

In the National Company Law Tribunal
Mumbai Bench.

MA 35 of 2018 in CP No.1132/I&BC/MB/MAH/2017

Application Under **Section 30(1) & (6)** and **Order under section 31** of Insolvency &
Bankruptcy Code 2016

In the matter of

Raj Oil Mills Limited
Registered Office : 224, Bellasis Road,
Mumbai – 400 0089.

Order delivered on: 19.04.2018

Coram:

~~Hon'ble Shri M.K. Shrawat, Member (Judicial)~~
~~Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)~~

For the Petitioners : 1. Mr. Ami Jain, Advocate for Resolution Professional;
2. Mr. Rajendra Ganata, Resolution Professional;
3. Ms. Zahra Baldiwala, i/b. Kartikeya and Associates.

For Respondents : 1. Mr. Himanshu C. Desai for i.a. party
2. Mr. Zubin Behramkambin,
3. Ms. Radhika Gupta, i/b Wadia Gandy & Co. (for
SICOM Limited);
4. Mr. Nishit Dhruva,
5. Ms. Khushboo Shah Rajahi, } For Rubberwala
6. Mr. Rohan Agarwal, i/b } Housing, (Successful
MDP & Partners } Resolution Applicant).
7. Mr. Vinay Deshpande, a/w
8. Ms. Meenakshi Mhapankar,
i/b. V. Deshpande & Co. for the SVC Co-op. Bank. Ltd.

For Interveners : 1. Mr. Rashid Boatwalla, Advocate a/w
2. Ms. Suchita Valjee, Advocate, a/w
3. Ms. Rashi Agarwal, Advocate i/b
Manilal Kher Ambalal & Co. appearing on behalf of
Interveners for Edelweiss Asset Reconstruction
Company.

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

ORDER

1. An Application has been moved on 17.01.2018 by the Learned Resolution Professional by invoking the Provisions of Section 30(6) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) 2016 for **approval of a Resolution Plan**. On receiving this Application along with Resolution Plan an **Order** is hereunder passed as prescribed **U/s 31(1) of The Code**.



2. The Corporate Debtor **M/s. Raj Oil Mills** had filed a **Petition by invoking the Provisions of Section 10 of The Code** read with Rule 7 of The Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016 on 23rd of June, 2017.

2.1. After considering the merits of the case, the said Petition was **admitted** vide an **Order dated 10.07.2017 (TCP No.1132/I&BP/NCLT/MB/2017)**. Initially Mr. U.V.G. Nayak, Chartered Accountant was appointed as IRP. The said IRP had carried out the duties assigned under the I&B Code, namely:-

- (a) Published the commencement of CIRP in newspapers on 15.07.2017;
- (b) Constituted the Committee of Creditors and called First meeting on 09th August 2017 ;
- (c) Appointed two Valuers to determine the Value of the assets.

2.2. A Resolution was passed by the Committee of Creditors for substitution of the IRP, as a consequence, a Miscellaneous Application (MA No.362/2017) was moved on 24.08.2017. Vide an Order dated 15.09.2017, the NCLT has approved the substitution by **appointing Resolution Professional Dr. Rajendra M. Ganatra**. It was also directed to outgoing IRP to hand over all the information collected by him as prescribed U/s 23(3) of The Code. It is worth to mention that "**Information Memorandum**" as prepared by the IRP has recorded certain inconsistencies in the Corporate Debtor's record. An information is available that the Financial Statement for the year ended on 31st March, 2016 had not been adopted by the Shareholders of the Corporate Debtor due to the reason that a Stay was granted by the Hon'ble High Court for holding AGM on 30.09.2016. The Memorandum had also consisted an information that, quote "*the corporate debtor had issued 7,00,000 CDRs at US\$11.084 each representing 35,000,000 equity shares on 26.07.2012 as per the Offering Circular. The amount raised in GDRs was US\$ 77,589,800/- (Rs. 42.97 crores approximately). The said GDRs were listed on the Luxemburg Stock Exchange. Necessary documents with regard to receipt of the GDR amount and inward remittance were not made available for review,*"

2.3. Third CoC meeting was held on 14.11.2017 wherein the I.M. was discussed and certain irregularities have also been highlighted in the discussion. It was noticed that the Corporate Debtor had recorded fictitious Sales and Purchases, further wrongfully written off certain accounts. There were several instances of irregularities which were also informed in the



report and also through a separate Application. An Order on this Application is yet to be passed i.e. pending for disposal. In this meeting it was also decided to **invite Resolution Plan U/s 29** of The Code based upon the Revised I.M. Again on 15.11.2017 Advertisement was published inviting "**Expression of Interest**" (EoI).

2.4. Three Resolution Plans were received for consideration submitted by the following Resolution Applicants:-

- a. Dipti Vegoils Ltd (DVL);
- b. Rubberwala Housing and Infrastructure Ltd. (RHIL); and
- c. Recon Oil Industries Pvt. Ltd. (Recon).

2.5. Fourth CoC meeting was held on 30.11.2017 and the Resolution Applicants were asked to furnish improved offer in the Resolution Plan.

2.6. On Fifth CoC meeting held on 07.12.2017 it was observed that the Resolution Plan submitted by the 'Recon' was not admissible. The two Plans of DVL and RHIL were left for final decision. However, on 08.12.2017 a Revised Resolution Plan was submitted by the said two entities.

2.7. Sixth CoC meeting held on 19.12.2017 and the improved Resolution Plans were placed for consideration. The CoC again impressed upon the improvement in the respective Resolution Plans. It has also been communicated that a final Revised Plan be submitted by 21.12.2017.

2.8. During this interregnum, 180 days were scheduled to expire on 06.01.2018. As a consequence, an Application was submitted (MA No.5/2018) for **seeking extension of 90 days**. The said Application was **allowed** by this NCLT Bench vide **Order dated 05.01.2018**.

2.9. An E-Voting was held in accordance with Regulation 26(4) of the CIRP Regulations. The CoC had voted in favour of the Resolution Plan submitted by **RHIL jointly with Mukhi Industries Limited (MIL) by 77.68% voting**.

2.10. The Resolution Professional has also communicated that in the light of the newly introduced Section 29(A) [with retrospective effect from 23/11/2017 Insolvency & Bankruptcy Code (Amendment) Act 2018] to be read with Regulation 39(3) of CIRP Regulation, a report U/s 30(2) of The Code has also been submitted. The main feature are stated to be as under :-



RP'S OBSERVATIONS ON COMPLIANCE WITH SECTIONS 30(2)(a) TO 30(2)(f) OF THE CODE

Sec.	Requirement	RP's observation
30(2)(a)	Insolvency Resolution Process costs	RA has provided for the payment of insolvency resolution process cost estimated at Rs. 60 lakhs in terms of Regulation 38(1) of CIRP Regulations. Assuming that the resolution process is concluded in the prescribed 180 days, the provision of Rs. 60 lakhs meets the requirement under this section.
30(2)(b)	Repayment of the debts of operational creditors	In terms of Regulation 38(1)(b) (erroneously mentioned as 38(2) by the Resolution Professional) of CIRP Regulations, no repayment of liquidation value arises since (i) the liquidation value of Rs. 22.83 crore (average of two valuations) is substantially lower than secured dues of Rs. 178.77 crore as on the insolvency commencement date, i.e. 10.07.2017, and (ii) the resolution plan offered by the RA of Rs. 62.22 crore to all the creditors is lower than the dues to secured creditors. Nevertheless, the RA has provided for the payment of Rs. 1.22 crore to the operational creditors, barring statutory liabilities. Since the RA has provided more amount to be paid to the operational creditors, the requirement under 30(2)(b) is treated as met in principle.
30(2)(c)	Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan	The RA has provided for the management of the affairs of ROML by stating that that one of the directors of MIL Mr. Sufyan Maknojiya who has knowledge, experience and expertise in the edible oil industry will manage and operate the company. This section implies successful management of the affairs of the corporate debtor since the resolution plan is indeed meant for successful resolution barring force majeure events. The probability of successful management has to be examined at two levels, i.e. at the conceptual level, and the feasibility level. While the RA's proposal about a professional in oil industry will manage and operate the company is conceptually in order, it needs to be examined for feasibility. Establishing feasibility requires financial and execution credentials with requisite size, apart from the financial viability of proposed investment so that the COC is assured of the RA's ability to successfully implement the resolution plan. Detailed evaluation is covered in this report later.
30(2)(d)	Implementation and supervision of the resolution plan	RA stated that the resolution plan after approval by the adjudicating authority will be implemented in 90 days. Implementation in 90 days is not feasible since the plan period is 15 quarters after initial payment. The plan implementation will involve infusion of RA's equity of Rs. 11.25 crore, unsecured loans of Rs. 34.85 crore over 15 quarters achieving projected cash accruals and utilization thereof to meet the obligation under the plan.



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		<p>The affairs of the company during the implementation period of 4 years will be supervised by Supervision Committee consisting of Managing Director, Representative of Secured Creditors Auditor of the company and one independent Auditor.</p> <p>The report of the supervision committee will be furnished to the appropriate authority as and when required, shall be placed before Board of Directors.</p> <p>During the implementation period company shall not make any investment in shares and securities, shall not give loans and advances which are not related to business shall not sale, transfer undertaking of major part of Plant & Machinery, and there shall not be change in the management of the company without prior approval of outstanding secured creditors.</p> <p>The affairs of the company will be subject to internal and Concurrent audit, the report will be placed before supervising committee.</p> <p>The operations of the company will be audited for Technical and Risk factors. The report will be placed before supervising committee.</p>
30(2)(e)	Does not contravene any of the provisions of the law for the time being in force;	<p>This has been deemed to have been complied with in principle, based on notarized affidavit in respect of section 29A of the Code, and declarations as to compliance with Regulation 38(3). The status of compliance of Regulation 38(3) is as under:</p> <p>38(3)(a): Identity: Complied with. KYC documents submitted.</p> <p>38(3)(b): Complied with. Covered in the affidavit u/s 29A</p> <p>38(3)(c): Complied with.</p> <p>38(3)(d): Complied with.</p> <p>38(3)(e): Complied with. This has been checked in the RBI's willful defaulter's list. The RAs' name does not figure in RBI list.</p> <p>38(3)(f): Complied with. The names do not figure in SEBI list of debarred entities. The RA partners are not listed.</p>
30(2)(f)	Conforms to such other requirements as may be specified by the Board	<p>Compliance with sections 29A of the Code and Regulations 37 and 38 has been handled by examining and evaluating compliances which relate to structuring and feasibility of the resolution plan. Other requirements relating to certain acts of the RA have been treated as complied with in principle based on declarations or affidavit.</p> <p>RA's compliance with section 29(A) of Code has been treated as complied with in principle based on notarized affidavit by the RA. In this regard, following points are noteworthy:</p> <p>In respect of NPA status, the RA's declaration has been relied upon since the RP does not have access to CIBIL data. It is suggested that the COC members may use their accessibility to CIBIL data and ascertain the status.</p> <p>In respect of criminal cases pending / convictions also, the RA's declaration has been relied upon since the RP does not have time and</p>



	<p>resources to ascertain the same. In this regard, information from internet search was conducted to get information for specific news on any of the promoters on this issue. In this connection, the following link was indicative of issues with Mr. Tabrez Rubberwala:</p> <p>https://www.facebook.com/bandranewsmumbai/posts/1002631079815067</p> <p>The link carries a letter dated May 18, 2016 from AH Khan of Adarsh Samaj Sevak Sangh, Mazgaon (ASSM - an NGO), addressed to (i) chief minister of Maharashtra, (ii) home minister of Maharashtra, and (iii) director general of police, Mumbai, complaining that ASSM had come to know about several complaints and cases against Mr. Tabrez Rubberwala at J.J. Police station (CR 10/15), Pydhonie police station (FIR No. 318/2012), Agripada police station, etc. ASSM further stated that Mr. Tabrez Rubberwala was cheating poor people in the name of construction, was a habitual cheater and requested for cancellation of police protection given to him.</p> <p>In view of the fact that such information is not available in the public domain, the veracity of the accusations against Mr. Tabrez Rubberwala cannot be established. However, Mr. Tabrez sent notarized affidavit confirming compliance with section 29A which also requires confirmation that the person has not been convicted with any offence punishable with imprisonment for two years or more. The company has also confirmed compliance with CIRP regulations 38(3)(c). As such, compliance with section 29A and regulation 38(3)(c) is treated as complete in principle.</p>
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2.11. The Resolution Professional has thus submitted his comments as prescribed U/s 30(2)(a) to Section 30(2)(f) of the Insolvency Code, revolving around the Resolution Plan submitted by RHIL and MIL jointly. The said Report contained all necessary statics as prescribed under the Code, hence submitted for due consideration of the Committee of Creditors. The most important part is the commitment on the part of the Resolution Applicant. It is informed that the **Resolution Applicant is committed to pay a sum of ₹6224 Lakhs** to the Creditors as against the Liquidation value of ₹2283 Lakhs. Further, the commitment is to invest ₹1260 Lakhs, (i) towards Plant Refurbishment ₹200 Lakhs, (ii) Working Capital ₹1000 Lakhs, (iii)-Insolvency Resolution Process cost ₹60 Lakhs. **Thus the aggregate comes to ₹7484 Lakhs.** The assurance is that a sum of ₹6224 Lakhs which is committed towards payment to Creditors shall be cleared in 15 quarters after approval of the Resolution Plan. The summary of the total commitment is as follows:-

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Quarter	Rs. Lakhs	Remarks
EMD	558	These payments relate to secured financial creditors viz. Edelweiss ARC (Rs. 2700 lakhs), SVC Cooperative Bank (Rs. 2050 lakhs), Citi Bank, and Bank of Baroda (Rs. 42 lakhs), and unsecured creditors viz. L&T Home Finance (Rs. 3 lakhs), SICOM (Rs. 107 lakhs), SIDBI (Rs. 28 lakhs), IFCI Factors (Rs. 110 lakhs) and Fixed Deposit holders (Rs. 536 lakhs). The total amount payable to Financial Creditors (excluding ICD and individual creditor) is Rs. 4635 lakhs till 8 quarters. Thus total amount payable to financial creditors works out to Rs 5576 lakhs. The instalments do not carry any interest.
On Approval by AA	505	
Initial (within 90 days from approval by AA or by 25.03.2018, whichever is earlier)	818	
1	437	
2	437	
3	437	
4	737	
5	197	
6	191	
7	159	
8	159	
9	160	
10	160	
11	160	
12	160	
13 to 15	300	Three remaining quarterly payments of Rs. 100 lakh each out of the above allocation
	639	These relate to payments to operational creditors (Rs. 122 lakhs) Payments for statutory liabilities of Rs. 34669 lakhs is proposed at 1% i.e. Rs. 346.69 lakhs in 4 quarterly instalments Payment of workers dues (Rs. 170 lakhs)
	7	ICD and individual creditor
Total to creditors	6224	
Insolvency resolution cost	60	
Plant refurbishment	200	
Working capital	1000	
Total Resolution Cost	7484	



2.12. Resolution Professional has examined the **year-wise cash outgo** of the Resolution Applicant and the figures stated to be as under :-

Financial year	Initial - 2018	2019	2020	2021	2022
Payments to creditors	2098	2052	710	1064	300
Resolution cost	60				
Plant refurbishment	200				
Working capital	500	500			
Total	2858	2552	710	1064	300
Grand Total	7484				

2.13. An important aspect is to ascertain the arrangement of the finances by the Resolution Applicant. As per the following chart, the proposed means of finances duly committed by the Resolution Applicant is reproduced below:-

Financial year	Initial -2018	2019	2020	2021	2022
Issue of new equity shares to new promoters	1125				
Loans from new Promoters	1733	1752			
Accruals used for debt restructuring plan		800	710	1064	300
Total	2858	2552	710	1064	300
Grand Total	7484				



2.14. The Application submitted by the Learned Resolution Professional also contains the **Financial Performance of the Resolution Applicants** along with the Profits earned in the past few years. An analysis has been made about **Earning Before Income Tax, Depreciation and Amortization (EBITDA)**. The Resolution Applicant's comment is that the operations are modest with net worth of Rs. 738 lakhs and capital employed of Rs. 767 lakhs as on 31.03.2017. It had recorded 83% decline in sales and 73% decline in total income due to substantial increase in inventory of 369% during FY-2017. This is consistent with the slump in the construction industry which has large unsold inventory. As a result, the company continued to have significant negative cash flow during the above period, commented by Learned Resolution Professional. The accepted fact is that the Company continued to face Liquidity strain. Because of the said reasons the Resolution Professional had raised an objection that it was unclear how the Resolution Applicant would make any contribution as proposed to infuse ₹43.42 crores for ROIL take over during the next 2-1/2 years. This question was raised and to get an answer, a Chartered Accountant of Resolution Applicant made a representation on the said Resolution Plan to the Committee of Creditors and some of the salient features are as under:-

(a) the three promoters had about Rs. 25 crore in their capital account from which investible surplus would be deployed (no estimate or details of investible surplus was available), and,

(b) the company had two contracts valued at Rs. 75 crore and the cash-flow from those projects would be deployed for the commitment in ROIL."

2.15. It has also been informed that on MCA search it was found that the Promoters have promoted six Companies including Rubberwala Housing and Infrastructure Ltd. (RHIL). Track record of the Resolution Applicant has also been examined. It has also been informed that RHIL is banking upon the background of Mukhi Industries Ltd. (MIL). The net worth of MIL as on 31st March, 2017 and the paid up capital stated to be ₹254 lakhs, however there were no operations during last two financial years. The Committee of Creditors had accepted the feasibility of the projected infusion of Promoter's contribution. The Resolution Plan which was received on 08.12.2017 was placed for consideration before Committee of Creditors on 19.12.2017. After discussion the Committee of Creditors had taken the following decision:-

- (a) The revised resolution plan with the figures as submitted by the RAs as per the format given by the COC today may be submitted latest by 12 noon on December 21, 2017.
- (b) The revised resolution plan should not have any condition linked to proposed payment to the creditors though it may have conditions relating to required waivers / forbearances from various government authorities / agencies.
- (c) The revised resolution plan should cover all the extant provisions / regulations including under regulations 37 and 38. It should specifically indicate the amount payable to the dissenting creditors, the equity structure proposed in the plan in terms of subscription amount, and percentage holding by the RA, public, and other entities if any. Besides it should propose one or more agencies for management of the affairs of the company and implementation and supervision of the resolution plan, after approval of the resolution plan.
- (d) The RA must deposit 10% of the total amount committed to the creditors as per the resolution plan by December 21, 2017 by 3:00 pm in the escrow account with SVC as advance. Particulars of the account would be communicated to the RAs immediately.
- (e) The above account will be treated as Escrow Account (EA). In case the resolution plan of any resolution applicant (RA) is rejected, the advance will be remitted back to the RA immediately. Towards this, RA has to submit bank account details for returning the amount if necessary. In case of acceptance of resolution plan of an RA, the amount will be retained in the EA and distributed among the creditors as proposed in the resolution plan, immediately upon approval by the NCLT. If however, the resolution plan is rejected by NCLT, the amount will be returned to the RA immediately upon receiving the NCLT order.
- (f) If the RA fails to remit the full advance as above, its resolution plan will not be considered by the COC.
- (g) Release of existing personal guarantees / collaterals will not be acceptable in the resolution plan.

2.16. In the light of the said requirement as stipulated by Committee of Creditors, a final Resolution Plan was submitted by the RAs jointly. The said two Resolution Plans were put to e-voting. In terms of **Regulation No. 25(2)** the COC voted for the final Resolution Plan submitted on 20-12-2017. The result of the voting was that 77.68% assenting votes,



18.91% dissenting vote and 3.41% remained absent. In terms of the notification dated 31.12.2017 issued by IBBI, a "dissenting financial creditor" means a Financial Creditor who voted against the Resolution Plan or abstained from voting. In this case, since the voting on Resolution Plan under consideration was concluded on 22.12.2017 i.e., before the notification date, hence the Insolvency Professional had made a request that 3.41% abstaining voters may be treated equivalent to "assenting Creditors". The Resolution Plan finally so approved thus provided Rs.7,484 lakhs containing the following three main components :-

(i) an amount of Rs.6224 lakhs payable to the creditors, (ii) insolvency resolution process cost of Rs. 60 lakhs (iii) plant refurbishment cost of Rs.200 lakhs and working capital of Rs.1000 lakhs.



- 2.17. An important issue was raised from the side of RA that whether on approval of the Resolution Plan the RA should be held liable, responsible or convicted in respect of any disclosed or undisclosed litigation of Raj Oil Mills ? In the Resolution Plan it is expressed that there shall be no responsibility, however the Resolution Professional had not made any comment on this proposal.
- 2.18. Likewise, one more suggestion of RA was that the RA shall not be responsible or charged for any act or omission prior to the date of approval of the Resolution Plan. There was no comment of Resolution Professional on this issue as well.
- 2.19. Further, RA has also put a condition that he shall not be responsible for any claim, damage, penalty, attachment, etc. if any imposed under Assessment proceedings or execution of any Judgment or Decree of any Court of Law. However, the Debtor Company had not received any claim from the side of the Income Tax Department towards Income Tax liability. It is also demanded that on acceptance of the Resolution Plan no property of the Company be recovered under any Order, Judgment, etc. Any property over which the Lenders or the Government Body has exercised their control belonging to the Corporate Debtor, should be released from lien subject to approval by Adjudicating Authority. On payment of the amount settled the Secured Creditors shall vacate the charge and the mortgage on the property or personal guarantee. **This condition was not acceptable to Committee of Creditors.**

2.20. In respect of the **payment to Workers and Employees**, RA had undertaken to make payment of the outstanding dues of Workers and Employees. This was **accepted by the Committee of Creditors**. The Resolution Professional has accepted the claim of Workers and Employees, as admitted by the Resolution Applicant.

2.21. As per the details of the Accounts, RA had noticed that in all there are 1,483 Fixed Depositors. In terms of the Resolution Plan and also accepted by the Committee of Creditors **U/s 30(4) of The Code**, the RA had proposed to pay 100% of the Principal i.e. 5.36 Crores in four equal quarterly instalments starting from 5th quarter i.e. 90 days after approval of the Resolution Plan.

2.22. It was resolved that the Resolution Professional is required to hand over the charge of affairs of "Corporate Debtor" i.e. Raj Oil Mills along with Books of Accounts, Asset of the Company, Documents, Agreement, etc.

2.23. Further, it has also been resolved that all the rights in terms of lease, tenancy etc. shall continue to be the property and rights of the incoming Company (RA) without any hindrance. **The Debtor Company is having an office at Bellasis Road, Mumbai Central which is stated to be a tenanted property and the Landlord of the property is a Firm called M/s. Raj Builders.** The said Landlord had sent a request to Resolution Professional seeking vacant possession of the said premises stated to be occupied by the Respondent Corporate Debtor. Before the Company could hand over the vacant possession the CIRP was commenced with effect from 10.07.2017. As a consequence, 180 days Moratorium had also commenced which had ended on 06.01.2018. Admittedly, during the period of "Moratorium" no change in the Assets of the Company - whether tangible or intangible - was permissible under the Insolvency Code, hence maintained the status quo. **M/s. Raj Builders, owner / land-lord, had not filed its claim for overdue rental as operational creditor.**

It is worth to clarify at this juncture itself that the incoming Resolution Applicant i.e. RHIL and MIL are stepping into the shoes of the outgoing Concern i.e. M/s. Raj Oil Mills. Due to this reason, the office premises shall not be changed/vacated by this Order. It shall depend upon the Terms and Conditions of the 'Lease Agreement' as laid down



when the tenancy was granted. Those Terms and Conditions shall be applicable on the incoming Resolution Applicants **MUTATIS MUTANDIS**.

3. Learned Resolution Professional has submitted an exhaustive "**Information Memorandum**". The background of the Corporate Debtor as per IM is that a partnership firm M/s. Raj Oil Mills was formed on February 18, 1959 with Registration no.B-8203 was engaged in the business of dealing in edible oil. On October 17, 2001 Raj Oil Mills Ltd was incorporated to undertake the business of buying, selling, manufacturing, processing of edible oils. In 2002, Company acquired business of M/s Raj Oil Mills, (partnership firm) vide Deed of Assignment with effect from April 1, 2002. In the year 2005, the Company shifted factory premises from Military Road, Marol, Andheri (East), Mumbai - 400 059 to village Ten, Manor, taluka Palghar, Thane - 401 404. Board of Directors are as under:-

Azamkhan Lohani
 Abdulla Musla
 Shaukat Suleman Tharadra
 Saryu Chimantal Vora
 Balsubramanya Hiriyannaiah Rudrapatna
 Rashidbhai Ismailbhai Tharadara
 Pragnaben Prabhulal Joshi
 Ishwarlal Dhudalal Jagania



- 3.1. As per IM at present 81 Workers are employed and 165 Other Employees are working in the Company. Company had not paid dues to its Employees since 10th July, 2017 aggregating to Rs.35,58,196/-. However, the total outstanding which includes PF, Bonus, Gratuity and Salary is to the tune of Rs.1,61,92,329/-.
- 3.2. The IM contained details of Legal matters pending, stated to be "Statutory Liability". The list contained Sales Tax Liability for several Financial Years totaling Rs.88.62 Crores and Income Tax Liabilities for which several appeals are pending totaling Rs.234.07 Crores.
4. During the period of **next four years** the affairs of the Company shall be supervised by a '**Supervision Committee**' consisting of Managing Director, a Representative of the Secured Creditors, and an Independent Auditor so that the Terms of the Resolution Plan be implemented correctly.
5. The Resolution Professional has made following Prayers:-

- (a) Consider and allow the instant MA No. 35/2018;
- (b) Consider and approve the resolution plan approved by the Committee of Creditors (CoC) u/s 31(1) of the IBC, 2016;
- (c) Consider closing the corporate insolvency resolution process of the corporate debtor on approval of the resolution plan under IBC, 2016;
- (d) Consider declaring u/s 31(3)(a) of IBC, 2016, that the moratorium u/s 14(1) of IBC, 2016, shall cease to have effect from the date the Hon'ble NCLT passes an order approving the resolution plan;
- (e) Consider passing such directions as the Hon'ble NCLT may deem fit and proper with respect various issues listed in the Table under para 49 hereinabove;
- (f) Consider directing various authorities to undertake speedy investigations and conclude the matters on various issues relating to irregularities and non-compliances as contained in the RP's 'Qualifications and Observations' enclosed at Exhibit X of the instant MA."



6. While finalizing the Resolution Plan a **Miscellaneous Application** was moved, Numbered as **MA 27 of 2018 in CP 1132 of 2017**, by **SICOM Limited** seeking a claim for a sum of Rs.1.07 Crore for due consideration. It is stated that SICOM is in the category of "Unsecured Financial Creditor" of the Corporate Debtor. As per the facts alleged therein that a **Bill Discounting Facility of Rs.15 Crores** was provided to the Corporate Debtor. The Facility was against Security of pledge of Shares held by the Directors of the Corporate Debtor. In the event of default SICOM invoked the aforesaid pledge and sold the Shares. As a result, appropriated the proceeds received towards the outstanding due. However, it is alleged that there was a Debt payable by the Corporate Debtor amounted to Rs.21,40,96,799/- as on 10.07.2017. This Applicant has raised a claim before the Resolution Professional in the following manner:-

"9. I say that under the Approved Resolution Plan, out of the aforesaid outstanding sum of Rs.21,40,96,799/- (Rupees Twenty One Crores Forty Lacs Ninety Six Thousand Seven Hundred and Ninety Nine only) SICOM was proposed to be paid an aggregate sum of Rs.1,07,00,000/- (Rupees One Crore and Seven Lacs only), with an upfront payment of Rs.27,00,000/- (Rupees Twenty Seven Lacs only) and the balance being payable in six quarterly installments. Per contra, under the Resolution Plan submitted by Dipti Vegols Limited, an aggregate sum of Rs.1,61,00,000/- (Rupees One Crore Sixty One Lacs) was proposed to be paid to SICOM with an upfront payment of Rs.1,07,00,000/- (Rupees One Crore and Seven Lacs only) and the balance being payable in eight quarterly installments. SICOM craves leave to refer to and rely upon the plan submitted by Dipti Vegols Limited when produced."

6.1. The objection is that the Applicant has **dissented** the approval of the Resolution Plan, therefore, as per the communication received, disentitled for the claim. It is informed in this Application that on 11.01.2018 the Resolution Professional addressed an e-mail stating

therein that since SICOM voted against the approved Resolution Plan hence to be treated as "dissenting Creditor" and will be entitled only to receive the Liquidation Value. In short, it is pleaded that after detailed discussion and through exchange of number of email, the representation made by SICOM was not placed before the Hon'ble Tribunal. As a result, the outcome of the Insolvency Resolution Process is prejudicial to the interest of SICOM. Through this Application SICOM is making a representation for its entitlement to receive a sum of Rs.1.07 Crore as provided in the approved Resolution Plan. The denial of payment of the legitimate due of SICOM specially when the approved Resolution Plan had made a provision for the said payment of SICOM, the decision of the RP is contrary to the scheme of the I&B Code, pleaded by the Ld. Representative of the Applicant.

6.2. Considering the totality of the circumstances and the nature of transaction with the Corporate Debtor it is appropriate that the outstanding Debt of SICOM be also considered during the process of implementation of the offered Resolution Plan. A compilation placed before us contains a list of **Unsecured Financial Creditors** and their respective claims shortlisted on 10th July, 2017. For ready reference the said list is reproduced below:-

UNSECURED LOANS					
Sr. No	Financial Creditors	Amount as per books as on 10.07.2017	Claim Amount as on 10.07.2017	Claim to be admitted	Security Interest
1	CITI Bank	0	11,99,936	11,99,936	Secured against Flat No 1 (owned by Mr. Abdulla Musla) 1 st floor, Avval Chambers, 61, Morland Road, Mumbai Central, (Main borrower as per loan agreement of Citi bank is Mr. Abdulla Musla. Raj oil mills ltd is a co-borrower. As the loan is obtained by Mr. Abdulla Musla, outstanding amount as per books of the company is NIL. However, the company is a co-borrower, bank has lodged the claim against the company. And hence, the loan is treated as Unsecured Loans)
1	L & T Home Finance Loan	65,53,562	70,34,344	68,36,499	Secured against Flat Nos 3 (owned by Ismail Suliya shareholder) & 4 (owned by Azamkhan Lohani Director), 2nd Avval Chambers, 61, Morland Road, Mumbai Central Flats owned by the directors of the company. (Main borrower as per loan agreement of Citi Financial is Abdulla





UNSECURED LOANS					
Sr. No	Financial Creditors	Amount as per books as on 10.07.2017	Claim Amount as on 10.07.2017	Claim to be admitted	Security interest
					Musla Raj oil mills ltd is a co-borrower. L&T has shown Raj oil mills ltd as the borrower. Hence, treated as Unsecured Loans)
2	SICOM Limited	1,110,03,393	2140,96,799	2140,96,799	Secured by way of pledge of shares of 55,50,500 nos of the directors which have been sold due to default committed by the Company. The amount realised was appropriated towards interest dues.
3	SIDBI	240,24,622	564,24,547	564,24,547	Secured by : 1 Bills of Exchange accepted by the Company. 2 Irrevocable and unconditional Personal Guarantee of Mr. Shaukat S.Tharadra, Mr. Rashid Ismail Tharadra, Mr. Azamkhan Fatekhan Lohani and Mr. Abdulla Kalukhan Musla
4	IFCI Factors Limited	991,84,844	2206,05,202	2206,05,202	Security interest as mentioned in Form B which are as follows: 1. Deed of Personal Guarantee dated 8.8.2011 executed by Mr. Shaukat Suleman Tharadra 2. Agreement for pledge of shares dated 8.8.2011 and 3. Repayment of Cheques
5	Shaukat S. Tharadra	630,82,073	630,82,073	630,82,073	Unsecured Loan as mentioned in party's letter dated 24.7.2017
6	Abdullah K. Musla	140,62,354	147,24,682	147,24,682	Unsecured Loan as mentioned in party's letter dated 24.7.2017
7	Azamkhan F. Lohani	8,00,000	8,00,000	8,00,000	Unsecured Loan as mentioned in party's letter dated 24.7.2017
5	Mohammedi Singaporewala	23,72,000	536,45,833	23,72,000	Unsecured Loan
Inter Corporate Deposits					
1	a. Astra Capital	8,00,000	Not received	8,00,000	Claim not received
2	b. Fairtex International	12,00,000	18,34,543	18,34,543	
3	c. Harilal H. Shah	21,00,000	38,69,698	38,69,698	
4	d. Vijaykumar S Ganeriwala	15,00,000	33,36,522	33,36,522	Petition filed by his legal heir Mrs. Satyabhama V. Ganeriwala
5	Public Fixed Deposits (Unsecured)	536,86,000		536,86,000	Interest due up to the maturity date of FD was Rs. 167,38,872 as per the books of the Company. (See material litigation for matters relating to Fixed Deposit holders)
6	Deposit from Distributors	23,89,637		23,89,637	The amount admitted is as per the books of the Company. No claim has been received from any of the distributors.
	Total		24273,37,195	23766,65,517	

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6.3. It is important to clarify that the Debts owed to a Secured Creditor shall get preference over the Debts owed of Unsecured Creditors. The **Secured Financial Creditors** have preference and the list is as under:-

Secured Loans

Sr. No.	Financial Creditors	Amount as per books as on 10.07.2017	Claim Amount as on 10.07.2017	Claim to be admitted	Security Interest
1	Edelweiss Assets Reconstruction Co. Ltd (Assigned from Karur Vysya bank on 28.06.2012)	6381,83,785	13832,86,375	13832,86,375	Secured by mortgage and charge on land and building, and plant & machinery of the new plant (Refinery) at Manor, District Personal guarantee of Mr. Shaikat S Tharadra, Mr. Azamkhan F. Lohan, Mr. Abdullah K.Musla and Mr. Rashid I. Tharadra, Directors of the Company
2	SVC Co-Operative Bank Limited.	2368,59,336	4004,27,273	4004,27,273	Hypothecation of stocks and book debts Hypothecation of Plant and Machinery, Electrical Equipments & Misc. Fixed Assets installed at Village Ten, Taluka Palghar, Dist. Thane All that piece and parcel of land admeasuring at about 16000 sq.mtrs., bearing Survey No. 4 & 6, Hissa No. 1 lying, being and situate at Village Ten, Taluka Palghar, Dist. Thane, together with structures standing thereon admeasuring at about 49,649 sq.ft.s., and the plant and machinery installed / located therein. On or towards North : By Forest, On or towards South : Land of Bharat Industries On or towards East : By Forest On or towards West : By Gram Panchayat Road
3	City Bank Equity Mortgage Loan	34,84,648	36,05,092	36,05,092	Secured against Flat No. 6, Avval Co-apt Hsg Soc belonging to the Company
4	Bank of Baroda	5,44,623	5,64,211	5,64,211	Secured with Fixed deposit amounting to INR 7,87,720/-



6.4. To answer this legal question whether a "dissenting Financial Creditor" is entitled to be made a Creditor in an approved Resolution Plan, we have examined the provisions of The Code. If we read **Section 30 of I&B Code along with Regulation 38 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016** it transpires that Section 30 prescribes that a Resolution Applicant is to submit a Resolution Plan which provides for payment of Resolution Cost and simultaneously also provide for repayment of the Debts in such manner which shall not be less than the amount to be paid in the event of Liquidation of the Corporate Debtor U/s 53 of The Insolvency Code. The Regulation 38 has also specified that a Resolution Plan shall identify specific sources of Funds that will be used to pay the Liquidation Value due to

dissenting Financial Creditor and provide that such payment is made before any recoveries are made by the Financial Creditors who voted in favour of the Resolution Plan. A conjoined reading of these two provisions thus indicates that the Statute has not provided outright rejection of claim of dissenting Financial Creditor. If a Resolution Plan has a provision in respect of servicing the Financial Debt of the said dissenting Financial Creditor and that Resolution Plan in toto has been approved by the CoC then it is unjustifiable to take a view against the dissenting Creditor.

6.5. Admitted position is that SICOM has not blatantly opposed the Resolution process but in the voting held on 21/12/2017 voted in favor of Dipti Vegoils Limited on the ground that in the said Plan there was a better repayment terms favourable to him. Therefore, it is a case of giving preference to one Resolution Plan over the other one. Undisputedly this 'dissenting creditor' is otherwise part of the CoC. The CoC had approved a plan and that plan has made a provision for this Creditor, which means that his claim is in-built in the approved Resolution Plan. Resultantly, the **Miscellaneous Application 27 of 2018 submitted by SICOM is partly allowed to the extent that the sum receivable of Rs.1.07 Crore being an Unsecured Loan shall be considered only after the Settlement of the Secured Loans.**

7. **'RESOLUTION PLAN' & 'FINDINGS' :-**

Finally, after having a detailed foregoing discussion on Insolvency Process adopted so far, now the feasibility of the Resolution Plan is required to be examined. The revised Resolution Plan was submitted on 21st December 2017. Only the main feature relevant for satisfaction of the outstanding Debt are reproduced as also discussed hereunder :-

APPLICANTS CORPORATE INFORMATION

APPLICANT NO. 1

Name of the Company : RUBBERWALA HOUSING & INFRASTRUCTURE LIMITED

Registered Address: Rubberwala House, Dr. Nair Road Opp. Agripada Police Station Mumbai 400011

Corporate Address: Rubberwala House, Dr. Nair Road Opp. Agripada Police Station Mumbai 400011

CIN : U45200MH2003PLC142620

Date of Incorporation: 10/10/2003

e-mail : info@rubberwala.com

APPLICANT NO.2



Name of the Company : MUKHI INDUSTRIES LIMITED

Registered Address : Shop No. 1, 1st Floor, Kedy Shopping Centre, Belasis Road,
Nagpada Junction, Mumbai Central, Mumbai - 400008Corporate Address : Shop No. 1, 1st Floor, Kedy Shopping Centre, Belasis Road,
Nagpada Junction, Mumbai Central, Mumbai - 400008

CIN : U15549MH2016PLC288891

Date of Incorporation : 23/12/2016

e-mail : mukhiindustriesltd@gmail.com

**APPLICANTS BANKING FACILITY**

Rubberwala Housing & Infrastructure Limited and Mukhi Industries Limited are not having Banking facility from any bank.

COST AND MEANS OF RESOLUTION PLAN

We have envisaged that the payment of Insolvency cost, settlement and restructuring the debt to financial and operational creditors, the cost of refurbishing and working capital requirement works out to be Rs.74.83.

The total cost of Rs.74.83 will be funded by subscription to new equity shares, Loans from New Promoter and Internal Accruals as under:

The Cost of Resolution Plan and Means of Finance over a period of Four years is provided herein below

The Funds required for payment of earnest money of 10% of amount due to Creditors to be deposited in Escrow account, amount to be deposited in Escrow account on receipt of approval of Resolution Plan by NCLT and balance payment of initial payment by 25th March, 2018 is as per the following chart:-

Cost & Means of Finance		Rs in Cr																	
Description	TOTAL	Initial	Year 1				Year 2				Year 3				Year 4				Total
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	
Insolvency Cost	0.60	0.60																	0.60
Payment to discharge liabilities	62.23	20.98	4.38	4.38	4.38	7.38	1.98	1.92	1.60	1.60	2.66	2.66	2.66	2.66	1.00	1.00	1.00	-	62.23
Refurbishing of Existing plant & Machinery & New Equipments	2.00	2.00																	2.00
Funds required for Working Capital Total	10.00	5.00	2.50	2.50															10.00
Total Project Cost	74.83	28.58	6.88	6.88	4.38	7.38	1.98	1.92	1.60	1.60	2.66	2.66	2.66	2.66	1.00	1.00	1.00	-	74.83
Means of Finance																			
Description	TOTAL	Initial	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	Total
Issue of new equity shares to New Promoters	11.25	11.25																	11.25
Loans from New Promoter	34.84	17.33	4.88	4.88	2.38	5.38													34.84
Accruals used for debt restructuring plan	28.74		2.00	2.00	2.00	2.00	1.98	1.92	1.60	1.60	2.66	2.66	2.66	2.66	1.00	1.00	1.00	-	28.74
Total Means of Finance	74.83	28.58	6.88	6.88	4.38	7.38	1.98	1.92	1.60	1.60	2.66	2.66	2.66	2.66	1.00	1.00	1.00	-	74.83

APPLICANTS RESOURCES OF FUNDS TO PAY FOR RESOLUTION PLAN

1. Mr. S.A.Tabrez Shaikh, Mr. S.A. Humayun S.A. Shaikh and Parvez S.A. Shaikh through one of its group company Rubberwala Hospitality Pvt Ltd has entered into a term sheet dated 3rd October, 2017 with Mr. Nisar I Patel for sale of land admeasuring 1532 sq. mt. at Vileparle, Andheri

for a consideration of Rs.35 crs. which will be distributed as Rs.1.42 crs to Rubberwala Hospitality Pvt Ltd and Rs.11.19 crs. to each shareholder i.e. Tabrez, Humayun and Parvez. The consideration is scheduled to be received as under:

Balance Consideration-

2. Mukhi Industries Limited has negotiated with BOI for Term Loan of Rs. 15cr.The bank has agreed to finance the same and had issued letter dated 18th December, 2017 in principal approval for the same.

INTRODUCTION TO RESOLUTION PLAN

- Resolution applicant has placed reliance on Information Memorandum and based its proposal. Secured Creditors, Unsecured Creditors, Financial Creditors, Operational Creditors, Workers Employees, Statutory Liabilities claims as received by Resolution Professional as per regulation 7, 8 and 9 are verified and accepted will be considered for settlement payment which are submitted till approval of Resolution Plan.
- The Resolution Applicant is providing Revival Plan for Raj Oil Mills Ltd to insure continuity of business along with most effected use of assets and equipment. The production facility and infrastructure will be put to economic use. The workers and employees will continue in the employment. Additional employment to be generated by employing additional workforce.
- The company has history and business goodwill with registered trademarks and brands. This will be explored to the fullest extent.
- The applicant will induct required funds for debt restructuring and capital restructuring. The objective of debt restructuring is to satisfy the secured lenders through settlement terms and release the securities.
- The capital restructuring will reduce the capital to reasonable level to account for the losses incurred by the company in the previous year and to be with in line with Net Worth of the company.
- The Resolution applicant will induct funds for participating in the equity in the company and to own the company upto 75% of the enlarge capital. The objective is to retain the status of Listed Company in the stock exchange.
- The Resolution applicant will take over (*sic* 'over') the management of the company by inducting promoter director and independent directors. The resolution applicant has full freedom of Management of the company.
- The resolution applicant will abide by its commitment to infuse the funds requirement for initial payment and subsequent instalment in a timely manner.
- Resolution applicant has adequate resources to induct additional capital as will be required in future with the consent of BOD and Shareholders.
- Resolution Plan is in adherence to the **Regulations 37 & 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016**. Details are as per the following information forming part of this Resolution Plan.

KEY OBJECTIVES BEHIND THE RESOLUTION PLAN

The Resolution Plan envisaged by **New Promoter ('NP')** for Insolvency resolution of Raj Oil Mills Limited ('ROM') and to ensure continuity of business along with most effective use of assets and equipment of ROM is as detailed below:

- i) Resolution Plan provides for payment of Insolvency Resolution Process Cost in priority to the repayment of other debts.



- ii) Payment to Workers & Employees: NP will make payment of outstanding dues of workers and employees as per the claims received by the Resolution Professional till date of approval of Resolution Plan
- iii) Financial Re-Structuring- -Restructuring of Debts by way of settlement with Financial Creditors and Operational Creditor and payment of restructured dues over a period of 3 years.
- iv) Capital Restructuring – Reduction in existing issued and subscribed capital of corporate debtor and issue of new Equity shares on preferential allotment basis to NP.
- v) Payment to Operational Creditors and Statutory Dues - Dues to the Operational Creditors be restructured and payment to such Operational Creditors be made as per payment schedule.
- vi) **Dissenting Financial creditor** – Resolution Plan provides for payment if any required to be made to dissenting financial creditor.
- vii) Infusion of fresh funds by the promoters-Additional fresh fund will be infused by the promoters of the Applicant Company, if required.
- viii) Management – Resolution Plan provides for the management of the affairs of Raj Oil Mills Limited after approval of the Resolution Plan.
- ix) Implementation and Supervision - Resolution Plan provide for implementation and supervision of resolution plan.



INITIAL PAYMENT

In the meeting held on 19th December, 2017 Committee of Creditors have discussed the proposal of Resolution Plan. It was resolved in the meeting that the Resolution Applicant to deposit 10% of the total amount committed to the creditors as per the Resolution Plan. The amount to be deposited in HDFC bank beneficiary Shamrao Vitthal Co-op Bank, the account will be treated as Escrow account. In case the Resolution Plan of the Resolution Applicant is rejected the advance will be remitted back to Resolution Applicant. In accordance with the compliance with the condition we are **depositing Rs. 6.22cr, being 10% of total proposed payment to all the creditors of Rs.62.23cr.**

We may further add that we will **further deposit Rs.5.65cr. on approval of Resolution Plan by NCLT.** In our proposed Resolution Plan submitted earlier we had agreed for payment of initial amount. The balance part of initial amount will be paid by 25th March, 2018.

-We have committed Rs.15cr. to Edelweiss Assets Reconstruction Company Limited as initial amount. We may clarify that 10% amounting to Rs. 2.7cr. of Rs.27 cr. is getting deposited on 21st December, 2017 Rs.4.05cr. will be deposited/paid on approval of Resolution Plan by NCLT and balance Rs.5.25cr. shall be paid by 25th March, 2018.

-We have committed Rs.20.50cr. to SVC Bank as initial amount. We may clarify that 10% amounting to Rs.2.05cr. of Rs.20.50 cr. is getting deposited on 21st December, 2017 Rs.1cr. will be deposited / paid on approval of Resolution Plan by NCLT and balance Rs.2.45cr. shall be paid by 25th March, 2018.

INSOLVENCY RESOLUTION PROCESS COST

We have considered the Insolvency resolution process cost of Rs.0.6 cr. The same will be paid under this resolution plan on approval by NCLT.

PAYMENT TO WORKERS

We have perused the copy of Information Memorandum as per the point 15 on page no. 110 Resolution Professional has stated that they have received claim from some of the Ex- employees which are under review. As the amount has not been ascertained and the claims are not quantified it is not practical to make the provision for payment of the same. We have made assessment on the basis of the information in the IM that the claim of workers will not be more than 2.42 crs. To ensure that claims of the workers are settled we are willing to settle such cases at the rate of 35% of the claims admitted before approval of Resolution Plan by Adjudicating Authority subject to maximum of Rs. 0.85crores.

Workers	Claim Amount	Settlement Percentage	Maximum Amount payable under our Resolution Pan
Claims submitted under Form D or Form E (to be verified)	Rs. 2.42 Crores	@35%	Rs. 0.85 Crores

FINANCIAL RE-STRUCTURING

Secured Lenders

The claims of secured lenders are as under:

The amount outstanding of secured lenders claims admitted amounts to Rs.178.78 crores. We would like to refer note on page 25 of IM, RP has stated that "Claims to be admitted" we are presuming that RP has verified the claims and approved the amount. Liability on account claims received from secured financial creditors and approved shall not exceed Rs.178.78 crores.

We would like to state and clarify that the security offered to Edelweiss and SVC Co-op limited are not further charged or encumbered or under attachment to anyone else.

On full payment of settlement amount the secured creditor shall vacate the charges and mortgages on the property and shall release personal guarantees of Directors. The secured creditors shall handover all the original documents of properties, loan agreement and sign the required documents to release the charges.

We proposes to settle secured creditors as under:

Secured Creditor	Claim to be admitted	Amount offered for settlement
Edelweiss Assets Reconstruction Company Limited	138.32	27.00

SVC Co-op Bank Limited	40.04	20.50
City Bank Equity Mortgage Loan	0.36	0.36
Bank of Baroda	0.06	0.06
Total	178.78	47.92



The amount of settlement due to secured lenders will be paid as under:

1. Edelweiss will be paid Rs. 15 Crores as initial payment by 25th March, 2018 on approval of Resolution Plan. The balance amount of Rs. 15 Crores will be paid in four quarterly instalments. The first three quarters will be paid Rs.3 cr. per quarter and Balance Rs.6 cr. by 31st March, 2019
2. SVC Co-op bank will be paid Rs.5.5 Crores as initial payment by 25th March, 2018 on approval of Resolution Plan. The balance Rs.15 Crores will be paid in fifteen quarterly instalments of Rs.1cr. each
3. City Bank will be paid Rs.6 lakhs as initial payment and balance of Rs. 30 lakhs in Five quarterly instalments of Rs.6 lakhs each.
4. Bank of Baroda will be paid Rs.0.06 Crores as part of initial payment

PUBLIC FIXED DEPOSIT

Public Fixed Deposit is from socially weaker section and senior citizens. We intend that the small fixed deposit holders should not suffer; therefore we are proposing to settle the principal amount due to fixed deposit holders @ of 100% of the amount. The amount will be paid to the fixed deposit holders who have submitted the claims which are in the books of the company will be verified and accepted not exceeding Rs.5.36 Crores. The amount so settled shall be paid in eight quarterly instalments starting from 30th June, 2019.

Public Fixed Deposits	Amount Claimed	Settled @Percentage	Amount Settled	Quarterly Instalment (beginning 30th June,2019)
	Rs. 5.36 Crores	100%	Rs. 5.36Crores	0.67Crores

SUNDRY CREDITORS (UNSECURED OPERATIONAL CREDITORS)

The amount outstanding of sundry creditors' claims to be admitted amounts to Rs. 24.40 cr.as under:

Sundry Creditors as per books

Particulars	Amount
Sundry Creditors for goods	16,62,07,445
Sundry Creditors for Packing material	1,56,69,283
Sundry creditors for Expenses	6,21,65,646
Total	24,40,42,374

We proposes(sic) to settle liability on account of sundry Creditors @ 5% of the amount claims received, before the date of approval of Resolution Plan by Adjudicating authority.

The amount so settled with Sundry Creditors will be paid as under:

25% of settlement amount would be paid as initial amount amounting Rs. 0.12 crs. By 25th March, 2018 and balance in 6 quarterly instalment beginning 30th June, 2020.

Sundry Creditors	Amount Claimed	Settled @Percentage	Amount Settled	Quarterly Instalment (beginning 30th June,2020)
	Rs. 24.40 Crores	5%	Rs. 1.22Crores	Rs. 0.31Crores



STATUTORY LIABILITIES

Income Tax: The Company has not received any 'Claim Form' from Income Tax department towards Income tax liability. In view of the same no provision is required to be made for payment of dues on account of Income tax. RP has enumerated on page.no. 73 and 74 of IM The details of legal cases in respect of Income Tax matters. ROM has filed appeal with Income Tax Appellate Tribunal or before CIT Appeal. The subject matters of dispute are not settled and the liabilities cannot be determined. NP proposes to settle crystalized demand based on the order of Income Tax Appellate Tribunal or CIT Appeals. The amount so determined shall be settled for settlement amount of @1% of crystalized demand maximum to Rs. 2.58 crores.

The amount due on the settlement as stated above will be paid in 4 equal quarterly instalments starting from Sep, 2019.

VAT: The Company has not received any Claim Form from Value Added Tax department towards VAT liabilities. In view of the same no provision is required to be made for payment of dues on account of VAT liabilities. RP has enumerated on page no. 72 of the IM The details of legal matters with regards to VAT. ROM has filed appeals with Value Added Tax Appellate Tribunal, before Commissioner of VAT. The subject matters are not settled and the liabilities cannot be determined.

New Promoters (NP) proposes to settle crystalized demand as per the order of Value Added Tax Appellate Tribunal or Commissioner of VAT Appeals. The so determined demand will be settled for a settlement amount of @1% of crystalized demand maximum to Rs:0.89 crores. The amount due on the settlement as stated above will be paid in 4 equal quarterly instalments starting from Sep, 2019. The details are as under :

Sundry Liabilities	Amount Claimed	Settled @Percentage	Amount Settled	Quarterly Instalment (beginning 30th June, 2020)
Sales Tax	Rs. 88.62 Crores	1%	Rs. 0.89 Crores	Rs. 0.22 Crores
Income Tax	Rs. 258.07 Crores	1%	Rs. 2.58 Crores	Rs. 0.65 Crores

At the time of approval of this Resolution Plan by the Adjudicating Authority, NP seeks claim exemption from the statutory dues from the Adjudicating Authority.

CAPITAL RESTRUCTURING

Present Capital structure of the company is as under:

Particulars	Number of shares	Amount
Authorised Capital	16,00,00,000	1,60,00,00,000
1600 lakhs equity shares of FV of Rs. 10 each		
Subscribed and Paid up Capital	7,49,43,438	74,94,34,380
749.43 lakhs equity shares of Face Value of Rs. 10 each		



Net worth of the company is totally eroded. Present net worth of the company as on 31st March, 2017 is Rs.43.66 Cr. negative.

The liquidation value as valued by the approved valuer is Rs. 22.82 Cr. against the total liability of 615.72 Cr. NP has provided restructuring plan reducing the debt liability and pay the settled amount over a period of four years. The company's capital is totally eroded and the NP will be able to revive company by inducting the additional capital to provide the funds for payment of settled debts under Debt Restructuring. As per waterfall provision under section 53 of I&B code equity shareholders liquidation value is zero. As we have considered settlement amount of 5% of claim for unsecured creditors on similar lines we are proposing de-rating of equity capital to 5%. NP proposes to reduce the existing capital by 95%. The shareholders holding 20 shares will be reduced to one share of Rs. 10 each. The shareholders holding less than 20 shares will be offered coupons in the ratio of no. of fractional shares. Consolidation of 20 coupons will be offered one share. Under this process the present subscribed and paid up capital of 7,49,43,438 shares of Rs. 10 each amounting to Rs.74,94,34,380/- will reduced to 37,47,171 shares of 10 each amounting to Rs.3,74,71,710/-.

After reduction of capital NP will subscribe to 1,12,41,513 shares of rupees 10 each amounting to Rs.11,24,15,130/-.

The revised capital after subscription by NP would be 1,49,88,684 shares of Rs. 10 each amounting to Rs. 14,98,86,840/-.

Revised Capital structure of the company will be as under:

Particulars	Number of shares	Amount
Authorised Capital 1600 lakhs equity shares of FV of Rs. 10 each	16,00,00,000	1,60,00,00,000
Subscribed and Paid up Capital 749.43 lakhs equity shares of Face Value of Rs. 10 each	1,49,88,684	14,98,86,840



Shareholding pattern will be as under:

Share Holders	Percentage	No. of shares	Amount in Rs.
Promoters	75%	112,41,513	11,24,15,130
Public	25%	37,47,171	3,74,71,710
Total	100%	1,49,88,684	14,98,86,840

The Equity shares of the company are listed on BSE and NSE stock exchanges.

NP will make application to NSE & BSE for appropriate approvals and sanction for reduction of capital and allotment of new shares within the framework, rules and regulation of SEBI and any other law as make(sic) be applicable. Company will retain status of Listed company.

INFUSION OF FRESH FUNDS BY THE PROMOTERS

NP will be subscribing 1,12,41,513 shares of rupees 10 each amounting to Rs.11,24,15,130/-. In addition to this amount NP will induct Rs.32.08 Cr. by way of loan to the company. NP would induct total Rs.43.33 Crores.

In addition to the above, NP also has the capability of raising funds in normal course of business as and when deemed necessary to continue the operations of the Corporate Debtor as a going concern.



IMPLEMENTATION AND SUPERVISION

The Implementation of the Resolution Plan shall commence from the date of approval of Adjudication plan by NCLT.

The Resolution Professional to hand over the charge of affairs of the corporate Debtor Raj Oil Mills to Mr. Sufyan Maknojia. All the records, books of accounts, assets of the company documents, agreements copy shall be handed over to Mr. Sufyan Maknojia.

The affairs of the company will be managed by Mr. Sufyan as Managing Director of Raj Oil Mills Limited. The Company will operate all its products and production facilities and shall continue its operation as on going concern.

Mr. Sufyan will be supported by CEO and CFO to be appointed within shortest possible time frame. The affairs of the plant will be managed by the plant in-charge to be appointed.

All the workers and Employees shall continue in the employment. The performance of each employee will be judged on the basis of his performance, capabilities, experience and accordingly he will be assigned functions and duties.

CFO will prepare financial budgeting and forecasting under the advice of Mr. Sufyan Managing Director. Mr. Sufyan will draw plan for rehabilitation of existing plant and Machinery to support and enhance the production.

The Resolution Plan approved by Adjudicating Authority shall be implemented in 4 years from the date of approval of the order. The following chart submitted has demonstrated the total Project Cost and Means of Finance to be arranged and accruals from the Debt Restructuring Plan. The figures of this Chart are self-explanatory as follows:-

✓

Description	Year 1				Year 2				Year 3				Year 4					
Insolvency Cost	0.60	0.60	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.60	
Payment to discharge liabilities	62.24	20.98	4.38	4.38	4.38	7.38	1.98	1.92	1.60	1.60	2.66	2.66	2.66	2.66	1.00	1.00	1.00	62.24
Refurbishing of Existing plant & Machinery & New Equipments	2.00	2.00																2.00
Funds required for Working Capital Total	10.00	5.00	2.50	2.50														10.00
Total Project Cost	74.84	28.58	6.88	6.88	4.38	7.38	1.98	1.92	1.60	1.60	2.66	2.66	2.66	2.66	1.00	1.00	1.00	74.84
Means of Finance																		
Description																		
Issue of new equity shares to New Promoters	11.25	11.25																11.25
Loans from New Promotor	34.85	17.33	4.88	4.88	2.38	5.38												34.85
Accruals used for debt restructuring plan	28.74		2.00	2.00	2.00	2.00	1.98	1.92	1.60	1.60	2.66	2.66	2.66	2.66	1.00	1.00	1.00	28.74
Total Means of Finance	74.84	28.58	6.88	6.88	4.38	7.38	1.98	1.92	1.60	1.60	2.66	2.66	2.66	2.66	1.00	1.00	1.00	74.84

The company will have the option to pre pay the dues of the banks, Financial Institution, Creditors without any additional levies.

In the event of failure on the part of the company to adhere to make payments to financial creditors for an amount and in the manner and in accordance with the terms as envisaged in the scheme financial creditors should be entitled to reinstate their due to the original status as per the admitted claims by the RP along with security available to them. However the principal outstanding of each lender shall stand reduced by the amounts actually paid by the company, till such date.

Till the completion of the repayment of the entire amount of the restructured loan payable to the financial creditors, the financial creditors shall have the right to seek copies of audited financial statement.

The balance sheet of the company as on the cut-off date (date of approval of this Resolution Plan received from the Adjudicating Authority) shall stand restructured in terms of the scheme.

All the workers and employees shall continue, except in cases where they are willing to discontinue with the Corporate Debtor or are incapable to provide services.

The Resolution Plan envisages continuity of business along with most effective use of the assets and equipments.

All the Trade Marks, Brands, Goodwill will continue to be part of the assets of the company and will be used extensively for promotion and marketing of the products.



All the assets, Fixed assets, immovable (including the Land at Manor district is under attachment with Government of Maharashtra for dues payable under MVAT act which shall stand released upon the approval of this Resolution Plan by the Adjudicating Authority / moveable, Tangible/intangible, current assets, loans and advances, Investments, trade deposits, inter-corporate deposits balances with banks, cash balances shown in the books of the company, stock of goods and receivables as stated in the books of the company shall continue as assets of the company without any charge hypothecation mortgage and encumbrances unless and otherwise as mentioned as securities of secured lenders. All the assets should be handed over by RP under his control and possession to NP.

All the rights in terms of leases, tenancy shall continue to be property and rights of company without any breakage or disturbances.

RAJ OIL MILLS LTD

Projected Profit and Loss Account

Rs in Cr

Net Sales	180.00	210.00	240.00	250.00
Other Income				
Total Revenue	180.00	210.00	240.00	250.00
Variable Costs				
Raw Material Consumed	129.60	151.20	172.80	180.00
Stores and Consumables	11.89	13.52	15.45	16.09
Power Cost	4.09	4.23	4.88	4.88
Other Manufacturing Expenses	2.21	2.40	2.88	2.88
Repairs and Maintenance Cost	0.70	0.80	1.00	1.00
Manpower cost	2.00	2.40	2.70	2.70
Total Variable Costs	150.18	174.55	199.71	207.55
Opening Balance WIP				
Sub-Total	150.18	174.55	199.71	207.55
Closing Balance WIP				
Opening Balance FG				
Sub-Total	150.18	174.55	199.71	207.55
Closing Balance Fg				
Cost of Production	150.18	174.55	199.71	207.55
Fixed Costs				
Administrative & General Expenses	4.00	4.60	5.50	6.00
Sales and Marketing Costs	2.00	3.00	4.00	4.50
Total Fixed Costs	6.00	7.60	9.50	10.50
Total Operating Costs	156.18	182.15	209.21	218.05
EBDITA	23.82	27.85	30.79	31.95
EBDITA Margin	0.00%	13.23%	13.26%	12.83%
Depreciation	10.29	8.75	7.43	6.32
Interest on Term Loan/Lease Rent				
Interest on Working Capital Loan				
Interest on Unsecured Loan				
Non-Operating Expenses				
Expenses Written Off				
Total Expenditure	166.47	190.89	216.64	224.37
Profit Before tax	13.53	19.11	23.36	25.63
Applicable Tax	4.68	6.61	8.08	8.87
Profit After Tax	8.85	12.50	15.27	16.76
PAT Margin	0.00%	4.91%	5.95%	6.36%



RAJ OIL MILLS LTD

Projected Balance Sheet:-

Sources of Funds					
Shareholders Fund					
Promoters Contribution (Existing)	3.75	3.75	3.75	3.75	3.75
Promoters Contribution (New)	11.25	11.25	11.25	11.25	11.25
Reserve and Capital		8.85	21.34	36.62	53.37
Sub Total	15.00	23.85	36.34	51.62	68.37
Loan Funds					
Loan from Promotor	17.33	34.85	34.85	34.85	34.85
Deferment of Cost of restructuring etc	41.26	20.74	13.64	3.00	0.00
Sub Total	58.59	55.59	48.49	37.85	34.85
Total Sources	73.59	79.44	84.83	89.47	103.22
Application of Funds					
Net Fixed Assets	68.59	58.30	49.56	42.12	35.80
Gross Block	68.59	68.59	68.59	68.59	68.59
Less: Cumulative Depreciation		10.29	19.03	26.47	32.79
Investments					
Current Assets, Loans & Advances	11.00	29.13	45.28	59.34	81.42
Inventories	11.00	18.00	20.00	22.00	24.00
Debtors	0.00	0.00	0.00	0.00	0.00
Cash and Bank Balances		11.13	25.28	37.34	57.42
Less: Current Liabilities	6.00	8.00	10.00	12.00	14.00
Trade Creditors			10.00	12.00	14.00
Expense Creditors	6.00	8.00	0.00	0.00	0.00
Net Current Assets	5.00	21.13	35.28	47.34	67.42
Miscellaneous Expenditure					
Total Uses	73.59	79.44	84.83	89.47	103.22



8. It has been brought to our notice that one of the justifications for approval of the Resolution Plan is that the Liquidation Value is minimal comparing the proposals made in the Resolution Plan. To demonstrate this fact following chart is worth reproduction :-

"LIQUIDATION VALUE WATER FALL

Amount (RS)

Sr. No.	Waterfall Particulars	Amount claimed as per IM	Amount available as Liquidation Value
1	Insolvency Resolution Process Cost	0.6	0.6
2	Workmen's dues for preceding 24 months from the date of approval of Resolution Plan	2.42	0.6
3	Debts owed to Secured Creditors	178.78	21.36
4	Employees other than workers covered in item 2 for 12 months preceding date of approval of resolution plan.	2.42	0
5	Unsecured Creditors Financial Creditors	64.45	0
6	Unsecured Creditors (Sundry Creditors)	24.40	0
7	Statutory Liabilities	346.69	0
	Total	614.82	22.82



9. The Procedure as prescribed under The Code is that a Resolution Plan is required to be submitted by a **Resolution Application U/s 30 of The Code**. On approval, the Resolution Professional is to submit U/s 30(6) the Resolution Plan, as approved by the Committee of Creditors, to the AA. Thereafter, u/s 31, as reproduced *supra*, AA is to examine the contents of the Resolution Plan. The mandate of this section is that if the AA is "**satisfied**" that the Resolution Plan as approved by the Committee of Creditors meets the requirement as referred to in section 30(2), shall by an Order, approve the Resolution Plan. So the prerequisite is that recording of "**satisfaction**" by AA is a condition precedent. A "satisfaction" is to be recorded in writing in the Judgment approving the Resolution Plan. "Satisfaction" is required to be based upon a conscious decision on examination of the terms of the Resolution Plan. In our humble opinion a thorough study of a Resolution Plan is required before recording a "**satisfaction**" in writing by AA. The '**satisfaction**' as mandated in the statute can either objective or subjective or both, but it is a condition precedent. Naturally 'satisfaction' is to be recorded in writing with reasons after proper application of mind. The **pros and cons** of the scheme is required to be studied before recording subjective satisfaction. If the CoC has submitted the scheme of

Resolution after visualising the advantage and disadvantage then such proposal can be termed as just and equitable fit for according satisfaction. An '**objective satisfaction**' revolves around the object of enactment of the Code as enshrined in the Preamble of the I & B Code i.e. to revive the financially stressed corporate body. And the '**subjective satisfaction**' depends upon logical analysis of the Financial Data supplied so as to match with the business model of the Corporate Debtor. A methodical scrutiny of Financial Statement is expected before concurring with approval of the CoC. Per contra, absence of recording of subjective satisfaction may lead to situation that, being sanctioned without judicial analysis, thus may not be sustainable in the eyes of law. There are no two views, and must not be, that this I & B Code provides greater accountability both on the Insolvency Professional, as also on CoC, mainly comprise of lender Banks. Their approval of a Resolution Plan ought to be judged with due diligence. To sum up, in our humble interpretation the recording of an analytical 'satisfaction' is a condition precedent before granting of approval.

10. To sum up the above discussion, the Resolution Plan as approved by the Committee of Creditors is by and large hereby sanctioned by this Order subject to certain minor qualifications, noted below:-
- a) As already held above, the claim of Debt of the dissenting Financial Creditor viz. SICOM cannot be rejected out-rightly and to be considered as directed *supra*.
 - b) The Resolution Applicants/ New Promoters shall abide and be responsible to the extent of Undertaking given in the Resolution Plan in a time bound manner.
 - c) The Resolution Applicant/ NP is expected to discharge the Liability in the manner it is prescribed U/s 53 of The Code, although it is not a case of Liquidation, except as specifically provided in the Resolution Plan itself.
 - d) The incoming Resolution Applicants viz. RHIL & MIL are going to step in to the shoes of ROML not only pertaining to tenancy rights but also in respect of all other rights for which ROML was entitled. Simultaneously the incoming Resolution Applicants/ New Promoters shall also be abided by the Agreements of any nature executed by the outgoing ROML.

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11. To conclude, the Resolution Plan is approved subject to the modifications suggested hereinabove which is binding on the Corporate Debtor and other stakeholders involved in this Resolution Plan so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 shall cease to have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
- 11.1. That the incoming Management shall not be personally responsible for any act, omission, commission and/or offence committed by the erstwhile Management of Raj Oil Mills till commencement of CIRP.
- 11.2. That liberty is hereby granted that if deem fit and legally permissible, can move Miscellaneous Application if required in connection with implementation of this Resolution Plan.
- 11.3. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Mumbai.
12. The directions embodied and period of implementation provided hereinabove shall be effective from the date of receipt of this Order.

sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)

sd/-

M.K. SHRAWAT
Member (Judicial)

Date: 19.04.2018

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Certified True Copy
Copy Issued "free of cost"
Date: 02/05/2018


Assistant Registrar
National Company Law Tribunal Mumbai Bench