest globally & director manage the affairs from UK, where its holding Company was listed.<sup>47</sup> Hence, the fact that central administration took place from places other than USA & major economic activities are also carried from places other than USA, is enough to rebut the presumption laid down in Art. 16(3) of the Model Law that COMI is not at the same place as its registered office. Therefore, proceeding cannot be recognised as foreign main proceedings.

[¶ 22] **In Arguendo**, the present proceedings should not be recognised as foreign non-main as the mere fact that insolvency proceedings are commenced in USA or the existence of debt and Bank accounts are in USA, does not principally satisfy the definition of establishment for recognition of foreign proceeding as non-main proceedings.<sup>48</sup>

---

<sup>43</sup> *Young v Anglo American South Africa Ltd & Ors* [2014] EWCA Civ 1130, [2014] 2 CLC 143 (CA) 157 [45].

<sup>44</sup> Case C-396/09 *Interedil Srl v Fallimento Interedil Srl* [2011] ECR I-9915, para 52.

<sup>45</sup> Clarification to the Moot Proposition, Pg 1, 2, 5.

<sup>46</sup> *Interedil Srl* (n 45).

<sup>47</sup> *Tucker v Aero Inventory (UK) Ltd* [2009] ONSC 63138; *Re Northsea Base Invest ltd & Ors* [2015] EWHC 121 (Ch); *Re Bear Stearns High-Grade Structured Credit Strategies Fund Ltd* 389 BR 325 (SDNY 2008)

<sup>48</sup> UNCITRAL Model Law with Guide to Enactment and Interpretation, 55 [90].

**ISSUE 4: THAT THE RP IS JUSTIFIED IN REJECTING THE CLAIM OF APL**

---

[¶ 23] It is humbly submitted that RP occupies a pivotal role, right from the day of his appointment<sup>49</sup> as a forensic auditor to cater the admissibility of financial evidence and inculcate specialised skills & expertise to aid the adjudicator in various tasks in an effective and efficient manner. It is for the RP to ensure that resistance does not develop into a crisis, bringing the resolution process to a grinding halt<sup>50</sup> as it shall be incumbent upon the RP to ensure that the Corporate Debtor undergoes a detailed forensic audit<sup>51</sup> in order to report avoidable transactions. In the instant case, certain transactions entered by ACL were found to be ‘avoidable’ upon conducting a ‘forensic audit’ by the RP of ACL.<sup>52</sup>

[¶ 24] It is pertinent to note that forensic audit is conducted to detect & gather financial evidence and instances of misappropriation & embezzlement for curing loss through irregular transactions. It is, therefore necessary that a person conducting forensic audit has no conflict of interest, whatsoever.<sup>53</sup> In the instant case, the claim submitted by RP of APL cannot be sustained on the ground of those avoidable & irregular transactions found by RP of ACL upon conducting the forensic audit duly and diligently.

**ISSUE 5: THAT EXCESS PAYMENT MADE TO APL MUST BE AVOIDED**

---

[¶ 25] It is humbly submitted that the excess money received by APL in the year 2016-17 being an avoidable transaction [*Refer to p. LXXXV under part III Enclosures*] cannot be allowed to set-off under any circumstance. This will be further substantiated on the following grounds.

**5.1 THERE LIES INSTANCE OF AVOIDABLE TRANSACTION**

[¶ 26] APL is wholly owned by ACL<sup>54</sup> which makes it fall within the purview of a related party.<sup>55</sup> The transactions could be avoided if in case the transfers made in favour of related parties fall within the period of two years preceding the insolvency commencement

---

<sup>49</sup> Sumant Batra, *Corporate Insolvency Law and Practice* (EBC 2017) 306, 311.

<sup>50</sup> *ibid* 311.

<sup>51</sup> Vallari Dubey, ‘Contents of Resolution Plan Redrawn Duties of RP redefined’ (November 2017).

<sup>52</sup> Moot Proposition, Pg 9.

<sup>53</sup> Insolvency and Bankruptcy Board of India (Disciplinary Committee) Order 2018, IBBI/DC/07/2018.

<sup>54</sup> Clarifications to Moot Proposition, Pg 4.

<sup>55</sup> *Edelweiss Asset Recons Co Ltd v Synergies Dooray Automotive Ltd* [2017] 85 taxmann.com 136 (NCLT - Hyd).

date.<sup>56</sup> When transactions lead to excess payment in suspect period, the bad faith is presumed to exist.<sup>57</sup> Also, the defense of good faith will not be applicable in case of a related party as they will have a better understanding about the Debtor's affairs.<sup>58</sup> The excess payment, can't be justified by merely giving a window of ordinary course of business, thereby making the said transaction avoidable.

**5.2 SET-OFF CANNOT BE SUSTAINED IN PURSUANCE OF AN AVOIDABLE TRANSACTION**

**[¶ 27] In Arguendo**, There is no provision under Indian law that imposes a mandatory set-off for mutual debts, as all debts are ranked according to priority and repaid accordingly.<sup>59</sup> The principle of equitable set-off is applicable only in respect of demands & cross-demands arising out of the same transaction.<sup>60</sup> The relief of equitable set-off could not be availed in respect of transactions in different years.<sup>61</sup> A Debtor from whom money have been recovered as a fraudulent preference, later cannot seek another set-off against the sums recoverable.<sup>62</sup> In the present case, the transaction couldn't be allowed to set-off as the Company has other creditors also who are to be paid after CIRP, thereby setting off this transaction will also result in occurrence of a preferential transaction<sup>63</sup> and a creditor will not be permitted to raise a set-off to defend a preference claim brought by the RP.<sup>64</sup>

---

**ISSUE:6 THAT RP IS JUSTIFIED IN REJECTING THE REVISED RESOLUTION PLAN**

---

**[¶ 28]** It is submitted that as per the Code, if CoC has taken a decision as prescribed under the code, there is no point of NCLT transgressing into the jurisdiction of CoC.<sup>65</sup> The Adjudicating

---

<sup>56</sup> *BCL Homes Ltd v Canara Banks* [2018] 93 taxmann.com 279 (NCLAT).

<sup>57</sup> UNCITRAL Legislative Guide, 151 [200].

<sup>58</sup> Aurelio Martínez, 'The Avoidance of Pre-Bankruptcy Transactions: An Economic and Comparative Approach' <chromeextension://oemmndcblldboiebfnladdacbfmadadm/https://www.iiiglobal.org/sites/default/files/media/AGM.%20The%20Avoidance%20of%20PreBankruptcy%20Transactions.%20Final\_0.pdf>

<sup>59</sup> Shishir Mehta & Ors, 'Restructuring and insolvency in India: overview' (2017) Global Guide Restructuring on Insolvency in India.

<sup>60</sup> *Globe Forex & Travels Ltd v Siddharth Sett* [2015] 53 taxmann.com 456 (Cal HC).

<sup>61</sup> *Re Concast Exim Ltd* [2015] 64 taxmann.com 140 (Cal HC).

<sup>62</sup> Patrick O'Callaghan, 'Set-Off on Insolvency' (1998) Commercial Law Practitioner 20.

<sup>63</sup> John C. McCoid, II, 'Set-off: Why Bankruptcy Priority?' (1989) Vol 75 Virginia Law Review 15.

<sup>64</sup> *Re Washington Diamond Mining Co* [1893] 3 Ch 95 (CA); *Lister v Hooson* [1908] 1 KB (CA).

<sup>65</sup> *Re Gupta Energy Pvt Ltd* [2018] 93 taxmann.com 391 (NCLT - Mum).

Authority has no jurisdiction to exercise over a decision taken by the CoC as contemplated under the Code.<sup>66</sup> Where no provision of law for the time being has been contravened, the application filed by Resolution Professional for accepting the Resolution Plan approved by CoC as submitted in the instant case by Resolution Applicant: RCL[Refer to p. XCIX under part III Enclosures] should be readily accepted by NCLT.<sup>67</sup>

**ISSUES ON BEHALF OF THE OPERATIONAL CREDITORS**

**ISSUE:1 THAT THE CLAIM OF GKCL AS A FINANCIAL CREDITOR SHOULD BE ACCEPTED**

---

[¶ 29] It is humbly submitted that RP rejected the claim of GKCL on groundless notion. However, it is respectfully submitted before the Ld. Tribunal that GKCL fulfils the requirement of being classified as a secured Financial Creditor [Refer to p. XLVI under part II Enclosures] on the following grounds.

*1.1 THAT THE MAJOR REQUIREMENTS OF FINANCIAL DEBT STAND UNDISPUTED*

[¶ 30] It is submitted that a Financial Creditor is the one to whom a financial debt is owed.<sup>68</sup> The Respondent Company, owes an outstanding sum of INR 250 crores as on 30.03.2018<sup>69</sup> to GKCL. This debt can be attributed with a kind perusal to the Hire Purchase transaction dated 05.07.2010<sup>70</sup> & §5(8) (d) of the code which does not distinguish a hire purchase from a long term funding in all practicalities,<sup>71</sup> the definition being an inclusive one and not exhaustive.<sup>72</sup>

[¶ 31] It is submitted that the very essential requirement of financial debt has to be met viz, that the debt including interest is disbursed against consideration for time value of money. Such a commercial effect of borrowing<sup>73</sup> is always reckoned while making such advances as in the instant case, the outflow is distanced by time & there is compensation in the form of

---

<sup>66</sup> *ICICI Bank Ltd v Innoventive Industries Ltd* [2017] 88 taxmann.com 230 (NCLT – Mum).

<sup>67</sup> *State Bank of India v Bhushan Steel Ltd* [2018] 93 taxmann.com 307 (NCLT- New Delhi).

<sup>68</sup> I&B Code 2016, s 5(7).

<sup>69</sup> Moot Proposition, Pg 7.

<sup>70</sup> Moot Proposition, Pg 2.

<sup>71</sup> *Assn of Leasing & Financial Services Co v Union of India* (2011) 2 SCC 352 (SC) [20]-[21].

<sup>72</sup> Batra (n 49).

<sup>73</sup> *Nikhil Mehta and Sons v Amr Infrastructure Ltd* [2017] 84 taxmann.com 163 (NCL-AT) [24]-[25].

consideration to be paid by ACL to GKCL amounting to INR 500 crore along with interest over a period of 10 years. This promise, of an ‘assured return’ is essentially the amount of interest<sup>74</sup> thus making the Applicant (GKCL) analogous to a financial debt.

***1.2 IN ARGUENDO, THE PURCHASE AGREEMENT IS AKIN TO A FINANCIAL LEASE AGREEMENT***

[¶ 32] It is submitted that Financial Creditors are those, whose relationship with the entity is a pure financial contract, such as a loan or debt security. Financial lease is nothing but loans in disguise.<sup>75</sup> Loans, on the other hand, are debts repayable.<sup>76</sup> The lease period provides a right to enjoy the property for certain time under which the lessee is put in possession of the property,<sup>77</sup> whereas the lessor merely finances the acquisition of the asset and retains title over it. Similarly, in the instant case, Ld. Tribunal must take into consideration, the purchase agreement contemplating the completion of construction and subsequent handover of storage facilities immediately upon completion of construction to ACL, subsequently, the maturity date fixed therefor and the terms of the agreement relating to the demand, on the making of which the debt will become repayable. In other words, unlike a loan, there is no immediate obligation to repay in the present case, therefore, the outstanding amount to GKCL falls within the definition of financial debt, viz. under §5(8)(d). Furthermore, since GKCL holds security interest on the storages, i.e. association as a dealer for 30% of ACL’s sales, it falls within the ambit of § 3(30), i.e. secured Financial Creditor.

**ISSUES ON BEHALF OF FINANCIAL CREDITOR/COC**

**ISSUE:1 THAT PAYMENT MADE TO TTCL FROM INTERIM FINANCE WAS CONTRARY TO LAW**

---

[¶ 33] It is humbly submitted that the interim finance given to TTCL was unnecessary and contrary to the provisions of law as it was an avoidable transaction under § 66 of the code [Refer to p. LXXVII under part III Enclosures]. Interim finance should be declared void if done with fraudulent intention or in bad faith.<sup>78</sup>

---

<sup>74</sup> *ibid* 11.

<sup>75</sup> *Asea Brown Baveri Ltd v Industrial Finance Corporation of India* Appeal (civil) 3574 of 1998.

<sup>76</sup> *Abdul Hamid Sahib & Ors v Rahmat Br* (1964) SCC Online Mad 316.

<sup>77</sup> *Santilata v Saraju Bala Devi* (1955) SCC OnLine Cal 272; *State of Madras v OKM Zakina Bivi & Ors* (1957) SCC OnLine Mad 21, 22.

<sup>78</sup> Gerard McCormack, ‘Corporate restructuring law - a second chance for Europe?’ (2017) EL Rev 4.

[¶ 34] It is so, that while raising interim finance, the rights of lenders and parties affected need to be protected<sup>79</sup> as their rights cannot be prejudiced.<sup>80</sup> Furthermore, for raising interim finance, light must be shed on the following aspects<sup>81</sup>: (a) It must benefit the Corporate Debtor and creditor as whole.<sup>82</sup> (b) It must be actual and necessary.<sup>83</sup>

[¶ 35] In the present case, an interim finance was raised with an intention to defraud the creditors which affected their rights, thus it does not fulfil the above laid down test.<sup>84</sup> Further, interim finance cannot be raised for building up new assets<sup>85</sup> as interim finance should be kept as minimum as possible and should only be used for current expenses and not for long term decisions.<sup>86</sup> Therefore, mere showing that it was raised for the business is insufficient.<sup>87</sup>

---

**ISSUE: 2 THAT PAYMENT MADE BY ACL TO TTCL BEING FRAUDENTLY INTENDED IS AN AVOIDABLE TRANSACTION.**

---

[¶ 36] It is humbly submitted that the payment of 20 lakhs made by ACL to TTCL just before the commencement of CIRP was made with an intent to defraud the creditors of ACL, hence the transaction should be avoided.<sup>88</sup> [Refer to p. LXXIX under part III Enclosures] Although, the onus of proof in the present case is on ACL as the Debtor's inability to satisfactorily explain the commercial purpose of a particular transaction, it may point to the requisite intent<sup>89</sup>. Further, in order to establish that the transaction was carried out with the intent to defraud creditors, it is submitted that: [A] Directors had knowledge about the Corporate Debtor entering

---

<sup>79</sup> UNCITRAL Legislative Guide, 114 [94].

<sup>80</sup> Rolef de Weijs & Meren Baltjes, 'Opening the Door for the Opportunistic Use of Interim Financing: A Critical Assessment of the EU Draft Directive on Preventive Restructuring Frameworks' (2018) International Insolvency Review 224 <<https://onlinelibrary.wiley.com/doi/epdf/10.1002/iir.1305>> accessed 30 August 2018.

<sup>81</sup> *Re Patch Graphics Inc* 58 BR 743 (1986).

<sup>82</sup> *Re Club Development & Management Corp* 27 BR 610 (1982).

<sup>83</sup> *Patch Graphics* (n 81).

<sup>84</sup> I&B Code 2016, s 66.

<sup>85</sup> Moot Proposition, Pg 8.

<sup>86</sup> *Woods v City Nat Bank & Trust Co* 312 US 262 (1941); *Re OPM Leasing Services Inc* 23 BR 104 (1982); *Otte v United States* 419 US 43 (1974).

<sup>87</sup> *Club Development & Management* (n 82).

<sup>88</sup> I&B Code 2016, s 49; *BCL Homes Ltd v Canara Banks* [2018] 93 taxmann.com 279 (NCL-AT).

<sup>89</sup> UNCITRAL Legislative Law [200].

into twilight zone [B] Transaction resulted in substantial loss to the creditors.<sup>90</sup>

**2.1 DIRECTORS WERE AWARE ABOUT THE TWILIGHT ZONE**

[¶ 37] It is submitted that the transaction entered into by ACL in March 2018 falls under the suspect period, i.e. 1 year.<sup>91</sup> The directors decided to default on the interest payment to banks by closing their eyes on the reality of position and carried on its operations having knowledge of the fact that the Company was becoming insolvent, thereby, constituting wrongful trading.<sup>92</sup>

**2.2 TRANSACTION RESULTED IN LOSS TO CREDITORS**

[¶ 38] It is submitted that any legal act disposed of by obligation performed by way of payment causing avoidable loss to creditors after which the insolvency becomes inevitable, constitutes wrongful trading.<sup>93</sup> If the transaction was unfair in relation to certain creditors and if the Debtor was insolvent at the time transaction took place or would become insolvent as a result of the same, then it must be avoided.<sup>94</sup> In present case, the filing of CIRP application is a result of default made in the interest payment by the Corporate Debtor.<sup>95</sup> Therefore, such transaction must be avoided.

---

**ISSUE: 3 THAT PERSONAL GUARANTEE SHOULD BE ENFORCED AGAINST MR. ARVIND KUMAR.**

---

[¶ 39] It is submitted that the present application for enforcement of personal guarantee against [Refer to p. LXXXI under part III Enclosures]. Mr. Arvind Kumar should be accepted as pursuant to §60(2) of the code, bankruptcy proceeding can be initiated against personal guarantor before such Tribunal where CIRP of Corporate Debtor is pending.<sup>96</sup> This position was also reiterated by various Courts where they observed that: “*if a Financial Creditor intends to proceed against a personal guarantor he may file an application before the same adjudicating authority where CIRP of Corporate Debtor is pending i.e. NCLT<sup>97</sup>*”, although,

---

<sup>90</sup> Batra (n 49) 541-542.

<sup>91</sup> I&B Code 2016, s 46; Moot Proposition, Pg 5.

<sup>92</sup> *Re Continental Assurance Co* (2001) BPIR 733; *Powdrill v Watson* (1995) 2 AC 394 (HL).

<sup>93</sup> Batra (n 49) 542.

<sup>94</sup> UNCITRAL Legislative Guide, 138 [158].

<sup>95</sup> Moot Proposition, Pg 6.

<sup>96</sup> I&B Code 2016, s 60(2); Moot Proposition, Pg 8.

<sup>97</sup> *Schweitzer Systemtek India v Phoenix ARC Pvt Ltd* (2018) 91 taxmann.com 139 (NCL-AT); *State Bank of India v V Ramakrishnan* [2018] 96 taxmann.com 271 (SC).



NCLT is required to decide such proceeding in accordance with provincial insolvency act, 1920.<sup>98</sup>

[¶ 40] It is pertinent to note that *Reg. 36 of IBBI* (Insolvency Resolution Process for Corporate Persons) also sought information as to the personal guarantor when proceedings are initiated against Corporate Debtor.<sup>99</sup> The code clearly points out the intention of Legislature, which is to make guarantor of Corporate Debtor equally liable for speedy recovery of loan.<sup>100</sup> Reliance is also placed on *Vindhaya Vasini*<sup>101</sup> where the Ld. Tribunal, by invoking jurisdiction under §60(2) of the code made the personal guarantor liable for the debt of Principal Debtor.

[¶ 41] In the present case, application for enforcement of personal guarantee should be accepted as the essential prerequisite for invoking §60(2) i.e. pendency of CIRP relating to Corporate Debtor before the very same Ld. Tribunal stands fulfilled.<sup>102</sup> Furthermore, the liability of surety is co-extensive with that of Principal Debtor i.e. surety is liable to the same extend as Principal Debtor.<sup>103</sup> Presently, this liability is immediate<sup>104</sup> i.e. Mr. Arvind Kumar who is a surety may be advanced against without any proceeding against the Principal Debtor.<sup>105</sup> Therefore, RST bank can proceed against Mr. Arvind Kumar without exhausting his remedy against ACL as the whole object of guarantee is defeated if RST Bank is asked to postpone his remedy against the guarantor.<sup>106</sup>

---

<sup>98</sup> *State Bank of India v V Ramakrishnan* [2018] 96 taxmann.com 271 (SC).

<sup>99</sup> Insolvency and Bankruptcy Board of India (Insolvency regulation for Corporate Persons) Regulation 2016, IBBI/2016-17/GN/REG004, reg 36(f); Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, r 7, Form 6, Annexure vi(e).

<sup>100</sup> *M/s Sicom Investments & Finance Ltd v Rajesh Kumar Drolia* (2017) SCC Online Bom 9725 (Bom HC); Namrata Dubey, 'The New Conundrum: Guarantor in Insolvency Regime' (IBBI 2018).

<sup>101</sup> *Punjab National Bank v Vindhya Vasini Industries Ltd* CP (IB0-1170(MB)/2017 (NCLT Mumbai).

<sup>102</sup> Moot Proposition, Pg 6, 11.

<sup>103</sup> Indian Contract act 1872, s 128; *Suresh Narain v Akhauri* (1957) SCC OnLine Pat 7 (Pat HC); *Madho Sah v Sitaram* (1961) SCC OnLine Pat 101 (Pat HC).

<sup>104</sup> *Bank of Bihar v Damodar Prasad* (1969) SCR 297 [3]; *Subankhan v Lalkhan* AIR 1947 Nag. 643.

<sup>105</sup> Joseph Chitty, *Chitty on Contracts*, vol 2 (AG Guest ed, 24th edn, Sweet and Maxwell 2977) 1031.

<sup>106</sup> *Industrial Investment Bank of India Ltd v Bishwanath Jhunjunwala* (2009) 9 SCC 478 (SC) [15].

**ISSUES ON BEHALF OF OTHER PARTIES**

**ISSUE: 1 THAT RECOGNITION & COOPERATION MUST BE PROVIDED IN RESPECT TO THE FOREIGN PROCEEDINGS**

[¶ 42] It is humbly submitted that the application filed by Mr. Murray under Art. 15 of the Model Law for recognizing foreign proceedings<sup>107</sup> [Refer to p. XCV under part III Enclosures] should be accepted. The present contention can be substantiated on following grounds.

*1.1 Centre of main interest pertaining to ALSL lies in USA*

[¶ 43] It is a settled principle of corporate law that Company is a separate legal entity even though the relation between the two are of parent & subsidiary.<sup>108</sup> Presently, both ACL & ALSL should be treated as separate entities & their COMI should be determined separately.<sup>109</sup>

[¶ 44] It is submitted, that pursuant to Art. 17 of the Model Law, a foreign proceeding can be recognized as foreign main proceeding or non-main proceeding.<sup>110</sup> Presently, former proceeding is deemed to take place in the State where Debtor has COMI and the later is where Debtor has an establishment.<sup>111</sup> It is worthy to note, that in the absence of proof to the contrary, the registered office of a Debtor is presumed as his COMI.<sup>112</sup> In the present case, COMI of ALSL lies in USA as the registered office of ALSL stands located in USA.<sup>113</sup> Subsequently, the burden of proof to the contrary lies on the other party.<sup>114</sup>

---

<sup>107</sup> UNCITRAL Model Law, Art 15.; Moot Proposition, Pg 8-9.

<sup>108</sup> *Vodafone International holding BV v Union of India* [2012] 17 taxmann.com 202 (SC); *Salomon v A Salomon Co Ltd* (1897) AC 22 (HL); *Catherine Lee v Lee's Air Farming Ltd* [1960] UKPC 33; *Ban Hashem v Ali Shayif* (2008) EWHC 2380.

<sup>109</sup> *Re Lightsquared LP* (2012) ONSC 2994 [29]; *Case C-341/04 Re Eurofood IFSC Ltd* [2006] ECR I-3813, 37.

<sup>110</sup> United Nation Commission on International Trade Law, *UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation* (UN Publication Sales No. E.14.V.2 2014) 9, 73; *Re Fairfield Sentry Ltd* 714 F 3d 127 (2<sup>ND</sup> Cir 2013) (CA).

<sup>111</sup> United Nation Commission on International Law, *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective* (The Judicial Perspective UN 2014) 17 [45].

<sup>112</sup> UNCITRAL Model Law with Guide to Enactment and Interpretation, 68-69; *Re Northsea Base Investment Ltd & Ors* [2015] EWHC 121 (Ch); *Gainsford v Tannenbaum* (2012) 293 ALR 699, 707 [35].

<sup>113</sup> Clarification to the Moot Proposition, Pg 1, 2.

<sup>114</sup> *Re Stanford International Bank Ltd & Ors* [2010] EWCA Civ 137; UNCITRAL Model Law with Guide to Enactment and Interpretation 70 [143].

[¶ 45] In *Arguendo*, for determination of COMI, there is absence of particular formula.<sup>115</sup> Rather, the Court may place reliance on a variety of factors which are *both objective and ascertainable by third parties*.<sup>116</sup> These factors include the “*place where Debtor was incorporated, location of Debtor primary bank, the law governing the Company, the location of the main creditors*.”<sup>117</sup> In the present case, the fact that ALSL was incorporated in USA, all the banks stand deemed US based banks. Further, these banks having approached the US court for insolvency proceedings, itself convey that COMI of ALSL lies in USA as USA is readily ascertainable by creditors.

[¶ 46] In conclusion, mere fact that decision of the company is taken from some place other than its registered office is not enough to rebut the presumption<sup>118</sup> as there is no reason why a third party would have any knowledge of the location from where the director manage the Company affairs. Reliance must be placed on *Re Sphinx Ltd*<sup>119</sup> where the Court regarded registered office as place of COMI, even though decision of management were taken from some other place.

*1.2 The Model Law aids to cooperation between two states.*

[¶ 47] It is submitted that Art. 25 & 26 of the Model Law mandate cooperation between the domestic & foreign Court or foreign representative.<sup>120</sup> As per the matter referred to in Art. 1, this cooperation is not dependent upon recognition<sup>121</sup> i.e. cooperation can be provided in case no recognition is provided by the Court. In the present case, cooperation must be provided to Mr. Murray as the present case falls under Art. 1 of the Model Law as assistance is sought domestically by a foreign representative. Therefore, cooperation must be provided for the loan of 100 million to Mr. Murray as per the forms referred under Art. 27 of the Model Law.

---

<sup>115</sup> *Re Betcorp Ltd (in liquidation)* 400 B.R. 266 (Bankr D Nev 2009).

<sup>116</sup> *Re Eurofood IFSC Ltd* (n 110).

<sup>117</sup> UNCITRAL Model Law with Guide to Enactment and Interpretation, [144], [147]; *Re Bear Stearns High-Grade Structured Credit Strategies Master Fund Ltd* 389 BR 325 (SDNY 2008); *Re Probe Resources Ltd* (2011) 79 CBR (5th) 148 [28].

<sup>118</sup> *Re Eurofood IFSC Ltd* (n 110).

<sup>119</sup> *Re Sphinx Ltd* 351 BR 103 (Bankr, SDNY 2006) 117; Neil Hannan, *Cross Border Insolvency: The Enactment and Interpretation of the UNCITRAL Model Law* (Springer Nature Singapore 2017) 119.

<sup>120</sup> UNCITRAL Model Law with Guide to Enactment and Interpretation, 97-98.

<sup>121</sup> UNCITRAL Model Law with Guide to Enactment and Interpretation 30 [40].

**ISSUE: 2 THAT CLAIM OF APL BEING AN ESSENTIAL SUPPLIER MUST SUBSIST**

---

[¶ 48] It is humbly submitted before the Ld. Tribunal that APL falls under the definition of operational creditor [*Refer to p. LXXXVII under part III Enclosures*], whereby the amount due against ACL falls under the definition of operational debt.

*“Any person to whom an operational debt is owned including any person to whom such debt has been legally assigned or transferred”* is an Operational Creditor. Operational Creditors are those whose liability from the entity comes from a transaction on operations<sup>122</sup> and who supply goods or render any service.<sup>123</sup> In the present case, APL is that acceptor whose liability from the entity comes directly out of its operations, i.e. generation of electric power and fly ash.

[¶ 49] It is submitted that a supplier of essential services & goods would acquire the status of an Operational Creditor.<sup>124</sup> Further, amounts due to essential suppliers are a component of insolvency resolution process costs<sup>125</sup> which unquestionably mark the claim of 95 crore, a valid operational debt to be paid in priority. This claim can be attributed towards the PPA entered in 2006 where ACL was entitled to essential services from APL in the form of ‘power’ and ‘fly ash’ to support its operations. It is worthy to note that fly ash is by-product from burning pulverized coal in ‘electric power’ generating plants.<sup>126</sup> The PPA mandated services to be delivered to ACL which were totally meant to serve its ‘working capital’ requirements for running the manufacturing unit & simultaneously paying its debt obligations.<sup>127</sup>

[¶ 50] Henceforth, with a kind perusal to the PPA, it is pleaded that ACL’s default of 95 crores be considered & subsequently, APL’s claim as an Operational Creditor be admitted.

---

**ISSUE: 3 THAT EXCESS PAYMENT MADE TO APL SHOULD BE ALLOWED TO SET-OFF.**

---

[¶ 51] It is humbly submitted that where there are mutual dealings between the Corporate Debtor and another party, the sums due from one party shall be set off against the sums due

---

<sup>122</sup> *BLRC Report* para 5.21.

<sup>123</sup> *AMR Infrastructures* (n 30).

<sup>124</sup> I&B Code 2016, s 5(20), 5(21).

<sup>125</sup> Insolvency and Bankruptcy Board of India (Insolvency regulation for Corporate Persons) Regulation 2016, IBBI/2016-17/GN/REG004, reg 32.

<sup>126</sup> Kim D. Basham & Ors, ‘What is Fly Ash’ (07 December 2007)<[https://www.concreteconstruction.net/how-to/materials/what-is-fly-ash\\_o](https://www.concreteconstruction.net/how-to/materials/what-is-fly-ash_o)> accessed 30 August 2018.

<sup>127</sup> *N Parthasarthy v Controller Capital Issues* (1991) 2 SCR 329 (SC).

from the other to arrive at the net amount payable to the Corporate Debtor or to the other party.

<sup>128</sup> Any right to payment can be a “debt,” and the two “debts” underlying a set-off need not be related except that they should ordinarily be between the same two legal entities. <sup>129</sup> The right of set-off exists when the debts are mutual, valid and enforceable. <sup>130</sup> When there exists both sided obligations, the set-off must be allowed against counter claim. <sup>131</sup>

[¶ 52] In the present case, the excess amount paid by ACL is a debt owed on part of APL and the debts according to PPA are payable by ACL to APL, proving existence of mutuality of debts, therefore, allowing the set-off requirement.

---

**ISSUE: 4 THAT THE MORTGAGE CREATED BY APL OVER ITS LAND SHOULD BE AVOIDED.**

---

[¶ 53] It is submitted that the mortgage created by APL is an avoidable transaction as it is a preferential transaction and made with an intent to defraud creditors. Further, the said mortgage was created without any consideration in favour of ACL, thereby making it undervalued.

[¶ 54] It is submitted that the said transaction occurred within relevant time for the benefit of ACL who is an Operational Creditor. It is so that an operational debt includes services rendered by a person for consideration <sup>132</sup> which could also be in form of advice. <sup>133</sup> In the present case, ACL provided necessary transmission facility to transfer power to grid <sup>134</sup> with some other managerial and financial assistance. <sup>135</sup> Pursuant to this transaction, ACL became a secured

---

<sup>128</sup> *OL High Court of Karnataka v Smt V Lakshmikutty* [1981] 51 Comp Case 566 (SC) Abhay N Manudhane, ‘FAQs on Submission of Claims under CIRP (5 May 2018) <<http://sknl.co.in/FAQs%20on%20Submission%20of%20Claims%20under%20Resolution.pdf>>; accessed 30 August 2018.

<sup>129</sup> K&LNG Alert, ‘Getting to Know your to best friend: The Rights of Set-Off and Recoupment’ (December 2005) <<http://www.klgates.com/files/Publication/56da8ca6ba6a49738fa43b2d8aaf05a5/%20Presentation/PublicationAttachment%20/77554d2e-5845-481f-9f1c-4f3a7f161e4d/ba1205.pdf>> accessed 30 August 2018.

<sup>130</sup> *Re Bevill Bresler & Schulman Asset Mgmt. Corp* 896 F 2d 54, 59 (3d Cir 1990) (CA); St. John’s Bankruptcy Research Library ‘The Differences between the Right to Set-Off under 11 USC s 553 and 11 USC s 558’ vol 6 <<https://www.stjohns.edu/sites/default/files/documents/law/bankruptcy/bank-research2014-11-ehlinger.pdf>> accessed 30 August 2018.

<sup>131</sup> *RDC Concrete India Pvt Ltd v Bengal Unitech Universal Infrastructure Pvt Ltd* [2018] 89 taxmann.com 405 [NCLT-Delhi].

<sup>132</sup> *Ravindra Gopal v Tattva & Mittal Lifespaces Pvt Ltd* [2018] 91 taxmann.com 378 (NCLT - Mum) [8.1].

<sup>133</sup> *Sanjaya Kumar Ruia v Magna Opus Hospitality Pvt Ltd* (CP NO.65/I&BP/NCLT/MB/MAH/2017, para 6; MS Sahoo & Ors, *Compendium on IBC* (Wolters Kluwer 2017) 1.2.19.

<sup>134</sup> Moot Proposition, Pg 2.

<sup>135</sup> *Jaypee Infratech Ltd* (n 7).

creditor from an unsecured creditor with a much beneficial position in accordance with §53.<sup>136</sup> [¶ 55] Further, as this was a voluntary transaction, it satisfies the test laid down to prove preferential transaction as well.<sup>137</sup> It is pertinent to note that the said mortgage was without any consideration which is an evidence of an undervalued transaction as well.<sup>138</sup> Moreover, the mortgage was created by APL for the benefit of ACL at the time when it was not able to pay salary to its workers<sup>139</sup> and having knowledge of the fact that there are no reasonable prospects for the creditors ever receiving payment pursuant to this transaction.<sup>140</sup> Finally, the credit facility agreement must be taken into consideration where APL was required to obtain approval of lenders for creating interest in favour of anyone which was never done. It is very much understood that APL carried on business with an intent to defraud the creditors.<sup>141</sup> Thus, the said transaction should be reversed as per the § 44 of the code.

---

**ISSUE: 5 THAT REVISED PLAN PROPOSED BY JMCL SHOULD BE ACCEPTED.**

---

[¶ 56] It is humbly submitted that Reg. 39 of CIRP regulations provide that a Resolution Plan should be accepted if it is submitted 30 days before the completion of CIRP proceedings. Further, if considerable time is still left before completion of CIRP process, then even if Resolution Plan is submitted after the deadline set by RP or CoC, it can be taken into consideration.<sup>142</sup> As in the instant case, Resolution Plan submitted by JMCL on 19-10-2018<sup>143</sup> falls within the prescribed time limit.

---

<sup>136</sup> UNCITRAL Legislative Guide, 136 [150]; *Jaypee Infratech Ltd* (n 7).

<sup>137</sup> *Re Trustee Ex Parte* (1924) (2) Ch D 515; *Motorola India Ltd v DSS Mobile Communications Ltd* [2006] 65 SCL 107 (Delhi HC); *OL of Piramal Financial Services v RBI* (2004) 51 SCL 691 (GUJ HC); *OL of Piramal Financial Services v Decimal Systems* (2009) 91 SCL 31 (GUJ HC).

<sup>138</sup> UNCITRAL Legislative Guide 143 [175]; *Sunder Lal Jain v Sandeep Paper Mills Pvt Ltd* [1986] 60 Comp Case 77 (P&H HC); Shikha Bansal, 'Liquidation of Corporate Persons under The Bankruptcy Code' (2017) 80 taxmann.com 204; *Jaypee Infratech Ltd* (n 7).

<sup>139</sup> *Jaypee Infratech Ltd* (n 7); *Re Company A* (1990) BCC 526 (HC); *Re Parasrampuriah Trading & Finance Ltd* [2006] 70 SCL 342 (All HC); *OL Kerala High Court v Victory Hire Purchasing Co Pvt Ltd* [1982] 52 Comp Cas 88 (Ker HC); *Re Patrick & Lyon Ltd* [1933] 3 Comp Cas 449.

<sup>140</sup> *OL v Ram Swarup* (1997) 2 Comp LJ 221 (Allahabad HC); *Re William C Leitch Brothers Ltd* [1933] 3 Comp Cas 97 (CD); *Re Peerdan Juharmal Bank Ltd* [1954] 24 COMP CASE 41 (Mad HC).

<sup>141</sup> Sir DF Mulla, *The Law of Insolvency Law in India* (Sathaya Narayan ed, 5th edn, LexisNexis 2013) 570; *Re Victor Chit funds* (1972) 42 Comp Cas 396; *OL v Ashok Kumar Dalmia* [1999] 98 Comp Cas 269 (Raj HC).

<sup>142</sup> *Punjab National Bank v Bhushan Power & Steel Ltd* [2018] 92 taxmann.com 369 (NCLT-Delhi).

<sup>143</sup> Clarification to Moot Proposition, Pg 5.

[¶ 57] In *Bank of Baroda, In re vs*<sup>144</sup>, the same issue was raised and the Court held that “Whenever a resolution Applicant's plan is under consideration of CoC and that plan is not at all placed before the Adjudicating Authority for approval and if another resolution Applicant comes forward making an offer before CIRP duration expires, that it will satisfy all stakeholders of Corporate Debtor, then there is nothing in Code or Regulations to prevent CoC from considering a revised offer of another Applicant If a resolution Applicant is willing to present the revised Resolution Plan then COC should be directed to reconsider the Resolution Plan”. Hence, the Resolution Plan submitted by JMCL should be considered.

---

**ISSUE: 6 THAT RP OF APL BEING A NECESSARY PARTY SHOULD BE IMPEADED**

---

It is humbly submitted that the application filed by RP of APL must be admitted [Refer to p. XCVII under part III Enclosures] as § 60(5) (b) provides jurisdiction to NCLT in order to adjudicate upon the claims of subsidiaries of Corporate Debtor. If a legal right of a person is affected if not added as a party then such person should be impleaded.<sup>145</sup> If there is a question which cannot be settled without such impleadment then it must be allowed by Id. Tribunal.<sup>146</sup> Subsequently, a person having interest in the estate could be impleaded as a party.<sup>147</sup> In the present case, APL is a wholly owned subsidiary<sup>148</sup> and an Operational Creditor to the Corporate Debtor, thereby providing the Ld. Tribunal, reasonable locus in order to adjudicate more effectually and completely.<sup>149</sup>

Following the test of impleadment as laid down in *S. Krishnan v Rathinavel Naicker & Others*<sup>150</sup> “A party can be impleaded when the relief prayed for in the proceedings is sought to be made binding on him or when it is felt that he would be adversely affected by the ultimate outcome of the proceedings.” Hence, APL is an Operational Creditor being bound by proceedings regarding Resolution Plan satisfies the test of impleadment.

---

<sup>144</sup> [2018] 93 taxmann.com 331 (NCLT - Kolkata).

<sup>145</sup> *Terai Tea Co Pvt Ltd v Kumkum Mittal* (1993) SCC OnLine Cal 270.

<sup>146</sup> *Ramesh Chandra Mal v Municipal Corpn of Greater Bombay* (1992) 2 SCC 524 (SC).

<sup>147</sup> *Indian Associates v Shivendra Bahadur Singh* (2003) SCC OnLine Del 180.

<sup>148</sup> Clarification to Moot Proposition, Pg 4.

<sup>149</sup> Sir D F Mulla, *The Code of Civil Procedure*, (BM Prasad and SK Sarvaria ed. 17th edn, Lexis Nexis 2007) 90.

<sup>150</sup> (2006) SCC OnLine Mad 749.

**PRAYER**

---

Wherefore, in the light of the issues raised, arguments advanced, reasons given and authorities cited, this Hon'ble Tribunal may be pleased to:

**ON BEHALF OF CORPORATE DEBTOR/PROMOTERS**

*ARVIND CEMENT LIMITED:*

Hold that application filed under §7 by Consortium is not sustainable.

Hold that payment made by ACL to TTCL is not an avoidable transaction.

*MR. ARVIND KUMAR:*

Hold that personal guarantee could not be invoked against Mr. Arvind Kumar.

**ON BEHALF OF INSOLVENCY PROFESSIONAL**

*MISS POOJA PRAKASH:*

Hold that RP was justified in rejecting the claim of GKCL as Financial Creditor.

Hold that RP was justified in making payment to TTCL out of interim finance.

Hold that application for recognition and cooperation of foreign proceedings is not sustainable.

Hold that RP was justified in rejecting claims of APL as Operational Creditor.

Hold that RP was justified in rejecting the revised Resolution Plan.

**ON BEHALF OF OPERATIONAL CREDITOR**

*GK CONSTRUCTIONS LIMITED:*

Hold that GKCL is Financial Creditor to ACL.

**ON BEHALF OF FINANCIAL CREDITOR**

*RST BANK:*

Hold that the payments made by ACL and RP of ACL to TTCL are avoidable.

Hold that personal guarantee should be invoked against Mr. Arvind Kumar.

**ON BEHALF OF OTHER PARTIES**

*MR. KELVIN MURRAY (FOREIGN REPRESENTATIVE):*

Hold that recognition and cooperation should be granted to foreign proceedings.

*ARVIND POWER LIMITED:*

Hold that APL is an Operational Creditor to ACL.

*MR MAHESH KUMAR (RP OF ARVIND POWER LIMITED):*

Hold that Mortgage created by APL in favour of ACL is an avoidable transaction.

Hold RP of APL being a necessary party should be impleaded.

*JM CEMENTS LIMITED (RESOLUTION APPLICANT):*

Hold that revised Resolution Plan should be accepted.



**TEAM CODE: 003**

---

---

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION 2018**

---

---

---

**IN THE MATTER OF**

ARVIND CEMENT LIMITED, CORPORATE DEBTOR

---

---

---

---

**ANNEXURE/FORMS/REPORTS**

---

---

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

---

---

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL**

**AT HYDERABAD**

---

---

**COMPANY APPLICATION NO. (IB) \_\_\_\_\_ (Hyd.)/2018**

**MEMO OF THE PARTIES**

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

CONSORTIUM LED BY PEOPLE'S BANK..... FINANCIAL CREDITOR

**Part – I Filing of CIRP Application**

---

**FORM 1**

(See sub-rule (1) of rule 4) of Application to Adjudicating Authority rules 2016

**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)***

Date: 14<sup>th</sup> March 2018

To,  
The National Company Law Tribunal,  
Nagole, Hyderabad, 500068

From,  
Consortium led by People's Bank,  
Senapati Bapat Marg, Lower Parel,  
(West) Mumbai 400013

***In the matter of Arvind Cement Limited***

**Subject:** Application to initiate corporate insolvency resolution process in the matter of Arvind Cement Limited under the Insolvency and Bankruptcy Code, 2016.

Madam /Sir,

Consortium led by People's Bank, hereby submit this application to initiate a corporate insolvency resolution process in the matter of Arvind Cement Limited. The details for the purpose of this application are set out below:

***PART I***

**PARTICULARS OF FINANCIAL CREDITOR –**

**A - People's Bank**

1.	Name of Financial Creditor	People's Bank
2.	Date of Incorporation of Financial Creditor	06.03.1965
3.	Identification Number of Financial Creditor	U65191KL1969PLC000676
4.	Address of the Registered Office of	Senapati Bapat Marg, Lower Parel

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

---

	Financial Creditor	(West) Mumbai 400013
5.	Name and address of the person authorized to submit application on its behalf	Mr. Vikram Sahai (Legal Director, People's bank) T-20, Lawyer's Enclave, Mumbai
6.	Name and address of person resident in India authorized to accept the service of process on its behalf	Mr. Satyam Hazare Senapati Bapat Marg, Lower Parel (West) Mumbai 400013

**B – Bank of North India**

1.	Name of Financial Creditor	Bank of North India
2.	Date of Incorporation of Financial Creditor	15.03.1981
3.	Identification Number of Financial Creditor	U65191KL1969PLC000878
4.	Address of the Registered Office of Financial Creditor	D- 341, Vikas Marg, (West) Mumbai 400013
5.	Name and address of the person authorised to submit application on its behalf	Mr. Vikram Sahai (Legal Director, Bank of North India) T-20, Lawyer's Enclave, Mumbai
6.	Name and address of person resident in India authorized to accept the service of process on its behalf	Mr. Shivam Prasad Vikas Marg, (West) Mumbai 400013

**C- PSP Bank –**

1.	Name of Financial Creditor	PSP Bank
2.	Date of Incorporation of Financial Creditor	15.03.1985
3.	Identification Number of Financial Creditor	U65191KL1969PLC003482
4.	Address of the Registered Office of Financial Creditor	V – 500, Andheri Naga (West) Mumbai 400013
5.	Name and address of the person authorized to submit application on its behalf	Mr. Vikram Sahai (Legal Director, PSP Bank) T-20, Lawyer's Enclave, Mumbai
6.	Name and address of person resident in India authorized to accept the service of process on its behalf	Mr. Aman Sharma Andheri Nagar, (West) Mumbai 400013

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

---

**D- SCB Bank**

1.	Name of Financial Creditor	SCB Bank
2.	Date of Incorporation of Financial Creditor	12.05.2004
3.	Identification Number of Financial Creditor	U65191KL1969PLC005628
4.	Address of the Registered Office of Financial Creditor	M – 531 Kashi Kung, (West) Delhi 400013
5.	Name and address of the person authorized to submit application on its behalf	Mr. Vikram Sahai (Legal Director, SCB bank) T-20, Lawyer’s Enclave, Mumbai
6.	Name and address of person resident in India authorized to accept the service of process on its behalf	Mr. Rajesh Kumar M – 531 Kashi Kung, (West) Delhi 400013

***PART II***

**PARTICULARS OF CORPORATE DEBTOR**

1	Name of Corporate Debtor	Arvind Cement Limited (ACL)
2	Identification of Corporate Debtor	L17110MH1973PLC019876
3	Date of Incorporation of Corporate Debtor	1993
4	Address of the Registered office of Corporate Debtor	Green Valley, Banjara Hills, Hyderabad, Telangana 500034

***PART III***

**PARTICULARS OF PROPOSED INTERIM PROFESSIONAL**

1	Name, address, email address and the registration no of proposed IRP	Ms. Pooja Prakash, 22 Saket valley, New Delhi E-MAIL – <a href="mailto:pooja.rp@ymail.com">pooja.rp@ymail.com</a> Registration No. – IBBI/IPA/52-31/014
---	----------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------

***PART IV***

**PARTICULARS OF FINANCIAL DEBT**

1.	Total Amount of Debt granted	2000 Crore
2.	Amount claimed to be in default and the date on which the default occurred	2160 Crore

***PART V***

**Particulars of Financial Debt (Documents, Records, and evidence of default)**

**First Charge – On Land & Building of ACL; Second Charge – Plant & Machinery of ACL.**

I, hereby certify that, to the best of my knowledge, Ms. Pooja Prakash, 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.

Consortium led by People Bank has paid the requisite fee for this application through NEFT.

Yours Sincerely,

**VIKRAM SAHAI,**

Legal Director,

T-20, Enclave, Mumbai

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

---

---

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL**

**AT HYDERABAD**

---

---

**COMPANY APPLICATION NO. (IB) \_\_\_\_\_ (Hyd)/2018**

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

CONSORTIUM LED BY PEOPLE'S BANK..... FINANCIAL CREDITOR

VIKRAM SAHAI.....APPLICANT

**AFFIDAVIT IN SUPPORT OF INSOLVENCY APPLICATION**

I, Vikram Sahai, Legal Director, People's Bank, aged 48 Years, R/o Plot T-20, Lawyer's Enclave, Hyderabad, do hereby make an oath and state on solemnly affirmation as under -

1. That I am the Applicant and competent to file the present insolvency application before this Hon'ble Tribunal and am well conversant with the facts of the case and competent to depose the same on oath before this Hon'ble Tribunal.
2. That all contents of the insolvency application are true and correct to the best of my personal knowledge and office record and nothing material has been concealed there from. The deponent verifies the correctness, genuineness and authenticity of the said paragraphs.
3. That the documents Annexure 1 to 3 of application are true and correct photocopies of its original.

Hyderabad

Dated: March,2018

**VERIFICATION**

I, Vikram Sahai, Legal Director, People's Bank, do hereby verify that the contents of paragraphs I to 3 are true to my personal knowledge and belief and that I have not suppressed any material Facts.

Place: Hyderabad

Annexure in support of the Application for Initiating CIRP

**Annexure No. 1**

Loan Agreement of 1994

The present loan agreement has been entered on **12<sup>th</sup> day of December 1994**.

**BETWEEN**

**Consortium of lender led by People's Bank** (hereinafter referred as the '**Lender**') i.e. People Bank, Bank of North India, PSP Bank, SCB Bank, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns.

**AND**

**Arvind Cement Ltd**, a Company incorporated under the provisions of the Companies Act, 1956, established in the year 1993 having its registered office at Hyderabad, hereinafter referred as "**Borrower**" which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns.

**Lender of Consortium & Arvind Cement Ltd** together for the purpose of this loan agreement shall be referred as parties and individually as '**Bank**' and '**ACL**'.

**AND WHEREAS** parties have mutually decided to enter into this loan agreement under certain terms and conditions mentioned below.

**TERMS AND CONDITIONS**

- A.** The Borrower hereto, being in need of money, has requested the Consortium of Lender to give him a loan of **INR 2000 Crore** for setting up and implementation of projects and its operations.
- B.** The Consortium of lender has agreed to grant a loan of **INR 2000 Crore** but on the condition that the said loan shall only be used for setting up and implementation of project of **ACL** and the present loan agreement cannot be used for any other purpose.
- C.** The borrower shall pay this amount in installment & the borrower is required to pay the interest over the present amount on a regular basis. On failure of which action may be brought against the Borrower in the appropriate forum.
- D.** For the purpose of present loan agreement, the borrower shall create securities by way of hypothecation of all its movable properties and mortgage of immovable properties pertaining to Rajasthan Unit.
- E.** The terms and conditions of this Agreement are arrived at by the mutual consent of the parties thereto.



**AGREED, SIGNED AND DELIVERED**

**Consortium Led by People's Bank**

Through its authorized signatory

**Arvind Cement Limited**

Through its authorized signatory

Authorization Letter to people bank

**A – Letter from PSP Bank to act on their behalf**

From

PSP Bank,

V – 500, Andheri Naga (West) Mumbai

400013

To

People Bank,

Senapati Bapat Marg, Lower Parel

(West) Mumbai 400013

**Date:** 12.03.2018

**Subject:** Authorization letter to file CIRP

Madam/Sir,

This letter is to authorize People Bank, to act on my behalf, [**PSP Bank**] for filing CIRP application against Arvind Cement Ltd having its registered office located at Hyderabad. Now whatever order will be given by the Hon'ble Tribunal with respect to CIRP against ACL will be binding on us.

Sincerely,

**Mr. Vikram Sahai,**

**Legal Director,**

**PSP Bank**

**B – Letter from Bank of North India to act on their behalf**

From

Bank of North India,  
Vikas Marg, Mumbai  
400013

To

People Bank,  
Senapati Bapat Marg, Lower Parel  
(West) Mumbai 400013

**Date:** 12.03.2018

**Subject:** Authorization letter to file CIRP

Madam/Sir,

This letter is to authorize People Bank, to act on my behalf, [**Bank of North India**] for filing CIRP application against Arvind Cement Ltd having its registered office located at Hyderabad. Now whatever order will be given by the Hon'ble Tribunal with respect to CIRP against ACL will be binding on us.

Sincerely,

**Mr. Vikram Sahai,**  
**Legal Director,**  
**Bank of North India**

**C – Letter from SCB Bank to act on their behalf**

From

SCB Bank

M – 531 Kashi Kung, (West) Delhi

400013

To

People Bank,

Senapati Bapat Marg, Lower Parel

(West) Mumbai 400013

**Date:** 12.03.2018

**Subject:** Authorization letter to file CIRP

Madam/Sir,

This letter is to authorize People Bank, to act on my behalf, [**SCB Bank**] for filing CIRP application against Arvind Cement Ltd having its registered office located at Hyderabad. Now whatever order will be given by the Hon'ble Tribunal with respect to CIRP against ACL will be binding on us.

Sincerely,

**Mr. Vikram Sahai,**

**Legal Director,**

**SCB Bank**

**Annexure No. 3**

**FORM-2**

**(See sub-rule (1) of rule 9)**

Under rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)  
Rules, 2016

Written Communication By Proposed Interim Resolution Professional

06.03.2018

To,  
The National Company Law Tribunal  
Hyderabad, Telangana  
From,  
Ms. Pooja Prakash  
22 Saket valley, New Delhi

***In the matter of Arvind Cement Limited***

**Subject:** Written communication in connection with an application to initiate corporate insolvency resolution process in respect of Arvind Cement Limited.

Sir,

I, Pooja Prakash an insolvency professional registered with ICSI Insolvency Professionals Agency having registration number IBBI/IPA/52--31/014 have been proposed as the interim resolution professional by People's Bank in connection with the proposed corporate insolvency resolution process of Arvind Cement Limited.

In accordance with Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, I hereby:

- a. Agree to accept appointment as the interim resolution professional if an order admitting the present application is passed;
- b. State that the registration number allotted to me by the Board is IRP- 59843652 and that I am currently qualified to practice as an insolvency professional;
- c. Disclose that I am currently serving as an interim resolution professional/ resolution professional / liquidator in (Case no. 52146325) proceedings;
- d. Certify that there are no disciplinary proceedings pending against me with the Board or ICSI Insolvency Professionals Agency;
- e. Affirm that I am eligible to be appointed as a resolution professional in respect of the Corporate Debtor in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;
- f. Make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

**POOJA PRAKASH**

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL**

**AT HYDERABAD**

**COMPANY APPLICATION NO. (IB) \_\_\_\_\_ (Hyd.)/2018**

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

CONSORTIUM LED BY PEOPLE'S BANK.....FINANCIAL CREDITOR

VIKRAM SAHAI.....APPLICANT

**AFFIDAVIT IN SUPPORT OF INSOLVENCY APPLICATION**

I, Vikram Sahai, Legal Director, People's Bank, aged 48 Years, R/o Plot T-20, Lawyer's Enclave, Hyderabad, do hereby make an oath and state on solemnly affirmation as under –

- 1 That Applicant has paid the specified application fee as mentioned in schedule to the Application to the Adjudicating Authority Rules, 2016.
- 2 That all contents of the documents attached as Annexure No.1 to Annexure No. 2, are true and correct to the best of my personal knowledge and office record and nothing material has been concealed there from. The deponent verifies the correctness, genuineness and authenticity of the said paragraphs.

**VERIFICATION**

I, Vikram Sahai, Legal Director, People's Bank, do hereby verify that the contents of paragraphs 1 to 3 are true to my personal knowledge and belief and that I have not suppressed any material Facts.

Place: Hyderabad

**PART II - Acceptance of Insolvency Proceeding/Procedure conducted by  
IRP/RP**

---

**FORM A**

**PUBLIC ANNOUNCEMENT**

*(Under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency  
Resolution Process for Corporate Persons) Regulations, 2016)*

**FOR THE ATTENTION OF THE CREDITORS OF ARVIND CEMENT LIMITED**

<b>RELEVANT PARTICULARS</b>		
1.	Name of Corporate Debtor	Arvind Cement Limited (ACL)
2.	Identification of Corporate Debtor	L17110MH1973PLC019876
3.	Date of Incorporation of Corporate Debtor	1993
4.	Authority under which Corporate Debtor is Registered	Registered with Registrar of Companies in accordance with provisions of the Companies Act, 1956
5.	Address of the registered office of corporate Debtor	Green Valley, Banjara Hills, Hyderabad, Telangana 500034
6.	Insolvency commencement date in respect of Corporate Debtor	30.03.2018
7.	Estimated date of closure of Insolvency resolution process	25.10.2018
8.	Name, address, and the registration number of the interim resolution	Ms. Pooja Prakash, New Valley, Saket, 22/11, New Delhi. 110017 Registration No. – IBBI/IPA/52-31/014
9.	Last Date for Submission of Claims	13.04.2018

Notice is hereby given that the National Company Law Tribunal has ordered the commencement of a Corporate insolvency resolution process against the Arvind Cement Limited on 30.03.2018.

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

The creditors of Arvind Cement Limited, are hereby called upon to submit a proof of their claims on or before 13.04.18 to the interim resolution professional at the address mentioned against item 8.

“The Financial Creditors shall submit their proof of claims by electronic means only. All other creditors may submit the proof of claims in person, by post or by electronic means.”

Submission of false or misleading proofs of claim shall attract penalties

Ms. Pooja Prakash

30.03.2018

New Valley, Saket, 22/11

New Delhi. 110017



Proof of claim by Financial Creditor

1 - Claim by People's Bank (Form C)

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

11.04.2018

To

Interim Resolution Professional,

Ms. Pooja Prakash

New Valley, Saket, 22/11,

New Delhi. (110017)

From

People's Bank

Senapati Bapat Marg, Lower Parel

(West) Mumbai 400013

**Subject:** Submission of proof of claim.

Madam/Sir,

People's Bank hereby submits this proof of claim in respect of corporate insolvency

Resolution Process of Arvind Cement Ltd. The details for the same are set out below:

<b>PARTICULARS</b>		
1.	Name of Financial Creditor	People's Bank
2.	Identification number of Financial Creditors	L65190GJ1994PLC02232
3.	Address of Financial Creditor	Senapati Bapat Marg, Mumbai
4.	Total amount of claim	INR 800 Crores
5.	Details of documents by reference to which the debt can be substantiated	Loan agreement which was entered in 1994
6.	Details of how and when debt incurred	Financial assistance was provided by a consortium which include <i>People Bank, PSP Bank, SCB Bank and Bank of North India</i> in the year 1993 for implementation of projects.

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

---

7.	Details of any mutual credits, mutual debts or other mutual dealings between the corporate Debtor and the creditor which may be set-off against the claim	N/A
8.	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a Resolution Plan	Account Name- Loan Repayment A/c Account No –46910100009980 Bank Name – SST Bank
9.	Details of any security held, the value of the security, and the date it was given	The Loan Agreement created charge on the following properties – <b>First Charge –</b> Land and Building of ACL in Rajasthan. <b>Second Charge –</b> Plant and Machinery of ACL.
10.	List of documents attached to this proof of claim to prove the existence and non-payment of claim due to the Financial Creditor	Loan Agreement between ACL and ALSL

VIKRAM SAHAI

Managing Legal Director

Address - T-20, Lawyer's Enclave, New Delhi

**AFFIDAVIT**

I, Vikram Sahai, currently Managing Director of People's Bank, R/O, T-20, Lawyer's Enclave, New Delhi do solemnly affirm, and state as follows:

1. Arvind Cement Ltd., the Corporate Debtor was, at the insolvency commencement date, being the 30th day of March 2018, justly and truly indebted to me in the sum of Eight Hundred Crore Rupees (Rs. 800 Crore).
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: Loan Agreement entered in year 1994.
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief. Solemnly, affirmed at Hyderabad on 11th day of April 2018

4. In respect of the said sum or any part thereof I have not nor has any person by my order to my knowledge or belief for my use had or receive any manner of satisfaction or security save and except the following.

Solemnly, affirmed at Hyderabad on 11<sup>th</sup> Day of April 2018.

Before me,

Notary/Oath Commissioner

**Deponent's Signature**

**VERIFICATION**

I, the Vikram Sahai hereinabove, do hereby verify and affirm that the contents of paragraph 1 to 4 of this affidavit is true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Hyderabad on 11th day of April 2018.

**Deponent's Signature**

Annexure in support of Proof of Claim of People Bank

**Annexure No. 1**

**LOAN AGREEMENT**

The present loan agreement has been entered on **12<sup>th</sup> day of December 1994**.

**BETWEEN**

**Consortium of lender led by People's Bank** (hereinafter referred as the '**Lender**') i.e. People Bank, Bank of North India, PSP Bank, SCB Bank, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns.

**AND**

**Arvind Cement Ltd**, a Company incorporated under the provisions of the Companies Act, 1956, established in the year 1993 having its registered office at Hyderabad, hereinafter referred as "**Borrower**" which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns.

**Lender of Consortium & Arvind Cement Ltd** together for the purpose of this loan agreement shall be referred as parties and individually as '**Bank**' and '**ACL**'.

**AND WHEREAS** parties have mutually decided to enter into this loan agreement under certain terms and conditions mentioned below.

**TERMS AND CONDITIONS**

- A.** The Borrower hereto, being in need of money, has requested the Consortium of Lender to give him a loan of **INR 2000 Crore** for setting up and implementation of projects and its operations.
- B.** The Consortium of lender has agreed to grant a loan of **INR 2000 Crore** but on the condition that the said loan shall only be used for setting up and implementation of project of **ACL** and the present loan agreement cannot be used for any other purpose.
- C.** The borrower shall pay this amount in installment & the borrower is required to pay the interest over the present amount on a regular basis. On failure of which action may be brought against the Borrower in the appropriate forum.
- D.** For the purpose of present loan agreement, the borrower shall create securities by way of hypothecation of all its movable properties and mortgage of immovable properties pertaining to Rajasthan Unit.

E. The terms and conditions of this Agreement are arrived at by the mutual consent of the parties thereto.

**AGREED, SIGNED AND DELIVERED**

**Consortium Led by People's Bank**

Through its authorized signatory

**Arvind Cement Limited**

Through its authorized signatory

2 – Claims by Bank of North India (FORM C)

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

10.04.2018

To  
Interim Resolution Professional,  
Ms. Pooja Prakash  
New Valley, Saket, 22/11,  
New Delhi

From  
Bank of North India  
D- 341, Vikas Marg, (West) Mumbai - 400013  
**Subject:** Submission of proof of claim.

Madam/Sir,

Bank of North India hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of Arvind Cement Limited. The details for the same are set out below:

1.	Name of Financial Creditor	Bank of North India
2.	Identification number of Financial Creditors	U65191KL1969PLC000878
3.	Address of Financial Creditor	D-341 Vikas Marg, Mumbai
4.	Total amount of claim	INR 555 Crore
5.	Details of documents by reference to which The Debt can be substantiated	Loan Agreement entered in year 1993.
6.	Details of how and when debt incurred	Financial assistance was provided by a consortium which include <i>People Bank, PSP Bank, SCB Bank and Bank of North India</i> in the year 1993

		for implementation of projects.
7.	Details of any mutual credits, mutual debts or other mutual dealings between the corporate Debtor and the creditor which may be set-off against the claim	N/A
8.	Details of the Bank Account to which the amount of the Claim or any part thereof can be transferred pursuant to a Resolution Plan	Account No – 39070100099998288
9.	Details of any security held, the value of the security, and the date it was given	The following charge are Created at the time loan was Granted – <b>First Charge –</b> Charge on Land and Building of ACL of Rajasthan Unit. <b>Second Charge –</b> Plant & Machinery of ACL
10.	list of documents attached to this proof of claim in order to prove the existence and non-payment of claim due to the Financial Creditor	Loan Agreement entered in the year 1994.

VIKRAM SAHAI

Managing Legal Director

Address - T-20, Lawyer's Enclave, New Delhi

**AFFIDAVIT**

I, Vikram Sahai, currently Managing Director of People's Bank, R/O, T-20, Lawyer's Enclave, New Delhi do solemnly affirm, and state as follows:

1. Arvind Cement Ltd., the Corporate Debtor was, at the insolvency commencement date, being the 30th day of March 2018, justly and truly indebted to me in the sum of Eight Hundred Crore Rupees (Rs. 800 Crore).
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: N/A
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief. Solemnly, affirmed at Ahmadabad on 11th day of April 2018
4. In respect of the said sum or any part thereof I have not nor has any person by my order to my knowledge or belief for my use had or receive any manner of satisfaction or security save and except the following.

Solemnly, affirmed at Hyderabad on 11<sup>th</sup> Day of April 2018.

Before me,

Notary/Oath Commissioner

**Deponent's signature**

**VERIFICATION**

I, the Vikram Sahai hereinabove, do hereby verify and affirm that the contents of paragraph 1 to 4 of this affidavit is true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Hyderabad on 11th day of April 2018.

**Deponent Signature**



Annexure in support of Proof of Claim of Bank of North India

**Annexure No. 1**

**LOAN AGREEMENT**

The present loan agreement has been entered on **12<sup>th</sup> day of December 1994**.

**BETWEEN**

**Consortium of lender led by People's Bank** (hereinafter referred as the '**Lender**') i.e. People Bank, Bank of North India, PSP Bank, SCB Bank, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns.

**AND**

**Arvind Cement Ltd**, a Company incorporated under the provisions of the Companies Act, 1956, established in the year 1993 having its registered office at Hyderabad, hereinafter referred as "**Borrower**" which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns.

**Lender of Consortium & Arvind Cement Ltd** together for the purpose of this loan agreement shall be referred as parties and individually as '**Bank**' and '**ACL**'.

**AND WHEREAS** parties have mutually decided to enter into this loan agreement under certain terms and conditions mentioned below.

**TERMS AND CONDITIONS**

- A.** The Borrower hereto, being in need of money, has requested the Consortium of Lender to give him a loan of **INR 2000 Crore** for setting up and implementation of projects and its operations.
- B.** The Consortium of lender has agreed to grant a loan of **INR 2000 Crore** but on the condition that the said loan shall only be used for setting up and implementation of project of **ACL** and the present loan agreement cannot be used for any other purpose.
- C.** The borrower shall pay this amount in installment & the borrower is required to pay the interest over the present amount on a regular basis. On failure of which action may be brought against the Borrower in the appropriate forum.

- D.** For the purpose of present loan agreement, the borrower shall create securities by way of hypothecation of all its movable properties and mortgage of immovable properties pertaining to Rajasthan Unit.
- E.** The terms and conditions of this Agreement are arrived at by the mutual consent of the parties thereto.

**AGREED, SIGNED AND DELIVERED**

**Consortium Led by People's Bank**

Through its authorized signatory

**Arvind Cement Limited**

Through its authorized signatory

3 – Claim by PSP Bank (FORM C)

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

10.04.2018

To

Interim Resolution Professional,  
Ms. Pooja Prakash  
New Valley, Saket, 22/11,  
New Delhi

From

PSP Bank  
V – 500, Andheri Nagar  
(West) Mumbai 400013)

**Subject:** Submission of proof of claim.

Madam/Sir,

PSP Bank hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of Arvind Cement Limited. The details for the same are set out below:

1.	Name of Financial Creditor	PSP Bank
2.	Identification number of Financial Creditors	U65191KL1969PLC003482
3.	Address of Financial Creditor	V – 500, Andheri Nagar (West) Mumbai 400013
4.	Total amount of claim	INR 250 Crores
5.	Details of documents by reference to which the debt can be substantiated	Loan Agreement entered in year 1994.
6.	Details of how and when debt incurred	Financial assistance was provided by a

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

---

		consortium which include <i>People Bank, PSP Bank, SCB Bank and Bank of North India</i> in the year 1994 for implementation of projects.
7.	Details of any mutual credits, mutual debts or other mutual dealings between the corporate Debtor and the creditor which may be set-off against the claim	N/A
8.	Details of the Bank Account to which the amount of the Claim or any part thereof can be transferred pursuant to a Resolution Plan	Account No – 39070100099998288
9.	Details of any security held, the value of the security, and the date it was given	The following charge are Created at the time loan was Granted – <b>First Charge –</b> Charge on Land and Building of ACL of Rajasthan Unit. <b>Second Charge –</b> Plant & Machinery of ACL
10.	List of documents attached to this proof of claim in order to prove the existence and non-payment of claim due to the Financial Creditor	Loan Agreement entered in the year 1994.

VIKRAM SAHAI

Managing Legal Director

Address - T-20, Lawyer's Enclave, New Delhi

**AFFIDAVIT**

I, Vikram Sahai, currently Managing Director of People's Bank, R/O, T-20, Lawyer's Enclave, New Delhi do solemnly affirm, and state as follows:

1. Arvind Cement Ltd., the Corporate Debtor was, at the insolvency commencement date, being the 30th day of March 2018, justly and truly indebted to me in the sum of Eight Hundred Crore Rupees (Rs. 800 Crore).
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: N/A
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief. Solemnly, affirmed at Ahmadabad on 11th day of April 2018
4. In respect of the said sum or any part thereof I have not nor has any person by my order to my knowledge or belief for my use had or receive any manner of satisfaction or security save and except the following.

Solemnly, affirmed at Hyderabad on 10<sup>th</sup> Day of April 2018.

Before me,

Notary/Oath Commissioner

**Deponent's signature**

**VERIFICATION**

I, the Vikram Sahai hereinabove, do hereby verify and affirm that the contents of paragraph 1 to 4 of this affidavit is true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Hyderabad on 11th day of April 2018.

**Deponent Signature**

Annexure in support of Proof of Claim of PSP Bank

**Annexure No. 1**

**LOAN AGREEMENT**

The present loan agreement has been entered on **12<sup>th</sup> day of December 1994**.

**BETWEEN**

**Consortium of lender led by People's Bank** (hereinafter referred as the '**Lender**') i.e. People Bank, Bank of North India, PSP Bank, SCB Bank, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns.

**AND**

**Arvind Cement Ltd**, a Company incorporated under the provisions of the Companies Act, 1956, established in the year 1993 having its registered office at Hyderabad, hereinafter referred as "**Borrower**" which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns.

**Lender of Consortium & Arvind Cement Ltd** together for the purpose of this loan agreement shall be referred as parties and individually as '**Bank**' and '**ACL**'.

**AND WHEREAS** parties have mutually decided to enter into this loan agreement under certain terms and conditions mentioned below.

**TERMS AND CONDITIONS**

- A.** The Borrower hereto, being in need of money, has requested the Consortium of Lender to give him a loan of **INR 2000 Crore** for setting up and implementation of projects and its operations.
- B.** The Consortium of lender has agreed to grant a loan of **INR 2000 Crore** but on the condition that the said loan shall only be used for setting up and implementation of project of **ACL** and the present loan agreement cannot be used for any other purpose.
- C.** The borrower shall pay this amount in installment & the borrower is required to pay the interest over the present amount on a regular basis. On failure of which action may be brought against the Borrower in the appropriate forum.
- D.** For the purpose of present loan agreement, the borrower shall create securities by way of hypothecation of all its movable properties and mortgage of immovable properties pertaining to Rajasthan Unit.

E. The terms and conditions of this Agreement are arrived at by the mutual consent of the parties thereto.

**AGREED, SIGNED AND DELIVERED**

**Consortium Led by People's Bank**

Through its authorized signatory

**Arvind Cement Limited**

Through its authorized signatory

4 – Claim by SCB Bank (FORM C)

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

10.04.2018

To  
Interim Resolution Professional,  
Ms. Pooja Prakash  
New Valley, Saket, 22/11,  
New Delhi

From  
SCB Bank  
M – 531 Kashi Kunj,  
(West) Delhi 400013

**Subject:** Submission of proof of claim.

Madam/Sir,

SCB Bank hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of Arvind Cement Limited. The details for the same are set out below:

1.	Name of Financial Creditor	SCB Bank
2.	Identification number of Financial Creditors	L65190GJ2007PLC021012
3.	Address of Financial Creditor	M – 531 Kashi Kung, (West) Delhi 400013
4.	Total amount of claim	INR 555 Crores
5.	Details of documents by reference to which the debt can be substantiated	Loan Agreement entered in year 1994.
6.	Details of how and when debt incurred	Financial assistance was provided by a consortium which include <i>People</i>



**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

---

		<i>Bank, PSP Bank, SCB Bank and Bank of North India in the year 1993 for implementation of projects.</i>
7.	Details of any mutual credits, mutual debts or other mutual dealings between the corporate Debtor and the creditor which may be set-off against the claim	N/A
8.	Details of the Bank Account to which the amount of the Claim or any part thereof can be transferred pursuant to a Resolution Plan	Account No – 39070100099998288
9.	Details of any security held, the value of the security, and the date it was given	The following charge are Created at the time loan was Granted – <b>First Charge –</b> Charge on Land and Building of ACL of Rajasthan Unit. <b>Second Charge –</b> Plant & Machinery of ACL
10.	List of documents attached to this proof of claim in order to prove the existence and non-payment of claim due to the Financial Creditor	Loan Agreement entered in the year 1994.

VIKRAM SAHAI

Managing Legal Director

Address - T-20, Lawyer's Enclave, New Delhi

**AFFIDAVIT**

I, Vikram Sahai, currently Managing Director of People's Bank, R/O, T-20, Lawyer's Enclave, New Delhi do solemnly affirm, and state as follows:

1. Arvind Cement Ltd., the Corporate Debtor was, at the insolvency commencement date, being the 30th day of March 2018, justly and truly indebted to me in the sum of Eight Hundred Crore Rupees (Rs. 800 Crore).
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: N/A
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief. Solemnly, affirmed at Ahmadabad on 11th day of April 2018
4. In respect of the said sum or any part thereof I have not nor has any person by my order to my knowledge or belief for my use had or receive any manner of satisfaction or security save and except the following.

Solemnly, affirmed at Hyderabad on 10<sup>th</sup> Day of April 2018.

Before me,

Notary/Oath Commissioner

**Deponent's signature**

**VERIFICATION**

I, the Vikram Sahai hereinabove, do hereby verify and affirm that the contents of paragraph 1 to 4 of this affidavit is true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Hyderabad on 11th day of April 2018.

**Deponent Signature**

*Annexure in support of Proof of Claim of SCB Bank*

**Annexure No. 1**

**LOAN AGREEMENT**

The present loan agreement has been entered on **12<sup>th</sup> day of December 1994**.

**BETWEEN**

**Consortium of lender led by People's Bank** (hereinafter referred as the '**Lender**') i.e. People Bank, Bank of North India, PSP Bank, SCB Bank, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns.

**AND**

**Arvind Cement Ltd**, a Company incorporated under the provisions of the Companies Act, 1956, established in the year 1993 having its registered office at Hyderabad, hereinafter referred as "**Borrower**" which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns.

**Lender of Consortium & Arvind Cement Ltd** together for the purpose of this loan agreement shall be referred as parties and individually as '**Bank**' and '**ACL**'.

**AND WHEREAS** parties have mutually decided to enter into this loan agreement under certain terms and conditions mentioned below.

**TERMS AND CONDITIONS**

- A.** The Borrower hereto, being in need of money, has requested the Consortium of Lender to give him a loan of **INR 2000 Crore** for setting up and implementation of projects and its operations.
- B.** The Consortium of lender has agreed to grant a loan of **INR 2000 Crore** but on the condition that the said loan shall only be used for setting up and implementation of project of **ACL** and the present loan agreement cannot be used for any other purpose.
- C.** The borrower shall pay this amount in installment & the borrower is required to pay the interest over the present amount on a regular basis. On failure of which action may be brought against the Borrower in the appropriate forum.
- D.** For the purpose of present loan agreement, the borrower shall create securities by way of hypothecation of all its movable properties and mortgage of immovable properties pertaining to Rajasthan Unit.

E. The terms and conditions of this Agreement are arrived at by the mutual consent of the parties thereto.

**AGREED, SIGNED AND DELIVERED**

**Consortium Led by People's Bank**

Through its authorized signatory

**Arvind Cement Limited**

Through its authorized signatory

*5 – Claim by RST Bank (FORM C)*

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

10.04.2018

To  
Interim Resolution Professional,  
Ms. Pooja Prakash  
New Valley, Saket, 22/11,  
New Delhi

From  
RST Bank  
2/2, Canal Colony, Havlok Road  
Lucknow, 226007

**Subject:** Submission of proof of claim.

Madam/Sir,

RST Bank hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of Arvind Cement Limited. The details for the same are set out below:

1.	Name of Financial Creditor	RST Bank
2.	Identification number of Financial Creditors	L65190GJ2007PLC021012
3.	Address of Financial Creditor	2/2, Canal Colony, Havlok Road, Lucknow, 226007
4.	Total amount of claim	INR 90 Crores
5.	Details of documents by reference to which the debt can be substantiated	Credit Facility Agreement of year 2005.
6.	Details of how and when debt incurred	In year 2005 ACL took a loan from RST Bank as working capital facility.
7.	Details of any mutual credits, mutual debts or	N/A

	other mutual dealings between the corporate Debtor and the creditor which may be set-off against the claim	
8.	Details of the Bank Account to which the amount of the Claim or any part thereof can be transferred pursuant to a Resolution Plan	Account No – 47000100567358
9.	Details of any security held, the value of the security, and the date it was given	The following charge are Created at the time loan was Granted – <b>First Charge –</b> Plant & Machinery of ACL <b>Second Charge –</b> Land and building of ACL, Rajasthan Unit. Further Mr. Arvind Kumar also provided Personal Guarantee to secure the Loan of RST Bank.
10.	list of documents attached to this proof of claim in order to prove the existence and non-payment of claim due to the Financial Creditor	Credit facility agreement of year 2005. Personal Guarantee Agreement Between RST Bank and Mr. Arvind Kumar

ARVIND KHENDALWAL  
Managing Director  
Address - 2/2 Canal Colony  
Havlok Road, Lucknow (226007)

**AFFIDAVIT**

I, Arvind Kehriwal, currently Managing Director of RST Bank, R/O 2/2 Canal Colony, Havlok Road, Lucknow (226007) do solemnly affirm and state as follows:

1. Arvind Cement Ltd., the Corporate Debtor was, at the insolvency commencement date, being the 30th day of March 2018, justly and truly indebted to me in the sum of Ninety Crore Rupees (Rs. 90 Crore).
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below.
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief. Solemnly, affirmed at Hyderabad on 12th day of April 2018.
4. In respect of the said sum or any part thereof I have not nor has any person by my order to my knowledge or belief for my use had or receive any manner of satisfaction or security save and except the following

Before me,

Notary/Oath Commissioner

**VERIFICATION**

I, the Deponent hereinabove, do hereby verify and affirm that the contents of paragraph 1 to 3 of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Lucknow on 12th day of April 2018

**Arvind Khandelwal**

*Annexure in support of Proof of Claim of SCB Bank*

---

**CREDIT FACILITY AGREEMENT**

---

The present loan agreement has been entered on 20<sup>th</sup> day of August 2005.

**BETWEEN**

**RST Bank** (hereinafter referred as the ‘**Lender**’) which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns.

**AND**

**Arvind Cement Ltd**, a Company incorporated under the provisions of the Companies Act, 1956, established in the year 2003 having its registered office at 31 Tagore Colony, Delhi 110091, hereinafter referred as “**Borrower**” which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns.

**RST Bank & Arvind Cement Ltd** together for the purpose of this loan agreement shall be referred as parties and individually as ‘**Bank**’ and ‘**ACL**’.

**AND WHEREAS** parties have mutually decided to enter into this loan agreement under certain terms and conditions mentioned below.

**TERMS AND CONDITIONS**

- A.** The Borrower hereto, being in need of money, has requested the Consortium of Lender to give him a loan of **INR 200 Crore** for the purpose of working capital.
- B.** The lender has agreed to grant a loan of **INR 200 Crore** but on the condition that the said loan shall only be used for working capital purpose & the present loan amount cannot be used for any other purpose.
- C.** The borrower shall pay this amount in installment & the borrower is required to pay the interest over the present amount on a regular basis. On failure of which action may be brought against the Borrower in the appropriate forum.
- D.** For the purpose of present loan agreement, the borrower shall create securities by way of hypothecation of all its movable properties and mortgage of immovable properties pertaining to Rajasthan Unit.
- E.** The lender shall only grant the present loan amount on condition that the promoter of the borrower shall provide a personal guarantee to the lender.



- F. The terms and conditions of this Agreement are arrived at by the mutual consent of the parties hereto.

**AGREED, SIGNED AND DELIVERED**

**RST Bank**

Through its authorized signatory

**Arvind Cement Limited**

Through its authorized signatory

**GUARANTEE AGREEMENT**

---

**(PERSONAL GUARANTEE)**

---

**The present Personal Guarantee** is executed at **New Delhi** on 20<sup>th</sup> day of October 2005  
(present guarantee)

**BY**

**Mr. Arvind Kumar** (hereinafter referred to as **Guarantor**) whose address & other details are provided under **Schedule I** thereto

**IN FAVOUR OF**

**RST Bank** (hereinafter referred as **Creditors**) whose address & other details are provided under **Schedule I** thereto.

**Whereas**

- (1) Pursuant to the loan agreement entered between (a) **Arvind Cement Ltd.** (Hereinafter referred as borrower) more particularly mentioned in **Schedule 1** & the **Creditor** for the Loan more particularly mentioned in **Schedule I** & at the request of the borrower, the Lender has agreed to lend the loan to borrower and the borrower have agreed to borrow the loan form from lender on terms & condition contained in **Loan Documents**.
- (2) One of the Condition for the Lender having agreed to grant the said loan to the borrower was that the Guarantor shall execute in favour of Lender an unconditional and irrevocable continuing guarantee being these presents.

**NOW THIS AGREEMENT OF GUARANTEE WITNESS AS FOLLOWS –**

For good and valuable consideration being lender providing the loan to the borrower under the Loan Agreement (the receipt and sufficiency of which are acknowledged) the Guarantor irrevocably and unconditionally:

- (i) Guarantees to the Lender punctual performance by the borrower of all the borrower obligations under the loan document and in the event borrower failing to perform any of its obligations under the Loan Documents, the Guarantor shall, on first demand by the Lender (such notice to be conclusive proof of the default) and without any demur, contest or delay, shall pay to the Lender the Guarantee amount as stipulated in **Schedule I of this agreement** (the Guarantee Amount) and in addition thereto shall pay interest and other

amount that become due and payable by the borrower to the Lender under the Loan document and any part thereof.

- i. Accepts and acknowledges that the obligations hereunder are joint and several and independent of the obligations of the Borrower and a separate action or actions may be brought against the Guarantor alone or jointly with the Borrower.
- ii. The Guarantors agree and understand that the Guarantors shall not be entitled to delay the payment of the guaranteed amounts for any controversy, question or dispute which may arise between the Lender and Borrower(s) as regard to the terms and conditions of the said Loan Agreement or the liability and/or payment of the amounts due thereunder.
- iii. The Guarantor further agree and undertake to pay to the Lender all legal costs occasioned to Lender by reason of omission, default in repayment by the Borrower(s) and in case of legal costs, also the costs of enforcement or attempted enforcement of any security in favour of the Lender against the loan or the costs which may incur by the Lender being joined in any proceeding either with or without others in connection with any such security or any proceeds thereof.

IN WITNESS WHEREOF this Guarantee Deed has been executed by the Guarantors at the place and on the date first above written.

**SCHEDULE I to the Present Personal Guarantee Agreement**

<b>S. No</b>	<b>Items</b>	<b>Information to be inserted</b>
<b>1 -</b>	<b>Date of Agreement</b>	20 <sup>th</sup> October 2005
<b>2 -</b>	<b>Guarantor Details</b>	Name – Mr. Arvind Kumar Age – 50 Years Constitution: Individual Address: 25 Saket Vihar, New Delhi
<b>3 -</b>	<b>Borrower Details</b>	Name – Arvind Cement Ltd. (ACL) Constitution – Private Ltd. Company Registered Office Address – 54 Nagar Colony, Hyderabad Other Corporate Office – Situated at New Delhi and Bombay
<b>4 -</b>	<b>Loan Agreement</b>	Loan agreement Dated 20 October 2005 entered between Arvind Cement Limited (Borrower) & RST Bank (Lender)
<b>5 -</b>	<b>Loan Principal Amount</b>	INR 200 Crore
<b>6 -</b>	<b>Guaranteed Amount</b>	INR 200 Crore

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

<b>7 -</b>	<b>Notice</b>	Any notice to the Guarantor for any matter shall be sent to his Registered Office.
<b>8 -</b>	<b>Place of execution</b>	New Delhi

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

**PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND EMPLOYEES**

*1 – Claim by GKCL (FORM B)*

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

10.04.2018

To  
Interim Resolution Professional  
Ms. Pooja Prakash  
New Valley, Saket, 22/11

From  
GKCL,  
209-210 Akbar Road,  
Lucknow (India)

**Subject:** Submission of proof of claim.

Madam/Sir,

GKCL, hereby submits this proof of claim in respect of the corporate insolvency resolution Process in the case of Arvind Cement Limited. The details for the same are set out below:

<b>Particulars</b>		
1.	Name of Operational Creditor	GK Constructions Limited (GKCL)
2.	Identification number of Operational Creditors	U65190GJ2007PLC021012
3.	Address of Operational Creditor	209-210, Akbar Road, Lucknow (India)
4.	Total amount of claim	INR 250 Crores
5.	Details of documents by reference to which the debt can be substantiated	Purchase Agreement between ACL and GKCL
6.	Details of any dispute as well as the record of pendency or order of suit or arbitration proceedings	N/A

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

7.	Details of how and when debt incurred	The debt was incurred in year 2010 by a purchase agreement between ACL and GKCL.
8.	Details of any mutual credits, mutual debts or other mutual dealings between the Corporate Debtor and the creditor which may be set-off against the claim	N/A
9.	Details of any retention of title arrangements in respect to goods or properties to which the claim refers	N/A
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	Account Name- Loan Repayment A/c Account No. – 4700010009200 Bank Name – Dene Bank
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	Purchase Agreement between ACL and GKCL entered in the year 2010.

Signature

GKCL LIMITED

209-210, Akbar Road,

Lucknow (India) – 226001

**AFFIDAVIT**

I, GKCL, currently located at 209-210, Akbar Road, Lucknow (India) – 226001, do solemnly affirm and state as follows:

- 1) Arvind Cement Ltd., the Corporate Debtor was, at the insolvency commencement date, being the 30th day of April 2018, justly and truly indebted to me in the sum of Rs. Two Hundred and Fifty Crores
- 2) In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: Purchase Agreement
- 3) The said documents are true, valid and genuine to the best of my knowledge, information and belief.
- 4) In respect of the said sum or any part thereof I have not nor has any person by my order to

my knowledge or belief for my use had or receive any manner of satisfaction or security save and except the following

Solemnly, affirmed at Hyderabad on 10th day of April 2018.

Before me,

Notary / Oath Commissioner

**Deponent's Signature**

**VERIFICATION**

I, the Deponent hereinabove, do hereby verify and affirm that the contents of paragraph 1 to 4 of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Hyderabad on 10th day of April 2018.

**Deponent's Signature**

*Annexure in support of Proof of Claim of GKCL*

**Annexure No. 1**

**AGREEMENT FOR CONSTRUCTION**

This agreement is made on **05.07.2010**

**BETWEEN** GK Construction Limited whose address is Akbar Road, Lucknow India here in referred as “Contractor”,

**AND** the Property Owner Arvind Cement Limited incorporated under the Companies Act, 1956 having its registered office at registered office at 31 Tagore Colony, Delhi 110091, referred to as the “Owner”

**A. Agreement**

The contractor agrees to perform certain construction, alteration or repair work (referred to as the “work”) in accordance with this agreement. All work will be done in a good, sound and workmanlike manner.

**B. Work**

The Work includes construction of **85 storage facilities** whose ownership rights over these storage facilities vested in Arvind Cement Limited immediately upon the completion of construction

**C. Price**

The agreed upon price **Rs. 500 crore/- ( Rupees Five Hundred Crore only)**. This amount will be paid in the installment with the interest over a period of **10 years**.

**D. Materials**

The Contractor will provide the materials, supplies, equipment, services and labor necessary for the complete performance of this agreement. Unless otherwise agreed, all materials will be new and of good quality.

**E. Compliance with Laws**

The Contractor will comply with all applicable Federal, State and local laws regarding work, materials and the safety of persons or property. The Owner will not be responsible for any loss or damage to the work or any property of the Contractor.

**F. No Oral Changes**

This Agreement can only be changed by an agreement in writing signed by both the Owner and the Contractor. No variations, alterations, deviations, deletions or extra work can be made unless both the Owner and the Contractor specifically agree in writing.

**G. Failure to Complete Work**



The Contractor must properly and diligently complete the work provided for in this Agreement. Otherwise, the Owner may notify the Contractor in writing that he must begin work within three days or the Owner will complete the work by other means. Any additional cost to complete this work will be charged to the Contractor.

**H. Care of Property**

The Contractor will protect the work, materials, property and adjacent property from damage or loss. The Contractor will also take proper precautions for the safety of the public. The Property will be kept free of waste, rubbish and surplus materials. The Contractor will leave the Property “broom clean” before being entitled to the final payment under this Agreement. The Contractor will also pay for, repair or replace any damage or loss caused by the Contractor’s failure to perform this Agreement.

**I. Contractor’s Continuing Liability**

The Contractor will be liable for defective, faulty or improper materials or workmanship. Upon written demand, the Contractor will immediately remedy all defects, faults or omissions and complete all unfinished work. The Contractor’s obligations will not be affected by the issuance of an Architect’s Certificate.

**J. Notices**

All notices under this Agreement must be in writing. The notices must be delivered personally or mailed by certified mail, return receipt requested, to the other party at the address written in this Agreement or to that party’s attorney.

**K.** The terms and conditions of this Agreement are arrived at by the mutual consent of the parties hereto.

**AGREED, SIGNED AND DELIVERED**

**GK CONSTRUCTION LIMITED**

Through its authorized signatory

**ARVIND CEMENT LIMITED**

Through its authorized signatory

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

---

2 – GKL and Other Dealers (FORM B)

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

10.04.2018

To  
Interim Resolution Professional,  
Ms. Pooja Prakash  
New Valley, Saket, 22/11,  
New Delhi

From  
GKL and other dealers  
Naka Hindola, Alwar, Rajasthan, 301002  
**Subject:** Submission of proof of claim.

Madam/Sir,  
GKL and other dealers, hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of Arvind Cement Limited. The details for the same are set out below:

<b>Particulars</b>		
1.	Name of Operational Creditor	GKL and other dealers
2.	Identification number of Operational Creditors	U50102MH2006PLC158715
3.	Address of Operational Creditor	Naka Hindola, Alwar, Rajasthan, 301002
4.	Total amount of claim	INR 2.15 Crores
5.	Details of documents by reference to which the debt can be substantiated	N/A
6.	Details of any dispute as well as the record of pendency or order of suit or arbitration proceedings	N/A
7.	Details of how and when debt incurred	N/A
8.	Details of any mutual credits, mutual debts or other mutual dealings between the Corporate Debtor and	N/A

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

	the creditor which may be set-off against the claim	
9.	Details of any retention of title arrangements in respect to goods or properties to which the claim refers	N/A
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	Account Name- Loan Repayment A/c Account No. – 470507001975 Bank Name – Dene Bank
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	N/A

Signature

GKL and other Dealers

Naka Hindola, Alwar, Rajasthan, 301001

**AFFIDAVIT**

I, GKL and other dealers, currently residing at: Naka Hindola, Alwar, Rajasthan, 301002, do solemnly affirm and state as follows:

- 1) Arvind Cement Ltd., the Corporate Debtor was, at the insolvency commencement date, being the 30th day of April 2018, justly and truly indebted to me in the sum of Rs. Two Crore fifteen Lakh.
- 2) In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: N/A
- 3) The said documents are true, valid and genuine to the best of my knowledge, information and belief.
- 4) In respect of the said sum or any part thereof I have not nor has any person by my order to my knowledge or belief for my use had or receive any manner of satisfaction or security save and except the following.

Solemnly, affirmed at Hyderabad on 10th day of April 2018.

Before me,

Notary / Oath Commissioner

**Deponent's signature**

**VERIFICATION**

I, the Deponent hereinabove, do hereby verify and affirm that the contents of paragraph 1 to 4 of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Alwar on 10th day of April 2018.

**Deponent's signature**

*3 – Imperium Carriers Ltd, FORM B*

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

10.04.2018

To  
Interim Resolution Professional,  
Ms. Pooja Prakash  
New Valley, Saket, 22/11,  
New Delhi

From  
Imperium Carriers Limited  
Defence Colony, Telibagh,  
Rajasthan, 301001

**Subject:** Submission of proof of claim.

Madam/Sir,

Imperium Carriers Limited (ICL), hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of Arvind Cement Limited. The details for the same are set out below:

<b>Particulars</b>		
1.	Name of Operational Creditor	Imperium Carriers Limited
2.	Identification number of Operational Creditors	U50102MH2006PLC158715
3.	Address of Operational Creditor	Defence Colony, Telibagh, Rajasthan, 301001
4.	Total amount of claim	INR 0.35 Crore
5.	Details of documents by reference to which the debt can be substantiated	N/A
6.	Details of any dispute as well as the record of pendency or order of suit or arbitration proceedings	N/A
7.	Details of how and when debt incurred	N/A

8.	Details of any mutual credits, mutual debts or other mutual dealings between the Corporate Debtor and the creditor which may be set-off against the claim	N/A
9.	Details of any retention of title arrangements in respect to goods or properties to which the claim refers	N/A
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	Account Name- Loan Repayment A/c Account No. – 67010100001848 Bank Name – Kodak Bank
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	N/A

**Signature**

Imperium Carriers Ltd  
Defence Colony,  
Telibagh, Rajasthan 301001

**AFFIDAVIT**

I, Imperium Carriers Ltd., currently located at: Defence Colony, Telibagh, Rajasthan 301001, do solemnly affirm and state as follows:

- 1) Arvind Cement Ltd., the Corporate Debtor was, at the insolvency commencement date, being the 30th day of April 2018, justly and truly indebted to me in the sum of Rs. 0.35 Crores.
- 2) In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: N/A
- 3) The said documents are true, valid and genuine to the best of my knowledge, information and belief.
- 4) In respect of the said sum or any part thereof I have not nor has any person by my order to my knowledge or belief for my use had or receive any manner of satisfaction or security save and except the following.

Solemnly, affirmed at Hyderabad on 14th day of April 2018.

Before me,

Imperium Carriers Ltd.

**Deponent's Signature**

**VERIFICATION**

I, the Deponent hereinabove, do hereby verify and affirm that the contents of paragraph 1 to 4 of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Hyderabad on 14th day of April 2018.

**Deponent's Signature**

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

---

*4 – Raw Material Suppliers (FORM B)*

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

10.04.2018

To

Interim Resolution Professional,

Ms. Pooja Prakash

New Valley, Saket, 22/11,

New Delhi

From

Raw Material Suppliers

Agrawal Market, Alwar, Rajasthan 301002

**Subject:** Submission of proof of claim.

Madam/Sir,

Raw Material Suppliers hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of Arvind Cement Limited. The details for the same are set out below:

<b>Particulars</b>		
1.	Name of Operational Creditor	Raw Material Supplier
2.	Identification number of Operational Creditors	U50102MH2006PLC158715
3.	Address of Operational Creditor	Agrawal Market, Alwar, Rajasthan 301001
4.	Total amount of claim	INR 2 Crore
5.	Details of documents by reference to which the debt can be substantiated	N/A
6.	Details of any dispute as well as the record of pendency or order of suit or arbitration proceedings	N/A
7.	Details of how and when debt incurred	N/A
8.	Details of any mutual credits, mutual debts or other	N/A



**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

	mutual dealings between the Corporate Debtor and the creditor which may be set-off against the claim	
9.	Details of any retention of title arrangements in respect to goods or properties to which the claim refers	N/A
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	Account Name- Loan Repayment A/c Account No. – 57090100002868 Bank Name – Kalyani Bank
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	N/A

**Signature**

Raw Material Suppliers  
Agrawal Market, Alwar,  
Rajasthan 301001

**AFFIDAVIT**

I, Manish Joshi, currently located at: Agrawal Market, Alwar, Rajasthan 301002, do solemnly affirm and state as follows:

- 1) Arvind Cement Ltd., the Corporate Debtor was, at the insolvency commencement date, being the 30th day of April 2018, justly and truly indebted to me in the sum of Rs. Two Crores.
- 2) In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: N/A
- 3) The said documents are true, valid and genuine to the best of my knowledge, information and belief. Solemnly, affirmed at Alwar, Rajasthan on 15th day of April 2018.
- 4) In respect of the said sum or any part thereof I have not nor has any person by my order to my knowledge or belief for my use had or receive any manner of satisfaction or security save and except the following.

Before me,

Notary / Oath Commissioner

**Deponent's Signature**

**VERIFICATION**

I, the Deponent hereinabove, do hereby verify and affirm that the contents of paragraph 1 to 4 of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Hyderabad on 10th day of April 2018.

**Deponent's Signature**

5– XYL Securities Agency (FORM B)

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

10.04.2018

To  
Interim Resolution Professional,  
Ms. Pooja Prakash  
New Valley, Saket, 22/11,  
New Delhi

From  
XYL Security Agency  
K-90, Mahabali, Alwar, Rajasthan (301001)

**Subject:** Submission of proof of claim.

Madam/Sir,

XYL Security Agency, hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of Arvind Cement Limited. The details for the same are set out below:

<b>Particulars</b>		
1.	Name of Operational Creditor	XYL Securities Agency
2.	Identification number of Operational Creditors	U50102MH2006PLC158715
3.	Address of Operational Creditor	K-90, Mahabali, Alwar, Rajasthan (301001)
4.	Total amount of claim	INR 0.30 Crore
5.	Details of documents by reference to which the debt can be substantiated	N/A
6.	Details of any dispute as well as the record of pendency or order of suit or arbitration proceedings	N/A
7.	Details of how and when debt incurred	N/A
8.	Details of any mutual credits, mutual debts or other mutual dealings between the Corporate Debtor and	N/A

	the creditor which may be set-off against the claim	
9.	Details of any retention of title arrangements in respect to goods or properties to which the claim refers	N/A
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	Account Name- Loan Repayment A/c Account No. – 4700010006835 Bank Name – Axel Bank
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	N/A

**Signature**

SHARMAN JOSHI

General Manager

K-90, Mahabali,

Alwar, Rajasthan (302424)

**AFFIDAVIT**

XYL Security agency residing at: K-90, Mahabali, Alwar, Rajasthan (302424), do solemnly affirm and state as follows:

- 1) Arvind Cement Ltd., the Corporate Debtor was, at the insolvency commencement date, being the 30th day of April 2018, justly and truly indebted to me in the sum of Rs. 0.30 Crores.
- 2) In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: N/A
- 3) The said documents are true, valid and genuine to the best of my knowledge, information and belief. Solemnly, affirmed at Jaipur, Rajasthan on 16th day of April 2018.
- 4) In respect of the said sum or any part thereof I have not nor has any person by my order to my knowledge or belief for my use had or receive any manner of satisfaction or security save and except the following.

Before me,

Notary / Oath Commissioner

**Deponent's Signature**

**VERIFICATION**

I, Sharman Joshi do hereby verify and affirm that the contents of paragraph 1 to 4 of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Hyderabad on 16th day of April 2018.

**Deponent's Signature**

*6– T&T Construction Ltd (FORM B)*

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

10.04.2018

To

Interim Resolution Professional,

Ms. Pooja Prakash

New Valley, Saket, 22/11,

New Delhi

From

TTCL

Cine Plaza C-89, Alwar,

Rajasthan (302028)

**Subject:** Submission of proof of claim.

Madam/Sir,

TTCL, hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of Arvind Cement Limited. The details for the same are set out below:

<b>Particulars</b>		
1.	Name of Operational Creditor	TTCL
2.	Identification number of Operational Creditors	L50102MH2996PLC158718
3.	Address of Operational Creditor	Cine Plaza C-89, Alwar, Rajasthan (302028)
4.	Total amount of claim	INR 0.6 Crore
5.	Details of documents by reference to which the debt can be substantiated	N/A
6.	Details of any dispute as well as the record of pendency or order of suit or arbitration proceedings	N/A
7.	Details of how and when debt incurred	N/A
8.	Details of any mutual credits, mutual debts or other mutual dealings between the Corporate Debtor and	N/A

	the creditor which may be set-off against the claim	
9.	Details of any retention of title arrangements in respect to goods or properties to which the claim refers	N/A
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	Account Name- Loan Repayment A/c Account No. – 4700010006835 Bank Name – Axel Bank
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	N/A

**Signature**

**TTCL**

Address: Cine Plaza C-89,  
Alwar, Rajasthan (302028)

**AFFIDAVIT**

TTCL residing at: Cine Plaza C-89, Alwar, Rajasthan (302028), do solemnly affirm and state as follows:

- 1) Arvind Cement Ltd., the Corporate Debtor was, at the insolvency commencement date, being the 30th day of April 2018, justly and truly indebted to me in the sum of Rs. 0.6 Crores.
- 2) In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: N/A
- 3) The said documents are true, valid and genuine to the best of my knowledge, information and belief. Solemnly, affirmed at Alwar, Rajasthan on 20th day of April 2018.
- 4) In respect of the said sum or any part thereof I have not nor has any person by my order to my knowledge or belief for my use had or receive any manner of satisfaction or security save and except the following.

Before me,

Notary / Oath Commissioner

**Deponent's signature**

**VERIFICATION**

I, the Deponent hereinabove, do hereby verify and affirm that the contents of paragraph 1 to 4 of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Hyderabad on 10th day of April 2018.

**Deponent's signature**



*7 – Electricity Discom in Rajasthan (FORM B)*

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

10.04.2018

To  
Resolution Professional,  
Ms. Pooja Prakash  
New Valley, Saket, 22/11,  
New Delhi

From  
Electricity Discom in Rajasthan  
T-50 Mayur Gate, Karan,  
Bikaner, Rajasthan

**Subject:** Submission of proof of claim.

Madam/Sir,

**Electricity Discom in Rajasthan**, hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of Arvind Cement Limited. The details for the same are set out below:

<b>Particulars</b>		
1.	Name of Operational Creditor	Electricity Discom in Rajasthan
2.	Identification number of Operational Creditors	L50102MH2996PLC158718
3.	Address of Operational Creditor	T-50 Mayur Gate, Karan, Bikaner, Rajasthan
4.	Total amount of claim	INR 1.15 Crore
5.	Details of documents by reference to which the debt can be substantiated	N/A
6.	Details of any dispute as well as the record of pendency or order of suit or arbitration proceedings	N/A

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

7.	Details of how and when debt incurred	N/A
8.	Details of any mutual credits, mutual debts or other mutual dealings between the Corporate Debtor and the creditor which may be set-off against the claim	N/A
9.	Details of any retention of title arrangements in respect to goods or properties to which the claim refers	N/A
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	Account Name- Loan Repayment A/c Account No. – 4700010005864 Bank Name – SBI Bank
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	N/A

**Signature**

Manish Rastogi

Authorized Representative

**AFFIDAVIT**

Electricity Discom in Rajasthan do solemnly affirm and state as follows:

- 1) Arvind Cement Ltd., the Corporate Debtor was, at the insolvency commencement date, being the 30th day of April 2018, justly and truly indebted to me in the sum of Rs.1.15 crores.
- 2) In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: N/A
- 3) The said documents are true, valid and genuine to the best of my knowledge, information and belief.
- 4) In respect of the said sum or any part thereof I have not nor has any person by my order to my knowledge or belief for my use had or receive any manner of satisfaction or security save and except the following.

Before me,

Notary / Oath Commissioner

**Deponent's signature**

**VERIFICATION**

I, the Deponent hereinabove, do hereby verify and affirm that the contents of paragraph 1 to 4 of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Hyderabad on 10th day of April 2018.

**Deponent's signature**

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

**PROOF OF CLAIM BY A WORKMAN OR AN EMPLOYEE (FORM D)**

*(Under Regulation 9 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)*

10.04.2018

To  
Interim Resolution Professional,  
Ms. Pooja Prakash  
New Valley, Saket, 22/11,  
New Delhi

From  
Employees and Workmen of ACL

**Subject:** Submission of proof of claim.

Madam/Sir,

We hereby submit this proof of claim in respect of the corporate insolvency resolution process in the case of Arvind Cement Limited. The details for the same are set out below:

<b>Particulars</b>		
1.	Pan Number, Passport, the identity card issued by the Election Commission of India or Aadhar Card of workman/ employee	N/A
2.	Address of the workman/employee for correspondence	521, Vijay Nagar, Udaipur, Rajasthan
3.	Total amount of claim	INR 1.18 Crore
4.	Details of documents by reference to which the debt can be substantiated	N/A
5.	Details of any dispute as well as the record of pendency or order of suit or arbitration proceedings	N/A
6.	Details of how and when debt incurred	N/A
7.	Details of any mutual credits, mutual debts or other mutual dealings between the Corporate Debtor and the	N/A

	creditor which may be set-off against the claim	
8.	Details of any retention of title arrangements in respect to goods or properties to which the claim refers	N/A
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	Account No. – 4700015241563264 Bank Name – SBI Bank
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	N/A

**Signature**

**VIJAY KUMAR**

**AFFIDAVIT**

I Vijay Kumar solemnly affirm, and state as follows:

- 1) Arvind Cement Ltd., the Corporate Debtor was, at the insolvency commencement date, being the 30th day of April 2018, justly and truly indebted to me in the sum of Rs.1.18 crores.
- 2) In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: N/A
- 3) The said documents are true, valid and genuine to the best of my knowledge, information and belief.
- 4) In respect of the said sum or any part thereof I have not nor has any person by my order to my knowledge or belief for my use had or receive any manner of satisfaction or security save and except the following.

Before me,

Notary / Oath Commissioner

**Deponent's signature**

**VERIFICATION**

I, the Deponent hereinabove, do hereby verify and affirm that the contents of paragraph 1 to 4 of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Hyderabad on 10th day of April 2018.

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**AT HYDERABAD**

**COMPANY APPLICATION NO. (IB) \_\_\_\_\_ (Hyd.)/2018**

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

CONSORTIUM LED BY PEOPLE'S BANK..... FINANCIAL CREDITOR

*List of Creditor prepared by the IRP*

Under regulation 13 of the insolvency resolution process for corporate person, Regulation 2016. The IRP (Ms. Pooja Prakash has prepared the following list of creditors who have submitted their claim and outstanding amount due to them.

<b>Particulars</b>	<b>Principal amount (In INR Crores)</b>	<b>Outstanding Amount</b>
People's Bank	875	800
Bank of North India	625	555
SCB Bank	625	555
PSP Bank	375	250
RST Bank	200	90
GKCL	500	250
GKL and Other Dealers	2	2.15
ICL	0.15	0.35
Raw Material Suppliers	1.5	2
Electricity Discom in Rajasthan	1	1.15
Employees and Workmen of ACL	1.25	1.85
XYL Security Agency	0.25	0.30
TTCL	0.5	0.6

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

---

---

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**AT HYDERABAD**

---

---

**COMPANY APPLICATION NO. (IB) \_\_\_\_\_ (Hyd.)/2018**

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

CONSORTIUM LED BY PEOPLE'S BANK..... FINANCIAL CREDITOR

**Report Of Minutes Of Coc Meeting Held On 27.04.2018**

**MEETING HELD AT:**

A meeting of Arvind Cement Limited was held at A-12, Niraj Vihar, New Delhi on April 27, 2018.

**ATTENDEES:**

- People's Bank
- Bank of North India
- SCB Bank
- PSP Bank
- RST Bank

**BUSINESS PROPOSED TO BE TRANSACTED IN THE MEETING:**

- Chairman (Interim Professional) to preside over the Meeting
- Ascertainment of quorum for the meeting
- Consideration of the list of Creditors
- Appointment of Resolution Professional
- Finalizing list of creditors
- Proposal to raise Interim finance of INR 5 Crore

**BUSINESS TRANSACTED IN THE MEETING:**

**AGENDA: 1 Chairman (Interim Professional) to preside over the Meeting**

*Proposed by: Ms. Pooja Prakash (IRP)*

*Seconded and agreed by:* The members of the Committee unanimously accepted, Ms. Pooja Prakash (IRP) the IRP to preside over the meeting as the Chairman.

**Agenda 2: Ascertainment of quorum for the meeting**

*Ascertained by:* Chairman

**Agenda 3: Consideration of the list of Creditors**

*Decision made:* The members unanimously accepted the list prepared by the IRP after receiving and verifying all the claims and authorized the IRP to present the list before the Tribunal.

**Agenda 4: Appointment of Resolution Professional**

*Proposed by:* Chairman

The IRP be continued as Resolution Professional.

*Seconded and agreed by:* The members of the Committee accepted, Ms. Pooja Prakash will continue as Resolution Professional.

**Agenda 5: Proposal to raise Interim finance of INR 5 Crore**

*Proposed by:* Resolution Professional

*Seconded and agreed by:* Consortium led by People's Bank

*Objected by:* RST Bank

That the proposal for interim finance, to the extent that payment was proposed to be made to TTCL, was unnecessary and contrary to the provisions of law. RST Bank argued that any interim finance raised by the RP shall be used for conducting the insolvency resolution process and for maintaining the Debtor as a going concern, but it cannot be used for building new assets during CIRP. RST Bank also alleged that the payment of INR 20 lakhs to TTCL is an avoidable transaction under the law and that such transaction was carried out with intent to defraud the creditors of ACL.

*Decided:* Out of the interim finance amount of INR 5 crores, RP of ACL set aside INR 2.5 crores for running operations at the manufacturing unit, which included money for



purchasing power from APL. The remaining funds were disbursed amongst TTCL, workers and employees of ACL and remuneration to valuers, RP, auditors and other process costs

***Next Meeting:***

The RP is authorized to serve notice for the next meeting as and when required or when any requisition is received from the members of committee to conduct such meeting.

**INTERIM RESOLUTION PROFESSIONAL**

In the matter of Arvind Cement Limited

(Ms. Pooja Prakash)

REPORT OF 7<sup>th</sup> MINUTES OF COC MEETING HELD ON 27.08.2018

**MEETING HELD AT:**

A meeting of Arvind Cement Limited was held at A-12, Niraj Vihar, New Delhi on August 27, 2018.

**ATTENDEES:**

- People's Bank
- Bank of North India
- SCB Bank
- PSP Bank
- RST Bank

**BUSINESS PROPOSED TO BE TRANSACTED IN THE MEETING:**

- Extension of Corporate Insolvency Resolution Process by 90 days.

**BUSINESS TRANSACTED IN THE MEETING:**

**AGENDA:** Extension of Corporate Insolvency Resolution Process by 90 days.

*Decided:* To file and application for the extension of Corporate Resolution Professional Process by 90 days.

***Next Meeting:***

The RP is authorized to serve notice for the next meeting as and when required or when any requisition is received from the members of committee to conduct such meeting.

**INTERIM RESOLUTION PROFESSIONAL**

In the matter of Arvind Cement Limited

(Ms. Pooja Prakash)

**PART III - Application Filed Before the Tribunal on Behalf of the concerned party  
during CIRP**

---

**1 – APPLICATION BY GKCL**

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,**

**AT HYDERABAD**

**COMPANY APPLICATION NO. (IB) \_\_\_\_\_ (Hyd.)/2018**

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

CONSORTIUM LED BY PEOPLE'S BANK..... FINANCIAL CREDITOR

GK CONSTRUCTION LIMITED.....APPLICANT

**Application under the section 60(5)(a) of the Insolvency and Bankruptcy Code, 2016 to  
submit that the GKCL is a Financial Creditor**

**MOST RESPECTFULLY SHOWETH:**

1. That the Applicant is incorporated under the Companies Act, 1956 having its registered office 209-210 Akbar Road, Lucknow files the application under the section 60(5)(a) submitting that Resolution Professional rejected the claim of GKCL on groundless notion.
2. That a Financial Creditor is one to whom a financial debt is owed. The Arvind Cement Limited, owes an outstanding sum of INR 250 crores as on 30.03.2018 to GKCL. This debt can be attributed by a kind perusal to the Hire Purchase transaction dated 05.07.2010 and §5(8) (d) of the code which does not distinguish a hire purchase from a long-term funding in all practicalities, the definition being an inclusive one and not exhaustive.
3. Furthermore, it is submitted that the very essential requirement of financial debt has to be met viz, that the debt including interest is disbursed against consideration for time value of money. Such a commercial effect of borrowing is always reckoned while making such advances as in the instant case, the outflow is distanced by time & there is compensation in the form of consideration to be paid by ACL to GKCL amounting to INR 500 crore along with interest over a period of 10 years.
4. In light of the aforesaid facts and premises, it is most respectfully prayed that this Hon'ble

Tribunal may be pleased to adjudge and declare that:

- a. That GKCL is a Financial Creditor.
- b. Pass/ make such other order(s)/ direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

**APPLICANT**  
**GK Construction Limited**

Through its authorized signatory

Date: 05<sup>th</sup> June 2018

Place: Hyderabad

*Document Annexed for the Support of the Application of GKCL*

**AGREEMENT FOR CONSTRUCTION**

This agreement is made on **05.07.2010**

**BETWEEN** GK Construction Limited whose address is 209-210 Akbar Road, Lucknow here in referred as “Contractor”,

**AND** the Property Owner Arvind Cement Limited incorporated under the Companies Act, 1956 having its registered office Green Valley, Banjara Hills, Hyderabad, Telangana 500034, referred to as the “Owner”

**A. Agreement**

The contractor agrees to perform certain construction, alteration or repair work (referred to as the “work”) in accordance with this agreement. All work will be done in a good, sound and workmanlike manner.

**B. Work**

The Work includes construction of **85 storage facilities** whose ownership rights over these storage facilities vested in Arvind Cement Limited immediately upon the completion of construction

**C. Price**

The agreed upon price **Rs. 500 crore/- ( Rupees Five Hundred Crore only)**. This amount will be paid in the installment with the interest over a period of **10 years**.

**D. Materials**

The Contractor will provide the materials, supplies, equipment, services and labor necessary for the complete performance of this agreement. Unless otherwise agreed, all materials will be new and of good quality.

**E. Compliance with Laws**

The Contractor will comply with all applicable Federal, State and local laws regarding work, materials and the safety of persons or property. The Owner will not be responsible for any loss or damage to the work or any property of the Contractor.

**F. No Oral Changes**

This Agreement can only be changed by an agreement in writing signed by both the Owner and the Contractor. No variations, alterations, deviations, deletions or extra work can be made unless both the Owner and the Contractor specifically agree in writing.

**G. Failure to Complete Work**

The Contractor must properly and diligently complete the work provided for in this Agreement. Otherwise, the Owner may notify the Contractor in writing that he must begin

work within three days or the Owner will complete the work by other means. Any additional cost to complete this work will be charged to the Contractor.

**H. Care of Property**

The Contractor will protect the work, materials, property and adjacent property from damage or loss. The Contractor will also take proper precautions for the safety of the public. The Property will be kept free of waste, rubbish and surplus materials. The Contractor will leave the Property “broom clean” before being entitled to the final payment under this Agreement. The Contractor will also pay for, repair or replace any damage or loss caused by the Contractor’s failure to perform this Agreement.

**I. Contractor’s Continuing Liability**

The Contractor will be liable for defective, faulty or improper materials or workmanship. Upon written demand, the Contractor will immediately remedy all defects, faults or omissions and complete all unfinished work. The Contractor’s obligations will not be affected by the issuance of an Architect’s Certificate.

**J. Notices**

All notices under this Agreement must be in writing. The notices must be delivered personally or mailed by certified mail, return receipt requested, to the other party at the address written in this Agreement or to that party’s attorney.

**K.** The terms and conditions of this Agreement are arrived at by the mutual consent of the parties hereto.

**AGREED, SIGNED AND DELIVERED**

**GK CONSTRUCTION LIMITED**

Through its authorized signatory

**ARVIND CEMENT LIMITED**

Through its authorized signatory

**2 – APPLICATION OF RST BANK FOR AVOIDANCE OF INTERIM FINANCE**

---

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**AT HYDERABAD**

---

**COMPANY APPLICATION NO. (IB) \_\_\_\_\_ (Hyd.)/2018**

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

CONSORTIUM LED BY PEOPLE'S BANK..... FINANCIAL CREDITOR

RST BANK.....APPLICANT

**Application under the section 60(5)(a) of the Insolvency and Bankruptcy Code, 2016 to submit that the interim finance raised by the Resolution Professional is avoidable transaction**

**MOST RESPECTFULLY SHOWETH:**

1. That Applicant RST Bank incorporated under the Companies Act, 1956 having its registered office at 2/2, Canal Colony, Havlok Road, Lucknow, 226007 filed the present application before the Hon'ble Tribunal against the interim finance raised by the resolution professional of the Corporate Debtor.
2. That in the first meeting of committee of creditors, Ms. Pooja Prakash who is Resolution Professional of Corporate Debtor proposed to raise the interim finance of **INR 5,00,00,000 crore/- ( Rupees Five Crore Only)** so as to continue minimal operation as to continue minimal operations at the plant in Rajasthan, to start the construction work at Karnataka site and to pay salaries of workers and employees for the period since the commencement of CIRP. Resolution Professional reasoned that TTCL has to be given assurance of payment during the Corporate Insolvency Resolution Process (CIRP) in order to avoid value erosion of assets of the Company in Karnataka.
3. That consortium lender by People's Bank agreed to give interim finance and thus majority of the creditors approved this proposal raised by the Resolution Professional.
4. That it is submitted by the Applicant that this proposal is a way to defraud the creditors thus is an avoidable transaction as per the section 66 of the Insolvency and Bankruptcy Code, 2016. According to the case of **In re Patch Graphics, Inc., 58 B.R. 743 (1986)** in order to raise interim finance two tests needs to be satisfied. First, it must benefit the Corporate

Debtor and the creditor as whole. Second, it must be actual and necessary for the ordinary course of business. Applicant submits that any interim finance raised by the Resolution Professional shall be used for conducting the insolvency resolution process and for maintaining the Debtor as a going concern, but it cannot be used for building new assets during corporate insolvency resolution process. Therefore, Applicant submits that the extent to the payment given to TTCL under interim finance is unnecessary and contrary to the provision of law.

5. In light of the aforesaid facts and premises, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to adjudge and declare that:
  - a. The Resolution Professional's proposal for interim finance to the extent that payment was proposed to be made to TTCL was unnecessary and contrary to the provision of law.
  - b. Pass/ make such other order(s)/ direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

**APPLICANT  
RST BANK**



**3 – APPLICATION OF RST BANK FOR AVOIDANCE OF 20 LAKH RUPEES TO TTCL**

---

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**AT HYDERABAD**

---

**COMPANY APPLICATION NO. (IB) \_\_\_\_\_ (Hyd.)/2018**

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

CONSORTIUM LED BY PEOPLE'S BANK..... FINANCIAL CREDITOR

POOJA

PRAKASH.....APPLICANT

**Application under the section 60(5)(a) of the Insolvency and Bankruptcy Code, 2016  
to submit that the payment of 20 lakh given to TTCL should be avoided**

**MOST RESPECTFULLY SHOWETH:**

1. That the Applicant is the Resolution Professional of Arvind Cement Limited, registered with ICSI Insolvency Professionals Agency having registration number **IBBI/IPA/52--31/014** submits that the transaction of **Rs. 20 lakh** (Rupees Twenty lakh only) is an avoidable transaction.
2. It is humbly submitted that the payment of 20 lakhs to TTCL by ACL just before the commencement of CIRP was made with the intent to defraud creditors of ACL hence the transaction should be avoided.
3. That the transaction was entered into by ACL in March 2018 which is within a suspect period (i.e. 1 year) in the case in hand directors decided to default the interest payment to banks hence when the directors closed their eyes to the reality of the Company's position and carried on trading when it is obvious that Company was insolvent then it constitutes wrongful trading.
4. That any legal act disposed of obligation done by way of payment causing avoidable loss to creditors after which the insolvency of Company becomes inevitable will amount to wrongful trading and if the transaction was unfair in relation to certain creditors and if the Debtor was insolvent at the time the transaction took place or would become insolvent as a result of the transaction then it should be avoided. In present case the filing of CIRP application is the result of default done in interest payment by Corporate Debtor hence such transaction must be avoided.

5. Therefore, in light of the aforesaid facts and premises, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to adjudge and declare that:
- a. The transaction that led to payment of 20 lakh to TTCL should be avoided.
  - b. Pass/ make such other order(s)/ direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

**APPLICANT**

**Ms. Pooja Prakash**

**Resolution Professional of Arvind Cement Limited**

Date: 04<sup>th</sup> Mat 2018

Place: Hyderabad

**4 – APPLICATION OF RST BANK FOR ENFORCEMENT OF PERSONAL GUARANTEE**

---

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL**

**AT HYDERABAD**

---

**COMPANY APPLICATION NO. (IB) \_\_\_\_\_ (Hyd.)/2018**

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

CONSORTIUM LED BY PEOPLE'S BANK..... FINANCIAL CREDITOR

RST BANK.....APPLICANT

**Application under the section 60(2) of the Insolvency and Bankruptcy Code, 2016 for enforcement of personal guarantee against Mr. Arvind Kumar (promoter of ACL).**

**MOST RESPECTFULLY SHOWETH:**

1. That Applicant RST Bank incorporated under the Companies Act, 1956 having its registered office at 2/2, Canal Colony, Havlok Road, Lucknow, 226007, filed the present application before the Hon'ble Tribunal for enforcing the personal guarantee which is provided by Mr. Arvind Kumar for the loan obtained by Arvind Cement Ltd (ACL).
2. That Mr. Arvind Kumar is the promoter of ACL. In 2005 ACL obtained INR 200 Crore working Capital facility from Applicant, for the security of which RST Bank was allowed to have first charge on Plant & Machinery of ACL Rajasthan unit & Mr. Arvind Kumar also gave personal guarantee for securing the loan granted by RST Bank.
3. That in the present factual matrix as ACL is unable to pay the present debt. The Applicant files the present application for enforcement of personal guarantee against Mr. Arvind Kumar.
4. That it is submitted by the Applicant that present application should be accepted as pursuant to section 60(2) of the I&B Code, an application for initiation of bankruptcy proceeding against personal guarantor of Corporate Debtor shall be filed before such NCLT where CIRP of Corporate Debtor is pending. This position is also reiterated by the Hon'ble **Supreme Court of India** in the case of **State Bank of India v V. Ramakrishnan, [2018] 96 taxmann.com 271 (SC)** where the court observe that if a Financial Creditor intends to proceed against a personal guarantor he may file an application before the same adjudicating authority where CIRP of Corporate Debtor is pending i.e. NCLT. Although NCLT is required to decide such proceeding in accordance with **provincial insolvency act, 1920**.

5. That it is pertinent to mentioned here that **Regulation 36 of IBBI** (Insolvency Resolution Process for Corporate Persons) read with **Annexure VI (e) to form 6**, Insolvency and Bankruptcy (Application to adjudicating authority rules), 2016 also sought information for details of personal guarantor when proceeding is initiated against Corporate Debtor. All these regulation and sections clearly points out to the intention of Legislature to make the personal guarantor equally liable for the speedy recovery of loan.
6. That in the present case personal guarantee should be enforced as only essential for invoking jurisdiction under section 60(2) is pendency of CIRP of Corporate Debtor before the same NCLT which is fulfilled in the present case and the moratorium which is applicable to the Corporate Debtor during CIRP does not apply to personal guarantor of Corporate Debtor.
7. That section 128 of the Indian Contract Act, 1872 also provides for co-extensive liability of borrower & guarantor i.e. surety liability is to the same extend as of the principal borrower. Here reliance can be placed on **Industrial Investment Bank of India Lt. v Bishwanath Jhunjhunwala** case where the SC observe that whole object of guarantee is defeat if the personal guarantor is asked to postpone his remedy.
8. In light of the aforesaid facts and premises, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to adjudge and declare that:
  - a) That application filed by RST Bank for enforcement of personal guarantee is admitted & personal guarantee can be enforced.
  - b) Pass/ make such other order(s)/ direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

**APPLICANT**  
**RST BANK**

Date – 20 May 2018

Place – Hyderabad

*Document Annexed for the Support of the Application*

**GUARANTEE AGREEMENT**

**(PERSONAL GUARANTEE)**

**The present Personal Guarantee** is executed at **New Delhi** on 20<sup>th</sup> day of October 2005  
**(present guarantee)**

**BY**

**Mr. Arvind Kumar** (hereinafter referred to as **Guarantor**) whose address & other details are provided under **Schedule I** thereto

**IN FAVOUR OF**

**RST Bank** (hereinafter referred as **Creditors**) whose address & other details are provided under **Schedule I** thereto.

**Whereas**

- (1) Pursuant to the loan agreement entered between (a) **Arvind Cement Ltd.** (Hereinafter referred as borrower) more particularly mentioned in **Schedule 1** & the **Creditor** for the Loan more particularly mentioned in **Schedule I** & at the request of the borrower, the Lender has agreed to lend the loan to borrower and the borrower have agreed to borrow the loan form from lender on terms & condition contained in **Loan Documents**.
- (2) One of the Condition for the Lender having agreed to grant the said loan to the borrower was that the Guarantor shall execute in favour of Lender an unconditional and irrevocable continuing guarantee being these presents.

**NOW THIS AGREEMENT OF GUARANTEE WITNESS AS FOLLOWS –**

For good and valuable consideration being lender providing the loan to the borrower under the Loan Agreement (the receipt and sufficiency of which are acknowledged) the Guarantor irrevocably and unconditionally:

- (i) Guarantees to the Lender punctual performance by the borrower of all the borrower obligations under the loan document and in the event borrower failing to perform any of its obligations under the Loan Documents, the Guarantor shall, on first demand by the Lender and without any demur, contest or delay, shall pay to the Lender the Guarantee amount as stipulated in **Schedule I of this agreement** (the Guarantee Amount) and in addition thereto shall pay interest and other amount that become due and payable by the borrower to the Lender under the Loan document and any part thereof.

## **INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2018**

- i. Accepts and acknowledges that the obligations hereunder are joint and several and independent of the obligations of the Borrower and a separate action or actions may be brought against the Guarantor alone or jointly with the Borrower.
- ii. The Guarantors agree and understand that the Guarantors shall not be entitled to delay the payment of the guaranteed amounts for any controversy, question or dispute which may arise between the Lender and Borrower(s) as regard to the terms and conditions of the said Loan Agreement or the liability and/or payment of the amounts due thereunder.
- iii. The Guarantor further agree and undertake to pay to the Lender all legal costs occasioned to Lender by reason of omission, default in repayment by the Borrower(s) and in case of legal costs, also the costs of enforcement or attempted enforcement of any security in favour of the Lender against the loan or the costs which may incur by the Lender being joined in any proceeding either with or without others in connection with any such security or any proceeds thereof.

IN WITNESS WHEREOF this Guarantee Deed has been executed by the Guarantors at the place and on the date first above written.

### **SCHEDULE I to the Present Personal Guarantee Agreement**

<b>S.No.</b>	<b>Items</b>	<b>Information to be inserted</b>
<b>1 -</b>	<b>Date of Agreement</b>	20 <sup>th</sup> October 2005
<b>2 -</b>	<b>Guarantor Details</b>	Name – Mr. Arvind Kumar Age – 50 Years Constitution: Individual Address: 25 Saket Vihar, New Delhi
<b>3 -</b>	<b>Borrower Details</b>	Name – Arvind Cement Ltd. (ACL) Constitution – Private Ltd. Company Registered Office Address – 54 Nagar Colony, Hyderabad Other Corporate Office – Situated at New Delhi and Bombay
<b>4 -</b>	<b>Loan Agreement</b>	Loan agreement Dated 20 October 2005 entered between Arvind Cement Limited (Borrower) & RST Bank (Lender)
<b>5 -</b>	<b>Loan Principal Amount</b>	INR 200 Crore
<b>6 -</b>	<b>Guaranteed Amount</b>	INR 200 Crore
<b>7 -</b>	<b>Notice</b>	Any notice to the Guarantor for any matter shall be sent to his Registered Office.
<b>8 -</b>	<b>Place of execution</b>	New Delhi

**5 – APPLICATION OF RP OF ACL FOR AVOIDANCE OF 20 CRORE TO APL**

---

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**AT HYDERABAD**

---

**COMPANY APPLICATION NO. (IB) \_\_\_\_\_ (Hyd.)/2018**

---

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

PEOPLE’S BANK..... FINANCIAL CREDITOR

POOJA PRAKASH.....APPLICANT

**Application under the section 60(5)(b) of the Insolvency and Bankruptcy Code, 2016 to submit that transactions that led to payment of excess payment of INR 20 crore shall be avoided**

**MOST RESPECTFULLY SHOWETH:**

1. That the Applicant is the Resolution Professional of Arvind Cement Limited, registered with ICSI Insolvency Professionals Agency having registration number **IBBI/IPA/52--31/014** submits that the transaction that led to excess payment of **Rs. 20 crore** (Rupees Twenty Crore only) is an avoidable transaction.
2. That the Applicant submits that APL is wholly owned by ACL hence will fall under definition of related party. According to the case of **BCL Homes Ltd. vs. Canara Banks [2018] 93 taxmann.com 279 (NCL-AT)**, transactions could be avoided if in case the transfers made in favor of related parties within two years preceding insolvency commencement date .
3. Furthermore, when such transactions that led to excess payment took place in suspect period the bad faith is presumed to exist. As per the **UNCITRAL, Legislative Guide** the defense of good faith transaction is not applicable in case of related party as they will probably have a better knowledge about the Debtor’s affairs. The excess payment could not be justified by merely giving a window of ordinary course of business hence the transaction is avoidable.
4. Therefore, in light of the aforesaid facts and premises, it is most respectfully prayed that this Hon’ble Tribunal may be pleased to adjudge and declare that:
  - a. The transaction that led to payment of excess amount of INR 20 crores to Arvind Power Limited should be avoided.

- b. Pass/ make such other order(s)/ direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

**APPLICANT**

**Ms. Pooja Prakash**

**Resolution Professional of Arvind Cement Limited**

Through its authorized signatory

Date: 20<sup>th</sup> May 2018

Place: Hyderabad



**6 – APPLICATION OF APL FOR CLAIMING ITSELF AS OPERATION CREDITOR**

---

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**AT HYDERABAD**

---

**AT COMPANY APPLICATION NO. (IB) \_\_\_\_\_ (ND)/2018**

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

PEOPLE'S BANK.....FINANCIAL CREDITOR

ARVIND POWER LIMITED.....APPLICANT

**Application under the section 60(5)(b) of the Insolvency and Bankruptcy Code, 2016  
to submit its claim as an Operational Creditor**

**MOST RESPECTFULLY SHOWETH:**

1. That the Applicant **Arvind Power Limited** is incorporated under the provisions of the Companies Act, 1956, established in the year 2003 having its registered office at 31 Tagore Colony, Delhi 110091, files the present application submitting that its claim should be accepted as Operational Creditor.
2. That the Applicant falls under the definition of Operational Creditor because any person to whom an operational debt is owned including any person to whom such debt has been legally assigned or transferred is an Operational Creditor. Operational Creditors are those whose liability from the entity comes from a transaction on operations and who supply goods or render any service. In the present case, APL is that acceptor whose liability from the entity comes directly out of its operations.

Therefore, in light of the aforesaid facts and premises, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to adjudge and declare that:

That the Arvind Power Limited should be accepted as operation creditor of APL.

Pass/ make such other order(s)/ direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

**APPLICANT**

**Arvind Power Limited**

Through its authorized signatory

Date 22th May 2018

*Document Annexed for the Support of the Application of APL*

**POWER PURCHASE AGREEMENT**

This POWER PURCHASE AGREEMENT (hereinafter referred to as "Agreement" or "PPA") is made and entered into effective as of 1<sup>st</sup> day of January, 2006 amongst:

**Arvind Cement Ltd.** a Company registered under the Companies Act 1956 with its registered office at Hyderabad (Hereinafter referred to as "ACL", which expression shall unless repugnant to the context or meaning thereof, include its successors and assignees).

AND

**Arvind Power Ltd.** a Company incorporated under the Companies Act, 1956 and carrying on the business of distribution and supply of electric energy and fly ash in the area of supply mentioned in its license at Rajasthan hereinafter referred to as "Distribution Licensee" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors & assignees).

**AND WHEREAS** parties has mutually decided to enter into this credit facility agreement under certain terms and conditions mentioned below.

- A. That ACL shall mandatorily purchase 80% of the power generated by APL. In the event, ACL is not able to consume the entire output generated by APL, APL may sell the balance power to a third party and ACL shall be liable.
- B. That ACL shall provide APL with the necessary transmission facility to transfer power to the grid within a period of 5 years from the scheduled date of commencement of operations of the power plant.
- C. That ACL shall make minimum payments to the APL to meet the expenses, taxes and debt-service obligations to the lenders of the Captive Power Plant even if no sale of power happens in any given year
- D. That APL to supply fly ash generated from the power plant to the manufacturing unit as a raw material for the cement plant.
- E. That in pursuance of clause 6 of Guidelines by Rajasthan Electricity Regulatory Commission for Development, Management and Operations of Off-Grid Distributed Energy Generation and Supply, the *Rural Local Body* has granted consent to Rural System Operator to establish Off-Grid electric power generation an fly ash generation facility in the Project Area situated at Rajasthan.
- F. That the rural System Operator intends to own and/or operate an electric power generation facility using Off-grid power Energy System (ORES). Rural System Operator

desires to operate such generation in the area of Distribution Licensee and sell a portion or all of the power produced to the Distribution Licensee. The Distribution Licensee has no direct financial involvement in the investment, construction, operation, or maintenance of Rural System Operator's generation facility.

- G.** Term of the Power Purchase Agreement shall be for 5 year supply of the Off-Grid Energy System as per the order issued by State Electricity Regulatory Commission for different off-grid RE applications, from the date of commercial operation of the power plant. The Power Plant will be commissioned by year 2006 unless extended by SREDA/Distribution Licensee.
- H.** The PPA may be terminated either by the Rural System Operator or the Distribution Licensee only in the event of default by Distribution Licensee or the Rural System Operator respectively.
- I.** Default by Distribution Licensee will mean non-payment or partial payment of electricity charges for a period of consecutive three months.
- J.** Default by Rural System Operator shall mean non-supply of electricity generated and delivered at the Delivery Point for a period of consecutive three months for reasons exclusively attributable to the Rural System Operator.
- K.** The terms and conditions of this Agreement are arrived at by the mutual consent of the parties hereto.

**AGREED, SIGNED AND DELIVERED**

**ARVIND CEMENT LIMITED**

Through its authorized signatory

**ARVIND POWER LIMITED**

Through its authorized signatory

**7 – Application of APL for Avoidance of 100 Acres Mortgage Land**

---

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**AT HYDERABAD**

---

**COMPANY APPLICATION NO. (IB) \_\_\_\_\_ (Hyd.)/2018**

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

PEOPLE'S BANK..... FINANCIAL CREDITOR

MAHESH KUMAR.....APPLICANT

**Application under the section 60(5)(b) of the Insolvency and Bankruptcy Code, 2016 to submit that mortgage of 100 acres land by Arvind Power Limited is an avoidable transaction**

**MOST RESPECTFULLY SHOWETH:**

1. That the Applicant Mr. Mahesh Kumar is the resolution professional of Arvind Power Limited with ICSI Insolvency Professionals Agency having registration number **IBBI/IPA/15-25/026** has filed the present application under the **section 60(5)(b)** for avoiding the transaction of 100 acres land which was mortgage by the Arvind Power Limited to its parent Company Arvind Cement Limited for mortgaging to People's Bank for the security purposes.
2. That Arvind Cement Limited was in dire need of funds of **Rs 500,00,00,000/- ( Rupees Five Hundred Crore Only)**. For the purpose of giving security to the People's Bank, Arvind Cement Limited brought management of Arvind Power Limited into the negotiations and it decided to mortgage the 100 acres land which is situated in 521, Ghanataghar Alwar Rajasthan in the of the Arvind Power Limited in favor of the consortium led by the People's Bank.
3. That the Applicant submits that as per the **IDBI vs Jaypee [2018] 93 taxmann.com 308** said transaction is avoidable transaction as it is preferential transaction as per the **section 43** of the Insolvency and Bankruptcy Code 2016 , undervalued transaction as per the **section 45** of the code and also fraudulent trading as per the **section 66** of the code.
4. That Applicant submits that it is an preferential transaction under the **section 43** of the Insolvency and Bankruptcy Code 2016, because it took place within the relevant time (which is nowhere disputed presently); the transaction is for the benefit of creditor or surety or guarantor which gives him better position in accordance with sec 53. Further according

to the **Ravindra Gopal v. Tattva & Mittal Lifespaces (P.) Ltd., [2018] 91 taxmann.com 378 (NCLT - Mum.)**, it was said that the operational debt includes service done by a person for another for consideration. Service is an intangible commodity in the form of human effort, such as labour, skill or advice. Here, ACL provided transmission facility to transfer power to grid with some other managerial and financial assistance. Therefore, ACL was an Operational Creditor of APL. Moreover, Security interest comes within the purview of preferential transaction as a creditor who is given security is being placed in a better position than an unsecured creditor. After this transaction, ACL became secured creditor from unsecured creditor thus is in beneficial position in accordance with **section 53**.

5. That the Applicant submits the as per the case of **IDBI vs Jaypee [2018] 93 taxmann.com 308** this transaction is also undervalued transaction under the **section 45** of the Insolvency and Bankruptcy Code 2016, because it is presumed that less than fair, or no, consideration to be an evidence of undervalued transaction. In the instant case, the said mortgage was made without any consideration to APL, thus an undervalued transaction.
6. At last Applicant also submits that this transaction was also intended to defraud the creditors as per the **section 66** of the Insolvency and Bankruptcy Code 2016, because; it is held in plethora of cases like **Official Liquidator v Ram Swarup, (1997) 2 Comp LJ 221; In re William C. Leitch Brothers Ltd., [1933] 3 Comp. Cas. 97; In re Peerdan Juharmal Bank Ltd.; AIR 1958 Mad.583; Nagendra Prabhu v. Popular Bank (1969) ILR Ker 340; Official Liquidator v. Ram Swarup, [1997] 88 COMP CASE 569** that-

*“where Company continues to carry on business and to incur debts at a time when it knew that no reasonable prospect of the creditors ever receiving payment, it is in general a proper inference that the Company is carrying on business with intent to defraud.”*

Here, APL was not able to pay salary to its workers since May 2017 still in September 2017 APL mortgaged his land for the benefit of ACL which could had been used for paying off APL’s own debts. Further, as per the credit facility agreement APL was required to obtain approval of lenders for creating interest in favor of anyone which was also not done. Thus, these circumstantial evidences show that the mortgage created by APL was done to defraud the creditors.

7. Therefore, in light of the aforesaid facts and premises, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to adjudge and declare that:
- c. The mortgage of 100 acres land by the Arvind Power Limited in favor of consortium of People's Bank for the benefit of Arvind Cement Limited is an avoidable transaction as the **section 43, section 45** and **section 66** of the Insolvency and Bankruptcy Code, 2016.
  - d. The said transaction should be reversed as per the **section 44** of the Insolvency and Bankruptcy Code, 2016.
  - e. Pass/ make such other order(s)/ direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

**APPLICANT**

**Mr. Mahesh Kumar**

Through its authorized signatory

Date: 24<sup>th</sup> May 2018

Place: Hyderabad

*Document Annexed for the Support of the Application*

**ANNEXURE NO. 1-**

**CREDIT FACILITY AGREEMENT**

This agreement is made as of the day of **dd/mm/yyyy** by and between

**People's Bank (the 'Lender')** a banking Company incorporated under the provisions of the Companies Act, 1956 having its registered office at People's Bank, Senapati Bapat Marg, Lower Parel (West) Mumbai 400013, hereinafter referred as "**Lender**" which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns).

**AND**

**Arvind Cement Limited (the 'Borrower')** Company incorporated under the provisions of the Companies Act, 1956, established in the year 1993 having its registered office at 55, Sajjan Vihar, Jaipur Rajasthan 302001, hereinafter referred as "**Borrower**" which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns)

**People's Bank and Arvind Cement Limited** together for the purpose of this credit facility agreement shall be referred as parties and individually as '**Bank**' and '**APL**'.

**AND WHEREAS** parties has mutually decided to enter into this credit facility agreement under certain terms and conditions mentioned below.

**TERMS AND CONDITIONS**

- A.** The Borrower hereto, being in need of money, has requested the Lender to give him a loan of **Rs.500,00,00,000** /- (**Rupees Five Hundred Crore** only) for the ordinary course of business, to which the Lender has agreed.
- B.** The Borrower hereby agrees and undertakes to return the loan of **Rs. 500,00,00,000** /- (**Rupees Five Hundred Crore** only), in installments.
- C.** For the purpose of security Borrower agrees to mortgage 100 acres land to Lender, situated at 521, Ghanataghar Alwar Rajasthan.
- D.** That if the borrower does not pay the said amount with interest when shall become due and payable under these presents, the Lender shall be entitled to sell the said land through any competent court and to realise and receive the said loan amount and interest, out of the sale proceeds of the land.

- E. The terms and conditions of this Agreement are arrived at by the mutual consent of the parties hereto.

**AGREED, SIGNED AND DELIVERED**

**PEOPLE'S BANK**

Through its authorized signatory

**ARVIND CEMENT LIMITED**

Through its authorized signatory



**8 –APPLICATION FOR RECOGNIZING THE FOREIGN PROCEEDINGS**

---

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**AT HYDERABAD**

---

**COMPANY APPLICATION NO. (IB) \_\_\_\_\_ (Hyd.)/2018**

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

CONSORTIUM LED BY PEOPLE’S BANK..... FINANCIAL CREDITOR

KELVIN MURRAY .....APPLICANT

**Application under the Article 15 of the UNCITRAL Model Law on Cross border insolvency for recognition of the foreign proceedings**

**MOST RESPECTFULLY SHOWETH:**

1. That the Applicant is the interim trustee appointed by the United States Bankruptcy court and has filed this application being the foreign representative to the Adjudicating Authority in India for the recognition of the foreign proceedings as foreign main proceedings.
2. That the Applicant submits that pursuant to Article 17 of the Model Law, a foreign proceeding can be recognized as foreign main proceeding or non-main proceeding. Here, former proceeding is deemed to take place in the state where Debtor has COMI and the later is where Debtor has an establishment. It is worthy to note, that in the absence of proof to the contrary, the registered office of a Debtor is presumed as his COMI. In the present case, COMI of ALSL lies in USA as the registered office of ALSL stands located in USA.
3. **That**, for determination of COMI, there is no particular formula, rather the court place reliance on a variety of factors which are both objective and ascertainable by third parties. These factors include *place where Debtor was incorporated, location of Debtor primary bank, the law governing the main contract of the Company, the location of main creditors*. In the present case, the fact that ALSL was incorporated in USA, all the banks stand deemed US based banks. Further, these banks having approached the US court for insolvency proceedings, itself convey that COMI of ALSL lies in USA as USA is readily ascertainable by creditors.
4. Further, the mere fact that decision of the co. is taken from other place than its registered office is not enough to rebut the presumption as there is no reason why a third party would

have any knowledge of the location of the place from where the director manage the Company's affairs. Reliance must be placed on *Re Sphinx Ltd* case where the court regarded registered office as place of COMI, even though decision for management are taken from any other place.

5. That the article 25 and 26 of the Model Law law mandate cooperation between the domestic & foreign Court or foreign representative. Therefore, in the present case, cooperation must be provided to Mr. Murray as the present case falls under Art. 1 of the Model Law as assistance is sought domestically by a foreign representative. Therefore, cooperation must be provided for the loan of 100 million to Mr. Murray as per the forms referred under Art. 27 of the Model Law.
6. Thus, in light of the aforementioned facts, it is most humbly requested -
  - a. To recognize foreign proceeding as foreign main proceeding.
  - b. To provide cooperation to Mr. Kelvin Murray for the loan of 100 Million which is provided by ALSL to ACL.

**APPLICANT**  
**KELVIN MURRAY**  
**Foreign Representative**

**9 – APPLICATION OF APL FOR IMPLEADMENT**

---

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**AT HYDERABAD**

---

**COMPANY APPLICATION NO. (IB) \_\_\_\_\_ (Hyd.)/2018**

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

CONSORTIUM LED BY PEOPLE’S BANK..... FINANCIAL CREDITOR

MAHESH KUMAR.....APPLICANT

**Application under the section 60(5)(b) of the Insolvency and Bankruptcy Code, 2016 to  
impleaded Arvind Power Limited in the suit of Arvind Cement Limited**

**MOST RESPECTFULLY SHOWETH:**

1. That the Applicant Mr. Mahesh Kumar is the Resolution Professional of Arvind Power Limited with ICSI Insolvency Professionals Agency having registration number **IBBI/IPA/15-25/026** has filed the present application under the **section 60(5)(b)** submitting that Arvind Power Limited should be impleaded.
2. That the Applicant submits that Arvind Power Limited is wholly owned subsidiary and an Operational Creditor to Corporate Debtor hence their presence will enable the tribunal to adjudicate more effectually and completely.
3. That Applicant relies on the case of case of **S.Krishnan v Rathinavel Naicker and Others 2006 Indlaw MAD 1973** where **High Court** laid down the test that: “

*“A party can be impleaded when the relief prayed for in the proceedings is sought to be made binding on him or when it is felt that he would be adversely affected by the ultimate outcome of the proceedings.”*

Furthermore, as per the case **Terai Tea Co. pvt. Ltd. v. Kumkum Mittal AIR 1994 Cal 191** where it was held that the if a legal right of a person is affected if not added as a party then such person should be impleaded. If there is a question which cannot be settled without such impleadment then it must be allowed by learned Tribunal. Therefore, it is prayed before the tribunal that Arvind Power Limited should be impleaded in interest of its rights.

4. In light of the aforesaid facts and premises, it is most respectfully prayed that this Hon’ble Tribunal may be pleased to adjudge and declare that:
  - a. Arvind Power Limited should be impleaded in the suit of Arvind Cement Limited.

- b. Pass/ make such other order(s)/ direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

**APPLICANT**

**MAHESH KUMAR**

**(Resolution Professional of Arvind Power Limited)**

Through its authorized signatory

Date: 28<sup>th</sup> August 2018

Place: Hyderabad

**10 – APPLICATION OF JMCL FOR ACCEPTANCE OF RESOLUTION PLAN**

---

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**AT HYDERABAD**

---

**COMPANY APPLICATION NO. (IB) \_\_\_\_\_ (Hyd.)/2018**

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

CONSORTIUM LED BY PEOPLE'S BANK..... FINANCIAL CREDITOR

JM CEMENT LIMITED.....APPLICANT

**Application under the section 60(5)(a) of the Insolvency and Bankruptcy Code, 2016  
to submit that JMCL's Resolution Plan should be accepted**

**MOST RESPECTFULLY SHOWETH:**

1. That the Applicant is incorporated under the Companies Act, 1956 having its registered office at M-21, Kunji Shetra, New Delhi 110546, filed the present application before the Hon'ble Tribunal to have its Resolution Plan accepted by the Resolution Professional of Arvind Cement Limited.
2. That the Applicant submitted its revised Resolution Plan by offering a 10 percent haircut for the Financial Creditors. But, this was not accepted as it was submitted after the last date of the submission of resolution plan fixed by the Resolution Professional.
3. That it is submitted that as per the **Regulation 39 of CIRP regulations** provides that a Resolution Plan could be accepted if it is submitted 30 days before the completion of CIRP proceedings.
4. Furthermore, the Applicant relies on the case of **Punjab National Bank vs. Bhushan Power & Steel Ltd., [2018] 92 taxmann.com 369**, where it was held that if considerable time is still left before completion of CIRP process then even if Resolution Plan is submitted after the deadline set by RP or COC should be taken into consideration. In the instant case, the Resolution Plan submitted by JMCL on **19-10-2018** which is clearly falling within the time limit.
5. That reliance is made on the of **Bank of Baroda, In re vs [2018] 93 taxmann.com 331 (NCLT - Kolkata)** the same issue was raised the **Hon'ble Tribunal held** that "*whenever a resolution Applicant's plan is under consideration of Committee of Creditors (CoC) and that plan is not at all placed before Adjudicating Authority for approval and if another resolution Applicant comes forward making an offer before CIRP duration expires, that it*

*will satisfy all stakeholders of Corporate Debtor, then there is nothing in Code or Regulations to prevent CoC from considering a revised offer of another Applicant. If a resolution Applicant is willing to present the revised Resolution Plan then COC should directed to reconsider the Resolution Plan".* Hence, the Resolution Plan submitted by JMCL should be considered.

6. In light of the aforesaid facts and premises, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to adjudge and declare that:
  - c. The Resolution Plan of JMCL should be accepted by the Resolution Professional of Arvind Cement Limited and the Committee of Creditors.
  - d. Pass/ make such other order(s)/ direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

**APPLICANT**  
**JM Cement Limited**

Through its authorized signatory

Date:

Place: Hyderabad

**IN THE MATTER OF**

ARVIND CEMENT LIMITED.....CORPORATE DEBTOR

On Behalf of

CONSORTIUM LED BY PEOPLE'S BANK..... FINANCIAL CREDITOR

POOJA PRAKASH.....APPLICANT

**Application under the section 12 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 40 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for extension of Corporate Insolvency Resolution Process**

**MOST RESPECTFULLY SHOWETH:**

1. That the Applicant Ms. Pooja Prakash is the Resolution Professional of Arvind Cement Limited with ICSI Insolvency Professionals Agency having registration number **IBBI/IPA/52--31/014** has filed the present application under the **section 12** of the **Insolvency and Bankruptcy Board of India** read with **Regulation 40** of the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016** of the for the extension of the Corporate Insolvency Resolution Process by 90 days.
2. That the Applicant submits that according to the 7<sup>th</sup> meeting of Committee of Creditor of the Corporate Debtor held on **27.08.2018** the Creditors resolved to file an extension of CIRP to another 90 days.
3. Therefore, it in the light of the aforementioned facts it is humbly requested to the Hon'ble Tribunal to extend the CIRP by 90 days.

**APPLICANT  
POOJA PRAKASH**