

Team Code: 141

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION

2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LTD.....CORPORATE DEBTOR/RESPONDENT

ON BEHALF OF

RST BANK.....FINANCIAL CREDITOR/APPLICANT

WRITTEN SUBMISSIONS ON BEHALF OF THE CONCERNED PARTIES

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LIST OF ABBREVIATIONS

ABBREVIATION	EXPANSION
&	And
§	Section
¶	Paragraph
AIR	All India Reporter
Anr.	Another
AT	Appellate Tribunal
BOD	Board of Directors
C.P.	Company Petition
CIRP	Corporate Insolvency Resolution Process
CoC	Committee of Creditors
IBBI	Insolvency & Bankruptcy Board of India
IBC/Code	Insolvency and Bankruptcy Code
IRP	Insolvency Resolution Professional
JV	Joint Venture
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
Ors.	Others
Regn.	Regulation
RP	Resolution Professional
SC	Supreme Court

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~WRITTEN SUBMISSIONS *on behalf of the* **CONCERNED PARTIES**~

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STATEMENT OF JURISDICTION

Stage I: Filing and Acceptance of CIRP Application

With reference to the circumstances that have been presented in the instant case, the Applicant has approached the Hon'ble National Company Law Tribunal under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Stage III: Proceedings for approval of Resolution Plan

With reference to the circumstances that have been presented in the instant case, the Resolution Professional has approached the Hon'ble National Company Law Tribunal under Section 30 of the Insolvency & Bankruptcy Code, 2016, seeking the approval of the Resolution Plan for the Corporate Debtor.

STATEMENT OF FACTS

-BACKGROUND-

New Age Technology Limited (New Age) is the 4th largest manufacturer of solar panels in the world and the promoters of New Age diversified into hotel and real estate business. New Age has 3 plants, one located in Gujarat and the other 2 in Karnataka. New Age has many clients but 85% of its production is captive with 2 major clients, Morris and TPI.

List of New Age's property:

- Self-owned Rajasthan office located in a commercial building in Jaipur and lands on which Gujarat plant and 2 Karnataka plants are built.
- "New Age House" property in Jaipur.
- 6 luxury cars, including a Mercedes Benz, BMW and Audi.
- An apartment in Juhu, Mumbai.
- A parcel of land in Raipur, Chhattisgarh. Later on, turned into a commercial tower and Hotel by entering into a JV with RHPL.

-STAGE I: FILING AND ACCEPTANCE OF CIRP APPLICATION-

2008	New Age obtained financial assistance from a consortium of banks for setting up Gujarat plant.
2011	New Age obtained Financial assistance from a consortium of banks for setting up Karnataka plants.
15.10.2016	Morris conveyed its inability to pay money. Around the same time, TPI expressed inability to take delivery of solar panels already ready for delivery.
31.10.2016	Installment of interest payable to term loan lenders was paid.
04.12.2016	BOD passed a resolution to sell Juhu apartment to its MD for Rs. 5 crore.
16.12.2016	Bangalore HC passed an order of imposition of a penalty of Rs. 95 lakhs.
31.12.2016	New Age failed to pay an instalment of interest to working capital lenders.
04.03.2017	RST Bank filed an application before the NCLT under the Code.

-R-

~WRITTEN SUBMISSIONS *on behalf of the* **CONCERNED PARTIES**~

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

-STAGE II: PROCEEDINGS CONDUCTED BY INSOLVENCY PROFESSIONALS AND CoC-

05.04.2017	NCLT accepted the application and Moratorium was declared. Mr. Amit Thakur was appointed as IRP. So, he visited the Gujarat plant and was not allowed to enter the unit.
06.04.2017	Electricity supplier GSES issued a demand notice for Rs. 85 lakhs.
08.04.2017	JSEW Ltd., a regular supplier, refused to supply EVA film.
09.04.2017	IRP wrote to People's Bank to deposit the lease rental from April 2015 to February 2017.
N/A	Pursuant to the public announcement, the IRP received claims from all the other lenders, operational creditors and statutory authorities.
08.05.2017	IRP appointed M/s KGB Valuers and M/s AKP Valuers to determine the liquidation value of New Age.
N/A	RST Bank challenged the claim filed by People's Bank and Marvel on the ground that the claim filed by People's Bank is inflated.
N/A	IRP filed an application before the NCLT, seeking appropriate orders for taking possession of the Mumbai flat.
22.05.2017	IRP constituted the Committee of Creditors (CoC).
N/A	RP terminated the lease of Hyderabad guesthouse.
N/A	RP refused to accept Mr. Chew's letter to put on hold any further action in the New Age insolvency proceedings. Therefore, Mr. Chew moved an application before the NCLT.
N/A	RP prepared IM. He gave a copy of IM to promoters of New Age and The Blue Plaza but refused to give a copy to JKL Pvt. Ltd.
20.07.2017	RP received claim from PEG Developers Ltd. to the tune of Rs. 15 crore.

-STAGE III: PROCEEDINGS FOR APPROVAL OF RESOLUTION PLAN-

The promoters of both New Age and The Blue Plaza submitted separate resolution plans. The promoters plan has been accepted by COC with few modifications and the same is presented before NCLT for approval.

-S-

~WRITTEN SUBMISSIONS *on behalf of the* **CONCERNED PARTIES**~

ISSUES RAISED

ISSUES ON BEHALF OF THE CORPORATE DEBTOR/PROMOTERS OF CORPORATE DEBTOR

Stage I: Filing and Acceptance of CIRP Application

- I. Whether the application filed by RST Bank is maintainable?
- II. Whether appointment of an empanelled lawyer of the Applicant as the IRP will result in a conflict of interest?
- III. Whether appointment of IRP is *intra vires* the powers of IBBI?

Stage II: Proceedings conducted by Insolvency Professionals and CoC

- IV. Whether the steps taken by IRP to take possession of the property of Corporate Debtor are justified?
- V. Whether the claim of Marvel Organics Ltd. should be accepted?
- VI. Whether the valuation of the assets of the Corporate Debtor is irregular?
- VII. Whether IRP can take possession of the Juhu Apartment?
- VIII. Whether the allegations of siphoning hold any legal merit?
- IX. Whether the appointment of the Resolution Professional is valid?
- X. Whether RP has unjustly terminated the lease of the Hyderabad Guesthouse?

Stage III: Proceedings for approval of Resolution Plan

- XI. Whether the resolution plan submitted by the promoters of Corporate Debtor should be approved?

ISSUES ON BEHALF OF OPERATIONAL CREDITORS

Stage II: Proceedings conducted by Insolvency Professionals and CoC

- I. Whether the claim of public depositors should be accepted?

Stage III: Proceedings for approval of Resolution Plan

II. Whether immediate payment must be ensured to the Operational Creditors?

ISSUES ON BEHALF OF INSOLVENCY PROFESSIONALS (IRP/RP)

Stage II: Proceedings conducted by Insolvency Professionals and CoC

I. Whether the steps taken by IRP to take possession of the property of Corporate Debtor are justified?

II. Whether People's Bank has violated the principle of Moratorium?

III. Whether the acceptance of the claim of Marvel Organics Ltd. by IRP is valid?

IV. Whether the valuation of the assets of the Corporate Debtor is irregular?

V. Whether the claim of public depositors should be accepted?

VI. Whether the IRP can take possession of the Juhu apartment?

VII. Whether the application filed by Radha Hospitality Pvt. Ltd. should be accepted?

VIII. Whether the RP has rightly terminated the lease of the Hyderabad Guesthouse?

IX. Whether the Application to recognise Singapore Proceedings should be accepted?

X. Whether a copy of Information Memorandum should be given to JKL Pvt. Ltd.?

Stage III: Proceedings for approval of Resolution Plan

XI. Whether the Resolution Plan should be approved by the Ld. Tribunal?

ISSUES ON BEHALF OF FINANCIAL CREDITORS/CoC

Stage I: Filing and Acceptance of CIRP Application

I. Whether the application filed by the RST Bank is maintainable?

Stage II: Proceedings conducted by Insolvency Professionals and CoC

II. Whether the claim filed by People's Bank and Marvel Organics Ltd. is escalated?

III. Whether the application filed by RHPL should be accepted?

IV. Whether the appointment of the Insolvency Professionals is valid?

V. Whether the claim of PEG Developers is admissible?

ISSUES ON BEHALF OF OTHER PARTIES

Stage II: Proceedings conducted by Insolvency Professionals and CoC

I. Whether insolvency proceedings against THSPL, Singapore should be recognized?

II. Whether a copy of Information Memorandum should be provided to JKL Pvt. Ltd.?

SUMMARY OF ARGUMENTS

ARGUMENTS ON BEHALF OF CORPORATE DEBTOR

- The application filed by RST Bank is not maintainable as: the Applicant has inflated the amount of debt. Also, the unforeseen market situation has resulted in transient liquidity problem for the growth-oriented company which has the potential to act as a catalyst in achieving the Renewable Energy Goals, 2022. Thus, the delay in payment is temporary.
- The appointment of an empanelled lawyer of the Applicant as an IRP will result in a conflict of interest as: the appointment of proposed IRP violates principles of natural justice. Moreover, the proposed IRP does not possess requisite managerial expertise.
- The claim of Marvel Organics Ltd. should not be accepted as: it is not a financial creditor. Further, it has neither substantiated its claim nor the IRP has verified the same.
- IRP cannot take possession of the Juhu apartment as: the sale is made in good faith and the requirements under a Related Party Transaction have been complied with.
- The allegations of siphoning are devoid of legal merit as: the acts are done in good faith for the purpose of carrying on the debtor's business and benefit the same.
- The appointment of the Resolution Professional is not valid as: the CoC does not have the power to appoint the RP & Divesh Sharma had been holding the office of RP unlawfully.
- RP has unjustly terminated the lease of the guest house as: he does not have the power to terminate a contract without the prior consent of CoC or the Tribunal. Moreover, the termination of the lease is in violation of the principle of Moratorium.
- Resolution Plan submitted by Promoters of Corporate Debtor should be approved as: it provides for the continued involvement of the erstwhile management under the overall supervision of insolvency representative and it has been approved by all the stakeholders.

ARGUMENTS ON BEHALF OF OPERATIONAL CREDITORS

- The claim of public depositors should be accepted as: the amount due against them falls under the definition of operational debt.

ARGUMENTS ON BEHALF OF INSOLVENCY PROFESSIONALS (IRP/RP)

- People's Bank has violated the principle of Moratorium: by adjusting the lease rental from the New Age House towards its dues instead of depositing the same.
- The claim of Marvel Organics Ltd. has been validly accepted as: it can submit proof of claim to IRP/RP till the approval of a resolution plan by the CoC. Moreover, the IRP can revise the amounts of claims admitted if required.

- The claim of public depositors shall not be accepted as: the amount owed by Corporate Debtor to them does not fit in the elements of operational debt.
- IRP can take possession of the Juhu apartment as: the sale is not made in good faith. Also, the sale amounts to Related Party Transaction.
- The application filed by RHPL should be rejected: owing to no outstanding liability and it is not a financial creditor. Also, a related party of the debtor cannot participate in the CoC.
- RP has terminated the lease of the guesthouse: in the interest of the Corporate Debtor.
- The application to recognise Singapore proceedings should be rejected as: THSPL falls within the *de facto* group of the Corporate Debtor. Further, the centre of main proceedings lies in India, thus, the foreign main proceedings should be conducted in India.
- Copy of information memorandum should not be given to JKL Pvt. Ltd. as: it is not a serious party and RP is duty-bound to maintain confidentiality in this case.
- The Resolution Plan should be approved by the Ld. Tribunal as: the plan was duly submitted and approved by all stakeholders. Further, as it satisfies all essential elements prescribed in the Code, the Tribunal is not required to check its financial viability.

ARGUMENTS ON BEHALF OF FINANCIAL CREDITORS/CoC

- The application filed by RST Bank is maintainable as: Debtor owes undisputed financial debt to it and failure to honour the debt reflects commercial insolvency which has been escalated by the management by transferring company's assets for personal gains.
- The claim filed by People's Bank and Marvel Organics Ltd. is escalated as: they have failed to substantiate and justify their respective claims.
- The application filed by RHPL should be accepted as: it has the buyout right in case of Corporate Debtor's insolvency. Moreover, RHPL is not related party of Corporate Debtor.
- The appointment of the insolvency professional is valid as: it does not result in prejudice to any party and the same is valid in the eyes of law.
- The claim of PEG Developers Ltd. is admissible as: a creditor can submit such proof to the IRP/RP at any stage till the approval of a Resolution Plan by the CoC.

ARGUMENTS ON BEHALF OF OTHER PARTIES

- The insolvency proceedings against THSPL should be recognized as: the centre of main interest lies in Singapore as THSPL is operating independently from the parent company.
- A copy of Information Memorandum must be provided to JKL Pvt. Ltd. as: it is a serious party and it is the duty of RP to provide IM to all the Resolution Applicants.

ARGUMENTS ADVANCED

ARGUMENTS ON BEHALF OF CORPORATE DEBTOR/ PROMOTERS OF CORPORATE DEBTOR

Stage I: Filing and Acceptance of CIRP Application

I. THAT THE APPLICATION FILED BY RST BANK IS NOT MAINTAINABLE.

It is humbly submitted before the Ld. Tribunal that the application filed by the RST bank/Applicant against New Age Technology Ltd./Respondent Company/Corporate Debtor under §7 of the Insolvency and Bankruptcy Code, 2016, is not maintainable [*Refer to p.3-6 of Enclosures for CIRP Application (Form I)*]. The veracity of the claim can be substantiated by the following contentions.

[A] That there exists a bonafide dispute against the amount claimed by the Applicant.

It is submitted that there exists a bonafide dispute against the amount claimed by the Applicant. The Applicant has misrepresented material facts before the Ld. Tribunal as the default amount computed by the Applicant is grossly incorrect and contrary to the provisions of insolvency law. The explanation of the same is two-fold.

i. That the Applicant has inflated the amount of debt.

It is submitted that the Respondent Company took a loan amounting to Rs. 500 crore from the Applicant Bank in 2008 & 2011. Since then the Company has been servicing its debts regularly, without any default, and has excellent relations with the bankers¹. However, the Applicant Bank has incorrectly claimed an exorbitant amount of Rs. 650 Crore without justifying such escalation of the regularly serviced debt.² Also, no document has been provided to substantiate such escalated demand. Thus, the application is false in material particulars, and the applicant is liable to be punished for false information furnished in the application.³ It is pertinent to mention that the Code does not provide any mechanism for modification of claim amount post-admission of application.⁴ Thus, if the debt itself is

¹ Moot Proposition, p. 4 ¶ 2.

² *Newfinds (India) v. Vorion Chemicals & Distilleries*, (1970) 46 CompCas 87 (Mad).

³ §75, The Insolvency & Bankruptcy Code, 2016 [Act 31 of 2016] [*hereinafter, the Code*].

⁴ *M/s. Starlog Enterprises Ltd. v. ICICI Bank Ltd.*, Company Appeal (AT) (Ins.) No. 5 of 2017.

disputed and requires detailed scrutiny, the insolvency application is not maintainable⁵. A Company Court cannot be reduced as a means of bringing improper pressure on the company to pay a bonafide disputed debt.⁶ Instead, the parties should be relegated to the appropriate forum for the adjudication of the dispute because, during insolvency proceedings, the Tribunal follows a summary procedure and will not investigate facts and evidence in depth.⁷ Furthermore, in *Re Softsule Pvt. Ltd.*⁸, it was held that a winding-up petition is not legitimate means of seeking to enforce payment of a debt which is bonafide disputed. These aspects were reiterated by the Ld. Tribunal in *Western Refrigeration case*⁹, while considering the occurrence of a default.

ii. That the Applicant has claimed unmatured amount as default amount.

§3(12)¹⁰ of the Code defines ‘default’ to mean ‘non-payment of the debt’ once it has become due and payable and the same is not repaid by the debtor. ‘Default’ occurs on the fulfilment of twin conditions, *i.e.* debt becoming due and payable and non-payment thereof.¹¹ In the instant case, the financial creditor has claimed the unmatured (principal) amount, which never became due as on the date of filing of the application, merely one instalment was outstanding. Hence, it cannot claim the entire loan amount as the defaulted amount. Reliance is placed on *Starlog Enterprises Case*¹², wherein it was held that unmatured amount, never having become due and payable to the financial creditor could not have been claimed as the default amount.¹³

⁵ *Madhusudan Gordhandas & Co. v. Madhu Woollen Industries Pvt. Ltd.*, AIR 1971 SC 2600; *Niyogi Offset Printing Press Ltd. v. Doctor Morepen Ltd.*, (2007) 149 CompCas 467 (Del); *Tube Investments of India Ltd. v. Rim and Accessories Pvt. Ltd.*, (1993) 3 CompCas 322 (Mad).

⁶ *IBA Health (India) Pvt. Ltd. v. Info-Drive Systems Sdn. Bhd.*, (2010) 10 SCC 553.

⁷ *Srinivasa (T.) v. Flemming (India) Apotheke Pvt. Ltd.*, (1990) CompCas 506 (Kar); *Rohtak & Hissar Districts Electric Supply Co. P. Ltd. v. Anausi Textile Mills Ltd.*, (2001) 106 CompCas 697 (All); *Shri Shadilal Enterprises v. Cooperative Co. Ltd.*, (2001) 103 CompCas 863 (All).

⁸ *Re, Softsule Pvt. Ltd.* (1997) 47 CompCas 438 (Bom).

⁹ *State Bank of India, Colombo v. Western Refrigeration Pvt. Ltd.*, C.P. (IB) No. 17/7/NCLT/AHM/2017.

¹⁰ §3(12), the Code.

¹¹ *Kirusa Software Pvt. Ltd. v. Mobilox Innovations Pvt. Ltd.*, Company Appeal (AT) (Ins.) No. 6 of 2017.

¹² *M/s. Starlog Enterprises Ltd. v. ICICI Bank Ltd.*, Company Appeal (AT) (Ins.) No. 5 of 2017.

¹³ *Asim Pharmachem Industries v. Nolsin Ultrachem Ltd.*, (2013) 176 CompCas 460 (Guj).

[B] That delayed payment was the result of force majeure.

It is humbly submitted that there is no unjustifiable delay of payment in the instant case. It is to be noted that 85% of the production of the Respondent Company was captive with Dan Morris Energy Inc. and Texas Power International which suddenly underwent hardships, thereby affecting the export of the Respondent Company. This unforeseen market situation resulted in a temporary financial crunch for the Respondent Company which otherwise expected to earn huge profits from the supply orders for at least four years.¹⁴ In *Seavalley Resorts Case*¹⁵, the project of a five-star hotel became delayed because of the unforeseen order of the Municipality converting the land into a residential area and therefore, either reversal of the order or exemption in favour of the hotel became necessary. The court said that there was no unjustifiable delay in the payments involved. Thus, the delay in payment by the Respondent Company is due to the unforeseen circumstances which have occurred due to the hardship of its clients and not due to commercial insolvency of the Company itself.

[C] That the CIRP will adversely affect the future of the growth-oriented Company.

It is pertinent to note that Respondent Company is the largest manufacturer of solar panels in India and fourth largest in the World.¹⁶ Thus, it is a growth oriented company¹⁷ which employs over 3000 persons¹⁸. The interest of a large number of employees could not be obliterated only to satisfy the unjustified claims of certain creditor.¹⁹ The Company has extensive business commitments, which includes export orders and having regard to all-round interests, including public interest²⁰, the company should be afforded a reasonable opportunity to resuscitate its resources²¹ and thus, corporate insolvency resolution process

¹⁴ Moot Proposition, p. 4 ¶ 1,3,4.

¹⁵ *Bikkina Gopalkrishna Rao v. Seavalley Resorts Pvt. Ltd.*, (2001) 104 CompCas 267 (AP); *Daulat Mokalal Luthria v. Solitaire Hotels Pvt. Ltd.*, (1993) 76 CompCas 215 (Bom).

¹⁶ Moot Proposition, p. 1 ¶ 1.

¹⁷ *American Express Bank Ltd. v. Core Health Care Ltd.*, (1999) 96 CompCas 841 (Guj).

¹⁸ Moot Proposition, p. 2 ¶ 1.

¹⁹ *Ramdeo Ranglal v. Ghooronia Tea Co. P. Ltd.*, 2005 126 CompCas 193 (Gau).

²⁰ *Harinagar Sugar Mills Co. Ltd. v. M. W. Pradhan*, AIR 1966 SC 1707.

²¹ *Ema India Ltd. Track Parts of India Ltd.*, (1998) 106 CompCas 700 (All).

[*hereinafter*, **CIRP**] should not be initiated.²²

Reliance is placed on *Kotak Mahendra Bank v. J.B. Diamonds*²³, wherein the Court held that winding up petition cannot be admitted without first giving the company an opportunity of making payment in a phased manner, particularly when the consortium of banks in their assessment note stated that the company is going through a temporary financial crisis and there is a possibility of overcoming it. Public interest demands that the company ought to be offered an opportunity of doing so. The application by the Applicant implies insolvency and if it is accepted, it is likely to damage the company's creditworthiness or its financial standing with its creditor or customers and even among the public.²⁴ Thus, the decision should be modulated by equitable considerations and reasonable opportunity should be afforded to the Respondent Company to resuscitate its resources.²⁵

[D] That Respondent Company is catalyst in achieving Renewable Energy Goals, 2022.

It is submitted that the Power and Renewable Energy Ministry of Government of India have targeted the four-fold increase in the production of solar energy, which includes setting up of 60 GW of large and medium-scale grid-connected solar power projects and 40 GW of solar rooftop project.²⁶ The Annual Budget, 2017 further boosted the solar energy sector by announcing the development of solar parks and allocation of substantial funds for the sector.²⁷ Thus, being the largest manufacturer of solar panels with internationally acclaimed technology, the Respondent Company would be a catalyst in achieving the ambitious target of the Government and will also ensure the substantial amount of profit for the company.

**II. THAT APPOINTMENT OF AN EMPANELLED LAWYER OF THE APPLICANT AS IRP WILL
RESULT IN A CONFLICT OF INTEREST.**

It is humbly submitted before the Ld. Tribunal that appointment of an empanelled lawyer of the Applicant as an Insolvency Resolution Professional/IRP will result in a conflict of

²² PEC Ltd. v. M/s. Sree Ramakrishna Alloys Ltd. with PEC Ltd. v. M/s. Sree Gangadhar Steels Ltd., Company Appeal (AT) (Ins.) No. 120 of 2017.

²³ *Kotak Mahendra Bank Ltd. v. J.B. Diamonds Ltd.*, (2011) 163 CompCas 152 (Bom).

²⁴ SUMANT BATRA, *CORPORATE INSOLVENCY: LAW & PRACTICE* 35 (1st ed. 2017).

²⁵ *Madhya Pradesh Iron & Steel Co. v. G.B. Springs Pvt. Ltd.*, (2003) 117 CompCas 327 (Del); *Gujarat Industrial Investment Corpn. Ltd. v. Sterling Holding Resorts (India) Ltd.*, (2008) 143 CompCas 39 (Mad).

²⁶ Niti Ayog, December 2015, Report of the Expert Group on 175 GW RE by 2022.

²⁷ Sarita Singh, "Budget 2017 gives big boost to Renewable Energy", *Economic Times*, February 2, 2017.

interest. This can be substantiated as follows.

[A] That appointment of the proposed IRP violates principles of natural justice.

Notably, Mr. S Mahesh is an empanelled lawyer of the Applicant Bank,²⁸ resulting in an inherent bias towards the Applicant. Therefore, he is bound to emphasise on the recovery of the amount due to the Applicant. This shall prejudice the interest of the Corporate Debtor and other stakeholders including the creditors, which is contrary to the objective of the Code, *viz.* promotion of entrepreneurship and balancing the interest of all the stakeholders²⁹.

It is pertinent to mention that Code of Conduct prescribed for IPs necessitates integrity and objectivity.³⁰ However, the presence of such bias shall result in a conflict of interest, violating the prescribed conduct.³¹ Reliance is placed on *Sree Metaliks Case*³², wherein the Ld. Tribunal instructed the empanelled lawyer to step down from the position of IRP. Moreover, such appointment will be contrary the principles of natural justice, *i.e.* ‘*nemo judex in causa sua*’, which the Ld. Tribunal is required to comply.³³

[B] That the proposed IRP does not possess requisite technical expertise.

It is submitted that duties assigned to IRP necessitate the specialized knowledge in the field of operations of the Corporate Debtor.³⁴ This is necessary to ensure the effective and efficient conduct of the resolution process and to gain market confidence in the insolvency regime.³⁵ Also, in the instant case, the Corporate Debtor is merely undergoing transient liquidity issues and that too can be resolved if it is managed by an expert who possesses requisite skills to run the company efficiently. However, the proposed IRP is a professional lawyer and does not possess the technical knowledge required to manage the affairs of the company efficiently. Thus, such appointment will force the company towards liquidation,

²⁸ Moot Proposition, p. 5 ¶ 3.

²⁹ Preamble, the Code.

³⁰ Code of Conduct, Regn. 7(2)(h), IBBI (Insolvency Professionals) Regulations, 2016.

³¹ Sumant Batra, *supra* note 24, at 25.

³² *Sree Metaliks Ltd. v. M/s. Srei Equipment Finance Ltd.*, Company Appeal (AT) (Ins.) No. 3 of 2017.

³³ *Innoventive Industries Ltd. v. ICICI Bank*, Company Appeal (AT) (Ins.) No. 1 & 2 of 2017.

³⁴ UNCITRAL LEGISLATIVE GUIDE ON INSOLVENCY LAW 175 (2005) [*hereinafter*, **UNCITRAL Legislative Guide**].

³⁵ Sumant Batra, *supra* note 24, at 273.

contravening the essence and purpose of the Code. Therefore, it is humbly pleaded that Mr. Mahesh should not be appointed as an IRP.

III. THAT THE APPOINTMENT OF IRP IS ULTRA VIRES THE POWERS OF IBBI.

The power to appoint an IRP lies with the Tribunal and not IBBI/Board. The power of Board is restricted to the recommendation of the name of an IRP to the Tribunal within 10 days of receipt of a reference from it.³⁶ The Tribunal may reject the name proposed by the Board if it is not satisfied with the recommendation. Thus, it is not bound to accept each recommendation made by the Board as the final say lies with the Tribunal.³⁷

In the instant case, Board recommended and confirmed Mr. Amit Thakur as IRP to carry the functions as mentioned under the IBC, 2016.³⁸ Board has exceeded its power of recommendation to appoint the IRP but the power of appointment vests in the adjudicating authority. Therefore, the appointment of Mr. Thakur as IRP is ultra vires the IBC, 2016. Hence, the appointment of IRP should be struck down.

Stage II: Proceedings conducted by Insolvency Professionals and CoC

IV. THAT STEPS TAKEN BY IRP TO TAKE POSSESSION OF THE PROPERTY ARE NOT JUSTIFIED

It is contended that by directly employing forceful measure to take control of the assets of the company, the RP failed to recognise the agony of the workers caused due to initiation of CIRP. Instead, he should have tried to win the confidence of the workers and resolved the issue by peaceful. His act has adversely affected the process as it shook the confidence of the employees, who are the most valuable assets of the Company. Such actions on part of IRP will lower the morale of the employees and will result in employees leaving their jobs adding to the ongoing hardships as it will lose its experienced and trustworthy employees. Hence, the deployment of security forces by the IRP is unjust and inappropriate as it is detrimental to the interest of the company.³⁹

³⁶ §16, the Code.

³⁷ Sumant Batra, *supra* note 24, at 297.

³⁸ Moot Proposition, p. 5 ¶ 5.

³⁹ Sumant Batra, *supra* note 24, at 311.

V. THAT THE CLAIM OF MARVEL ORGANICS LTD. SHOULD NOT BE ACCEPTED.

It is submitted that the claim of Marvel Ltd. should not be accepted on the following grounds:

[A] That Marvel Organics Ltd. is not a financial creditor of the Corporate Debtor.

Marvel has filed its claim as the financial creditor of Corporate Debtor. However, the claim is arising out of provisions of goods, *i.e.* transformers. In the case of *AMR Infrastructures*⁴⁰, this Tribunal has laid down the substantive elements of operational debt⁴¹, *viz.* debt arising out of provisions of goods, services or employment. Hence, Marvel is an operational creditor and not financial creditor and thus, its claim should not be accepted.

[B] That Marvel Organics Ltd. has failed to substantiate its claim.

It is humbly submitted that Marvel Organics Ltd. has filed a claim of Rs. 136 crore [*Refer to p. 93-95 of Enclosures for Proof of Claim*]. However, it has merely supplied the transformers to the tune of Rs. 20 crores, which it could have actually claimed from the Corporate Debtor.⁴² Further, it has not filed any documents justifying the escalated demand of Rs. 136 crore.⁴³ According to Regn. 8 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 [CIRP Regulations], a person claiming to be a financial creditor, shall submit proof of claim to the IRP in person. This includes details of documents for substantiating the debt.⁴⁴

[C] That the IRP has failed to verify the claim of Marvel Organics Ltd.

It is humbly submitted that the IRP has failed to verify the escalation in the amount claimed by Marvel, and moreover, has added the claim to the list and invited it to the Committee of Creditors [CoC]. Regn. 13 of the CIRP Regulations, requires the IRP to verify every claim as on the insolvency commencement date, within seven days from the last date of the receipt of the claims. However, in the instant case, the error committed by IRP is writ large as it has not only failed to recognise Marvel as an operational creditor but has also failed to verify and substantiate the amount claimed by it. Henceforth, from the perusal of *factum*, it is pleaded

⁴⁰ Col. Vinod Awasthy v. AMR Infrastructures Ltd., C.P. (IB) No. 10/NCLT/PB/2017.

⁴¹ §5(21), the Code.

⁴² Moot Proposition, p. 7 ¶ 2.

⁴³ *Id.*

⁴⁴ Subodha Entertainments Co. v. Jacksonblock Facility Services Pvt. Ltd., C.P. (IB) No. 6/NCLT/BB/17; Steel India Corpn. v. Shree Radha Raman Packaging Pvt. Ltd., C.P. (IB) No. 56/NCLT/ND/2017.

that the claim of Marvel be hereby dismissed.

VI. THAT THE VALUATION OF THE ASSETS OF THE CORPORATE DEBTOR IS IRREGULAR.

On 8.04.2017 the IRP appointed M/s. KGB Valuers and M/s. AKP Valuers to determine the liquidation value of the Corporate Debtor. However, during the valuation process, it was found that M/s. AKP Valuers were a related party to the Corporate Debtor.⁴⁵ Thereafter the valuation was completed by M/s. KGB Valuers only, which is in contravention of the CIRP Regulations. It is herein submitted that according to Regn. 27, the IRP appoints two registered valuers to determine the liquidation value of the corporate debtor, provided that the valuer so appointed is not a related party of the corporate debtor.⁴⁶ In the instant case, the valuation done is thus irregular as the requirement of two valuers has not been complied with by the IRP. [*Refer to p. 131-135 of Enclosures for minutes of CoC Meeting*]

High reliance is placed on *Alpha & Omega Diagnostics Case*⁴⁷, wherein the Adjudicating Authority held that there are recognized canons of interpretation. The language of the Statute should be read as it existed. Every word is to be read and interpreted as it exists in the statute with the natural meaning attached to the word.

Henceforth, by giving a strict interpretation to the aforementioned provisions of insolvency law, it is submitted that the whole process of valuation has been rendered irregular by the IRP. Thus, fresh valuation is of utmost importance in the instant case.

VII. THAT IRP CANNOT TAKE POSSESSION OF THE JUHU APARTMENT.

It is humbly submitted before the Ld. Tribunal that on 4.12.2016 the BOD of the Corporate Debtor passed a resolution to the sell the Juhu apartment to its Managing Director for Rs. 5 crore. This sale was made in good faith, with a view to raise funds to pay the instalment due.⁴⁸ The application filed by the IRP [*Refer to p. 139-141 of Enclosures for the application*] should be rejected on following grounds.

⁴⁵ Moot Proposition, p. 7 ¶ 3.

⁴⁶ Regn. 27 & Regn. 35, CIRP Regulations, 2016.

⁴⁷ M/s. Alpha & Omega Diagnostics (India) Ltd. v. Asset Reconstruction Company of India Ltd., C.P. (IB) No. 1117/NCLT/MB/2017.

⁴⁸ Moot Proposition, p. 5 ¶ 1.

[A] That the transaction is not affected by §329 of the Companies Act, 2013.

The sale of the apartment does not contravene §329 of Companies Act, 2013 as it is made in good faith for valuable consideration.

Where a transaction is sought to be annulled under §329 of the Companies Act, the burden of proof is entirely on the person who impugns the transaction of transfer.⁴⁹ Thus, mere speculation of the fair market value of the property does not suffice. Reliance is placed on *N. Subramania Iyer v. Official Receiver*⁵⁰, wherein Hon'ble Supreme Court held that for upholding a transaction, it is not necessary that the transferor who had been subsequently adjudged as insolvent should have been honest and straightforward in the matter of the impugned transaction. The lack of bonafide in the transferee must be proved as he cannot be affected by the dishonest course of conduct of the transferor.

Thus, where the transfer has been bonafide executed at fair market value for the betterment of the company, the transaction cannot be hit by §329 of the Companies Act, 2013.⁵¹ Such transfer though made within a period of one year before the presentation of the application was made in good faith and for valuable consideration, and thus such transfer cannot be annulled.⁵² It is pertinent to note that the mere intent of the transaction was to raise funds for the payment of dues of the Corporate Debtor.⁵³ The mere fact that the transaction was entered into within one year before filing the application is not enough.⁵⁴

[B] That the requirements for Related Party Transaction have been complied with.

It is humbly submitted that §188(3) of the Companies Act, 2013 postulates that approval of the shareholders of a company with regard to a Related Party Transaction [RPT] can be obtained within three months from the date on which such contract or arrangement was entered into. These provisions have been duly complied with by the BOD of the Corporate Debtor and thus, the RPT is legally valid.

Henceforth, from the perusal of the *factum* in the instant matter, it is submitted that the sale of

⁴⁹ N. Subramania Iyer v. Official Receiver, Quilon, AIR 1958 SC 1.

⁵⁰ *Id.*

⁵¹ Companies Act, 2013 [Act 18 of 2013]; Sunder Lal Jain v. Sandeep Pictures Pvt. Ltd., (1986) 20 CompCas 77 (P&H); Maruti Ltd. v. Laxmi Steel Traders, (1998) 91 CompCas 632 (P&H).

⁵² Monark Enterprises v. Kishan Tulpule, (1992) 74 CompCas 89 (Bom).

⁵³ Official Liquidator, A.P. High Court v. M/s. A.P. State Financial Corpn. Ltd., (2001) 105 CompCas 778 (AP).

⁵⁴ Official Liquidator of Trimline Health & Resorts Ltd. v. GSFC, (2010) 153 CompCas 480 (Guj).

Mumbai House to the MD of the Corporate Debtor is valid and the IRP cannot take possession of the property by getting the transfer annulled.

VIII. THAT THE ALLEGATIONS OF SIPHONING ARE DEVOID OF LEGAL MERIT.

It is submitted that allegations of diversion and siphoning, made by the creditors, do not hold any legal merit as any act done in good faith for the purpose of carrying on the debtor's business and with reasonable grounds for believing that the transaction would benefit the debtor's ordinary business, cannot be regarded as siphoning.⁵⁵

IX. THAT APPOINTMENT OF THE RESOLUTION PROFESSIONAL IS NOT VALID.

It is humbly submitted before the Ld. Tribunal that the appointment of Mr. Divesh Sharma, as the Resolution Professional/RP is not valid as the CoC has failed to follow the procedure laid down under §22 of the Code. It is herein submitted that the appointment is tainted with procedural irregularity, thereby jeopardising the interests of the parties. The veracity of the claim can be substantiated by the following contentions.

[A] That CoC does not have the power to appoint the RP.

§22 of the Code stipulates that where the CoC resolves to replace the IRP, it shall file an application before the Adjudicating Authority for the appointment of the proposed RP. However, in the instant case where the CoC resolved to replace Mr. Amit Thakur with Mr. Divesh Sharma as the RP, it did not file an application before the Tribunal seeking the appointment, rather it merely informed the Tribunal about the appointment⁵⁶, thereby contravening the abovementioned provision of the Code.

[B] That Mr. Divesh Sharma had been holding the office of RP unlawfully.

It is humbly submitted that the appointment of RP took place on 29.04.2017 by the CoC [*Refer to p. 131-135 of Enclosures for minutes of CoC meeting*]. However, the name of the above-appointed RP was confirmed by the Board only on 17.05.2017. Thus, Mr. Divesh Sharma has been holding the office of the RP unlawfully from 29th April to 17th May 2017. Thus, all functions performed by him while holding the office irregularly are invalid.

Thus, the procedural infirmity by CoC has vitiated the entire insolvency process, directly

⁵⁵ UNCITRAL Legislative Guide, p. 143.

⁵⁶ Moot Proposition, p. 9 ¶ 2.

affecting the interest of the Corporate Debtor.⁵⁷ It is therefore pleaded that the appointment of Mr. Divesh Sharma be struck down on the ground of procedural impropriety⁵⁸.

X. THAT THE RP HAS UNJUSTLY TERMINATED THE LEASE OF THE GUESTHOUSE.

It is submitted that the act of the RP to terminate the lease of the Hyderabad guesthouse is unjust and has incurred financial loss and loss of goodwill to Corporate Debtor. An application challenging the same has been filed before the Tribunal [*Refer to p. 156-158 of Enclosures for the Application*] stating the following contentions.

[A] That the RP does not have the power to terminate a contract.

The RP has transgressed his power by doing an act which he was not authorized to do. §25 of the Code states the duties of the RP. The power of RP is restricted to take immediate custody and control of all the assets of the Corporate Debtor. In the instant case, the RP chose not to renew the lease and terminate it w.e.f. 31.03.2017, *i.e.* prior to the termination date.⁵⁹ Also, the termination of lease contract by the RP has resulted in financial loss to Corporate Debtor along with the loss of goodwill. In this regard, high reliance is placed on *Starlog Enterprises*⁶⁰, in which the Hon'ble Appellate Tribunal condemned the IRP for his misconduct and ultimately, removed him from the post of IRP.

[B] That RP terminated the lease without the prior consent of CoC or the Tribunal.

The act of RP to terminate the lease has brought material change in the assets of the Corporate Debtor. According to the Code, such changes shall be made with prior consent of the CoC or the adjudicating authority.⁶¹ Moreover, insolvency law requires secured creditors to be notified of any proposed disposal of an asset and provided with an opportunity to object.⁶² However, leave aside consent, no notice has been given either to CoC or the Tribunal by the RP before the termination of the lease. Therefore, it can be safely inferred that the RP is absurdly misusing his position.

⁵⁷ Agri. Horticultural & Forestry Industry Training Bd. v. Aylesbury Mushrooms Ltd., (1972) 1 All ER 280.

⁵⁸ Bradbury v. Enfield London Borough Council, (1967) 3 All ER 434; Ridge v. Baldwin, (1964) AC 40.

⁵⁹ Moot Proposition, p. 9 ¶ 3.

⁶⁰ M/s. Starlog Enterprises Ltd. v. ICICI Bank Ltd., Company Appeal (AT) (Ins.) No. 5 of 2017.

⁶¹ §28, the Code.

⁶² UNCITRAL Legislative Guide, p. 107.

[C] That the termination violates the principle of Moratorium.

§14(1)(b) of the Code prohibits transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein after the declaration of the moratorium. In the instant case, it was declared on 5.04.2017.⁶³

Moreover, for the purpose of selling or disposing of the assets of the Corporate Debtor, It is required that the stay is be lifted or modified by the Tribunal.⁶⁴ However, the RP did not fulfil this requirement so as to legally terminate the lease during the moratorium period. Hence, the termination of the lease deed by the RP violates the principle of moratorium.

Stage III: Proceedings for approval of Resolution Plan

XI. THAT THE RESOLUTION PLAN SUBMITTED BY PROMOTERS OF CORPORATE DEBTOR SHOULD BE APPROVED.

It is humbly submitted that the Resolution Plan submitted by the Promoters of Corporate Debtor has been approved by the RP and the CoC [*Refer to p. 204-205 of Enclosure for minutes of CoC Meeting*]. The application for final approval of the Plan has been filed by the RP before the Ld. Tribunal [*Refer to p. 206-208 of Enclosure for the application*].

Thus, it is submitted that the Ld. Tribunal considers the arguments put forth in the application by the RP and accordingly, grant the permission for the implementation of the Plan.

ARGUMENTS ON BEHALF OF OPERATIONAL CREDITORS

Stage II: Proceedings conducted by Insolvency Professionals and CoC

I. THAT THE CLAIM OF PUBLIC DEPOSITORS SHOULD BE ACCEPTED

It is humbly submitted before the Ld. Tribunal that the public depositors fall under the definition of operational creditor, whereby the amount due against the public deposits falls under the definition of operational debt.⁶⁵ The failure to service the interest has given rise to a debt in respect of the repayment of dues arising under the Companies (Acceptance of

⁶³ Moot Proposition, p. 5 ¶ 5.

⁶⁴ Sumant Batra, *supra* note 24, at 262.

⁶⁵ §5(21), the Code.

Deposits) Rules, 2014.⁶⁶ Therefore, it is pleaded that the IRP be ordered to accept the claim.

[A] *In Arguendo*, the public depositors should be considered as Financial Creditor.

It is herein submitted that public deposit falls under the definition of financial debt u/s 5(8)(a) of the Code whereby it is a debt along with interest which is disbursed against the consideration for the time value of money and includes money borrowed against the payment of interest. According to §2(31) Companies Act, 2013, deposit includes any receipt of money by way of deposit or loan or in any other form by a company.⁶⁷

The terms 'loans' and 'deposits' are not mutually exclusive. Reliance is placed on the case of *Abdul Hamid Sahib v. Rahmat Bi*⁶⁸, wherein it was held that both loans and deposits are debts repayable. A loan is repayable the minute it is incurred, while the repayment of deposit will depend upon the maturity date fixed therefor or the terms of the agreement relating to the demand, on the making of which the deposit will become repayable.⁶⁹ In other words, unlike a loan, there is no immediate obligation to repay in the case of a deposit.⁷⁰

The Corporate Debtor invited public deposits for its working capital needs and could not service the interest on the same, giving rise to the debt. Therefore, it is submitted that the public depositors be treated as financial creditors⁷¹ and their claim be accepted.

Stage III: Proceedings for approval of Resolution Plan

II. THAT IMMEDIATE PAYMENT MUST BE ENSURED TO THE OPERATIONAL CREDITORS.

It is pertinent to mention that the Operational Creditors have strongly condemned the Resolution Plan proposed and considered by the CoC, as it does not ensure immediate payment of the outstanding dues to the operational creditors. Thus, it is pleaded that the Tribunal assures that the Resolution Plan approved by it provides for an assured payment of the operational debts.

[Refer to p.185-188, 204-205 of Enclosures for minutes of CoC meeting].

⁶⁶ Rule 2(c), Companies (Acceptance of Deposits) Rules, 2014.

⁶⁷ *Ram Janki Devi & Anr. v. M/s. Juggilal Kamlapat*, AIR 1971 SC 2551.

⁶⁸ *Abdul Hamid Sahib v. Rahmat Bi*, AIR 1965 Mad 427.

⁶⁹ *Sharda Talkies (Firm) v. Smt. Madhulata Vyas*, AIR 1966 MP 68.

⁷⁰ *V.E.A. Annamalai Chettiar & Anr. v. S.V.V.S. Veerappa Chettir & Ors.*, AIR 1956 SC 12.

⁷¹ *Nikhil Mehta & Sons (HUF) & Ors. v. M/s. AMR Infrastructure Ltd.*, C.P (IB) No. 03/NCLT/PB/2017.

ARGUMENTS ON BEHALF OF INSOLVENCY PROFESSIONALS (IRP/RP)

Stage II: Proceedings conducted by Insolvency Professionals and CoC

I. THAT THE STEPS TAKEN BY IRP TO TAKE POSSESSION OF THE PROPERTY ARE JUSTIFIED.

It is brought to the notice of the Ld. Tribunal that post appointment, the IRP serviced intimation of CIRP to the employees of the Corporate Debtor [*Refer to p. 34-35 of Enclosures*]. Thereafter, he was not allowed to enter the Gujarat Plant of the Corporate Debtor by the local politicians and union workers.⁷² It is pertinent to note that there is a number of functions assigned to the IRP under the Code, and he will need to exercise these powers responsibly from the day of his appointment.⁷³ This includes taking possession of the assets of the Corporate Debtor, even where the debtor is hostile or his employees are non-cooperative. It is for the IRP to ensure that resistance does not develop into a crisis, bringing the resolution process to a grinding halt.⁷⁴ In the instant case it the IRP, in pursuance of his duty to manage & maximise earnings of the Corporate Debtor, proceeded to take control of its assets, as mentioned u/s 25 of the Code. But, he was illegally restricted by the employees from doing so. Thereafter, he appointed XYL Security services to control the situation in best possible way and preserve the assets, without using unwanted force against the protestors.

II. THAT PEOPLE'S BANK HAS VIOLATED THE PRINCIPLE OF MORATORIUM.

It is humbly submitted that the People's Bank has violated the restrictions imposed during the moratorium period, as prescribed u/s 14(c) of the Code, by adjusting the lease rental from the "New Age House" towards its dues instead of depositing the same. It is pertinent to note that the order of Moratorium imposes a stay not just on debt recovery actions, but also on any manner of recovery from the entity.⁷⁵ As the Code includes a mechanism to process claims, admit or disallow them and make distributions, proceedings with respect to those claims conducted outside the CIRP are rendered superfluous and therefore, a stay on such

⁷² Moot Proposition, p. 6 ¶ 2.

⁷³ Sumant Batra, *supra* note 24, at 306.

⁷⁴ *Id.*, at 311.

⁷⁵ Bankruptcy Law Reforms Committee, April 2016, Report of the Joint Committee on the Insolvency & Bankruptcy Code, 2015, p. 82 ¶ 1.

proceedings is fully justified.⁷⁶

Moreover, such actions of the Bank violates the fundamental principles of insolvency law which mention that insolvency proceedings are collective proceedings⁷⁷, which require the interests of all creditors to be protected against individual action by one of them.⁷⁸ The Bank shall have recovered its dues through the proper process and not by irregularly transferring the funds of Corporate Debtor to the disadvantage of other creditors. Reliance is placed on the case of *S. Muthuraju*⁷⁹, in which the Appellate Tribunal upheld the order of adjudicating authority whereby the financial creditor was directed to cooperate with the IRP and hand over possession of the assets under its control. Thus, in the instant case, the interests of all creditors should be protected against individual action by one of them.⁸⁰

III. THAT THE ACCEPTANCE OF THE CLAIM OF MARVEL ORGANICS LTD. IS VALID.

It is humbly submitted that Marvel Organics Ltd. is one of the financial creditors of the Corporate Debtor and has filed a claim of Rs. 136 crore [*Refer to p. 93-95 of Enclosures for Proof of claim*].⁸¹ This claim has been added by IRP to the list of claims and Marvel has been invited to the CoC. However, the Corporate Debtor has opposed this on the ground of non-verification of claim. In this regard, placing reliance on Regn. 13 of the CIRP Regulations, it is submitted that the IRP can verify every claim as on the insolvency commencement date, within seven days from the last date of the receipt of the claims. Furthermore, according to Regn. 12(2), Marvel can submit proof of claim to IRP/RP till the approval of a Resolution Plan by the CoC.⁸² Moreover, the IRP can revise the amounts of claims admitted, when he comes across additional information warranting such revision.⁸³ Thus, the addition of Marvel's claim to the list is not in contravention of the Code.

⁷⁶ Sumant Batra, *supra* note 24, at 252.

⁷⁷ Preamble, the Code.

⁷⁸ UNCITRAL Legislative Guide, p. 83.

⁷⁹ State Bank of India v. S. Muthuraju & Ors., Company Appeal (AT) (Ins.) No. 105 of 2017.

⁸⁰ UNCITRAL Legislative Guide, p. 83.

⁸¹ Moot Proposition, p. 7 ¶ 2.

⁸² Regn. 12(2), CIRP Regulations, 2016.

⁸³ Regn. 14(2), CIRP Regulations, 2016.

IV. THAT THE VALUATION OF THE ASSETS OF THE CORPORATE DEBTOR IS NOT IRREGULAR.

It is submitted that issues were raised in the CoC meeting [*Refer to p. 131-135 of Enclosures for minutes*] regarding the valuation process on two grounds, at different stages these are:

- a) That M/s. AKP Valuers is a related party to the CD.⁸⁴ Thus, it was removed by the IRP while complying with Regn. 27 & Regn. 35 of CIRP Regulations.
- b) That the valuation report of M/s. KGB Valuers is not admissible as it violates the condition prescribed in the Code. However, the Committee considered all the argument that valuation done in the instant case does not suffer from the vice of irregularity⁸⁵ as no prejudice has been caused to the parties⁸⁶ and unanimously accepted the Report.

V. THAT THE CLAIM OF PUBLIC DEPOSITORS SHALL NOT BE ACCEPTED.

It is humbly submitted that the claim of public depositors, who are claiming as operational creditors⁸⁷ cannot be accepted as it does not fall within the definition of ‘operational debt’⁸⁸. In *AMR Infrastructures Case*⁸⁹, this Tribunal has laid down the substantive elements of operational debt, a namely debt arising out of provisions of goods or services or out of employment.

In the instant case, the amount owed by Corporate Debtor to the public depositors does not fit in any of the above-stated elements of operational debt. Therefore, the claim of the depositors as the one under §9 of the Code is without substance. Hence, the same shall be rejected. [*Refer to p. 111-114 of Enclosures for claim and p. 149-151 for application before Tribunal*]

VI. THAT THE IRP CAN TAKE POSSESSION OF THE JUHU APARTMENT.

It is humbly submitted that the IRP has moved an application before the Ld. Tribunal to seek possession of the apartment, irregularly transferred to the then MD of the Company [*Refer to p. 139-141 of Enclosures for application*]. The MD has neither replied to the notice [*Refer to*

⁸⁴ Regn. 27 & Regn. 35, CIRP Regulations 2016.

⁸⁵ CIT, Delhi v. Kelvinator India Ltd., (2010) 2 SCC 723; Rani Kusum v. Kanchan Devi, AIR 2005 SC 3304; Shivjee Singh v. Nagendra Tiwary, AIR 2010 SC 2261.

⁸⁶ R v. Secretary of State for Transport, (1987) 1 All ER 161; State Bank of Patiala & Ors. v. S.K. Sharma, AIR 1996 SC 1669; State of U.P. v. Harendra Arora & Anr., AIR 2001 SC 2319.

⁸⁷ Moot Proposition, p. 7 ¶ 4.

⁸⁸ §5(21), the Code.

⁸⁹ Col. Vinod Awasthy v. AMR Infrastructures Ltd., C.P. (IB) No. 10/NCLT/PB/2017; Sajive Kanwar v. AMR Infrastructure Limited, C.P. (IB) No. 3/NCLT/PB/2017.

p. 147-148 of Enclosures for Notice] nor transferred the possession.

[A] That the sale of the apartment is hit by §329 of the Companies Act, 2013.

It is submitted that the sale of apartment to the MD, at an undervalued price, is not valid as it is neither made in the ordinary course of business nor made in good faith⁹⁰. It merely intends to transfer the assets of the insolvent company to its management, putting property beyond the reach of the creditors.⁹¹ In *Re Shivshakti Builders Case*⁹², the sale not made in the ordinary course of business was declared void on the application of the Official Liquidator.

Further, the sale of company's property below its market value is not a sale made in good faith. Notably, the MD has paid only Rs. 55 lakh out of the total amount of sale, *i.e.* Rs. 5 crore. This implies his malafide intention. Thus, the sale ought to be set aside⁹³ as it involves siphoning of funds of the company which is against the interest of creditors.⁹⁴ As mentioned in the '*Application to initiate enquiry against the Directors and Promoters of the Corporate Debtor for misfeasance and siphoning of funds*' [Refer to *p. 152-155 of Enclosures*], these acts have led to the insolvency of the Corporate Debtor and heavy loss to its creditors.⁹⁵

[B] That provisions relating to Related Party Transaction have not been complied with.

It is submitted that the sale amounts to Related Party Transaction/RPT. According to §2(76) of the Companies Act, 2013, "related party" includes director and thus, such transaction has to be in compliance with §188 of the Act and Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014. It is mandatory for the BOD to seek prior approval of the shareholders by an ordinary resolution. However, in the instant case, no such meeting has been called by the BOD.⁹⁶ The transaction has been approved only by the interested BOD without serving proper notice of such meeting to the shareholders, thereby keeping them in dark.⁹⁷ The BOD did not work with utmost good faith with regards to the Company and its

⁹⁰ §329, Companies Act, 2013

⁹¹ *National Westminster Bank Plc. v. Jones*, (2000) All ER (D) 857; *Pena v. Coyne*, (2004) All ER (D) 434.

⁹² *Re, Shivshakti Builders & Financial Co. Ltd.*, (2010) 158 CompCas 237 (Pat).

⁹³ *P.G. Vivekananda v. RPS Benefit Fund Ltd.*, (2004) 49 SCL 671 (Mad).

⁹⁴ *Archean Granties Pvt. Ltd. v. RPS Benefit Fund Ltd.*, (2007) 139 CompCas 191 (Mad).

⁹⁵ *Chamundi Chemicals & Safetyware Ltd. v. Cherian (MC)*, (1993) 77 CompCas 1 (Kar)

⁹⁶ *Chatterjee Petrochem Pvt. Ltd. v. Haldia Petrochemicals Ltd. & Ors.*, AIR 2012 SC 2753.

⁹⁷ *Allianz Securities Ltd. v. Regal Industries Ltd.*, (2002) 110 CompCas 764 (CLB).

members.⁹⁸ Such sale made in collusion with the MD of the Corporate Debtor cannot be approved.⁹⁹ Henceforth, in the interest of Corporate Debtor and its creditors, it is pleaded that sale be annulled and MD be ordered to transfer the possession of the apartment to IRP.

VII. THAT APPLICATION FILED BY RADHA HOSPITALITY PVT. LTD. SHOULD BE REJECTED.

It is humbly submitted that the application filed by Radha Hospitality Pvt. Ltd. [RHPL] seeking participation in the CoC should be rejected [*Refer to p. 136-138 of Enclosures*].

[A] That there is no outstanding payment liability towards RHPL.

It is submitted that the Corporate Debtor does not owe any debt to RHPL. In accordance with the terms mentioned in the JV Agreement, the Corporate Debtor has already paid the amount it was liable to pay.¹⁰⁰ Thus, there exists no liability or obligation in respect of a claim by RHPL which is due from the debtor.¹⁰¹

[B] That RHPL is not a financial creditor of the Corporate Debtor.

It is humbly submitted that RHPL is not a financial creditor of the Corporate Debtor as no financial debt is owed to RHPL. It is to be noted that the nature of the amount payable, if any, by the Corporate Debtor is in respect of the provision of services by RHPL.¹⁰² Therefore, placing reliance on *AMR Infrastructures Case*¹⁰³, it is submitted that any outstanding liability to RHPL can only amount to operational debt. However, according to §21(2) of the Code, the CoC shall comprise only of the financial creditors of the corporate debtor. Thus, being an operational creditor, RHPL has no right to be represented, participate or vote in the CoC.

[C] In Arguendo, related party of the Corporate Debtor cannot be a part of the CoC.

It is submitted that a party is related to another if it is a joint venture of the other party.¹⁰⁴

⁹⁸ *Re, Hindustan Cooperative Insurance Society*, AIR 1961 Cal 443; *Krishnaprasad Jwaladutt v. Colba Land & Mills Co. Ltd.*, AIR 1960 Bom 312; *Scottish Co-op Wholesale Society Ltd. v. Meyer*, (1958) 3 All ER 66.

⁹⁹ *Smt. Benu Berry v. JVG Finance Ltd.*, (2012) 172 CompCas 546 (Del).

¹⁰⁰ Moot Proposition, p. 4 ¶ 5.

¹⁰¹ §2(11), the Code.

¹⁰² §5(21), the Code.

¹⁰³ *Col. Vinod Awasthy v. AMR Infrastructures Ltd.*, C.P. (IB) No. 10/NCLT/PB/2017; *Surbhi Body Products v. Meyer Apparel Ltd.*, C.P. (IB) No. 13/NCLT/Chd/Hry/2017; *Umiya Trading v. Stratus Foods Pvt. Ltd.*, C.P. (IB) No. 3/9/NCLT/AHM/2017.

¹⁰⁴ ¶ 9, Related Party Disclosures, Indian Accounting Standard (Ind AS) 24; ¶ 3, Related Party Disclosures, Accounting Standard (AS) 18.

Furthermore, these companies have a common group of promoters which conclusively establish the related party relationship.¹⁰⁵ According to the proviso to §21(2) of the Code, a related party cannot participate in the CoC. Thus, RHPL, being a related party cannot participate in the CoC and the application seeking the same should be dismissed.

VIII. THAT THE RP HAS RIGHTLY TERMINATED THE LEASE OF THE GUESTHOUSE.

It is submitted that the act of the RP to terminate the lease of the Hyderabad guesthouse is in accordance with the powers conferred upon him by the Code. This claim can be substantiated by the following contentions.

[A] That it is the duty of RP to conduct business in the interest of the Corporate Debtor.

§25(1) of the Code casts a duty upon the RP to preserve and protect the assets of the Corporate Debtor, including the continued business operations of the corporate debtor. The act of termination of the lease by the RP is an act in furtherance of the above-stated duty. It is submitted that the RP may relinquish an asset if it is burdened in such a way that retention would require excessive expenditure which would exceed the proceeds of realization of the asset or give rise to an onerous obligation or a liability to pay money.¹⁰⁶ The guesthouse, at a monthly rent of Rs. 12 lakhs, was non-revenue generating expenditure and was merely increasing the payment obligations of the company already ridden in debt and facing insolvency proceedings. Thus, renewal of the lease at 30% increased rent will hinder chances of revival and violated the objective of maximizing value and reducing the costs of process.

IX. THAT APPLICATION TO RECOGNISE SINGAPORE PROCEEDINGS SHOULD BE REJECTED.

It is submitted that Mr. Chew John, the office holder of Ten Hospitality Services Pvt. Ltd. [THSPL] has claimed that the insolvency proceedings initiated against THSPL in Singapore be considered as the centre of main interest [*Refer to p. 159-161 of Enclosures for application filed by Mr. John*].¹⁰⁷ Such claims are baseless and cannot affect the proceedings initiated against the Corporate Debtor before the Ld. Tribunal on following grounds.

[A] That THSPL falls within the *de facto* group of the Corporate Debtor.

It is submitted that THSPL is a *de facto* group company of the Corporate Debtor. It is to be

¹⁰⁵ DLF Ltd. & Ors. v. Securities and Exchange Board of India, 2015 Indlaw SAT 1; Bechtel India Pvt. Ltd. v. DCIT, (2015) 174 TTJ (Del) 197.

¹⁰⁶ UNCITRAL Legislative Guide, p. 104-109.

¹⁰⁷ Moot Proposition, p. 9 ¶ 4.

noted that “*de facto groups*” are those where one company exercises, either directly or indirectly, a dominant influence over another company. Although not created by any formal arrangement, there must nevertheless be systematic involvement by the parent in the affairs of the controlled company.¹⁰⁸ In the instant case, THSPL is a Singapore based company acquired by the promoter group of the Corporate Debtor to diversify its business. Thus, THSPL is the group company of the Corporate Debtor, having common management.

[B] That the Centre of Main Proceedings lies in India.

It is submitted that the Centre of main proceedings of all the group companies of the Corporate Debtor, including THSPL, shall be in India and not in Singapore. It is to be noted that the factors relevant to determine the Centre of main proceedings of the Corporate Debtor include the place where central administration of the debtor take place and the place from which the debtor is subject to supervision and regulation.¹⁰⁹ In the instant case, the entire business of the Corporate Debtor is supervised by the promoter group from India. Further, major businesses of all the group companies of the Corporate Debtor are also based in India.

[C] That the foreign main proceedings should be conducted in India.

It is submitted that foreign main proceeding means a foreign proceeding taking place in the state where the debtor has the Centre of its main interests.¹¹⁰ As already established, in the instant case the Centre of main interest of the Corporate Debtor lies in India. Thus, the proceedings pending before the Ld. Tribunal shall be regarded as foreign main proceedings.

Therefore, the application filed by Mr. Chew John should be rejected.

X. THAT COPY OF INFORMATION MEMORANDUM SHOULD NOT BE GIVEN TO JKL PVT. LTD.

It is humbly submitted before the Ld. Tribunal that RP rightly refused to provide a copy of Information Memorandum [IM] to JKL Pvt. Ltd. It is herein submitted that JKL Pvt. Ltd. is not a serious party. The refusal is justified on the following grounds.

[A] That JKL Pvt. Ltd. is a competitor of the Corporate Debtor.

It is humbly submitted that §29 of the Code stipulates that the RP shall prepare an IM for the formulation of a Resolution Plan. However, it further recognizes the need to protect the intellectual property of the Corporate Debtor which is provided to the resolution applicant in

¹⁰⁸ 3 UNCITRAL LEGISLATIVE GUIDE ON INSOLVENCY LAWS 18 (2010).

¹⁰⁹ UNCITRAL Legislative guide, p. 70, 71.

¹¹⁰ Article 2(b), UNCITRAL Model Law on Cross-Border Insolvency, 2014.

the form of IM. In the instant case, JKL Pvt. Ltd. is the fourth largest manufacturer of solar panels in India, making him a direct competitor of Corporate Debtor, and hence, there would exist, an element of conflict and speculation if a copy of the IM, containing the managerial information and client details of the company is provided to it.¹¹¹ Thus, it will directly affect the future business continuity of the company in a highly competitive market.

Reliance is placed on *Saltman Engineering Case*¹¹² wherein the courts have recognised a wider equitable jurisdiction, which was based not so much on property or on contract, but rather on good faith. The law on confidence is based on the broad principle of equity that he who receives information in confidence should not take unfair advantage of it by using it to the prejudice of the person who imparts it. Thus, in the instant case, by revealing the relevant information to the competitor company, law of confidence would be violated.

[B] That it is the duty of the RP to maintain confidentiality in certain cases.

It is pertinent to bring it before the learned tribunal that the Code, 2016 casts a duty upon the RP to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.¹¹³ Further, according to First Schedule r.w. Regn. 7(2)(g) of the CIRP Regulations, RP must ensure that confidentiality of the information relating to the CIRP is maintained at all times.

It is submitted that by not disclosing such confidential information to the competitor operating the same market, the RP has ensured the future continuity of the business of Corporate Debtor as information relating to client and operating mechanism are essential integrals of any entity. Thus, by refusing to provide a copy to JKL Pvt. Ltd., the RP has adhered to his duty and ensured due resolution of the insolvency of the Corporate Debtor.

The objective of the Code is to conduct insolvency resolution of corporate persons in a time bound manner for maximisation of the value of assets of such persons. Furthermore, CIRP may have serious consequences on the Company.¹¹⁴ In the instant case, providing the relevant information of the Corporate Debtor to a competitor company would prejudice the resolution

¹¹¹ Regn. 36, CIRP Regulations, 2016.

¹¹² *Saltman Engineering Co. v. Campbell Engineering Co. Ltd.*, (1948) 65 RPC 203 (CA); See also *Nichrotherm Electrical Co. Ltd. v. Percy*, (1957) RPC 207 (CA); *Peter Pan v. Corsets Silhouette*, (1963) RPC 45; *Cranleigh Precision Engineering v. Byrant*, (1966) RPC 81.

¹¹³ §25 (1), the Code.

¹¹⁴ *State Bank of India, Colombo v. Western Refrigeration*, C.P. (IB) No. 17/7/NCLT/AHM/2017.

process, consequentially leading to liquidation of the Corporate Debtor. Thus, the application by JKL Pvt. Ltd. seeking the IM [*Refer to p. 170-171 of Enclosures*] should be rejected.

Stage III: Proceedings for approval of Resolution Plan

XI. THAT THE RESOLUTION PLAN SHOULD BE APPROVED BY THE LD. TRIBUNAL

It is humbly submitted that the RP has filed an application for the approval of the Resolution Plan submitted by Promoters of Corporate Debtor/Resolution Applicant before the Ld. Tribunal [*Refer to p. 195-202 of Enclosures for the Plan and p. 206-208 for the Application*]. It is herein pleaded that the Plan should be considered and approved by the Ld. Tribunal after considering the below-mentioned arguments.

[A] That the plan was duly submitted and approved by all stakeholders.

It is submitted that the resolution plan submitted by the promoters of the Corporate Debtor was duly analysed and considered by the RP and the CoC. Further, the Resolution plan was elaborately discussed and passed unanimously by the CoC members on 28.07.2017¹¹⁵ in accordance with the procedure prescribed under §30 of the Code.

[B] That the continued involvement of the erstwhile management under overall supervision of insolvency representative.

It is submitted that the allowing the erstwhile management of the company to regain the control will be advantageous to the company considering their immediate and intimate knowledge of its business and the industry within which it operates. Displacement of the erstwhile management, notwithstanding its role in the financial difficulties of the business, may not only eliminate an incentive for entrepreneurial activity, risk-taking in general but also may undermine the chances of success of the reorganization.¹¹⁶ However, an insolvency representative must be appointed by the Ld. Tribunal, how shall supervise the implementation of the plan and keep in check, the conduct of the management.

[C] That the plan satisfies all the essential elements prescribed in the Code.

It is submitted that the Resolution Plan consists of all the essential elements as mandated under §30 of the Code read with Regn. 38 of the CIRP Regulations, as it provides for:

- a) payment of insolvency resolution process costs;

¹¹⁵ Moot proposition, p. 5 ¶ 1.

¹¹⁶ UNCITRAL Legislative Guide, p. 162.

- b) repayment of the debts of operational creditors over a period of 3 years;
- c) repayment of the debts of financial creditors over a period of 5 years;
- d) source of funds for the repayment of debts of the dissenting Creditors;
- e) an appropriate policy for reducing the cost of production and management of trading operations;
- f) implementation and supervision of the resolution plan; and
- g) management of the affairs of the Corporate Debtor after approval of the resolution plan.

Thus, through the Plan, Resolution Applicant has undertaken to fund the immediate cash requirement of Corporate Debtor, to meet its unavoidable outstanding liabilities and enable continuity of business operations of Corporate Debtor through proper management policies.

[D] That the Ld. Tribunal is not required to check the financial viability of the Plan.

It is submitted that the intention of the Code is that the Tribunal is not to delve into technical and economic complexities of the Plan. This expectation is based on global best practices.¹¹⁷

In particular, it is highly desirable that the law not require or permit the court to review the economic and commercial basis of the decision of creditors. Moreover, there are a number of decisions of the Indian courts stating that the courts should not examine the merits of such Plans.¹¹⁸ Thus, in the light of §31 of the Code, the Tribunal has to first satisfy that the Resolution Plan is approved by the CoC under §30 and thereafter pass an order approving the Resolution Plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Plan. However, the Tribunal is not expected to reject a plan on the ground that it is not feasible or possible to implement the plan from a practical or economic point of view.¹¹⁹

Therefore, it is humbly pleaded that the Ld. Tribunal accepts the application filed by RP and passes an order approving the Resolution Plan for the Corporate Debtor.

¹¹⁷ UNCITRAL Legislative Guide, p. 228.

¹¹⁸ Hindustan Lever Employees Union v. Hindustan Lever Ltd., AIR 1995 SC 470; *Re*, Maknam Investments Ltd., (1996) 87 CompCas 689 (Cal); Banoo J. Coyajee v. Shanta Genevieve Parulekar, (1995) 84 CompCas 534 (Bom); Jitendra R. Sukhadia v. Alembic Chemical Works Co. Ltd., (1988) 64 CompCas 206 (Guj).

¹¹⁹ Sumant Batra, *supra* note 24, at 432.

ARGUMENTS ON BEHALF OF FINANCIAL CREDITORS/CoC

Stage I: Filing and Acceptance of CIRP Application

I. THAT THE APPLICATION FILED BY THE RST BANK IS MAINTAINABLE.

It is submitted before Ld. Tribunal that application filed by the Applicant under §7 of the Code [*Refer to p. 3-6 of Enclosures*], is complete and thus, acceptable on following grounds.

[A] That the Respondent Company owes an undisputed financial debt to the Applicant.

The Respondent Company owes a financial debt of Rs. 650 crores to the Applicant, outstanding as on 31.12.2016.¹²⁰ The outstanding loan amount, including principal, interest and other charges, fall within the ambit of financial debt as prescribed u/s 5(8) of the Code.¹²¹ Also, there exists no *bonafide* dispute between the parties relating to the existence of the debt and thus, the debt is an accepted debt and provides no specific reason for non-payment.

Further, the amount of outstanding debt is methodically calculated in accordance with the terms of the loan agreement [*Refer to p. 9-21 of Enclosures*]. Also, it is a settled principle of law that where the accuracy of claim is only doubted and the claim itself is not disputed by the company, an order for winding-up is warranted.¹²² Thus, the defendant cannot challenge the maintainability of the application by disputing the amount of debt.

[B] That the failure to honour the debts reflects commercial insolvency.

It is submitted that the failure to honour due debt amounts to the commercial insolvency of the Respondent Company and thus, necessitates initiation of CIRP.¹²³

Further, merely having large asset base is not sufficient to regard the company as a solvent company.¹²⁴ The test is whether the company shall be able to meet its current liabilities and whether the existing assets would be sufficient to meet the future demands while the

¹²⁰ Moot Proposition, p. 3 ¶ 1.

¹²¹ Col. Vinod Awasthy v. AMR Infrastructures Limited, C.P. (IB) No. 10/NCLT/PB/2017.

¹²² Madhusudan Gordhandas & Co. v. Madhu Woolens Industries Pvt. Ltd., AIR 1971 SC 2600; Hewlett Packard India Sales Pvt. Ltd. v. Jalan Infotech P. Ltd., (2013) 179 CompCas 331 (Cal).

¹²³ P.Y. Parry v. Cyrotech Biproducs P. Ltd., AIR 1999 Kar 331.

¹²⁴ Krishna Iyer & Sons v. New Era Manufacturing Co. Ltd., (1965) 35 CompCas 410 (Ker); ROC v. K T Financiers Pvt. Ltd. (1978) 48 CompCas 129 (All).

company remains a going concern.¹²⁵ However, with excessive borrowings and reduced asset base, the Respondent Company does not have future growth prospects. Thus, initiation of CIRP would ensure that all the creditors receive the amount due as it would prevent the directors from enriching themselves at the expense of small subscribers.¹²⁶

[C] That the management is transferring assets Corporate Debtor for personal gains.

The promoters of the Corporate Debtor are diverting its funds to the companies personally owned by them, hinting at conspiracy and fraud.¹²⁷ In the instant case, such frauds can be elucidated by the fact that the sale of the Juhu Apartment to the Managing Director is for an amount much lesser than the market value¹²⁸ and also the amount of Rs. 6.5 crore has been transferred to RHPL, owned by promoters, without being due [*Refer to p. 131-135 of Enclosures for minutes and p. 152-155 for Application for Enquiry*].

Henceforth, in the light of the factual milieu, it is submitted that the application satisfies all conditional precedents mentioned u/s 7 of the Code and thus, it should be accepted.

Stage II: Proceedings conducted by Insolvency Professionals and CoC

II. THAT CLAIM FILED BY PEOPLE'S BANK AND MARVEL ORGANICS LTD. IS ESCALATED.

It is submitted that the principal amount owed by Corporate Debtor to People's Bank was Rs. 500 crore but the financial creditor inflated the amount to Rs. 790 crores [*Refer to p. 53-69 of Enclosures*]. Such escalation is unexplained. Similarly, Marvel Organics Ltd., who is one of the financial creditors, has claimed an amount of Rs. 136 crores in as outstanding debt in lieu of the principal amount of Rs. 20 crores [*Refer to p. 93-95 of Enclosures*]. Further, it has failed to file any documents in support to substantiate and justify its claim. It is pertinent to mention that insolvency proceedings are collective proceedings, which require the interest of all the creditors to be protected against individual action by one of them.¹²⁹

¹²⁵ Ranbaxy Laboratories Ltd. v. M.S. Shoes East India Ltd., (1998) 93 CompCas 296 (Del); Alliance Credit & Investments Ltd. v. Khaitan Hostombe Spinels Ltd., (1999) 95 CompCas 436 (All).

¹²⁶ *Re, Navjivan Trading Finance P. Ltd.*, (1978) 48 CompCas 402 (Guj); *Re, Rishi Enterprises*, (1992) 73 CompCas 271 (Guj).

¹²⁷ *Nawabzada Captain Syed Murtasa Ali Khan v. Stressed Concrete Constructions Pvt. Ltd.*, (1961) 31 CompCas 84 (Mad).

¹²⁸ Moot Proposition, p. 5 ¶ 1.

¹²⁹ UNCITRAL Legislative Guide, p. 83.

Hence, the default amount computed by the financial creditor is grossly incorrect and contrary to the provisions of the law. In case of *Starlog Enterprises Ltd.*¹³⁰, the Hon'ble Appellate Tribunal not only dismissed the application of financial creditor but also imposed a fine of Rs 50,000/- u/s 75 of the Code on inflation of the default amount. Henceforth, it is pleaded that the Ld. Tribunal orders the IRP to take cognizance of the default on the part of People's Bank and Marvel, and verify their claim in accordance with the actual outstanding liability of the Corporate Debtor [*Refer to p. 131-135 of Enclosures for minutes*].

III. THAT THE APPLICATION FILED BY RHPL SHOULD BE ACCEPTED.

It is humbly submitted that the application filed by RHPL seeking participation in the CoC [*Refer to p. 136-138 of Enclosures*] should be accepted on the following grounds.

[A] That RHPL has the buyout right in case of Corporate Debtor's insolvency.

It is submitted that as per the terms of JV Agreement, the Corporate Debtor undertook the liability to pay 50% of the cost incurred in developing the hotel and the commercial tower in Raipur.¹³¹ However, in case of insolvency of one of the parties of JV, the other party gets the right to buyout the JV property and also, the right of first refusal. Thus, by refusing the right of first refusal to the non-debtor JV member, a grave injustice has been done against RHPL.

High reliance is placed on the case of *Northrop Grumman Tech. Serv. Inc. v. The Shaw Group Co.*¹³², wherein the JV agreement provided that a bankruptcy filing by or against any member was an event of default and gave the non-defaulting members the right to buy out the defaulting member's economic interest at a price specified in the agreement. It also gave each member a right of first refusal in the event that any other member wanted to transfer its rights to a non-affiliated third party.¹³³ It is therefore pleaded that RHPL be given an opportunity to raise its claim through a right to representation, participation and voting in the CoC.

[B] That RHPL is not a related party of the Corporate Debtor.

RHPL is not a related party of the Corporate Debtor as it does not fall under the definition of 'related party' enshrined in §5(24) of the Code. Thus, the participation of RHPL in CoC is not barred by the proviso to §21(2) of the Code. Hence, its application should be accepted.

¹³⁰ M/s. Starlog Enterprises Ltd. v. ICICI Bank Ltd., Company Appeal (AT) (Ins.) No. 5 of 2017.

¹³¹ Moot Proposition, p. 2 ¶ 2.

¹³² Northrop Grumman Tech. Serv. Inc. v. The Shaw Group Co. (*Re, The IT Group Inc.*), (2003) 302 BR 483.

¹³³ A. J. Currie & Kristen Burgers, *Bankruptcy Issues Affecting Joint Ventures*, 29 ABI JOURNAL 104 (2010).

IV. THAT THE APPOINTMENT OF THE INSOLVENCY PROFESSIONALS IS VALID.

It is humbly submitted before the Ld. Tribunal that the Corporate Debtor has challenged the appointments of Insolvency Professionals, *i.e.* Mr. Amit Thakur and Mr. Divesh Sharma, by citing procedural irregularity. It is herein submitted that the procedural irregularity does not vitiate the appointment as the Insolvency Professionals, who are otherwise qualified and were ultimately appointed under the supervision of the Ld. Tribunal.

Reliance is placed on the case of *R v. Secretary of State for Transport*¹³⁴, wherein the Court of Appeal applied the test of prejudice while dealing with a complaint of procedural impropriety, and held that unless prejudice is established to have resulted from the procedural impropriety, no interference was called for. Thus, it is submitted that procedural prescriptions are handmaid and not the mistress; a lubricant and not a resistance in the administration of justice.¹³⁵ Thus, if a procedure does not result in prejudice to the party, then the act is valid.¹³⁶

Henceforth, in the instant case, the appointments of Insolvency Professionals do not result in prejudice to any party and the same is valid in the eyes of law.

V. THAT THE CLAIM OF PEG DEVELOPERS LTD. IS ADMISSIBLE.

It is humbly submitted that PEG Developers Ltd. has submitted its claim for Rs. 15 crores on 20.07.2017¹³⁷ and the same should be accepted [*Refer to p. 89-92 of Enclosures*]. It is herein submitted that according to Regn. 12 of the CIRP Regulations, if a creditor fails to submit proof of claim within the time stipulated in the public announcement made by the IRP, it may submit such proof to the IRP or to the RP at any stage till the approval of a Resolution Plan by the CoC. In the instant case, according to the public announcement, the last date for submission of such claim was 22.04.2017. Howbeit, as on the date of submission of the claim by PEG Developers Ltd., *i.e.* 20th July, Resolution Plan was not approved by the CoC. Thus, in the light of CIRP Regulations, the claim of PEG Developers Ltd. is still admissible.

Stage III: Proceedings for approval of Resolution Plan

[*Refer to p. 204-205 of Enclosures for minutes of CoC meeting to approve the Resolution Plan*]

¹³⁴ *R v. Secretary of State for Transport*, (1987) 1 All ER 161; *State Bank of Patiala & Ors. v. S.K. Sharma*, AIR 1996 SC 1669; *State of U.P. v. Harendra Arora & Anr.*, AIR 2001 SC 2319.

¹³⁵ *Smt. Rani Kusum v. Smt. Kanchan Devi*, AIR 2005 SC 3304.

¹³⁶ *Shivjee Singh v. Nagendra Tiwary*, AIR 2010 SC 2261.

¹³⁷ Moot Proposition, p. 11 ¶ 1.

ARGUMENTS ON BEHALF OF OTHER PARTIES

Stage II: Proceedings conducted by Insolvency Professionals and CoC

I. THAT INSOLVENCY PROCEEDINGS AGAINST THSPL SHOULD BE RECOGNIZED.

It is humbly submitted that Ten Hospitality Services Pvt. Ltd. [THSPL], a group company of Corporate Debtor, is a company registered in Singapore and operates in the hotel business. Insolvency proceedings have been initiated against THSPL in Singapore and Mr. Chew John has been appointed as the office holder of THSPL.¹³⁸ An application has been filed by Mr. John under Art. 15, UNCITRAL Model Law¹³⁹ requesting the Ld. Tribunal to recognize the Singapore proceeding as foreign main proceedings [*Refer to p. 159-161 of Enclosures for application*] on the following grounds.

[A] That the centre of main interest lies in Singapore.

THSPL is a company registered in Singapore and its entire business is located in Singapore. It is to be noted that all business operations of THSPL and its sister company AFB Investment Pte. are regulated and supervised from Singapore only. The centre of main interest corresponded to the place where the debtor conducted the administration of its interest on a regular basis and therefore ascertained by the third party¹⁴⁰ and the place of the registered office is presumed to be the centre of main interest in absence of proof to the contrary. Placing reliance on *Re Daisytek-ISA Ltd.*¹⁴¹, it is submitted that proceedings be recognized as Foreign Main proceedings as the centre of main interest lies in Singapore.

[B] That THSPL is operating independently from the parent company.

Though THSPL is a subsidiary company of Corporate Debtor, however, it is operating independently from its parent company and managing its business operations from Singapore. High Reliance is placed on principle settled in *Eurofood IFSC Ltd. Case*¹⁴², i.e.

“Where a company carries on its business in the territory of the Member State where its

¹³⁸ Moot Proposition, p. 9 ¶ 4.

¹³⁹ UNCITRAL Model law on Cross-Border Insolvency, 2014.

¹⁴⁰ *Geveran Trading Co. Ltd. v. Skievesland*, (2002) All ER (D) 296.

¹⁴¹ *Re, Daisytek-ISA Ltd.*, (2003) All ER (D) 312.

¹⁴² *Re, Eurofood IFSC Ltd.*, (2006) All ER (EC) 1078.

registered office is situated, the mere fact that its economic choices are or can be controlled by a parent company in another Member State is not enough to rebut the presumption laid down by that Regulation...On a proper interpretation of the first subparagraph of Article 16(1) of Regulation No 1346/2000, the main insolvency proceedings opened by a court of a Member State must be recognised by the courts of the other Member States, without the latter being able to review the jurisdiction of the court of the opening State.”

Thus it is pleaded that the insolvency proceedings initiated against THSPL be recognized as foreign main proceedings as THSPL has centre of main proceedings in Singapore.¹⁴³ Moreover, if insolvency proceedings are opened against a company that is in some way related to another company, the former company is considered to be a separate debtor as every legal person is a single debtor under the application of the Insolvency Regulation.

[C] That assets of Corporate Debtor be subjected to the result of Singapore proceedings.

It is pleaded that the Ld. Tribunal be obliged to grant the relief mentioned under provisions of UNCITRAL Model Law, subsequent to the recognition of foreign proceedings initiated against the corporate debtor. These reliefs are listed hereunder:

- a) Execution against debtor’s assets be stayed¹⁴⁴ and the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.¹⁴⁵
- b) Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor’s assets, rights, obligations or liabilities.¹⁴⁶
- c) Entrusting the administration or realization of all or part of the debtor’s assets located in this State to the foreign representative or another person designated by the court.

II. THAT A COPY OF INFORMATION MEMORANDUM MUST BE PROVIDED TO JKL PVT. LTD.

It is submitted that JKL Pvt. Ltd. has filed an application before this Tribunal [*Refer to p. 162-165 of Enclosures for application*] challenging on following grounds the wrongful refusal of IM to JKL by the RP.¹⁴⁷

¹⁴³ Article 2(b), UNCITRAL Model Law on Cross-Border Insolvency, 2014.

¹⁴⁴ *Id.*, Article 20(b).

¹⁴⁵ *Id.*, Article 20(c).

¹⁴⁶ *Id.*, Article 21(1)(a).

¹⁴⁷ Moot Proposition, p. 10 ¶ 3.

[A] That JKL Pvt. Ltd. is a serious party.

It is submitted that when a corporate entity enters into CIRP, there are essentially two possible outcomes, *i.e.* insolvency resolution or the winding up and liquidation of the company and a distribution of its assets to creditors and other stakeholders. The former essentially deals with corporate restructuring. Moreover, the objective of CIRP is restructuring rather than liquidation to ensure the continued business of the Corporate Debtor. The latter comes into picture only when the former fails. Thus the RP should provide equal opportunities to all the parties to participate in the restructuring of the company.

Moreover, any person submitting a resolution plan would want to be completely satisfied with the legal and marketable title of the assets for which it is expected to pay a price.¹⁴⁸ Thus, before making huge investment decision like this, JKL Pvt. Ltd. sought IM from the RP in order to satisfy that the same is conducive for its business.

Notably, both JKL Pvt. Ltd. and the Corporate Debtor deal with the business of manufacturing of solar panels. Thus, JKL Pvt. Ltd. is in a better position to understand the business of Corporate Debtor and accordingly, suggest a better resolution plan than those businessmen who are new to this line of business.

[B] That it is the duty of RP to provide IM to all the Resolution Applicants.

§5(25) of the Code defines resolution applicant as any person who submits a resolution plan to the RP. Further, §29 of the Code mandates the RP to provide to the Resolution Applicant access to all relevant information. since Resolution Plan can be submitted only after the concerned person gets details of the business and prepares a viable plan from the relevant information contained in IM, the ambit of definition of resolution applicant is wide enough to include the pre-resolution plan submission stage. Such wider interpretation of resolution applicant includes JKL Pvt. Ltd. within its ambit because it also proposes to file a resolution plan after analyzing the details of the business from the IM.¹⁴⁹ Therefore, the RP should interpret the term 'resolution applicant' in a wider sense and not narrow down its scope.¹⁵⁰

Thus, it is humbly pleaded before the Ld. Tribunal that the application by JKL Pvt. Ltd. be accepted and the RP be ordered to provide a copy of the IM to it.

¹⁴⁸ Sumant Batra, *supra* note 24, at 311.

¹⁴⁹ Alpha & Omega Diagnostics (India) Ltd. v. Asset Reconstruction Co. of India Ltd., Company Appeal (AT) (Ins.) No. 116 of 2017.

¹⁵⁰ Schweitzer Systemtek India Pvt. Ltd. v. Phoenix ARC Pvt. Ltd., Company Appeal (AT) (Ins.) No. 129 of 2017.

PRAYER

Wherefore in the light of facts stated, arguments advanced and authorities cited, it is most humbly prayed that this Hon'ble Tribunal may be pleased to adjudge and declare that:

PRAYER ON BEHALF OF THE CORPORATE DEBTOR/PROMOTERS

Stage I: Filing and Acceptance of CIRP Application

- The CIRP Application filed by RST Bank is not maintainable and the IRP proposed in the CIRP application is ineligible for appointment. Hence, the application is bound to be rejected.

Stage II: Proceedings conducted by Insolvency Professionals and CoC

- The Juhu Apartment was validly sold to Managing Director and does not account as the property of the Corporate Debtor.
- The claims filed by Marvel Organics Ltd. be rejected as no documents has been filed to substantiate the escalated claim.
- The appointment of the RP by CoC is irregular and hence liable to be set aside.
- The act of IRP to terminate the lease of Hyderabad Guesthouse is ultra vires his powers and hence liable to be quashed.
- The allegation of siphoning of funds by the Management/Promoters of the Corporate Debtor is devoid of merits.

Stage III: Proceedings for approval of Resolution Plan

- The Resolution Plan submitted by the Promoters of Corporate Debtor be approved.

PRAYER ON BEHALF OF THE OPERATIONAL CREDITORS

Stage II: Proceedings conducted by Insolvency Professionals and CoC

- The claim of public depositors should be considered, accepted and verified by the IRP.

PRAYER ON BEHALF OF THE INSOLVENCY PROFESSIONALS (IRP/RP)

Stage II: Proceedings conducted by Insolvency Professionals and CoC

- The sale of Juhu Apartment to the Managing Director is illegal and void.
- The application filed by RHPL should be rejected as it is not a financial creditor.
- The termination of the lease of the Hyderabad Guesthouse is valid.
- People's Bank has violated the principle of Moratorium by adjusting the lease rental against the outstanding debts, during the pendency of CIRP.
- The acceptance of the claim of Marvel Organics Ltd. by IRP is valid.
- The claim of public depositors should not be accepted in the interest of all the

stakeholders.

- The application to recognise Singapore Proceedings should not be accepted as the centre of main proceedings lies in India.
- A copy of IM should not be provided to JKL Pvt. Ltd as it is a non-serious party.
- The Resolution Plan submitted by the Promoters of the Corporate Debtor be approved.

PRAYER ON BEHALF OF THE FINANCIAL CREDITORS/CREDITORS COMMITTEE

Stage I: Filing and Acceptance of CIRP Application

- The application to initiate CIRP be accepted and the proposed Insolvency Professional be appointed as Interim Resolution Professional for the Corporate Debtor.

Stage II: Proceedings conducted by Insolvency Professionals and CoC

- The IRP/RP be ordered to conduct detailed verification of the allegations of escalated claims raised by several claimants.
- The application of RHPL seeking representation in CoC be allowed.
- No irregularity has been committed in the appointment of Mr. Divesh Sharma as the Resolution Professional.

PRAYER ON BEHALF OF THE OTHER PARTIES

Stage II: Proceedings conducted by Insolvency Professionals and CoC

- The insolvency proceedings against THSPL, Singapore be recognized as foreign main proceedings as the centre of main interest lies there.
- The RP should provide a copy of IM to JKL Pvt. Ltd as it is a serious party.

And any other relief that the Hon'ble Tribunal may be pleased to grant in the interests of Justice, Equity and Good Conscience.

All of which is respectfully submitted & humbly prayed.

Sd/-

COUNSELS FOR THE CONCERNED PARTIES

-Z-

~WRITTEN SUBMISSIONS *on behalf of the* **CONCERNED PARTIES**~

**INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION
2017**

IN THE MATTER OF

NEW AGE TECHNOLOGY LTD.....CORPORATE DEBTOR/RESPONDENT

ON BEHALF OF

RST BANK.....FINANCIAL CREDITOR/APPLICANT

**ENCLOSURES AND ATTACHMENTS ON BEHALF OF THE
CONCERNED PARTIES**

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

Stage I: Filing and Acceptance of CIRP Application

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INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

STAGE I: FILING AND ACCEPTANCE OF CIRP APPLICATION

Part- A: Insolvency application filed by RST Bank

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

COMPANY APPLICATION No. (IB) _____ (ND)/2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED.....CORPORATE DEBTOR

ON BEHALF OF

RST BANK.....FINANCIAL CREDITOR

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Counsel for the Applicant

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

COMPANY APPLICATION No. (IB) _____ (ND)/2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED.....CORPORATE DEBTOR

ON BEHALF OF

RST BANK.....FINANCIAL CREDITOR

MEMO OF PARTIES / ADDRESS FORM

RST Bank, R/O at Eshwar Nagar, Manipal, Karnataka 576104, through Raghuraj Singh,
Legal Director, RST Bank.

- Applicant

And

New Age Technology Ltd, R/O at A-112, Vikram Vihar, New Delhi, Through its Managing
Director

- Corporate Debtor

Place: New Delhi

HUMBLE APPLICANT

DATED: 04.03.2017

RST Bank

(Through Raghuraj Singh)

FORM 1

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

**APPLICATION BY FINANCIAL CREDITOR TO INITIATE CORPORATE INSOLVENCY
RESOLUTION PROCESS UNDER THE CODE**

*(Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

Date: 04.03.2017

To,

The National Company Law Tribunal,

New Delhi

From,

RST Bank,

Eshwar Nagar, Manipal, Karnataka - 576104

In the matter of New Age Technology Limited

Subject: Application to initiate corporate insolvency resolution process in the matter of New Age Technology Limited under the Insolvency and Bankruptcy Code, 2016.

Sir,

RST Bank, hereby submit this application to initiate a corporate insolvency resolution process in the matter of New Age Technology Limited. The details for the purpose of this application are set out below:

Part-I

PARTICULARS OF APPLICANT		
1.	Name of financial creditor	RST Bank
2.	Date of incorporation of financial creditor	12.05.1974

(3)

ENCLOSURES AND ATTACHMENTS *on behalf of the* **CONCERNED PARTIES-**

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

3.	Identification number of financial creditor	U65191KL1929PLC000676
4.	Address of the registered office of the financial creditor	Eshwar Nagar, Manipal, Karnataka 576104
5.	Name and address of the person authorised to submit application on its behalf	Raghuraj Singh (Legal Director, RST Bank) T-20, Lawyer Enclave, New Delhi
6.	Name and address of person resident in India authorised to accept the service of process on its behalf	Sanyam Hazare Eshwar Nagar, Manipal, Karnataka 576104

Part-II

PARTICULARS OF THE CORPORATE DEBTOR		
1.	Name of corporate debtor	New Age Technology Limited
2.	Identification number of corporate debtor	L17110MH1973PLC019876
3.	Date of incorporation of corporate debtor	02.05.2007
4.	Nominal share capital and the paid-up share capital of the corporate debtor and/or details of guarantee clause as per memorandum of association (as applicable)	5,00,00,00,00,000/-
5.	Address of the registered office of the corporate debtor.	A-112, Vikram Vihar, New Delhi

Part-III

PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL		
1.	Name, address, email address and the registration number of the proposed interim resolution professional	Mr. S. Mahesh

Part-IV

PARTICULARS OF FINANCIAL DEBT		
1.	Total amount of debt granted	Rs. 500 crore
2.	Amount claimed to be in default and the date on which the default occurred	Rs. 650 crore

Part-V

PARTICULARS OF FINANCIAL DEBT [DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT]	
1.	Particulars of security held, if any, the date of its creation, its estimated value as per the creditor.
2.	The latest and complete copy of the financial contract reflecting all amendments and waivers to date.
3.	List of other documents attached to this application in order to prove the existence of financial debt, the amount and date of default.

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

Yours sincerely,

Signature of person authorised to act on behalf of the financial creditor
Raghuraj Singh
Position with or in relation to the financial creditor
Address of person signing

AFFIDAVIT IN SUPPORT OF INSOLVENCY APPLICATION

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

COMPANY APPLICATION No. (IB) _____ (ND)/2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED.....CORPORATE DEBTOR

ON BEHALF OF

RST BANK.....FINANCIAL CREDITOR

AFFIDAVIT IN SUPPORT OF INSOLVENCY APPLICATION

I, Raghuraj Singh , Legal Director, RST Bank, aged 48 Years, R/o Plot T-20, Lawyer Enclave, New Delhi, 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 6 of application are true and correct photocopies of its original.

New Delhi

Dated: 04.03.2017

VERIFICATION

I, Raghuraj Singh , Legal Director, RST 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: New Delhi

Date: 04.03.2017

Signature of the Applicant

DOCUMENTS ANNEXED

ANNEXURE 1: LOAN AGREEMENT

RST BANK

BUSINESS LOANS

Terms and Conditions

LOAN ACCOUNT NO: RST3147963

INSTRUCTIONS FOR FILLING LOAN TERMS AND CONDITIONS

1. All applications to be filled in English in CAPITAL LETTERS using a Black Ball point pen only.
2. There should not be any amendments / overwriting / erasures / cutting on the Loan Terms and Conditions and any amendments / over erasures / cutting should be undersigned.
3. The Signature of Borrower and Co-Borrower should be the same on the Loan Terms and Conditions document.
4. The full Signature of the Borrower and Co-Borrower is to be done in all places marked in Grey color box in Loan Terms and Conditions booklet using a Black Ball Point Pen only.
5. There are maximum 7 signatures to be done which has been marked from S1 to S7.

TERMS & CONDITIONS

The person(s) named in the Schedule-cum-Key Fact Statement hereto (hereinafter referred to as the “Schedule”) being borrowers and co-borrowers, hereinafter collectively referred to as “Borrower” which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include his/her heirs, administrators and executors.

In favour of:

RST BANK, a banking company incorporated under the provisions of the Companies Act, 1956 having its registered office at RST Bank, Eshwar Nagar, Manipal, Karnataka - 576104, India, and a branch office at the place mentioned in the Schedule hereto (hereinafter referred to as the “Bank” which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors, transferees and assign). In case of there being more than one Borrowers (i.e. there being co-borrowers), the reference to the term “Borrower” shall be deemed to be as if it were plural and this document shall be read accordingly as if made and liabilities undertaken by each of them jointly and severally. Reference to the masculine gender includes reference to the feminine and neuter genders and vice versa. The expression “Borrower”, unless it be repugnant to the context or meaning thereof, shall mean and include: in the event that the Borrower is a Company within the meaning of the Companies Act, 2013 or a Limited Liability Partnership, incorporated under the Limited Liability Partnership Act, 2008, its successors; in the event that the Borrower is a partnership firm for the purposes of the Indian Partnership Act, 1932, the partners for the time being and from time to time and their respective legal heirs, executors and administrators; in the event that the Borrower is a sole proprietorship, the sole proprietor and his/ her legal heirs, administrators and executors; in the event that the Borrower is a joint Hindu Undivided Family, the Karta and any or each of the adult members of the HUF and their survivor(s) and his / her / their respective heirs, executors, administrators; in the event that the Borrower is a Society, the members of the governing body of the Society and any new members elected, appointed or co-opted thereon; in the event that the Borrower is a Trust, the Trustee or Trustees for the time being hereof and their respective heirs, executors, administrators and successors; in the event that the Borrower is an individual, his/her heirs, administrators and executors.

The Borrower hereby irrevocably and unconditionally agrees to abide by the following terms and conditions:

1. Pursuant to the application made by the Borrower in the Loan Application Form (“Application”), the Bank has sanctioned the non-revolving loan not exceeding the amount mentioned in the Schedule hereto (hereinafter referred to as “Loan”), and the Borrower agrees to borrow the same, subject to and upon the terms and conditions contained in the Application and/or this document. The Bank may disburse the Loan or any part thereof (“Disbursement”) at its own discretion. Notwithstanding anything contained herein: (i) the Bank may at its sole discretion, suspend or cancel the Loan if the same is not utilized within 15 days of the issuance of instrument/instruction for Disbursement; or (ii) the Borrower may cancel the Loan within 15 days of Disbursement; provided that in case of each (i) and (ii) the cancellation shall take effect only when the Borrower has paid to the Bank in full the total Outstanding Balance (defined hereinafter) including all the interest, and all other charges. The Borrower shall use the Loan only for the purpose stated in the Application and not for any other purpose including making investment in the capital market or any speculative or illegal or anti-social purpose. Without being obligated to do so, the Bank shall be entitled to monitor the use/end use of the Loan including through any auditor(s) or consultant(s) with necessary certification from them, as appointed by the Bank at its sole discretion at the cost of the Borrower. The Bank shall have no obligation to meet any further requirements of the Borrower on account of growth in its business, etc.
2. The Loan, interest, compound interest, default interest, any other charges, dues and monies payable, costs and expenses reimbursable, as outstanding from time to time and whether any of them due or not, are hereinafter collectively referred to as “Outstanding Balance”. The Borrower shall pay interest on the Loan, the unpaid due interest and all other outstanding charges and monies (except the default interest), at the rate of interest specified in the Schedule hereto, on the outstanding daily balance from the date of Disbursement, compoundable at monthly rests. The Bank in its sole discretion would be entitled to change the said rate of interest from time to time including on account of changes made by the Reserve Bank of India, which would be intimated to the Borrower(s) and would be binding upon the Borrower(s). The Borrower shall also pay and bear all interest tax, if any, as applicable from time to time. The Borrower(s) shall repay the Loan and pay the interest that is due from time to time by way of equated monthly installments (EMIs) as specified in the Schedule or as may be specified by the Bank from time to time (time being the essence of the contract). The Borrower has

perused, understood and agreed to Bank's method of calculating EMIs as also the appropriation thereof into principal and interest. The payment of all the monies by the Borrower including EMIs shall be made on or before the respective due dates, at such place as the Bank may require, without any set-off or counterclaim or withholding or deduction (save as required by law in which case the amount payable by the Borrower to the Bank shall be increased to the amount which after making such deduction or withholding equals the original due amount as if no withholding or deduction were required), by way of one or more modes and instruments including post-dated cheques ("PDCs"), Standing Instructions (SI)/ Electronic Clearing System (ECS) instructions/ other mode/ instrument, as acceptable to the Bank from time to time. If any due date falls on a non-business day of the Bank, the payment shall be made by the Borrower on the immediately preceding business day of the Bank. In case of cheques/ other instrument, the payment shall be deemed to have been made by the Borrower only at the point of time the sum is credited and realized fully in Bank's account irrespective of the date of instrument or time of receipt or presentation of instrument. In case of any default, the Borrower shall without prejudice to Bank's other rights and remedies, pay additional /default interest at the rate mentioned in the Schedule hereto/ Application or as may be prescribed by the Bank, over and above the then applicable rate of interest till full payment is made/default is cured. This liability shall not act as justification for any default.

3. The Borrower(s) shall pay to Bank, the charges, fees, commissions, etc, specified in the Schedule hereto/ Application or as specified by the Bank from time to time, within such time or upon occurrence of such events as specified and if not specified then forthwith upon demanded by the Bank. All other present and future costs and expenses, taxes (as applicable from time to time), any related levy, stamp duty, in all jurisdictions, in relation to this document/other documents/any transaction pursuant thereto, irrespective of who the beneficiary is, shall be borne and payable solely by the Borrower, including for creation, enforcement, preservation of security, recovery, initiating/defending/pursuing any legal proceedings/ actions by Bank. In case of any such sums if paid or incurred by the Bank, the Borrower shall be liable to reimburse the same to the Bank in full forthwith.
4. Any payments made by/on behalf/ for the Borrower or any realisations in relation to the Loan, security, shall be appropriated towards the Outstanding Balance and/ or Liabilities

(as defined hereinafter) in the following order: (a) Firstly, towards costs and expenses incurred by the Bank; (b) Secondly, towards any charges, commissions, fees, taxes, levies (wherever applicable); (c) Thirdly, towards additional/ default interest; (d) Fourthly, towards interest; (e) Fifthly, towards principal amount(s). Any statement of account furnished by the Bank shall be accepted by and be binding on the Borrower(s) and shall be conclusive proof of the correctness of the amounts mentioned therein except for any manifest error therein.

5. Notwithstanding anything stated in any document, the continuation of the Loan shall be at sole and absolute discretion of the Bank and the Bank may at any time in its sole discretion and without assigning any reason call upon the Borrower to pay the Outstanding Balance and upon such demand by the Bank, the Borrower shall, within 48 hours of being so called upon, pay the whole of the Outstanding Balance to the Bank without any delay or demur.
6. The Borrower shall be entitled to prepay the Loan: (i) only if Bank permits the same upon at least 15 days' written notice from Borrower communicating intention to prepay at Bank's lending branch; and (ii) only after expiry of 6 EMIs from Disbursement date; and (iii) subject to such conditions as the Bank may prescribe including payment of the prepayment charges as mentioned in the Schedule hereto/ Application or as specified from time to time by the Bank. Such prepayment shall take effect only when entire Outstanding Balance has been paid to and realized by the Bank.
7. The Bank may at its own discretion and upon Borrower's request, also finance the Borrower for the insurance premium of insurance policy taken by Borrower as per Borrower's own wish from any insurance company of Borrower's choice, which sum(s) shall be added to the principal amount under the Loan and all the terms and conditions shall be addition- ally applicable thereto All expenses, charges, fees, taxes etc. as applicable on any such insurance shall be incurred and paid by the Borrower, however in case paid by the Bank on Borrower's behalf, the Borrower shall reimburse the same to the Bank within 24 hours of the Bank's demand. The Borrower shall instruct the insurance company to add the Bank as loss payee in any such insurance policy.
8. The Borrower shall furnish and create such security from time to time in favour of or for the benefit of the Bank, of such value, in such form and in such manner, as may be deemed fit by the Bank, forthwith upon so required by the Bank. The Bank shall also

have the right to stipulate any other and further terms and conditions that it may deem fit at any time prior to or after the grant of the Loan, which shall be binding on the Borrower.

9. Each of the Borrowers represent(s) and warrant(s) that (which shall be deemed to have been repeated to the Bank on the date of the Disbursement and on each date thereafter till entire repayment): (a) The Borrower (if an individual) or each of the partners (in case the Borrower is a partnership firm), is a citizen of India. The Borrower (in case an individual) or each of the partners (in case the Borrower is a partnership firm) is a major (in terms of age) and is of sound mind and is competent to contract and enter into and perform his/her obligations contemplated under this document/ other document/in respect of the Loan; (b) There is no impediment or restriction, whether under law, judgment, order, award, contract or otherwise, for any of the Borrowers entering into and/or performing any of the transactions contemplated by this document/other documents/ in respect of the Loan and all approvals and consents, wherever necessary have been duly obtained and are and will continue to be in full force; (c) The execution hereof constitutes legal, valid and binding obligations of the Borrower. The Borrower is duly empowered and authorised to borrow the Loan, enter into and/or performing any of the transactions contemplated by this document/other documents/ in respect of the Loan, including in terms of its constitutional documents where applicable and all due corporate/other action and due corporate/other authorisations, therefore, where applicable have been completed and are in place and in force; (d) That there is no Event of Default existing; (e) All declarations made by Borrower are true and complete and no material information has been suppressed / withheld.
10. Negative Covenants: The Borrower covenants and agrees that, save and except with the prior, specific and express written consent of the Bank, the Borrower shall not: (a) create, assume or incur any further indebtedness to any person; or lend or advance any amounts to any person; or undertake any guarantee or security obligation; (b) except in favour of the Bank, sell, license, let, lease, transfer, alienate, dispose of in any manner whatsoever, surrender or otherwise encumber any of its assets, rights, title or interest, receivables, or any part thereof; or create, facilitate or permit to exist any charge, encumbrance or lien of any kind whatsoever over any of its property or grant any option or other right to purchase, lease or otherwise acquire, any such assets or part thereof; (c) (in case the Borrower is company) declare any dividend; or change its capital structure

or shareholding pattern in any manner; or make any amendments to its constitutional documents; or issue any new shares or securities; or purchase, redeem, buyback or reduce any or all of its share capital or otherwise make any payment in respect thereof; or enter into any compromise arrangement with its shareholders or creditors, or pass a resolution of voluntary winding up or implement any scheme for restructuring, reconstruction, consolidation, amalgamation, merger or other similar purposes; (d) permit or effect any direct or indirect change in the legal or beneficial ownership or control; (e) change business, or enter into any new business or line of business or effect any material change in the management; (f) Change/ cease/ retire from/ terminate/ resign from the present employment/ profession/business disclosed in the Application; or change, terminate or open any bank account. Further, in case the Borrower is a company, it shall not induct on its board of directors, a person whose name appears in the list of wilful defaulters and in case, such a person is found to be on its board, it would take expeditious and effective steps for removal of the person from its board of directors.

11. The following events shall constitute events of default (each an “Event of Default”), and upon the occurrence of any of them the entire Outstanding Balance shall become immediately due and payable by the Borrower and further enable the Bank inter alia to recall the entire Outstanding Balance and/or enforce any security and transfer/sell the same and/or take, initiate and pursue any actions/proceedings as deemed necessary by the Bank for recovery of the dues: (a) Failure on Borrower’s part to perform any of the obligations or terms or conditions or covenants applicable in relation to the Loan including under this document/other documents including non-payment in full of any part of the Outstanding Balance when due or when demanded by Bank; (b) any misrepresentations or misstatement by the Borrower; or (c) occurrence of any circumstance or event which adversely affects Borrower’s ability/capacity to pay/repay the Outstanding Balance or any part thereof or perform any of the obligations; (d) If any attachment, distress, execution or other process against the Borrower/its assets or any of the security is threatened, enforced or levied upon by any person; or (e) fall, reduction or decrease, in the opinion of the Bank, in value of any security lower than the value required by the Bank; (f) the event of death, insolvency, failure in business, commission of an act of bankruptcy of the Borrower, or change or termination of employment/profession/business for any reason whatsoever.

12. Notwithstanding anything to the contrary in this document or any other document/arrangement: (i) in respect of all and any of Borrower's present and future liabilities to the Bank, its affiliates, group entities, associate entities, parent, subsidiaries, any of their branches (collectively "Relevant Entities"), whether under this document or under any other obligation/loan/facilities/borrowings/document, whether such liabilities are/be crystallised, actual or contingent, primary or collateral or several or jointly with others, whether in same currency or different currencies, whether as principal debtor and/or as guarantor and/or otherwise howsoever (collectively "**Liabilities**"), each of the Bank and the Relevant Entities shall in addition to any general lien or similar right to which any of them as bankers may be entitled by law, practice, custom or otherwise, have a specific and special lien on all the Borrower's present and future stocks, shares, securities, property, book debts, all moneys in all accounts whether current, savings, overdraft, fixed or other deposits, held with or in custody, legal or constructive, with the Bank and/or any Relevant Entities, now or in future, whether in same or different capacity of the Borrower, and whether severally or jointly with others, whether for any banking relationship, safe custody, collection, or otherwise, whether in same currency or different currencies; and (ii) separately, each of the Bank and the Relevant Entities shall have the specific and express right to, without notice to and without consent of the Borrower, set-off, transfer, sell, realize, adjust, appropriate all such amounts in all accounts (whether prematurely or upon maturity as per the Bank's discretion), securities, amounts and property as aforesaid for the purpose of realizing or against any of dues in respect of any of the Liabilities whether ear-marked for any particular Liability or not, combine or consolidate all or any of accounts of the Borrower and set-off any monies, whether of same type or nature or not and whether held in same capacity or not including upon happening of any of the events of default mentioned in any of the documents pertaining to the respective Liabilities or upon any default in payment of any part of any of the Liabilities. (iii) The Bank and the Relevant Entities shall be deemed to have and hold and continue to have first charge on any assets including any deposit on which security has been/will be created in respect of the Loan, as security also for any of the other Liabilities and all the rights and powers vested in the Bank in terms of any security or charge created for the Loan shall be available to the Bank and/or the Relevant Entities also in respect of such other Liabilities, irrespective of the fact whether the Loan is at any time outstanding, repaid or satisfied or not and even after the Loan has been repaid or prepaid.

13. Borrower shall make good to, and save, defend and hold harmless Bank, its directors, employees, shareholders, agents, consultants, representatives from or against all, direct or indirect, claims, damages, losses, costs and expenses, including attorneys' fees arising out of/ in relation to any act, omission, breach, misrepresentation, fraud, misstatement or default by the Borrower and/or otherwise incurred by Bank as a result of any suit, investigation, etc, any other matter for any reason.
14. The Bank shall at any time, without any consent of or notice to the Borrower(s) be entitled to securitise, sell, assign, discount or transfer all or any part of the Bank's rights and obligations under the Loan, this document or any other document, to any person(s) and in such manner and on such terms as the Bank may decide. Borrower shall not be entitled to directly or indirectly assign or in any manner transfer, whether in whole or part, any rights, the benefit or obligation under the Loan, this document/other document.
15. Bank shall be entitled at its discretion to engage/ avail of, at the risk and cost of the Borrower, services of any person/ third party service provider/agent/agency, for anything required to be done for/ in relation to/ pursuant to the Loan, including collections, recovery of dues, enforcement of security, getting or verifying any information of the Borrower/ assets, and any necessary or incidental lawful acts/ deeds/ matters and things connected thereto, as the Bank may deem fit.
16. The Bank shall have the right to not return the Application, the photographs, information and documents submitted by the Borrower. The Bank shall, without notice to or without any consent of the Borrower, be absolutely entitled and have full right, power and authority to make disclosure of any information relating to Borrower including personal information, details in relation to documents, Loan, defaults, security, obligations of Borrower, to the Credit Information Bureau of India (CIBIL) and/or any other governmental/regulatory/statutory or private agency/entity, credit bureau, RBI, the Bank's other branches/ subsidiaries / affiliates / rating agencies, service providers, other banks / financial institutions, any third parties, any assignees/potential assignees or transferees, who may need the information and may process the information, publish in such manner and through such medium as may be deemed necessary by the publisher/ Bank/ RBI, including publishing the name as part of willful defaulter's list from time to time, as also use for KYC information verification, credit risk analysis, or for other related purposes. The Borrower waives the privilege of privacy and privity of contract.

The Bank shall have the right, without notice to or without any consent of the Borrower, to approach, make enquiries, obtain information, from any person including other banks/finance entities/credit bureaus, Borrower's employer/family members, any other person related to the Borrower, to obtain any information for assessing track record, credit risk, or for establishing contact with the Borrower or for the purpose of recovery of dues from the Borrower.

17. Any notice, approvals, instructions, demand and other communications given or made by the Bank shall be deemed to be duly given and served if sent by courier, normal post, Registered Post, facsimile, electronic mail, personal delivery, sms or by pre-paid registered mail addressed to the Borrower's address, phone/ mobile number, fax number or email as given in the Application (or at the address changed on which Bank's acknowledgement is duly obtained as hereinafter mentioned) and such notice and service shall be deemed to take effect on the third working day following the date of the posting thereof in case of courier, normal post, registered post, at the time of delivery if given by personal delivery, upon receipt of a transmission report if given by facsimile, upon sending the electronic mail or sms if given by electronic mail or sms. The Borrower undertakes to keep the Bank informed at all times in writing of any change in the mailing address, email id, phone and mobile number(s) as provided in the Application and to obtain Bank's written acknowledgement on the intimation given to Bank for any such change.
18. The Loan, this document/other documents, shall be governed by the laws of India. The parties hereto expressly agree that all disputes arising out of and/or relating to the Loan, this document or any other relevant document shall be subject to the exclusive jurisdiction of the court/tribunal of the city/place in which the branch of the Bank from where the Disbursement has been made is situate, provided that the exclusivity aforesaid shall bind the Borrower and the Bank shall be entitled to pursue the same in any other court of competent jurisdiction at any other place; and provided further that if any dispute is below the pecuniary jurisdiction limit of the Debts Recovery Tribunals established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, then such dispute shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as may be amended, or its re-enactment, by a sole arbitrator, appointed by the Bank. The costs of such arbitration shall be borne by the losing Party or otherwise as determined in the arbitration award If a party is required to

enforce an arbitral award by legal action of any kind, the party against whom such legal action is taken shall pay all reasonable costs and expenses and attorney's fees, including any cost of additional litigation or arbitration taken by the party seeking to enforce the award.

19. This document, Application and other documents have been explained to the Borrower in the language known to the Borrower and the Borrower has read and understood the same.

The Borrower(s) have affixed their signatures after verifying and understanding the contents of this document, at the end of the Schedule.

SCHEDULE-CUM-KEY FACT STATEMENT			
Loan Account No	RST3147963	Place of signing	Manipal
Date of Signing (DD / MM /YYYY)	22.01.2011	Bank Branch	Manipal
Name of the Borrower : New Age Technology Limited			
Name of the Co-Borrower : NA			
LOAN DETAILS			
Loan Amount	Rs. 500 Crore	Security: First Charge: a)Registered office situated at A-112, Vikram Vihar, New Delhi. b)Corporate office situated at 12, Leon Road, Mumbai c)Property located at Office no 12, 13 and 14, World Trade Park, Jaipur. d)Industry located at Industrial Area, Dharwad and Surat Second Charge: a)Plant and Machinery used in plant located in Surat. b)Plant and Machinery used in plant located in Karnataka	
Installment Frequency	Monthly		
Interest Rate (monthly reducing) (Fixed Rate)	15% PerAnnum		
EMI Amount	Rs. 65 lakhs		
CHARGES (All charges are non-refundable & applicable post disbursement of loan)			
Processing Charges (Amount)	Rs. 2500/-	Service Tax on Processing Charges :- Rs 250/-	

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

Cheque / ECS / SI Return Charges: Rs 550/- (+) Service tax. (without prejudice to Bank's civil and criminal rights and remedies)	Cheque/ECS/ SI Swapping Charges	Rs. 500/-
Taxes: At actuals, applicable presently or in future	Date on which annual outstanding balance statement will be issued	
Default Interest/ Late Payment charges (for the overdue period on EMI / Principal overdue) :- 2% per month	Loan Cancellation Charges: NIL Note: Interest would be charged for the interim period	
Loan Prepayment Charges: (Mentioned as percentage of Outstanding Balance) 7-24 Months of EMI repayment: 4%; 25 - 36 Months of EMI repayment: 3% > 36 Months of EMI repayment : 2% Note: Prepayment not allowed prior to payment of 6 EMI. Part Prepayment not allowed. Service tax as applicable, would be charged additionally		
CIBIL Report Copy Charges : - Rs.50/-	Legal Collection & Incidental Charges : Rs 500/-	
Other Charges, commissions, fees:- Rs 150/-	Stamp Duty & Other Statutory Charges :- Rs 150/-	
Details of Security/	Duplicate Amortization/Repayment Schedule charges : Rs. 200/-	

Accepted by RST Bank (signed by Authorized Signatory)

ANNEXURE 2: AFFIDAVIT IN SUPPORT OF NOTICE TO CORPORATE DEBTOR.

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

COMPANY APPLICATION No. (IB) _____ (ND)/2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED.....CORPORATE DEBTOR

ON BEHALF OF

RST BANK.....FINANCIAL CREDITOR

AFFIDAVIT IN SUPPORT OF NOTICE TO CORPORATE DEBTOR

I, Manager of RST Bank do hereby make an oath and state on solemnly affirmation as under:

1. That the applicant has dispatched, a copy of the application filed with the Adjudicating Authority, by post to the registered office of the corporate debtor under rule 4(3)the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Deponent

VERIFICATION

I, the above-named deponent do hereby verify on oath that the contents of the paragraphs of the affidavit are true and correct to the best of my knowledge of my personal and nothing material has been concealed there from.

Place: Delhi

Dated: 04.03.2017

Deponent

ANNEXURE 3: COPY OF BOARD RESOLUTION AUTHORIZING INSOLVENCY PROCEEDINGS

RST BANK

(REGISTERED BANKING COMPANY)

BOARD RESOLUTION

The following resolution was passed at a meeting of the Board of Directors of RST Bank Ltd. (hereinafter referred to as “the Company” on the 1st days of March 2017.

It was resolved that: -

Mr. Raghuraj Singh, Legal Director is hereby authorized to initiate conduct and represent for and on behalf of the Company, the recovery proceedings to recover amount of Rs. 650 Crore from New Age Technology Ltd. and also be authorized to initiate insolvency proceedings under Insolvency and Bankruptcy Code, 2016 in connection with such recovery.

Director

Director

(Name, Signature & ID No.)
No.)

(Name, Signature & ID

CERTIFIED TRUE COPY

(Name and signature of Director or Secretary)

ANNEXURE 4: CERTIFICATE OF CHARGE

Form No. CHG-2

Certificate of registration of charge.

[Pursuant to sections 77(1) and 78 of the Companies Act 2013 and sub-rule (1) of 6 of the Companies (Registration of Charges) Rules, 2014]

Corporate identity number (CIN) of the company: L17110MH1973PLC019876.

GLN: NA

Name of the company: New Age Technology Limited

Charge Identification No.: **CHG-122**

This is to certify that pursuant to the provisions contained in Chapter VI of the Companies Act, 2013, the above mentioned charge dated the **NA** day of **NA** two thousand eleven, created by the above named company/ New Age Technology Limited, on behalf of the company in favour of Indo Bank, RST Bank, People's Bank to secure the amount of 2000 Crore rupees has been registered and assigned a Charge Identification Number as mentioned above in the Register of Charges, in accordance with the provisions contained in that behalf in Chapter VI of the said Act.

Given under my hand and seal, at New Delhi, this 10th day of January of two thousand eleven.

Registrar of Companies

.....

ANNEXURE 5: FORM-2 (WRITTEN COMMUNICATION BY PROPOSED IRP)
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

04.03.2017

To,

The National Company Law Tribunal

New Delhi

From,

S. Mahesh

C-112, Lawyers Enclave, New Delhi

In the matter of New Age Technology Ltd

Subject: Written communication in connection with an application to initiate corporate insolvency resolution process in respect of New Age Technology Ltd.

Sir,

I, S. Mahesh, an insolvency professional registered with ICSI Insolvency Professionals Agency having registration number IBBI/IPA/16-17/02 have been proposed as the interim resolution professional by RST Bank in connection with the proposed corporate insolvency resolution process of New Age Technology Ltd.

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

- i. agree to accept appointment as the interim resolution professional if an order admitting the present application is passed;

(25)

ENCLOSURES AND ATTACHMENTS *on behalf of the* **CONCERNED PARTIES-**

- ii. state that the registration number allotted to me by the Board is IRP- 1234567 and that I am currently qualified to practice as an insolvency professional;
- iii. disclose that I am currently serving as an interim resolution professional/ resolution professional / liquidator in 1 proceedings;
- iv. certify that there are no disciplinary proceedings pending against me with the Board or ICSI Insolvency Professionals Agency;
- v. 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;
- vi. 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.

S. MAHESH

ANNEXURE 6: FORM-2 (WRITTEN COMMUNICATION BY AMIT THAKUR)

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

04.03.2017

To,

The National Company Law Tribunal

New Delhi

From,

Amit Thakur

C-112, Vijay Vihar, New Delhi

In the matter of New Age Technology Ltd.

Subject: Written communication in connection with an application to initiate corporate insolvency resolution process in respect of New Age Technology Ltd.

Sir,

I, S. Mahesh, an insolvency professional registered with ICSI Insolvency Professionals Agency having registration number IBBI/IPA/16-17/02 have been proposed as the interim resolution professional by Insolvency and Bankruptcy Board of India in connection with the proposed corporate insolvency resolution process of New Age Technology Ltd.

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

- i. agree to accept appointment as the interim resolution professional if an order admitting the present application is passed;

(27)

ENCLOSURES AND ATTACHMENTS *on behalf of the* **CONCERNED PARTIES-**

- ii. state that the registration number allotted to me by the Board is IRP- 583952 and that I am currently qualified to practice as an insolvency professional;
- iii. disclose that I am currently serving as an interim resolution professional/ resolution professional / liquidator in 1 proceedings;
- iv. certify that there are no disciplinary proceedings pending against me with the Board or ICSI Insolvency Professionals Agency;
- v. 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;
- vi. 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.

AMIT THAKUR

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

COMPANY APPLICATION No. (IB) _____ (ND)/2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED.....CORPORATE DEBTOR

ON BEHALF OF

RST BANK.....FINANCIAL CREDITOR

AFFIDAVIT IN SUPPORT OF DOCUMENTS

I, Raghuraj Singh , Legal Director, RST Bank, aged 48 Years, R/o Plot T-20, Lawyer Enclave, New Delhi,do hereby make an oath and state on solemnly affirmation as under:-

1. That I am the applicant and competent to file the present Limitation 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 documents attached as Annexure No.1 to Annexure No. 6, 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.

Deponent

VERIFICATION

I, the above named deponent do hereby verify on oath that the contents of the paragraphs of the affidavit are true and correct to the best of my knowledge of my personal and nothing material has been concealed there from.

Place: Jaipur

Dated: 04.03.2017

Deponent

Part-B: Acceptance of Insolvency Application

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 New Age Technologies Ltd.

RELEVANT PARTICULARS	
Name of the corporate debtor	New Age Technologies Ltd.
Date of incorporation of corporate debtor	02.05.2007
Authority under which corporate debtor is incorporated/registered	Registered with Registrar of Companies in accordance with provisions of the Companies Act, 1956
Corporate Identity Number of Corporate Debtor	L17110MH1973PLC019876
Address of Registered Office of Corporate Debtor	A-112, VikramVihar, New Delhi.
Insolvency Commencement date	05.04.2017
Estimated date of closure of insolvency resolution process	02.10.2017
Name, address, email address and the registration number of the interim resolution professional	Name - Amit Thakur Address- C-112, Vijay Vihar, New Delhi Reg. No. - IRP- 583952
Last date for submission of claims	21.04.2017

Notice is hereby given that the National Company Law Tribunal has ordered the commencement of a corporate insolvency resolution process against the New Age Technologies Ltd. on 05.04.2017.

The creditors of the New Age Technologies Ltd., are hereby called upon to submit a proof of their claims on or before 21.04.2017 to the interim resolution professional at the address mentioned against item 8.

The claims may be submitted in their specified Forms B, C, D and E in terms of Regulation 7, 8 and 9 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by the Operational Creditors except Workmen and Employees, Financial Creditors, Workmen or Employees and Authorised Representatives of Workmen and Employees, respectively, as the case may be.

The financial creditors shall submit their proof of claims by electronic means only. The operational creditors, including workmen and employees, may submit the proof of claims by in person, by post or electronic means.

Submission of false or misleading proofs of claim shall attract penalties.

Amit Thakur

Interim Resolution Professional

Date and Place: 07.04.2017 and New Delhi

NEW AGE TECHNOLOGY LIMITED

(Registered Under Companies Act, 1956)

(CIN No. -L17110MH1973PLC019876)

Reg. Office - A-112, Vikram Vihar, New Delhi

Email: support@NATL.com

INTIMATION OF INITIATION OF CIRP TO REGULATORY AUTHORITIES

Date: 07.04.2017

To,

(a) National Stock Exchange of India and/or (b) Bombay Stock Exchange Limited and/or (c) NSDL/CDSL and/or (d) MCX/NCDEX and/or (e) Registrar of Companies and/or (f) Reserve Bank of India and/or (g) Regional Directors-Ministry of Corporate Affairs and/or (h) Banks where the account of the corporate debtor is maintained [as applicable in the particular case]

Dear Sir,

Subject: Intimation of initiation of Corporate Insolvency Resolution Process (CIRP) and appointment of Interim Resolution Professional (IRP)

I hereby intimate your good office that CIRP has been initiated in respect of the New Age Technology Ltd. under the provisions of Insolvency and Bankruptcy Code, 2016 ("Code") by an order of National Company Law Tribunal ("NCLT") with effect from 05.04.2017.

As per section 17 of the Code, the powers of the Board of Directors or of the New Age Technology Ltd. stands suspended and such powers shall be vested with me, Amit Thakur, having IP Registration no. IRP- 583952, appointed as the Insolvency Resolution Professional.

It may further be noted that in consonance with the stipulations contained in Section 14 of the Code, a moratorium has been declared vide the aforesaid order passed by NCLT, whereby, inter alia, the following shall be prohibited:-

- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- e) the instant intimation w.r.t. initiation of CIRP and appointment of Interim Resolution Professional is for your information and record. I/We shall keep the statutory authorities posted on further developments in this regard.

Kindly acknowledge the receipt of this document.

Thanking you,

Yours faithfully,

Amit Thakur,

Insolvency Resolution Professional

INTIMATION TO THE EMPLOYEES OF THE CORPORATE DEBTOR

Date: 07.04.2017

To,

The employees of New Age Technology Limited

Dear Sir/Madam,

Subject: Intimation to the Employee(s)/ Officer(s)/ Manager(s) of initiation of Corporate Insolvency Resolution Process (CIRP) against New Age Technology Limited and appointment of Interim Resolution Professional

I hereby intimate you that CIRP has been initiated in respect of New Age Technology Limited under the provisions of Insolvency and Bankruptcy Code, 2016 ("Code) by an order of National Company Law Tribunal ("NCLT") with effect from 05.04.2017.

As per section 17 of the Code, the powers of the Board of Directors of New Age stands suspended, and such powers shall be vested with me, Amit Thakur, having IP Registration no.- IRP- 583952, appointed as the Insolvency Resolution Professional.

It may further be noted that as per the stipulations contained in Section 17 of the Code, once the Interim resolution Professional has been appointed:

- a) The management of the affairs of the corporate debtor is taken over by him;
- b) The powers of the Board of Directors or the partners of the Corporate Debtor, as the case may be, are suspended and be exercised by the IRP;
- c) The officers and managers of the corporate debtor shall report to the IRP and co-operate with him in providing access to documents and records of the corporate debtor;
- d) The financial institutions maintaining accounts of the corporate debtor shall furnish all information relating to the corporate debtor available with them to the IRP.

In accordance with the above mentioned provision you are advised to co-operate with me in providing access to documents and records pertaining to New Age Technology Limited as

and when requisitioned by me for the smooth conduct of the corporate insolvency resolution process.

The instant intimation w.r.t initiation of CIRP and appointment of Interim Resolution Professional is for your information.

Thanking you,

Yours faithfully,

Amit Thakur

IP Registration no- IRP- 583952

Enclosed:

- a) A copy of the NCLT order dated 05.04.2017
- b) A copy of the Public Announcement made under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

STAGE II: PROCEEDINGS CONDUCTED BY INSOLVENCY PROFESSIONALS AND CoC

Part-A: Procedure undertaken by IRP

INDO BANK

PROOF OF CLAIM BY FINANCIAL CREDITORS (FORM –C)

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

Date: 09.04.2017

To

Mr. Amit Thakur

The Interim Resolution Professional,

C-112, Vijay Vihar, New Delhi

From

Indo Bank,

Near Chakli Circle, Old Padra Road, Vadodara 390007, Gujarat, India.

Subject: Submission of proof of claim.

Sir,

Indo Bank hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of New Age Technology Limited. The details for the same are set out below:

PARTICULARS		
1.	Name of Financial Creditor	Indo Bank

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

2.	CIN Number of Financial Creditor	L65190GJ1994PLC021012
3.	Address of Financial Creditor for correspondence.	Near Chakli Circle, Old Padra Road, Vadodara 390007, Gujarat, India.
4.	Total amount of claim (including any interest as at the insolvency commencement date)	Rs. 1650 crore
5.	Details of documents by reference to which the Debt can be substantiated	Copy of Loan Agreement
6.	Details of how and when debt incurred	Financial assistance given by consortium of banks (which included Indo Bank, RST Bank and People's Bank) in year 2008 and 2011, for setting up of plants in Karnataka and Gujarat.
7.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	N/A
8.	Details of any security held, the value of the security, and the date it was given	<p>As per the loan agreement, charge has been created in favour of abovementioned consortium on the following properties:</p> <p>First Charge:</p> <ul style="list-style-type: none">a) Registered office situated at A-112, VikramVihar, New Delhi.b) Corporate office situated at 12, Leon Road, Mumbaic) Property located at Office no 12, 13 and 14, World Trade Park, Jaipur.d) Industry located at Industrial Area, Dharwad and Surat <p>Second Charge:</p>

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

		a) Plant and Machinery used in plant located in Surat. b) Plant and Machinery used in plant located in Karnataka.
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 Name- Loan Repayment A/c Account No. – 123456789, Bank Name – 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 operational creditor	N/A

Signature of financial creditor or person authorised to act on his behalf.
Raghav Kapur
Managing Director
Address - Near Chakli Circle, Old Padra Road, Vadodara 390007, Gujarat, India.

AFFIDAVIT

I, RaghavKapur, currently Managing Director of Bank of North India, R/O at Near Chakli Circle, Old Padra Road, Vadodara 390007, Gujarat, India, do solemnly affirm and state as follows:

1. New Age Technology Ltd., the corporate debtor was, at the insolvency commencement date, being the 5th day of April 2017, justly and truly indebted to me in the sum of Rs. Sixteen hundred and fifty Crore (Rs. 1650 Crore) .
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:
Copy of Loan Agreement

3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

Solemnly, affirmed at Vododara on 9th day of April 2017

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 3 of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Vododara on 9th day of April 2017

Deponent's signature

Annexure: Loan Agreement

INDO BANK
BUSINESS LOANS
Terms and Conditions

LOAN ACCOUNT NO: INDO3147963

INSTRUCTIONS FOR FILLING LOAN TERMS AND CONDITIONS

1. All applications to be filled in English in CAPITAL LETTERS using a Black Ball point pen only.
2. There should not be any amendments / overwriting / erasures / cutting on the Loan Terms and Conditions and any amendments / over erasures / cutting should be undersigned.
3. The Signature of Borrower and Co-Borrower should be the same on the Loan Terms and Conditions document.
4. The full Signature of the Borrower and Co-Borrower is to be done in all places marked in Grey color box in Loan Terms and Conditions booklet using a Black Ball Point Pen only.
5. There are maximum 7 signatures to be done which has been marked from S1 to S7.

TERMS & CONDITIONS

The person(s) named in the Schedule-cum-Key Fact Statement hereto (hereinafter referred to as the “Schedule”) being borrowers and co-borrowers, hereinafter collectively referred to as “Borrower” which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include his/her heirs, administrators and executors.

In favour of:

INDO BANK, a banking company incorporated under the provisions of the Companies Act, 1956 having its registered office at INDO Bank, Near Chakli Circle, Old Padra Road, Vadodara 390007, Gujarat, India, and a branch office at the place mentioned in the Schedule hereto (hereinafter referred to as the “Bank” which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors, transferees and assign). In case of there being more than one Borrowers (i.e. there being co-borrowers), the reference to the term “Borrower” shall be deemed to be as if it were plural and this document shall be read accordingly as if made and liabilities undertaken by each of them jointly and severally. Reference to the masculine gender includes reference to the feminine and neuter genders and vice versa. The expression “Borrower”, unless it be repugnant to the context or meaning thereof, shall mean and include: in the event that the Borrower is a Company within the meaning of the Companies Act, 2013 or a Limited Liability Partnership, incorporated under the Limited Liability Partnership Act, 2008, its successors; in the event that the Borrower is a partnership firm for the purposes of the Indian Partnership Act, 1932, the partners for the time being and from time to time and their respective legal heirs, executors and administrators; in the event that the Borrower is a sole proprietorship, the sole proprietor and his/ her legal heirs, administrators and executors; in the event that the Borrower is a joint Hindu Undivided Family, the Karta and any or each of the adult members of the HUF and their survivor(s) and his / her / their respective heirs, executors, administrators; in the event that the Borrower is a Society, the members of the governing body of the Society and any new members elected, appointed or co-opted thereon; in the event that the Borrower is a Trust, the Trustee or Trustees for the time being hereof and their respective heirs, executors, administrators and successors; in the event that the Borrower is an individual, his/her heirs, administrators and executors.

The Borrower hereby irrevocably and unconditionally agrees to abide by the following terms and conditions:

1. Pursuant to the application made by the Borrower in the Loan Application Form (“Application”), the Bank has sanctioned the non-revolving loan not exceeding the amount mentioned in the Schedule hereto (hereinafter referred to as “Loan”), and the Borrower agrees to borrow the same, subject to and upon the terms and conditions contained in the Application and/or this document. The Bank may disburse the Loan or any part thereof (“Disbursement”) at its own discretion. Notwithstanding anything contained herein: (i) the Bank may at its sole discretion, suspend or cancel the Loan if the same is not utilized within 15 days of the issuance of instrument/instruction for Disbursement; or (ii) the Borrower may cancel the Loan within 15 days of Disbursement; provided that in case of each (i) and (ii) the cancellation shall take effect only when the Borrower has paid to the Bank in full the total Outstanding Balance (defined hereinafter) including all the interest, and all other charges. The Borrower shall use the Loan only for the purpose stated in the Application and not for any other purpose including making investment in the capital market or any speculative or illegal or anti-social purpose. Without being obligated to do so, the Bank shall be entitled to monitor the use/end use of the Loan including through any auditor(s) or consultant(s) with necessary certification from them, as appointed by the Bank at its sole discretion at the cost of the Borrower. The Bank shall have no obligation to meet any further requirements of the Borrower on account of growth in its business, etc.
2. The Loan, interest, compound interest, default interest, any other charges, dues and monies payable, costs and expenses reimbursable, as outstanding from time to time and whether any of them due or not, are hereinafter collectively referred to as “Outstanding Balance”. The Borrower shall pay interest on the Loan, the unpaid due interest and all other outstanding charges and monies (except the default interest), at the rate of interest specified in the Schedule hereto, on the outstanding daily balance from the date of Disbursement, compoundable at monthly rests. The Bank in its sole discretion would be entitled to change the said rate of interest from time to time including on account of changes made by the Reserve Bank of India, which would be intimated to the Borrower(s) and would be binding upon the Borrower(s). The Borrower shall also pay and bear all interest tax, if any, as applicable from time to time. The Borrower(s) shall repay the Loan and pay the interest that is due from time to time by way of equated monthly installments (EMIs) as specified in the Schedule or as may be specified by the Bank from time to time (time being the essence of the contract). The Borrower has

perused, understood and agreed to Bank's method of calculating EMIs as also the appropriation thereof into principal and interest. The payment of all the monies by the Borrower including EMIs shall be made on or before the respective due dates, at such place as the Bank may require, without any set-off or counterclaim or withholding or deduction (save as required by law in which case the amount payable by the Borrower to the Bank shall be increased to the amount which after making such deduction or withholding equals the original due amount as if no withholding or deduction were required), by way of one or more modes and instruments including post-dated cheques ("PDCs"), Standing Instructions (SI)/ Electronic Clearing System (ECS) instructions/ other mode/ instrument, as acceptable to the Bank from time to time. If any due date falls on a non-business day of the Bank, the payment shall be made by the Borrower on the immediately preceding business day of the Bank. In case of cheques/ other instrument, the payment shall be deemed to have been made by the Borrower only at the point of time the sum is credited and realized fully in Bank's account irrespective of the date of instrument or time of receipt or presentation of instrument. In case of any default, the Borrower shall without prejudice to Bank's other rights and remedies, pay additional /default interest at the rate mentioned in the Schedule hereto/ Application or as may be prescribed by the Bank, over and above the then applicable rate of interest till full payment is made/default is cured. This liability shall not act as justification for any default.

3. The Borrower(s) shall pay to Bank, the charges, fees, commissions, etc, specified in the Schedule hereto/ Application or as specified by the Bank from time to time, within such time or upon occurrence of such events as specified and if not specified then forthwith upon demanded by the Bank. All other present and future costs and expenses, taxes (as applicable from time to time), any related levy, stamp duty, in all jurisdictions, in relation to this document/other documents/any transaction pursuant thereto, irrespective of who the beneficiary is, shall be borne and payable solely by the Borrower, including for creation, enforcement, preservation of security, recovery, initiating/defending/pursuing any legal proceedings/ actions by Bank. In case of any such sums if paid or incurred by the Bank, the Borrower shall be liable to reimburse the same to the Bank in full forthwith.
4. Any payments made by/on behalf/ for the Borrower or any realisations in relation to the Loan, security, shall be appropriated towards the Outstanding Balance and/ or Liabilities

(as defined hereinafter) in the following order: (a) Firstly, towards costs and expenses incurred by the Bank; (b) Secondly, towards any charges, commissions, fees, taxes, levies (wherever applicable); (c) Thirdly, towards additional/ default interest; (d) Fourthly, towards interest; (e) Fifthly, towards principal amount(s). Any statement of account furnished by the Bank shall be accepted by and be binding on the Borrower(s) and shall be conclusive proof of the correctness of the amounts mentioned therein except for any manifest error therein.

5. Notwithstanding anything stated in any document, the continuation of the Loan shall be at sole and absolute discretion of the Bank and the Bank may at any time in its sole discretion and without assigning any reason call upon the Borrower to pay the Outstanding Balance and upon such demand by the Bank, the Borrower shall, within 48 hours of being so called upon, pay the whole of the Outstanding Balance to the Bank without any delay or demur.
6. The Borrower shall be entitled to prepay the Loan: (i) only if Bank permits the same upon at least 15 days' written notice from Borrower communicating intention to prepay at Bank's lending branch; and (ii) only after expiry of 6 EMIs from Disbursement date; and (iii) subject to such conditions as the Bank may prescribe including payment of the prepayment charges as mentioned in the Schedule hereto/ Application or as specified from time to time by the Bank. Such prepayment shall take effect only when entire Outstanding Balance has been paid to and realized by the Bank.
7. The Bank may at its own discretion and upon Borrower's request, also finance the Borrower for the insurance premium of insurance policy taken by Borrower as per Borrower's own wish from any insurance company of Borrower's choice, which sum(s) shall be added to the principal amount under the Loan and all the terms and conditions shall be addition- ally applicable thereto All expenses, charges, fees, taxes etc. as applicable on any such insurance shall be incurred and paid by the Borrower, however in case paid by the Bank on Borrower's behalf, the Borrower shall reimburse the same to the Bank within 24 hours of the Bank's demand. The Borrower shall instruct the insurance company to add the Bank as loss payee in any such insurance policy.
8. The Borrower shall furnish and create such security from time to time in favour of or for the benefit of the Bank, of such value, in such form and in such manner, as may be deemed fit by the Bank, forthwith upon so required by the Bank. The Bank shall also

have the right to stipulate any other and further terms and conditions that it may deem fit at any time prior to or after the grant of the Loan, which shall be binding on the Borrower.

9. Each of the Borrowers represent(s) and warrant(s) that (which shall be deemed to have been repeated to the Bank on the date of the Disbursement and on each date thereafter till entire repayment): (a) The Borrower (if an individual) or each of the partners (in case the Borrower is a partnership firm), is a citizen of India. The Borrower (in case an individual) or each of the partners (in case the Borrower is a partnership firm) is a major (in terms of age) and is of sound mind and is competent to contract and enter into and perform his/her obligations contemplated under this document/ other document/in respect of the Loan; (b) There is no impediment or restriction, whether under law, judgment, order, award, contract or otherwise, for any of the Borrowers entering into and/or performing any of the transactions contemplated by this document/other documents/ in respect of the Loan and all approvals and consents, wherever necessary have been duly obtained and are and will continue to be in full force; (c) The execution hereof constitutes legal, valid and binding obligations of the Borrower. The Borrower is duly empowered and authorised to borrow the Loan, enter into and/or performing any of the transactions contemplated by this document/other documents/ in respect of the Loan, including in terms of its constitutional documents where applicable and all due corporate/other action and due corporate/other authorisations, therefore, where applicable have been completed and are in place and in force; (d) That there is no Event of Default existing; (e) All declarations made by Borrower are true and complete and no material information has been suppressed / withheld.
10. Negative Covenants: The Borrower covenants and agrees that, save and except with the prior, specific and express written consent of the Bank, the Borrower shall not: (a) create, assume or incur any further indebtedness to any person; or lend or advance any amounts to any person; or undertake any guarantee or security obligation; (b) except in favour of the Bank, sell, license, let, lease, transfer, alienate, dispose of in any manner whatsoever, surrender or otherwise encumber any of its assets, rights, title or interest, receivables, or any part thereof; or create, facilitate or permit to exist any charge, encumbrance or lien of any kind whatsoever over any of its property or grant any option or other right to purchase, lease or otherwise acquire, any such assets or part thereof; (c) (in case the Borrower is company) declare any dividend; or change its capital structure

or shareholding pattern in any manner; or make any amendments to its constitutional documents; or issue any new shares or securities; or purchase, redeem, buyback or reduce any or all of its share capital or otherwise make any payment in respect thereof; or enter into any compromise arrangement with its shareholders or creditors, or pass a resolution of voluntary winding up or implement any scheme for restructuring, reconstruction, consolidation, amalgamation, merger or other similar purposes; (d) permit or effect any direct or indirect change in the legal or beneficial ownership or control; (e) change business, or enter into any new business or line of business or effect any material change in the management; (f) Change/ cease/ retire from/ terminate/ resign from the present employment/ profession/business disclosed in the Application; or change, terminate or open any bank account. Further, in case the Borrower is a company, it shall not induct on its board of directors, a person whose name appears in the list of wilful defaulters and in case, such a person is found to be on its board, it would take expeditious and effective steps for removal of the person from its board of directors.

11. The following events shall constitute events of default (each an “Event of Default”), and upon the occurrence of any of them the entire Outstanding Balance shall become immediately due and payable by the Borrower and further enable the Bank inter alia to recall the entire Outstanding Balance and/or enforce any security and transfer/sell the same and/or take, initiate and pursue any actions/proceedings as deemed necessary by the Bank for recovery of the dues: (a) Failure on Borrower’s part to perform any of the obligations or terms or conditions or covenants applicable in relation to the Loan including under this document/other documents including non-payment in full of any part of the Outstanding Balance when due or when demanded by Bank; (b) any misrepresentations or misstatement by the Borrower; or (c) occurrence of any circumstance or event which adversely affects Borrower’s ability/capacity to pay/repay the Outstanding Balance or any part thereof or perform any of the obligations; (d) If any attachment, distress, execution or other process against the Borrower/its assets or any of the security is threatened, enforced or levied upon by any person; or (e) fall, reduction or decrease, in the opinion of the Bank, in value of any security lower than the value required by the Bank; (f) the event of death, insolvency, failure in business, commission of an act of bankruptcy of the Borrower, or change or termination of employment/profession/business for any reason whatsoever.

12. Notwithstanding anything to the contrary in this document or any other document/arrangement: (i) in respect of all and any of Borrower's present and future liabilities to the Bank, its affiliates, group entities, associate entities, parent, subsidiaries, any of their branches (collectively "Relevant Entities"), whether under this document or under any other obligation/loan/facilities/borrowings/document, whether such liabilities are/be crystallised, actual or contingent, primary or collateral or several or jointly with others, whether in same currency or different currencies, whether as principal debtor and/or as guarantor and/or otherwise howsoever (collectively "**Liabilities**"), each of the Bank and the Relevant Entities shall in addition to any general lien or similar right to which any of them as bankers may be entitled by law, practice, custom or otherwise, have a specific and special lien on all the Borrower's present and future stocks, shares, securities, property, book debts, all moneys in all accounts whether current, savings, overdraft, fixed or other deposits, held with or in custody, legal or constructive, with the Bank and/or any Relevant Entities, now or in future, whether in same or different capacity of the Borrower, and whether severally or jointly with others, whether for any banking relationship, safe custody, collection, or otherwise, whether in same currency or different currencies; and (ii) separately, each of the Bank and the Relevant Entities shall have the specific and express right to, without notice to and without consent of the Borrower, set-off, transfer, sell, realize, adjust, appropriate all such amounts in all accounts (whether prematurely or upon maturity as per the Bank's discretion), securities, amounts and property as aforesaid for the purpose of realizing or against any of dues in respect of any of the Liabilities whether ear-marked for any particular Liability or not, combine or consolidate all or any of accounts of the Borrower and set-off any monies, whether of same type or nature or not and whether held in same capacity or not including upon happening of any of the events of default mentioned in any of the documents pertaining to the respective Liabilities or upon any default in payment of any part of any of the Liabilities. (iii) The Bank and the Relevant Entities shall be deemed to have and hold and continue to have first charge on any assets including any deposit on which security has been/will be created in respect of the Loan, as security also for any of the other Liabilities and all the rights and powers vested in the Bank in terms of any security or charge created for the Loan shall be available to the Bank and/or the Relevant Entities also in respect of such other Liabilities, irrespective of the fact whether the Loan is at any time outstanding, repaid or satisfied or not and even after the Loan has been repaid or prepaid.

13. Borrower shall make good to, and save, defend and hold harmless Bank, its directors, employees, shareholders, agents, consultants, representatives from or against all, direct or indirect, claims, damages, losses, costs and expenses, including attorneys' fees arising out of/ in relation to any act, omission, breach, misrepresentation, fraud, misstatement or default by the Borrower and/or otherwise incurred by Bank as a result of any suit, investigation, etc, any other matter for any reason.
14. The Bank shall at any time, without any consent of or notice to the Borrower(s) be entitled to securitise, sell, assign, discount or transfer all or any part of the Bank's rights and obligations under the Loan, this document or any other document, to any person(s) and in such manner and on such terms as the Bank may decide. Borrower shall not be entitled to directly or indirectly assign or in any manner transfer, whether in whole or part, any rights, the benefit or obligation under the Loan, this document/other document.
15. Bank shall be entitled at its discretion to engage/ avail of, at the risk and cost of the Borrower, services of any person/ third party service provider/agent/agency, for anything required to be done for/ in relation to/ pursuant to the Loan, including collections, recovery of dues, enforcement of security, getting or verifying any information of the Borrower/ assets, and any necessary or incidental lawful acts/ deeds/ matters and things connected thereto, as the Bank may deem fit.
16. The Bank shall have the right to not return the Application, the photographs, information and documents submitted by the Borrower. The Bank shall, without notice to or without any consent of the Borrower, be absolutely entitled and have full right, power and authority to make disclosure of any information relating to Borrower including personal information, details in relation to documents, Loan, defaults, security, obligations of Borrower, to the Credit Information Bureau of India (CIBIL) and/or any other governmental/regulatory/statutory or private agency/entity, credit bureau, RBI, the Bank's other branches/ subsidiaries / affiliates / rating agencies, service providers, other banks / financial institutions, any third parties, any assignees/potential assignees or transferees, who may need the information and may process the information, publish in such manner and through such medium as may be deemed necessary by the publisher/ Bank/ RBI, including publishing the name as part of willful defaulter's list from time to time, as also use for KYC information verification, credit risk analysis, or for other related purposes. The Borrower waives the privilege of privacy and privity of contract.

The Bank shall have the right, without notice to or without any consent of the Borrower, to approach, make enquiries, obtain information, from any person including other banks/finance entities/credit bureaus, Borrower's employer/family members, any other person related to the Borrower, to obtain any information for assessing track record, credit risk, or for establishing contact with the Borrower or for the purpose of recovery of dues from the Borrower.

17. Any notice, approvals, instructions, demand and other communications given or made by the Bank shall be deemed to be duly given and served if sent by courier, normal post, Registered Post, facsimile, electronic mail, personal delivery, sms or by pre-paid registered mail addressed to the Borrower's address, phone/ mobile number, fax number or email as given in the Application (or at the address changed on which Bank's acknowledgement is duly obtained as hereinafter mentioned) and such notice and service shall be deemed to take effect on the third working day following the date of the posting thereof in case of courier, normal post, registered post, at the time of delivery if given by personal delivery, upon receipt of a transmission report if given by facsimile, upon sending the electronic mail or sms if given by electronic mail or sms. The Borrower undertakes to keep the Bank informed at all times in writing of any change in the mailing address, email id, phone and mobile number(s) as provided in the Application and to obtain Bank's written acknowledgement on the intimation given to Bank for any such change.
18. The Loan, this document/other documents, shall be governed by the laws of India. The parties hereto expressly agree that all disputes arising out of and/or relating to the Loan, this document or any other relevant document shall be subject to the exclusive jurisdiction of the court/tribunal of the city/place in which the branch of the Bank from where the Disbursement has been made is situate, provided that the exclusivity aforesaid shall bind the Borrower and the Bank shall be entitled to pursue the same in any other court of competent jurisdiction at any other place; and provided further that if any dispute is below the pecuniary jurisdiction limit of the Debts Recovery Tribunals established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, then such dispute shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as may be amended, or its re-enactment, by a sole arbitrator, appointed by the Bank. The costs of such arbitration shall be borne by the losing Party or otherwise as determined in the arbitration award If a party is required to

enforce an arbitral award by legal action of any kind, the party against whom such legal action is taken shall pay all reasonable costs and expenses and attorney's fees, including any cost of additional litigation or arbitration taken by the party seeking to enforce the award.

19. This document, Application and other documents have been explained to the Borrower in the language known to the Borrower and the Borrower has read and understood the same.

The Borrower(s) have affixed their signatures after verifying and understanding the contents of this document, at the end of the Schedule.

SCHEDULE-CUM-KEY FACT STATEMENT			
Loan Account No	INDO3147963	Place of signing	Vadodara
Date of Signing (DD / MM /YYYY)	22.01.2011	Bank Branch	Vadodara
Name of the Borrower : New Age Technology Limited			
Name of the Co-Borrower : NA			
LOAN DETAILS			
Loan Amount	Rs. 500 Crore	Security: First Charge: a)Registered office situated at A-112, Vikram Vihar, New Delhi. b)Corporate office situated at 12, Leon Road, Mumbai c)Property located at Office no 12, 13 and 14, World Trade Park, Jaipur. d)Industry located at Industrial Area, Dharwad and Surat Second Charge: a)Plant and Machinery used in plant located in Surat. b)Plant and Machinery used in plant located in Karnataka	
Installment Frequency	Monthly		
Interest Rate (monthly reducing) (Fixed Rate)	15% Per Annum		
EMI Amount	Rs. 35 lakhs		
CHARGES (All charges are non-refundable & applicable post disbursement of loan)			
Processing Charges (Amount)	Rs. 2500/-	Service Tax on Processing Charges :- Rs 250/-	

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Cheque / ECS / SI Return Charges: Rs 550/- (+) Service tax. (without prejudice to Bank's civil and criminal rights and remedies)		Cheque/ECS/ SI Swapping Charges	Rs. 500/-
Taxes: At actuals, applicable presently or in future		Date on which annual outstanding balance statement will be issued	
Default Interest/Late Payment charges (for the overdue period on EMI / Principal overdue) :- 2% per month		Loan Cancellation Charges: NIL Note: Interest would be charged for the interim period	
Loan Prepayment Charges: (Mentioned as percentage of Outstanding Balance) 7-24 Months of EMI repayment: 4%; 25 - 36 Months of EMI repayment: 3% > 36 Months of EMI repayment : 2% Note: Prepayment not allowed prior to payment of 6 EMI. Part Prepayment not allowed. Service tax as applicable, would be charged additionally			
CIBIL Report Copy Charges : - Rs.50/-		Legal Collection & Incidental Charges : Rs 500/-	
Other Charges, commissions, fees:- Rs 150/-		Stamp Duty & Other Statutory Charges :- Rs 150/-	
Details of Security/	Duplicate Amortization/Repayment Schedule charges : Rs. 200/-		

Accepted by INDO Bank (signed by Authorized Signatory)

PEOPLE'S BANK

PROOF OF CLAIM BY FINANCIAL CREDITORS (FORM C)

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

Date: 09.04.2017

To

Mr. Amit Thakur

The Interim Resolution Professional,

C-112, Vijay Vihar, New Delhi

From

People's Bank,

1st Floor, C.S.No.6/242, Senapati Bapat Marg,

Lower Parel, Mumbai - 400 013

Subject: Submission of proof of claim.

Sir,

People's Bank hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of New Age Technology Limited. The details for the same are set out below:

PARTICULARS		
1.	Name of financial creditor	People's Bank

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2.	CIN number of financial creditor	L65190GJ1994PLC021221
3.	Address of financial creditor for correspondence.	1st Floor,C.S.No.6/242, Senapati Bapat Marg, Lower Parel, Mumbai - 400 013
4.	Total amount of claim (including any interest as at the insolvency commencement date)	Rs. 650 Crore
5.	Details of documents by reference to which the debt can be substantiated	Copy of Loan Agreement
6.	Details of how and when debt incurred	Financial assistance given by consortium of banks (which included Indo Bank, RST Bank and People's Bank) in year 2008 and 2011, for setting up of plants in Karnataka and Gujarat.
7.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	N/A
8.	Details of any security held, the value of the security, and the date it was given	As per the loan agreement, charge has been created in favour of abovementioned consortium on the following properties: First Charge: a) Registered office situated at A-112, VikramVihar, New Delhi. b) Corporate office situated at 12, Leon Road, Mumbai c) Property located at Office no 12, 13 and 14, World Trade Park, Jaipur.

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		d) Industry located at Industrial Area, Dharwad and Surat Second Charge: a) Plant and Machinery used in plant located in Surat. b) Plant and Machinery used in plant located in Karnataka.
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 Name- Loan Repayment A/c Account No. – 49394456789, Bank Name – People’s 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 of financial creditor or person authorised to act on his behalf.

Dhairyaditya Singh Rathore

Managing Director

Address - 1st Floor,C.S.No.6/242, Senapati Bapat Marg, Lower Parel, Mumbai - 400 013.

AFFIDAVIT

I, Dhairyaditya Singh Rathore, currently Managing Director of Bank of North India, R/O at 1st Floor,C.S.No.6/242, Senapati Bapat Marg, Lower Parel, Mumbai - 400013., do solemnly affirm and state as follows:

1. New Age Technology Ltd., the corporate debtor was, at the insolvency commencement date, being the 5th day of April 2017, justly and truly indebted to me in the sum of Rs. Six hundred and fifty Crore (Rs. 650 Crore) .
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:
Copy of Loan Agreement
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

Solemnly, affirmed at Mumbai on 9th day of April 2017

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 3 of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Mumbai on 9th day of April 2017

Deponent's signature

Annexure: Loan Agreement

**PEOPLE'S BANK
BUSINESS LOANS
Terms and Conditions**

LOAN ACCOUNT NO: PEOPLE3147963

INSTRUCTIONS FOR FILLING LOAN TERMS AND CONDITIONS

1. All applications to be filled in English in CAPITAL LETTERS using a Black Ball point pen only.
2. There should not be any amendments / overwriting / erasures / cutting on the Loan Terms and Conditions and any amendments / over erasures / cutting should be undersigned.
3. The Signature of Borrower and Co-Borrower should be the same on the Loan Terms and Conditions document.
4. The full Signature of the Borrower and Co-Borrower is to be done in all places marked in Grey color box in Loan Terms and Conditions booklet using a Black Ball Point Pen only.
5. There are maximum 7 signatures to be done which has been marked from S1 to S7.

TERMS & CONDITIONS

The person(s) named in the Schedule-cum-Key Fact Statement hereto (hereinafter referred to as the “Schedule”) being borrowers and co-borrowers, hereinafter collectively referred to as “Borrower” which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include his/her heirs, administrators and executors.

In favour of:

PEOPLE’S BANK, a banking company incorporated under the provisions of the Companies Act, 1956 having its registered office at People’s Bank, 1st Floor, C.S.No.6/242, Senapati Bapat Marg, Lower Parel, Mumbai - 400 013, India, and a branch office at the place mentioned in the Schedule hereto (hereinafter referred to as the “Bank” which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors, transferees and assign). In case of there being more than one Borrowers (i.e. there being co-borrowers), the reference to the term “Borrower” shall be deemed to be as if it were plural and this document shall be read accordingly as if made and liabilities undertaken by each of them jointly and severally. Reference to the masculine gender includes reference to the feminine and neuter genders and vice versa. The expression “Borrower”, unless it be repugnant to the context or meaning thereof, shall mean and include: in the event that the Borrower is a Company within the meaning of the Companies Act, 2013 or a Limited Liability Partnership, incorporated under the Limited Liability Partnership Act, 2008, its successors; in the event that the Borrower is a partnership firm for the purposes of the Indian Partnership Act, 1932, the partners for the time being and from time to time and their respective legal heirs, executors and administrators; in the event that the Borrower is a sole proprietorship, the sole proprietor and his/ her legal heirs, administrators and executors; in the event that the Borrower is a joint Hindu Undivided Family, the Karta and any or each of the adult members of the HUF and their survivor(s) and his / her / their respective heirs, executors, administrators; in the event that the Borrower is a Society, the members of the governing body of the Society and any new members elected, appointed or co-opted thereon; in the event that the Borrower is a Trust, the Trustee or Trustees for the time being hereof and their respective heirs, executors, administrators and successors; in the event that the Borrower is an individual, his/her heirs, administrators and executors.

The Borrower hereby irrevocably and unconditionally agrees to abide by the following terms and conditions:

1. Pursuant to the application made by the Borrower in the Loan Application Form (“Application”), the Bank has sanctioned the non-revolving loan not exceeding the amount mentioned in the Schedule hereto (hereinafter referred to as “Loan”), and the Borrower agrees to borrow the same, subject to and upon the terms and conditions contained in the Application and/or this document. The Bank may disburse the Loan or any part thereof (“Disbursement”) at its own discretion. Notwithstanding anything contained herein: (i) the Bank may at its sole discretion, suspend or cancel the Loan if the same is not utilized within 15 days of the issuance of instrument/instruction for Disbursement; or (ii) the Borrower may cancel the Loan within 15 days of Disbursement; provided that in case of each (i) and (ii) the cancellation shall take effect only when the Borrower has paid to the Bank in full the total Outstanding Balance (defined hereinafter) including all the interest, and all other charges. The Borrower shall use the Loan only for the purpose stated in the Application and not for any other purpose including making investment in the capital market or any speculative or illegal or anti-social purpose. Without being obligated to do so, the Bank shall be entitled to monitor the use/end use of the Loan including through any auditor(s) or consultant(s) with necessary certification from them, as appointed by the Bank at its sole discretion at the cost of the Borrower. The Bank shall have no obligation to meet any further requirements of the Borrower on account of growth in its business, etc.
2. The Loan, interest, compound interest, default interest, any other charges, dues and monies payable, costs and expenses reimbursable, as outstanding from time to time and whether any of them due or not, are hereinafter collectively referred to as “Outstanding Balance”. The Borrower shall pay interest on the Loan, the unpaid due interest and all other outstanding charges and monies (except the default interest), at the rate of interest specified in the Schedule hereto, on the outstanding daily balance from the date of Disbursement, compoundable at monthly rests. The Bank in its sole discretion would be entitled to change the said rate of interest from time to time including on account of changes made by the Reserve Bank of India, which would be intimated to the Borrower(s) and would be binding upon the Borrower(s). The Borrower shall also pay and bear all interest tax, if any, as applicable from time to time. The Borrower(s) shall repay the Loan and pay the interest that is due from time to time by way of equated

monthly installments (EMIs) as specified in the Schedule or as may be specified by the Bank from time to time (time being the essence of the contract). The Borrower has perused, understood and agreed to Bank's method of calculating EMIs as also the appropriation thereof into principal and interest. The payment of all the monies by the Borrower including EMIs shall be made on or before the respective due dates, at such place as the Bank may require, without any set-off or counterclaim or withholding or deduction (save as required by law in which case the amount payable by the Borrower to the Bank shall be increased to the amount which after making such deduction or withholding equals the original due amount as if no withholding or deduction were required), by way of one or more modes and instruments including post-dated cheques ("PDCs"), Standing Instructions (SI)/ Electronic Clearing System (ECS) instructions/ other mode/ instrument, as acceptable to the Bank from time to time. If any due date falls on a non-business day of the Bank, the payment shall be made by the Borrower on the immediately preceding business day of the Bank. In case of cheques/ other instrument, the payment shall be deemed to have been made by the Borrower only at the point of time the sum is credited and realized fully in Bank's account irrespective of the date of instrument or time of receipt or presentation of instrument. In case of any default, the Borrower shall without prejudice to Bank's other rights and remedies, pay additional /default interest at the rate mentioned in the Schedule hereto/ Application or as may be prescribed by the Bank, over and above the then applicable rate of interest till full payment is made/default is cured. This liability shall not act as justification for any default.

3. The Borrower(s) shall pay to Bank, the charges, fees, commissions, etc, specified in the Schedule hereto/ Application or as specified by the Bank from time to time, within such time or upon occurrence of such events as specified and if not specified then forthwith upon demanded by the Bank. All other present and future costs and expenses, taxes (as applicable from time to time), any related levy, stamp duty, in all jurisdictions, in relation to this document/other documents/any transaction pursuant thereto, irrespective of who the beneficiary is, shall be borne and payable solely by the Borrower, including for creation, enforcement, preservation of security, recovery, initiating/defending/pursuing any legal proceedings/ actions by Bank. In case of any such sums if paid or incurred by the Bank, the Borrower shall be liable to reimburse the same to the Bank in full forthwith.

4. Any payments made by/on behalf/ for the Borrower or any realisations in relation to the Loan, security, shall be appropriated towards the Outstanding Balance and/ or Liabilities (as defined hereinafter) in the following order: (a) Firstly, towards costs and expenses incurred by the Bank; (b) Secondly, towards any charges, commissions, fees, taxes, levies (wherever applicable); (c) Thirdly, towards additional/ default interest; (d) Fourthly, towards interest; (e) Fifthly, towards principal amount(s). Any statement of account furnished by the Bank shall be accepted by and be binding on the Borrower(s) and shall be conclusive proof of the correctness of the amounts mentioned therein except for any manifest error therein.
5. Notwithstanding anything stated in any document, the continuation of the Loan shall be at sole and absolute discretion of the Bank and the Bank may at any time in its sole discretion and without assigning any reason call upon the Borrower to pay the Outstanding Balance and upon such demand by the Bank, the Borrower shall, within 48 hours of being so called upon, pay the whole of the Outstanding Balance to the Bank without any delay or demur.
6. The Borrower shall be entitled to prepay the Loan: (i) only if Bank permits the same upon at least 15 days' written notice from Borrower communicating intention to prepay at Bank's lending branch; and (ii) only after expiry of 6 EMIs from Disbursement date; and (iii) subject to such conditions as the Bank may prescribe including payment of the prepayment charges as mentioned in the Schedule hereto/ Application or as specified from time to time by the Bank. Such prepayment shall take effect only when entire Outstanding Balance has been paid to and realized by the Bank.
7. The Bank may at its own discretion and upon Borrower's request, also finance the Borrower for the insurance premium of insurance policy taken by Borrower as per Borrower's own wish from any insurance company of Borrower's choice, which sum(s) shall be added to the principal amount under the Loan and all the terms and conditions shall be addition- ally applicable thereto All expenses, charges, fees, taxes etc. as applicable on any such insurance shall be incurred and paid by the Borrower, however in case paid by the Bank on Borrower's behalf, the Borrower shall reimburse the same to the Bank within 24 hours of the Bank's demand. The Borrower shall instruct the insurance company to add the Bank as loss payee in any such insurance policy.
8. The Borrower shall furnish and create such security from time to time in favour of or for

the benefit of the Bank, of such value, in such form and in such manner, as may be deemed fit by the Bank, forthwith upon so required by the Bank. The Bank shall also have the right to stipulate any other and further terms and conditions that it may deem fit at any time prior to or after the grant of the Loan, which shall be binding on the Borrower.

9. Each of the Borrowers represent(s) and warrant(s) that (which shall be deemed to have been repeated to the Bank on the date of the Disbursement and on each date thereafter till entire repayment): (a) The Borrower (if an individual) or each of the partners (in case the Borrower is a partnership firm), is a citizen of India. The Borrower (in case an individual) or each of the partners (in case the Borrower is a partnership firm) is a major (in terms of age) and is of sound mind and is competent to contract and enter into and perform his/her obligations contemplated under this document/ other document/in respect of the Loan; (b) There is no impediment or restriction, whether under law, judgment, order, award, contract or otherwise, for any of the Borrowers entering into and/or performing any of the transactions contemplated by this document/other documents/ in respect of the Loan and all approvals and consents, wherever necessary have been duly obtained and are and will continue to be in full force; (c) The execution hereof constitutes legal, valid and binding obligations of the Borrower. The Borrower is duly empowered and authorised to borrow the Loan, enter into and/or performing any of the transactions contemplated by this document/other documents/ in respect of the Loan, including in terms of its constitutional documents where applicable and all due corporate/other action and due corporate/other authorisations, therefore, where applicable have been completed and are in place and in force; (d) That there is no Event of Default existing; (e) All declarations made by Borrower are true and complete and no material information has been suppressed / withheld.
10. Negative Covenants: The Borrower covenants and agrees that, save and except with the prior, specific and express written consent of the Bank, the Borrower shall not: (a) create, assume or incur any further indebtedness to any person; or lend or advance any amounts to any person; or undertake any guarantee or security obligation; (b) except in favour of the Bank, sell, license, let, lease, transfer, alienate, dispose of in any manner whatsoever, surrender or otherwise encumber any of its assets, rights, title or interest, receivables, or any part thereof; or create, facilitate or permit to exist any charge, encumbrance or lien of any kind whatsoever over any of its property or grant any option

or other right to purchase, lease or otherwise acquire, any such assets or part thereof; (c) (in case the Borrower is company) declare any dividend; or change its capital structure or shareholding pattern in any manner; or make any amendments to its constitutional documents; or issue any new shares or securities; or purchase, redeem, buyback or reduce any or all of its share capital or otherwise make any payment in respect thereof; or enter into any compromise arrangement with its shareholders or creditors, or pass a resolution of voluntary winding up or implement any scheme for restructuring, reconstruction, consolidation, amalgamation, merger or other similar purposes; (d) permit or effect any direct or indirect change in the legal or beneficial ownership or control; (e) change business, or enter into any new business or line of business or effect any material change in the management; (f) Change/ cease/ retire from/ terminate/ resign from the present employment/ profession/business disclosed in the Application; or change, terminate or open any bank account. Further, in case the Borrower is a company, it shall not induct on its board of directors, a person whose name appears in the list of wilful defaulters and in case, such a person is found to be on its board, it would take expeditious and effective steps for removal of the person from its board of directors.

11. The following events shall constitute events of default (each an “Event of Default”), and upon the occurrence of any of them the entire Outstanding Balance shall become immediately due and payable by the Borrower and further enable the Bank inter alia to recall the entire Outstanding Balance and/or enforce any security and transfer/sell the same and/or take, initiate and pursue any actions/proceedings as deemed necessary by the Bank for recovery of the dues: (a) Failure on Borrower’s part to perform any of the obligations or terms or conditions or covenants applicable in relation to the Loan including under this document/other documents including non-payment in full of any part of the Outstanding Balance when due or when demanded by Bank; (b) any misrepresentations or misstatement by the Borrower; or (c) occurrence of any circumstance or event which adversely affects Borrower’s ability/capacity to pay/repay the Outstanding Balance or any part thereof or perform any of the obligations; (d) If any attachment, distress, execution or other process against the Borrower/its assets or any of the security is threatened, enforced or levied upon by any person; or (e) fall, reduction or decrease, in the opinion of the Bank, in value of any security lower than the value required by the Bank; (f) the event of death, insolvency, failure in business, commission

of an act of bankruptcy of the Borrower, or change or termination of employment/profession/business for any reason whatsoever.

12. Notwithstanding anything to the contrary in this document or any other document/arrangement: (i) in respect of all and any of Borrower's present and future liabilities to the Bank, its affiliates, group entities, associate entities, parent, subsidiaries, any of their branches (collectively "Relevant Entities"), whether under this document or under any other obligation/loan/facilities/borrowings/document, whether such liabilities are/be crystallised, actual or contingent, primary or collateral or several or jointly with others, whether in same currency or different currencies, whether as principal debtor and/or as guarantor and/or otherwise howsoever (collectively "**Liabilities**"), each of the Bank and the Relevant Entities shall in addition to any general lien or similar right to which any of them as bankers may be entitled by law, practice, custom or otherwise, have a specific and special lien on all the Borrower's present and future stocks, shares, securities, property, book debts, all moneys in all accounts whether current, savings, overdraft, fixed or other deposits, held with or in custody, legal or constructive, with the Bank and/or any Relevant Entities, now or in future, whether in same or different capacity of the Borrower, and whether severally or jointly with others, whether for any banking relationship, safe custody, collection, or otherwise, whether in same currency or different currencies; and (ii) separately, each of the Bank and the Relevant Entities shall have the specific and express right to, without notice to and without consent of the Borrower, set-off, transfer, sell, realize, adjust, appropriate all such amounts in all accounts (whether prematurely or upon maturity as per the Bank's discretion), securities, amounts and property as aforesaid for the purpose of realizing or against any of dues in respect of any of the Liabilities whether ear-marked for any particular Liability or not, combine or consolidate all or any of accounts of the Borrower and set-off any monies, whether of same type or nature or not and whether held in same capacity or not including upon happening of any of the events of default mentioned in any of the documents pertaining to the respective Liabilities or upon any default in payment of any part of any of the Liabilities. (iii) The Bank and the Relevant Entities shall be deemed to have and hold and continue to have first charge on any assets including any deposit on which security has been/will be created in respect of the Loan, as security also for any of the other Liabilities and all the rights and powers vested in the Bank in terms of any security or charge created for the Loan shall be available to the Bank and/or the Relevant Entities

also in respect of such other Liabilities, irrespective of the fact whether the Loan is at any time outstanding, repaid or satisfied or not and even after the Loan has been repaid or prepaid.

13. Borrower shall make good to, and save, defend and hold harmless Bank, its directors, employees, shareholders, agents, consultants, representatives from or against all, direct or indirect, claims, damages, losses, costs and expenses, including attorneys' fees arising out of/ in relation to any act, omission, breach, misrepresentation, fraud, misstatement or default by the Borrower and/or otherwise incurred by Bank as a result of any suit, investigation, etc, any other matter for any reason.
14. The Bank shall at any time, without any consent of or notice to the Borrower(s) be entitled to securitise, sell, assign, discount or transfer all or any part of the Bank's rights and obligations under the Loan, this document or any other document, to any person(s) and in such manner and on such terms as the Bank may decide. Borrower shall not be entitled to directly or indirectly assign or in any manner transfer, whether in whole or part, any rights, the benefit or obligation under the Loan, this document/other document.
15. Bank shall be entitled at its discretion to engage/ avail of, at the risk and cost of the Borrower, services of any person/ third party service provider/agent/agency, for anything required to be done for/ in relation to/ pursuant to the Loan, including collections, recovery of dues, enforcement of security, getting or verifying any information of the Borrower/ assets, and any necessary or incidental lawful acts/ deeds/ matters and things connected thereto, as the Bank may deem fit.
16. The Bank shall have the right to not return the Application, the photographs, information and documents submitted by the Borrower. The Bank shall, without notice to or without any consent of the Borrower, be absolutely entitled and have full right, power and authority to make disclosure of any information relating to Borrower including personal information, details in relation to documents, Loan, defaults, security, obligations of Borrower, to the Credit Information Bureau of India (CIBIL) and/or any other governmental/regulatory/statutory or private agency/entity, credit bureau, RBI, the Bank's other branches/ subsidiaries / affiliates / rating agencies, service providers, other banks / financial institutions, any third parties, any assignees/potential assignees or transferees, who may need the information and may process the information, publish in such manner and through such medium as may be deemed necessary by the publisher/

Bank/ RBI, including publishing the name as part of willful defaulter's list from time to time, as also use for KYC information verification, credit risk analysis, or for other related purposes. The Borrower waives the privilege of privacy and privity of contract. The Bank shall have the right, without notice to or without any consent of the Borrower, to approach, make enquiries, obtain information, from any person including other banks/finance entities/credit bureaus, Borrower's employer/family members, any other person related to the Borrower, to obtain any information for assessing track record, credit risk, or for establishing contact with the Borrower or for the purpose of recovery of dues from the Borrower.

17. Any notice, approvals, instructions, demand and other communications given or made by the Bank shall be deemed to be duly given and served if sent by courier, normal post, Registered Post, facsimile, electronic mail, personal delivery, sms or by pre-paid registered mail addressed to the Borrower's address, phone/ mobile number, fax number or email as given in the Application (or at the address changed on which Bank's acknowledgement is duly obtained as hereinafter mentioned) and such notice and service shall be deemed to take effect on the third working day following the date of the posting thereof in case of courier, normal post, registered post, at the time of delivery if given by personal delivery, upon receipt of a transmission report if given by facsimile, upon sending the electronic mail or sms if given by electronic mail or sms. The Borrower undertakes to keep the Bank informed at all times in writing of any change in the mailing address, email id, phone and mobile number(s) as provided in the Application and to obtain Bank's written acknowledgement on the intimation given to Bank for any such change.

18. The Loan, this document/other documents, shall be governed by the laws of India. The parties hereto expressly agree that all disputes arising out of and/or relating to the Loan, this document or any other relevant document shall be subject to the exclusive jurisdiction of the court/tribunal of the city/place in which the branch of the Bank from where the Disbursement has been made is situate, provided that the exclusivity aforesaid shall bind the Borrower and the Bank shall be entitled to pursue the same in any other court of competent jurisdiction at any other place; and provided further that if any dispute is below the pecuniary jurisdiction limit of the Debts Recovery Tribunals established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, then such dispute shall be referred to arbitration in accordance with the provisions of the

Arbitration and Conciliation Act, 1996 as may be amended, or its re-enactment, by a sole arbitrator, appointed by the Bank. The costs of such arbitration shall be borne by the losing Party or otherwise as determined in the arbitration award. If a party is required to enforce an arbitral award by legal action of any kind, the party against whom such legal action is taken shall pay all reasonable costs and expenses and attorney's fees, including any cost of additional litigation or arbitration taken by the party seeking to enforce the award.

19. This document, Application and other documents have been explained to the Borrower in the language known to the Borrower and the Borrower has read and understood the same.

The Borrower(s) have affixed their signatures after verifying and understanding the contents of this document, at the end of the Schedule.

SCHEDULE-CUM-KEY FACT STATEMENT			
Loan Account No	PEOPLE3147963	Place of signing	Mumbai
Date of Signing (DD / MM /YYYY)	22.01.2011	Bank Branch	Mumbai
Name of the Borrower : New Age Technology Limited			
Name of the Co-Borrower : NA			
LOAN DETAILS			
Loan Amount	Rs. 500 Crore	Security: First Charge: a)Registered office situated at A-112, Vikram Vihar, New Delhi. b)Corporate office situated at 12,	
Installment Frequency	Monthly		
Interest Rate (monthly reducing) (Fixed Rate)	15% Per Annum		

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EMI Amount	Rs. 35 lakhs	Leon Road, Mumbai c)Property located at Office no 12, 13 and 14, World Trade Park, Jaipur. d)Industry located at Industrial Area, Dharwad and Surat Second Charge: a)Plant and Machinery used in plant located in Surat.	
CHARGES (All charges are non-refundable & applicable post disbursement of loan)			
Processing Charges (Amount)	Rs. 2500/-	Service Tax on Processing Charges :- Rs 250/-	
Cheque / ECS / SI Return Charges: Rs 550/- (+) Service tax. (without prejudice to Bank's civil and criminal rights and remedies)		Cheque/ECS/ SI Swapping Charges	Rs. 500/-
Taxes: At actuals, applicable presently or in future		Date on which annual outstanding balance statement will be issued	
Default Interest/ Late Payment charges (for the overdue period on EMI / Principal overdue) :- 2% per month		Loan Cancellation Charges: NIL Note: Interest would be charged for the interim period	
Loan Prepayment Charges: (Mentioned as percentage of Outstanding Balance) 7-24 Months of EMI repayment: 4%; 25 - 36 Months of EMI repayment: 3% > 36 Months of EMI repayment : 2% Note: Prepayment not allowed prior to payment of 6 EMI. Part Prepayment not allowed. Service tax as applicable, would be charged additionally			
CIBIL Report Copy Charges : - Rs.50/-		Legal Collection & Incidental Charges : Rs 500/-	
Other Charges, commissions, fees:- Rs 150/-		Stamp Duty & Other Statutory Charges :- Rs 150/-	
Details of Security/	Duplicate Amortization/Repayment Schedule charges : Rs. 200/-		

Accepted by People's Bank (signed by Authorized Signatory)

BANK OF NORTH INDIA

PROOF OF CLAIM BY FINANCIAL CREDITORS (FORM C)

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

Date: 09.04.2017

To

Mr. Amit Thakur

The Interim Resolution Professional,

C-112, Vijay Vihar, New Delhi

From

Bank of North India,

D-112, Greater Extension, Near Chakli Circle, Old Padra Road, Vadodara 390007, Gujarat, India.

Subject: Submission of proof of claim.

Sir,

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

PARTICULARS		
1.	Name of financial creditor	Bank of North India
2.	CIN number of financial creditor	L65190GJ1994PLC02232

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3.	Address of financial creditor for correspondence.	D-112, Greater Extension, Near Chakli Circle, Old Padra Road, Vadodara 390007, Gujarat, India.
4.	Total amount of claim (including any interest as at the insolvency commencement date)	Rs. 279 crore
5.	Details of documents by reference to which the debt can be substantiated	Copy of Loan Agreement
6.	Details of how and when debt incurred	Financial assistance given by Bank of North India to the Corporate Debtor in the form of working capital loan to manage its need of working capital of run business.
7.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	N/A
8.	Details of any security held, the value of the security, and the date it was given	<p>As per the loan agreement, first charge has been created in favour of abovementioned consortium on the following properties:</p> <p>First Charge:</p> <ul style="list-style-type: none">a) Plant and Machinery used in plant located in Surat.b) Plant and Machinery used in plant located in Karnataka. <p>Second Charge:</p> <ul style="list-style-type: none">a) Registered office situated at A-112, VikramVihar, New Delhi.b) Corporate office situated at 12, Leon Road, Mumbaic) Property located at Office no 12, 13 and

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		14, World Trade Park, Jaipur. d) Industry located at Industrial Area, Dharwad and Surat
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 Name- Loan Repayment A/c Account No. – 123456789, Bank Name – Bank of North India
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 of financial creditor or person authorised to act on his behalf.

Deep Agarwal

Managing Director

Address - D-112, Greater Extension, Near Chakli Circle, Old Padra Road, Vadodara 390007, Gujarat, India.

AFFIDAVIT

I, Deep Agarwal, currently Managing Director of Bank of North India, R/Oat D-112, Greater Extension, Near Chakli Circle, Old Padra Road, Vadodara 390007, Gujarat, India., do solemnly affirm and state as follows:

1. New Age Technology Ltd., the corporate debtor was, at the insolvency commencement date, being the 5th day of April 2017, justly and truly indebted to me in the sum of Two Seventy Nine Crore Rupees (Rs. 279 Crore) .
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:
Copy of Loan Agreement.
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

(72)

ENCLOSURES AND ATTACHMENTS *on behalf of the* **CONCERNED PARTIES-**

Solemnly, affirmed at Vododara on 9th day of April 2017

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 3 of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Vododara on 9th day of April 2017

Deponent's signature

Annexure: Loan Agreement

BANK OF NORTH INDIA
BUSINESS LOANS
Terms and Conditions

LOAN ACCOUNT NO: BNI3147963

INSTRUCTIONS FOR FILLING LOAN TERMS AND CONDITIONS

1. All applications to be filled in English in CAPITAL LETTERS using a Black Ball point pen only.
2. There should not be any amendments / overwriting / erasures / cutting on the Loan Terms and Conditions and any amendments / over erasures / cutting should be undersigned.
3. The Signature of Borrower and Co-Borrower should be the same on the Loan Terms and Conditions document.
4. The full Signature of the Borrower and Co-Borrower is to be done in all places marked in Grey color box in Loan Terms and Conditions booklet using a Black Ball Point Pen only.
5. There are maximum 7 signatures to be done which has been marked from S1 to S7.

TERMS & CONDITIONS

The person(s) named in the Schedule-cum-Key Fact Statement hereto (hereinafter referred to as the “Schedule”) being borrowers and co-borrowers, hereinafter collectively referred to as “Borrower” which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include his/her heirs, administrators and executors.

In favour of:

Bank of North India, a banking company incorporated under the provisions of the Companies Act, 1956 having its registered office at Bank of North India, , D-112, Greater Extension, Near Chakli Circle, Old Padra Road, Vadodara 390007, Gujarat, India, and a branch office at the place mentioned in the Schedule hereto (hereinafter referred to as the “Bank” which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors, transferees and assign). In case of there being more than one Borrowers (i.e. there being co-borrowers), the reference to the term “Borrower” shall be deemed to be as if it were plural and this document shall be read accordingly as if made and liabilities undertaken by each of them jointly and severally. Reference to the masculine gender includes reference to the feminine and neuter genders and vice versa. The expression “Borrower”, unless it be repugnant to the context or meaning thereof, shall mean and include: in the event that the Borrower is a Company within the meaning of the Companies Act, 2013 or a Limited Liability Partnership, incorporated under the Limited Liability Partnership Act, 2008, its successors; in the event that the Borrower is a partnership firm for the purposes of the Indian Partnership Act, 1932, the partners for the time being and from time to time and their respective legal heirs, executors and administrators; in the event that the Borrower is a sole proprietorship, the sole proprietor and his/ her legal heirs, administrators and executors; in the event that the Borrower is a joint Hindu Undivided Family, the Karta and any or each of the adult members of the HUF and their survivor(s) and his / her / their respective heirs, executors, administrators; in the event that the Borrower is a Society, the members of the governing body of the Society and any new members elected, appointed or co-opted thereon; in the event that the Borrower is a Trust, the Trustee or Trustees for the time being hereof and their respective heirs, executors, administrators and successors; in the event that the Borrower is an individual, his/her heirs, administrators and executors.

The Borrower hereby irrevocably and unconditionally agrees to abide by the following terms and conditions:

1. Pursuant to the application made by the Borrower in the Loan Application Form (“Application”), the Bank has sanctioned the non-revolving loan not exceeding the amount mentioned in the Schedule hereto (hereinafter referred to as “Loan”), and the Borrower agrees to borrow the same, subject to and upon the terms and conditions contained in the Application and/or this document. The Bank may disburse the Loan or any part thereof (“Disbursement”) at its own discretion. Notwithstanding anything contained herein: (i) the Bank may at its sole discretion, suspend or cancel the Loan if the same is not utilized within 15 days of the issuance of instrument/instruction for Disbursement; or (ii) the Borrower may cancel the Loan within 15 days of Disbursement; provided that in case of each (i) and (ii) the cancellation shall take effect only when the Borrower has paid to the Bank in full the total Outstanding Balance (defined hereinafter) including all the interest, and all other charges. The Borrower shall use the Loan only for the purpose stated in the Application and not for any other purpose including making investment in the capital market or any speculative or illegal or anti-social purpose. Without being obligated to do so, the Bank shall be entitled to monitor the use/end use of the Loan including through any auditor(s) or consultant(s) with necessary certification from them, as appointed by the Bank at its sole discretion at the cost of the Borrower. The Bank shall have no obligation to meet any further requirements of the Borrower on account of growth in its business, etc.
2. The Loan, interest, compound interest, default interest, any other charges, dues and monies payable, costs and expenses reimbursable, as outstanding from time to time and whether any of them due or not, are hereinafter collectively referred to as “Outstanding Balance”. The Borrower shall pay interest on the Loan, the unpaid due interest and all other outstanding charges and monies (except the default interest), at the rate of interest specified in the Schedule hereto, on the outstanding daily balance from the date of Disbursement, compoundable at monthly rests. The Bank in its sole discretion would be entitled to change the said rate of interest from time to time including on account of changes made by the Reserve Bank of India, which would be intimated to the Borrower(s) and would be binding upon the Borrower(s). The Borrower shall also pay and bear all interest tax, if any, as applicable from time to time. The Borrower(s) shall repay the Loan and pay the interest that is due from time to time by way of equated

monthly installments (EMIs) as specified in the Schedule or as may be specified by the Bank from time to time (time being the essence of the contract). The Borrower has perused, understood and agreed to Bank's method of calculating EMIs as also the appropriation thereof into principal and interest. The payment of all the monies by the Borrower including EMIs shall be made on or before the respective due dates, at such place as the Bank may require, without any set-off or counterclaim or withholding or deduction (save as required by law in which case the amount payable by the Borrower to the Bank shall be increased to the amount which after making such deduction or withholding equals the original due amount as if no withholding or deduction were required), by way of one or more modes and instruments including post-dated cheques ("PDCs"), Standing Instructions (SI)/ Electronic Clearing System (ECS) instructions/ other mode/ instrument, as acceptable to the Bank from time to time. If any due date falls on a non-business day of the Bank, the payment shall be made by the Borrower on the immediately preceding business day of the Bank. In case of cheques/ other instrument, the payment shall be deemed to have been made by the Borrower only at the point of time the sum is credited and realized fully in Bank's account irrespective of the date of instrument or time of receipt or presentation of instrument. In case of any default, the Borrower shall without prejudice to Bank's other rights and remedies, pay additional /default interest at the rate mentioned in the Schedule hereto/ Application or as may be prescribed by the Bank, over and above the then applicable rate of interest till full payment is made/default is cured. This liability shall not act as justification for any default.

3. The Borrower(s) shall pay to Bank, the charges, fees, commissions, etc, specified in the Schedule hereto/ Application or as specified by the Bank from time to time, within such time or upon occurrence of such events as specified and if not specified then forthwith upon demanded by the Bank. All other present and future costs and expenses, taxes (as applicable from time to time), any related levy, stamp duty, in all jurisdictions, in relation to this document/other documents/any transaction pursuant thereto, irrespective of who the beneficiary is, shall be borne and payable solely by the Borrower, including for creation, enforcement, preservation of security, recovery, initiating/defending/pursuing any legal proceedings/ actions by Bank. In case of any such sums if paid or incurred by the Bank, the Borrower shall be liable to reimburse the same to the Bank in full forthwith.

4. Any payments made by/on behalf/ for the Borrower or any realisations in relation to the Loan, security, shall be appropriated towards the Outstanding Balance and/ or Liabilities (as defined hereinafter) in the following order: (a) Firstly, towards costs and expenses incurred by the Bank; (b) Secondly, towards any charges, commissions, fees, taxes, levies (wherever applicable); (c) Thirdly, towards additional/ default interest; (d) Fourthly, towards interest; (e) Fifthly, towards principal amount(s). Any statement of account furnished by the Bank shall be accepted by and be binding on the Borrower(s) and shall be conclusive proof of the correctness of the amounts mentioned therein except for any manifest error therein.
5. Notwithstanding anything stated in any document, the continuation of the Loan shall be at sole and absolute discretion of the Bank and the Bank may at any time in its sole discretion and without assigning any reason call upon the Borrower to pay the Outstanding Balance and upon such demand by the Bank, the Borrower shall, within 48 hours of being so called upon, pay the whole of the Outstanding Balance to the Bank without any delay or demur.
6. The Borrower shall be entitled to prepay the Loan: (i) only if Bank permits the same upon at least 15 days' written notice from Borrower communicating intention to prepay at Bank's lending branch; and (ii) only after expiry of 6 EMIs from Disbursement date; and (iii) subject to such conditions as the Bank may prescribe including payment of the prepayment charges as mentioned in the Schedule hereto/ Application or as specified from time to time by the Bank. Such prepayment shall take effect only when entire Outstanding Balance has been paid to and realized by the Bank.
7. The Bank may at its own discretion and upon Borrower's request, also finance the Borrower for the insurance premium of insurance policy taken by Borrower as per Borrower's own wish from any insurance company of Borrower's choice, which sum(s) shall be added to the principal amount under the Loan and all the terms and conditions shall be addition- ally applicable thereto All expenses, charges, fees, taxes etc. as applicable on any such insurance shall be incurred and paid by the Borrower, however in case paid by the Bank on Borrower's behalf, the Borrower shall reimburse the same to the Bank within 24 hours of the Bank's demand. The Borrower shall instruct the insurance company to add the Bank as loss payee in any such insurance policy.
8. The Borrower shall furnish and create such security from time to time in favour of or for

the benefit of the Bank, of such value, in such form and in such manner, as may be deemed fit by the Bank, forthwith upon so required by the Bank. The Bank shall also have the right to stipulate any other and further terms and conditions that it may deem fit at any time prior to or after the grant of the Loan, which shall be binding on the Borrower.

9. Each of the Borrowers represent(s) and warrant(s) that (which shall be deemed to have been repeated to the Bank on the date of the Disbursement and on each date thereafter till entire repayment): (a) The Borrower (if an individual) or each of the partners (in case the Borrower is a partnership firm), is a citizen of India. The Borrower (in case an individual) or each of the partners (in case the Borrower is a partnership firm) is a major (in terms of age) and is of sound mind and is competent to contract and enter into and perform his/her obligations contemplated under this document/ other document/in respect of the Loan; (b) There is no impediment or restriction, whether under law, judgment, order, award, contract or otherwise, for any of the Borrowers entering into and/or performing any of the transactions contemplated by this document/other documents/ in respect of the Loan and all approvals and consents, wherever necessary have been duly obtained and are and will continue to be in full force; (c) The execution hereof constitutes legal, valid and binding obligations of the Borrower. The Borrower is duly empowered and authorised to borrow the Loan, enter into and/or performing any of the transactions contemplated by this document/other documents/ in respect of the Loan, including in terms of its constitutional documents where applicable and all due corporate/other action and due corporate/other authorisations, therefore, where applicable have been completed and are in place and in force; (d) That there is no Event of Default existing; (e) All declarations made by Borrower are true and complete and no material information has been suppressed / withheld.
10. Negative Covenants: The Borrower covenants and agrees that, save and except with the prior, specific and express written consent of the Bank, the Borrower shall not: (a) create, assume or incur any further indebtedness to any person; or lend or advance any amounts to any person; or undertake any guarantee or security obligation; (b) except in favour of the Bank, sell, license, let, lease, transfer, alienate, dispose of in any manner whatsoever, surrender or otherwise encumber any of its assets, rights, title or interest, receivables, or any part thereof; or create, facilitate or permit to exist any charge, encumbrance or lien of any kind whatsoever over any of its property or grant any option

or other right to purchase, lease or otherwise acquire, any such assets or part thereof; (c) (in case the Borrower is company) declare any dividend; or change its capital structure or shareholding pattern in any manner; or make any amendments to its constitutional documents; or issue any new shares or securities; or purchase, redeem, buyback or reduce any or all of its share capital or otherwise make any payment in respect thereof; or enter into any compromise arrangement with its shareholders or creditors, or pass a resolution of voluntary winding up or implement any scheme for restructuring, reconstruction, consolidation, amalgamation, merger or other similar purposes; (d) permit or effect any direct or indirect change in the legal or beneficial ownership or control; (e) change business, or enter into any new business or line of business or effect any material change in the management; (f) Change/ cease/ retire from/ terminate/ resign from the present employment/ profession/business disclosed in the Application; or change, terminate or open any bank account. Further, in case the Borrower is a company, it shall not induct on its board of directors, a person whose name appears in the list of wilful defaulters and in case, such a person is found to be on its board, it would take expeditious and effective steps for removal of the person from its board of directors.

11. The following events shall constitute events of default (each an “Event of Default”), and upon the occurrence of any of them the entire Outstanding Balance shall become immediately due and payable by the Borrower and further enable the Bank inter alia to recall the entire Outstanding Balance and/or enforce any security and transfer/sell the same and/or take, initiate and pursue any actions/proceedings as deemed necessary by the Bank for recovery of the dues: (a) Failure on Borrower’s part to perform any of the obligations or terms or conditions or covenants applicable in relation to the Loan including under this document/other documents including non-payment in full of any part of the Outstanding Balance when due or when demanded by Bank; (b) any misrepresentations or misstatement by the Borrower; or (c) occurrence of any circumstance or event which adversely affects Borrower’s ability/capacity to pay/repay the Outstanding Balance or any part thereof or perform any of the obligations; (d) If any attachment, distress, execution or other process against the Borrower/its assets or any of the security is threatened, enforced or levied upon by any person; or (e) fall, reduction or decrease, in the opinion of the Bank, in value of any security lower than the value required by the Bank; (f) the event of death, insolvency, failure in business, commission

of an act of bankruptcy of the Borrower, or change or termination of employment/profession/business for any reason whatsoever.

12. Notwithstanding anything to the contrary in this document or any other document/arrangement: (i) in respect of all and any of Borrower's present and future liabilities to the Bank, its affiliates, group entities, associate entities, parent, subsidiaries, any of their branches (collectively "Relevant Entities"), whether under this document or under any other obligation/loan/facilities/borrowings/document, whether such liabilities are/be crystallised, actual or contingent, primary or collateral or several or jointly with others, whether in same currency or different currencies, whether as principal debtor and/or as guarantor and/or otherwise howsoever (collectively "**Liabilities**"), each of the Bank and the Relevant Entities shall in addition to any general lien or similar right to which any of them as bankers may be entitled by law, practice, custom or otherwise, have a specific and special lien on all the Borrower's present and future stocks, shares, securities, property, book debts, all moneys in all accounts whether current, savings, overdraft, fixed or other deposits, held with or in custody, legal or constructive, with the Bank and/or any Relevant Entities, now or in future, whether in same or different capacity of the Borrower, and whether severally or jointly with others, whether for any banking relationship, safe custody, collection, or otherwise, whether in same currency or different currencies; and (ii) separately, each of the Bank and the Relevant Entities shall have the specific and express right to, without notice to and without consent of the Borrower, set-off, transfer, sell, realize, adjust, appropriate all such amounts in all accounts (whether prematurely or upon maturity as per the Bank's discretion), securities, amounts and property as aforesaid for the purpose of realizing or against any of dues in respect of any of the Liabilities whether ear-marked for any particular Liability or not, combine or consolidate all or any of accounts of the Borrower and set-off any monies, whether of same type or nature or not and whether held in same capacity or not including upon happening of any of the events of default mentioned in any of the documents pertaining to the respective Liabilities or upon any default in payment of any part of any of the Liabilities. (iii) The Bank and the Relevant Entities shall be deemed to have and hold and continue to have first charge on any assets including any deposit on which security has been/will be created in respect of the Loan, as security also for any of the other Liabilities and all the rights and powers vested in the Bank in terms of any security or charge created for the Loan shall be available to the Bank and/or the Relevant Entities

also in respect of such other Liabilities, irrespective of the fact whether the Loan is at any time outstanding, repaid or satisfied or not and even after the Loan has been repaid or prepaid.

13. Borrower shall make good to, and save, defend and hold harmless Bank, its directors, employees, shareholders, agents, consultants, representatives from or against all, direct or indirect, claims, damages, losses, costs and expenses, including attorneys' fees arising out of/ in relation to any act, omission, breach, misrepresentation, fraud, misstatement or default by the Borrower and/or otherwise incurred by Bank as a result of any suit, investigation, etc, any other matter for any reason.
14. The Bank shall at any time, without any consent of or notice to the Borrower(s) be entitled to securitise, sell, assign, discount or transfer all or any part of the Bank's rights and obligations under the Loan, this document or any other document, to any person(s) and in such manner and on such terms as the Bank may decide. Borrower shall not be entitled to directly or indirectly assign or in any manner transfer, whether in whole or part, any rights, the benefit or obligation under the Loan, this document/other document.
15. Bank shall be entitled at its discretion to engage/ avail of, at the risk and cost of the Borrower, services of any person/ third party service provider/agent/agency, for anything required to be done for/ in relation to/ pursuant to the Loan, including collections, recovery of dues, enforcement of security, getting or verifying any information of the Borrower/ assets, and any necessary or incidental lawful acts/ deeds/ matters and things connected thereto, as the Bank may deem fit.
16. The Bank shall have the right to not return the Application, the photographs, information and documents submitted by the Borrower. The Bank shall, without notice to or without any consent of the Borrower, be absolutely entitled and have full right, power and authority to make disclosure of any information relating to Borrower including personal information, details in relation to documents, Loan, defaults, security, obligations of Borrower, to the Credit Information Bureau of India (CIBIL) and/or any other governmental/regulatory/statutory or private agency/entity, credit bureau, RBI, the Bank's other branches/ subsidiaries / affiliates / rating agencies, service providers, other banks / financial institutions, any third parties, any assignees/potential assignees or transferees, who may need the information and may process the information, publish in such manner and through such medium as may be deemed necessary by the publisher/

Bank/ RBI, including publishing the name as part of willful defaulter's list from time to time, as also use for KYC information verification, credit risk analysis, or for other related purposes. The Borrower waives the privilege of privacy and privity of contract. The Bank shall have the right, without notice to or without any consent of the Borrower, to approach, make enquiries, obtain information, from any person including other banks/finance entities/credit bureaus, Borrower's employer/family members, any other person related to the Borrower, to obtain any information for assessing track record, credit risk, or for establishing contact with the Borrower or for the purpose of recovery of dues from the Borrower.

17. Any notice, approvals, instructions, demand and other communications given or made by the Bank shall be deemed to be duly given and served if sent by courier, normal post, Registered Post, facsimile, electronic mail, personal delivery, sms or by pre-paid registered mail addressed to the Borrower's address, phone/ mobile number, fax number or email as given in the Application (or at the address changed on which Bank's acknowledgement is duly obtained as hereinafter mentioned) and such notice and service shall be deemed to take effect on the third working day following the date of the posting thereof in case of courier, normal post, registered post, at the time of delivery if given by personal delivery, upon receipt of a transmission report if given by facsimile, upon sending the electronic mail or sms if given by electronic mail or sms. The Borrower undertakes to keep the Bank informed at all times in writing of any change in the mailing address, email id, phone and mobile number(s) as provided in the Application and to obtain Bank's written acknowledgement on the intimation given to Bank for any such change.

18. The Loan, this document/other documents, shall be governed by the laws of India. The parties hereto expressly agree that all disputes arising out of and/or relating to the Loan, this document or any other relevant document shall be subject to the exclusive jurisdiction of the court/tribunal of the city/place in which the branch of the Bank from where the Disbursement has been made is situate, provided that the exclusivity aforesaid shall bind the Borrower and the Bank shall be entitled to pursue the same in any other court of competent jurisdiction at any other place; and provided further that if any dispute is below the pecuniary jurisdiction limit of the Debts Recovery Tribunals established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, then such dispute shall be referred to arbitration in accordance with the provisions of the

Arbitration and Conciliation Act, 1996 as may be amended, or its re-enactment, by a sole arbitrator, appointed by the Bank. The costs of such arbitration shall be borne by the losing Party or otherwise as determined in the arbitration award. If a party is required to enforce an arbitral award by legal action of any kind, the party against whom such legal action is taken shall pay all reasonable costs and expenses and attorney's fees, including any cost of additional litigation or arbitration taken by the party seeking to enforce the award.

19. This document, Application and other documents have been explained to the Borrower in the language known to the Borrower and the Borrower has read and understood the same.

The Borrower(s) have affixed their signatures after verifying and understanding the contents of this document, at the end of the Schedule.

SCHEDULE-CUM-KEY FACT STATEMENT			
Loan Account No	BNI3147963	Place of signing	Vadodara
Date of Signing (DD / MM / YYYY)	22.01.2011	Bank Branch	Vadodara
Name of the Borrower : New Age Technology Limited			
Name of the Co-Borrower : NA			
LOAN DETAILS			
Loan Amount	Rs. 500 Crore	Security: First Charge: a) Plant and Machinery used in plant located in Surat. b) Plant and Machinery used in plant located in Karnataka.	
Installment Frequency	Monthly		
Interest Rate (monthly reducing) (Fixed Rate)	15% Per Annum		
EMI Amount	Rs. 35 lakhs	Second Charge: a) Registered office situated at A-112, Vikram Vihar, New Delhi. b) Corporate office situated at 12, Leon Road, Mumbai c) Property located at Office no 12, 13 and 14, World Trade Park, Jaipur. d) Industry located at Industrial	

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CHARGES (All charges are non-refundable & applicable post disbursement of loan)			
Processing Charges (Amount)		Rs. 2500/-	Service Tax on Processing Charges :- Rs 250/-
Cheque / ECS / SI Return Charges: Rs 550/- (+) Service tax. (without prejudice to Bank's civil and criminal rights and remedies)		Cheque/ECS/ SI Swapping Charges	Rs. 500/-
Taxes: At actuals, applicable presently or in future		Date on which annual outstanding balance statement will be issued	
Default Interest/ Late Payment charges (for the overdue period on EMI / Principal overdue) :- 2% per month		Loan Cancellation Charges: NIL Note: Interest would be charged for the interim period	
Loan Prepayment Charges: (Mentioned as percentage of Outstanding Balance) 7-24 Months of EMI repayment: 4%; 25 - 36 Months of EMI repayment: 3% > 36 Months of EMI repayment : 2% Note: Prepayment not allowed prior to payment of 6 EMI. Part Prepayment not allowed. Service tax as applicable, would be charged additionally			
CIBIL Report Copy Charges : - Rs.50/-		Legal Collection & Incidental Charges : Rs 500/-	
Other Charges, commissions, fees:- Rs 150/-		Stamp Duty & Other Statutory Charges :- Rs 150/-	
Details of Security/	Duplicate Amortization/Repayment Schedule charges : Rs. 200/-		

Accepted by Bank of North India (signed by Authorized Signatory)

FORM NO. CHG-2

CERTIFICATE OF REGISTRATION OF CHARGE

[Pursuant to sections 77(1) and 78 of the Companies Act 2013 and sub-rule (1) of 6 of the Companies (Registration of Charges) Rules, 2014]

Corporate Identity Number (CIN) of the company: L17110MH1973PLC019876.

GLN: NA

Name of the company: New Age Technology Limited

Charge Identification No.: CHG-122

This is to certify that pursuant to the provisions contained in Chapter VI of the Companies Act, 2013, the above mentioned charge dated the NA day of NA two thousand eleven, created by the above named company/ New Age Technology Limited, on behalf of the company in favour of Indo Bank, RST Bank, People's Bank to secure the amount of 2000 Crore rupees has been registered and assigned a Charge Identification Number as mentioned above in the Register of Charges, in accordance with the provisions contained in that behalf in Chapter VI of the said Act.

Given under my hand and seal, at New Delhi, this 10th day of January of two thousand eleven.

Registrar of Companies

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FORM NO. CHG-2

CERTIFICATE OF REGISTRATION OF CHARGE

[Pursuant to sections 77(1) and 78 of the Companies Act 2013 and sub-rule (1) of 6 of the Companies (Registration of Charges) Rules, 2014]

Corporate identity number (CIN) or foreign company registration number of the company (FCRN) of the company: N/A

GLN: N/A

Name of the company: New Age Technology Limited

Charge Identification No.: N/A

This is to certify that pursuant to the provisions contained in Chapter VI of the Companies Act, 2013, the above mentioned charge dated the N/A day of N/A two thousand eleven, created by the above named company/ New Age Technology Limited, on behalf of the company in favour of Bank of North India to secure the amount of 195 Crore rupees has been registered and assigned a Charge Identification Number as mentioned above in the Register of Charges, in accordance with the provisions contained in that behalf in Chapter VI of the said Act.

Given under my hand and seal, at N/A, this N/A day of N/A two thousand eleven.

Registrar of Companies

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PEG DEVELOPERS

PROOF OF CLAIM BY FINANCIAL CREDITORS (FORM C)

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

Date: 20.07.2017

To

Mr. Divesh Sharma

The Resolution Professional,

C-112, Vijay Vihar, New Delhi

From

PEG Developers Ltd.,

81 Cromwell Rd, Kensington, London SW7 5BW, UK

Subject: Submission of proof of claim.

Madam/Sir,

PEG Developers Ltd. hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of New Age Technology Limited. The details for the same are set out below:

PARTICULARS		
1.	Name of financial creditor	PEG Developers Ltd.
2.	CIN number of financial creditor	L65190GJ1994PLC02232

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

3.	Address and email address of financial creditor for correspondence.	81 Cromwell Rd, Kensington, London SW7 5BW, UK
4.	Total amount of claim (including any interest as at the insolvency commencement date)	Rs. 15 crore
5.	Details of documents by reference to which the debt can be substantiated	N/A
6.	Details of how and when debt incurred	Corporate Debtor issued Masala Bonds in 2015 wherein largest maturity amount was owed to PEG Developers Ltd. Corporate Debtor failed to pay the due amount to PEG Developers.
7.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	N/A
8.	Details of any security held, the value of the security, and the date it was given	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. – 123456789 Bank Name – Bank of England
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 of financial creditor or person authorised to act on his behalf.
Ronald Weasely
Managing Director
Address - 81 Cromwell Rd, Kensington, London SW7 5BW, UK

AFFIDAVIT

I, RONALD WEASELY, currently Managing Director of PEG Developers Ltd., 81 Cromwell Rd, Kensington, London SW7 5BW, UK, do solemnly affirm and state as follows:

1. New Age Technology Ltd., the corporate debtor was, at the insolvency commencement date, being the 5th day of April 2017, justly and truly indebted to me in the sum of Fifteen Crore Rupees (Rs. 15 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 London on 20th day of July 2017

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 3 of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at London on 20th day of July 2017

Deponent's signature

MARVEL ORGANICS LIMITED

PROOF OF CLAIM BY FINANCIAL CREDITORS (FORM C)

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

Date: 12.04.2017

To

Mr. Amit Thakur

The Interim Resolution Professional,

C-112, Vijay Vihar, New Delhi

From

Marvel Organics Ltd.,

45W, Sabarmati Market, Old Padra Road, Ahmadabad, Gujarat, India (380001)

Subject: Submission of proof of claim.

Sir,

Marvel Organics Ltd. hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of New Age Technology Limited. The details for the same are set out below:

PARTICULARS		
1.	Name of financial creditor	Marvel Organics Ltd.
2.	CIN number of financial creditor	L65190GJ1994PLC02232
3.	Address of financial creditor for correspondence.	45W, Sabarmati Market, Old Padra Road, Ahmadabad, Gujarat, India (380001)

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

4.	Total amount of claim (including any interest as at the insolvency commencement date)	Rs. 136 crore
5.	Details of documents by reference to which the debt can be substantiated	N/A
6.	Details of how and when debt incurred	N/A
7.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	N/A
8.	Details of any security held, the value of the security, and the date it was given	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. – 123456789, Bank Name – Bank of Baroda
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 of financial creditor or person authorised to act on his behalf.

Dhruvraj Shah

Managing Director

Address - 45W, Sabarmati Market, Old Padra Road, Ahmadabad, Gujarat, India (380001)

AFFIDAVIT

I, Dhruvraj Shah, currently Managing Director of Marvel Organics Ltd., R/O 45W, Sabarmati Market, Old Padra Road, Ahmadabad, Gujarat, India (380001), do solemnly affirm and state as follows:

1. New Age Technology Ltd., the corporate debtor was, at the insolvency commencement date, being the 5th day of April 2017, justly and truly indebted to me in the sum of One Thirty Six Crore Rupees (Rs. 136 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 12th day of April 2017

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 3 of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Ahmadabad on 12th day of April 2017

Deponent's signature

JSEW LIMITED

**PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND EMPLOYEES
(FORM B)**

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

Date: 10.04.2017

To

Mr. Amit Thakur

The Interim Resolution Professional,

C-112, Vijay Vihar, New Delhi

From

JSEW Ltd.

JK 49, Parijaat Colony, Noida, Uttar Pradesh, India (201301)

Subject: Submission of proof of claim.

Sir,

JSEW Ltd., hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of New Age Technology Ltd. The details for the same are set out below:

PARTICULARS OF OPERATIONAL DEBT		
1.	Name of operational creditor	JSEW Ltd.
2.	Identification number of operational creditor	L65190GJ2007PLC021012

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

3.	Address and email address of operational creditor for correspondence	JK 49, Parijaat Colony, Noida, Uttar Pradesh, India (201301)
4.	Total amount of claim (including any interest as at the insolvency commencement date)	Rs. 20 crore
5.	Details of documents by reference to which the debt can be substantiated.	Demand Notice issued under Rule 5(1) of Insolvency Rules, 2016
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	The applicant is the supplier of EVA Film for manufacturing of the solar panels and the payment of Rs. 20 Crore is outstanding the EVA Films supplied in past.
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	N/A
9.	Details of any retention of title arrangements in respect of goods or properties to which the claims refers	N/A
10.	Details of the bank account to which the amount if the claim or any part thereof can be transferred pursuant to a resolution plan	A/c No. – 45594666466 Bank – 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	Demand Notice issued under Rule 5(1) of Insolvency Rules, 2016

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

	operational creditor	
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Signature of Operational Creditor or person authorised to act on his behalf
PIYUSH JOSHI
Managing Director
Address: JK 49, Parijaat Colony, Noida, Uttar Pradesh, India (201301)

AFFIDAVIT

I, Piyush Joshi, currently residing at JK 49, Parijaat Colony, Noida, Uttar Pradesh, India (201301), do solemnly affirm and state as follows:

- 1) New Age Technologies Ltd., the corporate debtor was, at the insolvency commencement date, being the 5th day of April 2017, justly and truly indebted to me in the sum of Rs. Twenty Crore.
- 2) In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

Demand Notice issued under Rule 5(1) of Insolvency Rules, 2016
- 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 received any manner of satisfaction or security whatsoever, save and except the following:

Solemnly, affirmed at Noida on 10th day of April 2017.

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 Noida on 10th day of April 2017

Deponent's signature

GSES

**PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND EMPLOYEES
(FORM B)**

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

Date: 10.04.2017

To

Mr. Amit Thakur

The Interim Resolution Professional,

C-112, Vijay Vihar, New Delhi

From

GSES

Patparganj Road, East Guru Angad Nagar, Radhu Palace, New Delhi, Delhi
(110092)

Subject: Submission of proof of claim.

Sir,

GSES, hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of New Age Technology Ltd. The details for the same are set out below:

PARTICULARS		
1.	Name of operational creditor	GSES
2.	Identification number of operational creditor	U50102MH2006PLC158718
3.	Address and email address of operational creditor for correspondence	Patparganj Road, East Guru Angad Nagar, Radhu Palace, New Delhi, Delhi (110092)

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4.	Total amount of claim (including any interest as at the insolvency commencement date)	Rs. 1.20 crore
5.	Details of documents by reference to which the debt can be substantiated.	Demand Notice issued under Rule 5(1) of Insolvency Rules, 2016
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	The applicant supplies electricity to the Corporate Debtor. The Corporate Debtor has not paid its electricity bills since last 9 months and it remains outstanding for period June, 2016 to February, 2017
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	N/A
9.	Details of any retention of title arrangements in respect of goods or properties to which the claims refers	N/A
10.	Details of the bank account to which the amount if the claim or any part thereof can be transferred pursuant to a resolution plan	A/c No. – 45593566466 Bank – ICICI 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	Demand Notice issued under Rule 5(1) of Insolvency Rules, 2016

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

	operational creditor	
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Signature of Operational Creditor or person authorised to act on his behalf
Anuj Mehra
Managing Director
Address: Patparganj Road, East Guru Angad Nagar, Radhu Palace, New Delhi, Delhi (110092)

AFFIDAVIT

I, ANUJ MEHRA, currently residing at: Patparganj Road, East Guru Angad Nagar, Radhu Palace, New Delhi, do solemnly affirm and state as follows:

- 1) New Age Technologies Ltd., the corporate debtor was, at the insolvency commencement date, being the 5th day of April 2017, justly and truly indebted to me in the sum of Rs. One crore and twenty lakh.
- 2) In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

Demand Notice issued under Rule 5(1) of Insolvency Rules, 2016
- 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 received any manner of satisfaction or security whatsoever, save and except the following:

Solemnly, affirmed at New Delhi on 10th day of April 2017.

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 New Delhi on 10th day of April 2017

Deponent's signature

FORM 3

(See clause (a) of sub-rule (1) of rule 5)

**FORM OF DEMAND NOTICE / INVOICE DEMANDING PAYMENT UNDER THE INSOLVENCY
AND BANKRUPTCY CODE, 2016**

*(Under rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rules, 2016)*

Date: 06.03.2017

To,

Managing Director,

New Age Technologies Ltd.

C-112, VikramVihar, New Delhi.

From,

GSES

Patparganj Road, East Guru Angad Nagar, Radhu Palace, New Delhi, Delhi (110092)

Subject: Demand notice/invoice demanding payment in respect of unpaid operational debt due from New Age Technologies Ltd. under the Code.

Sir,

1. This letter is a demand notice/invoice demanding payment of an unpaid operational debt due from New Age Technologies Ltd.
2. Please find particulars of the unpaid operational debt below:

PARTICULARS OF OPERATIONAL DEBT		
1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	Rs.85 lakhs

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

2.	Amount claimed to be in default and the date on which the default occurred	You have not paid its electricity bills since last 9 months and it remains outstanding for period June, 2016 to February, 2017
3.	Particulars of security held, if any, the date of its creation, its estimated value as per the Creditor.	No security held.

3. If you dispute the existence or amount of unpaid operational debt (in default) please provide the undersigned, within ten days of the receipt of this letter, of the pendency of the suit or arbitration proceedings in relation to such dispute filed before the receipt of this letter/notice.
4. If you believe that the debt has been repaid before the receipt of this letter, please demonstrate such repayment by sending to us, within ten days of receipt of this letter, the following:
 - a. an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or
 - b. an attested copy of any record that [name of the operational creditor] has received the payment.
5. The undersigned, hereby, attaches a certificate from an information utility confirming that no record of a dispute raised in relation to the relevant operational debt has been filed by any person at any information utility. (if applicable)
6. The undersigned request you to unconditionally repay the unpaid operational debt (in default) in full within ten days from the receipt of this letter failing which we shall initiate a corporate insolvency resolution process in respect of [name of corporate debtor].

Yours sincerely,

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

Signature of Operational Creditor or person authorised to act on his behalf

Anuj Mehra

Managing Director

Address: Patparganj Road, East Guru Angad Nagar, Radhu Palace, New Delhi, Delhi (110092)

CENTRAL BOARD OF EXCISE AND CUSTOMS

**PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND EMPLOYEES
(FORM B)**

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

Date: 11.04.2017

To

Mr. Amit Thakur

The Interim Resolution Professional,

C-112, Vijay Vihar, New Delhi

From

Central Board of Excise and Customs

Ministry of Finance, North Block, New Delhi (110001)

Subject: Submission of proof of claim.

Sir,

The Central Board of Excise and Customs, hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of New Age Technology Ltd. The details for the same are set out below:

PARTICULARS		
1.	Name of operational creditor	Central Board of Excise and Customs
2.	Identification number of operational creditor	N/A
3.	Address and email address of operational creditor for correspondence	Ministry of Finance, North Block, New Delhi (110001)

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

4.	Total amount of claim (including any interest as at the insolvency commencement date)	Rs. 2 crore
5.	Details of documents by reference to which the debt can be substantiated.	Copy of the judgment of High Court of Karnataka accepting the claim of the OC
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	The Corporate Debtor had concealed the real value of plant imported from France in 2011 to avoid payment of duty, depriving the government of revenue.
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	N/A
9.	Details of any retention of title arrangements in respect of goods or properties to which the claims refers	N/A
10.	Details of the bank account to which the amount if the claim or any part thereof can be transferred pursuant to a resolution plan	A/c No. – 2510012450 Bank – SBI
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	Copy of the judgment of High Court of Karnataka accepting the claim of the OC

Signature of Operational Creditor or person authorised to act on his behalf.

Vanjana N. Sarna

Chairman
Address: Ministry of Finance, North Block, New Delhi (110001)

AFFIDAVIT

I, Vanjana N. Sarna, currently residing at: Ministry of Finance, North Block, New Delhi (110001), do solemnly affirm and state as follows:

1) New Age Technologies Ltd., the corporate debtor was, at the insolvency commencement date, being the 5th day of April 2017, justly and truly indebted to me in the sum of Rs. Two crore.

2) In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

Copy of the judgment of High Court of Karnataka accepting the claim of the OC.

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 received any manner of satisfaction or security whatsoever, save and except the following:

Solemnly, affirmed at New Delhi on 11th day of April 2017.

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 New Delhi on 11th day of April 2017

Deponent's signature

PUBLIC DEPOSITORS

**PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND
EMPLOYEES (FORM B)**

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

Date: 10.04.2017

To

Mr. Amit Thakur

The Interim Resolution Professional,

C-112, Vijay Vihar, New Delhi

From

Shankar Prasad, Deposit Trustee (Authorized representative on behalf of Public Depositors
of Corporate Debtor)

22A, Shah Industrial Estate, Mumbai, Maharashtra (400053)

Subject: Submission of proof of claim.

Sir,

Deposit Trustee, hereby submits this proof of claim in respect of the corporate insolvency
resolution process in the case of New Age Technology Ltd. The details for the same are set
out below:

PARTICULARS		
1.	Name of operational creditor	Deposit Trustee
2.	Identification number of operational creditor	N/A

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

3.	Address of operational creditor for correspondence	22A, Shah Industrial Estate, Mumbai, Maharashtra (400053)
4.	Total amount of claim (including any interest as at the insolvency commencement date)	Rs. 45 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	The Corporate Debtor failed to service interest on the public deposits that it had invited from the public depositors.
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	N/A
9.	Details of any retention of title arrangements in respect of goods or properties to which the claims refers	N/A
10.	Details of the bank account to which the amount if the claim or any part thereof can be transferred pursuant to a resolution plan	Account No.: 56467836 Bank Name: Central Bank of India
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 of Operational Creditor or person authorised to act on his behalf
SHANKAR PRASAD
Deposit Trustee Authorised Representative on the behalf of Public Depositors of the Corporate Debtor
Address: 22A, Shah Industrial Estate, Mumbai, Maharashtra (400053)

AFFIDAVIT

I, Shankar Prasad, currently residing at 22A, Shah Industrial Estate, Mumbai, Maharashtra (400053), do solemnly affirm and state as follows:

1. New Age Technology Ltd, the corporate debtor was, at the insolvency commencement date, being the 5th day of April 2017, justly and truly indebted to me in the sum of Rs. 45 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.
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 received any manner of satisfaction or security whatsoever, save and except the following:

Solemnly, affirmed at Mumbai on 10th day of April 2017.

Before me,

Notary / Oath Commissioner

Deponent's signature

VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom. Verified at Mumbai on this 10th day of April of 2017.

Deponent's signature

XI MAO

**PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND EMPLOYEES
(FORM B)**

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

Date: 15.04.2017

To

Mr. Amit Thakur

The Interim Resolution Professional / Resolution Professional,

C-112, Vijay Vihar, New Delhi

From

Xi Mao

Grand Hills 262, Xiangjiang Lukou Jingshun Lu, Chaoyang District, Beijing, China
(100010)

Subject: Submission of proof of claim.

Sir,

Xi Mao, hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of New Age Technology Ltd. The details for the same are set out below:

PARTICULARS		
1.	Name of operational creditor	Xi Mao
2.	Identification number of operational creditor	C50102MH2006PLC158718

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

3.	Address and email address of operational creditor for correspondence	Grand Hills 262, Xiangjiang Lukou Jingshun Lu, Chaoyang District, Beijing, China (100010)
4.	Total amount of claim (including any interest as at the insolvency commencement date)	Rs. 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
7.	Details of how and when debt incurred	Outstanding amount against the raw material supplied to New Age Technology Ltd. in 2017
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	N/A
9.	Details of any retention of title arrangements in respect of goods or properties to which the claims refers	N/A
10.	Details of the bank account to which the amount if the claim or any part thereof can be transferred pursuant to a resolution plan	N/A
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 of Operational Creditor or person authorised to act on his behalf

Matt Slater

Managing Director
Address: Grand Hills 262, Xiangjiang Lukou Jingshun Lu, Chaoyang District, Beijing, China (100010)

AFFIDAVIT

I, MATT SLATER, currently residing at Grand Hills 262, Xiangjiang Lukou Jingshun Lu, Chaoyang District, Beijing, China (100010), do solemnly affirm and state as follows:

1) New Age Technologies Ltd., the corporate debtor was, at the insolvency commencement date, being the 5th day of April 2017, justly and truly indebted to me in the sum of Rs. 15 Crore.

2) In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

Demand Notice issued under Rule 5(1) of Insolvency Rules, 2016

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 received any manner of satisfaction or security whatsoever, save and except the following:

Solemnly, affirmed at Chaoyang District on 15th day of April 2017.

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 New Delhi on 15th day of April 2017.

Deponent's signature

EPF DUES

**PROOF OF CLAIM SUBMITTED BY AUTHORISED REPRESENTATIVE OF WORKMEN AND
EMPLOYEES (FORM E)**

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

Date: 10.04.2017

To

Mr. Amit Thakur
The Interim Resolution Professional,
C-112, Vijay Vihar, New Delhi

From,

Vishal Sikka
Authorized Representative,
New Age Workers Employees Association.
C-112, VikramVihar, New Delhi.

Subject: Submission of proofs of claim.

Sir,

I, Vishal Sikka, currently residing at C-112, VikramVihar, New Delhi, on behalf of the workmen and employees employed by the above named corporate debtor and listed in Annexure A, solemnly affirm and say:

1. That the above named corporate debtor was, at the insolvency commencement date, being the 5th day of April 2017, justly truly indebted to all the employees resulting on account of money deposited in “Employees Provident Fund”, as the part of regular deductions from the salary payable to each employee as workmen or/ and employees in the employment of the corporate debtor in respect of services rendered by them respectively to the corporate debtor during such periods. The total amount of outstanding balance in EPF is Rs. 12 Crore.

Deponent

AFFIDAVIT

I, Vishal Sikka, currently residing at C-112, Vijay Vihar, New Delhi, do solemnly affirm and state as follows:

1. New Age Technologies Ltd., the corporate debtor was, at the insolvency commencement date, being the 5th day of April 2017, justly and truly indebted to me in the sum of Rs. 12 Crore.
2. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

Solemnly, affirmed at New Age on 10th day of April 2017.

Before me,

Notary/Oath Commissioner

Deponent's signature

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

COMPANY APPLICATION No. (IB) _____ (ND)/2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED.....CORPORATE DEBTOR

ON BEHALF OF

RST BANK.....FINANCIAL CREDITOR

REPORT OF CLAIMS RECEIVED BY IRP

List of Creditors under Regulation 13(2)(d) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations by Amit Thakur under the Insolvency and Bankruptcy Code 2016

1. The application for Corporate Insolvency Resolution Process filed by RST Bank, Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 was admitted by New Delhi Bench vide order no N/A dated 05.04.2017 wherein Amit Thakur, the undersigned was appointed as Interim Resolution Professional who is directed to take necessary actions in accordance with the relevant provisions of the Insolvency and Bankruptcy Board of India.
2. In Compliance with Regulation 13(2)(d) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016, a list of creditors along with amount claimed, claims admitted, security interest in respect of claims is enclosed at Annexure A in quadruplicate

INTERIM RESOLUTION PROFESSIONAL

In the matter ofNew Age Technology Ltd.

(Amit Thakur)

Registration Number:IRP- 583952

Place: New Delhi

Date: 23.04.2017

ANNEXURE-A

NEW AGE TECHNOLOGY LIMITED

LIST OF CREDITORS

AS ON 05.04.2017

S. NO.	NAME OF CREDITORS	AMOUNT CLAIMED	AMOUNT ADMITTED
1.	INDO BANK	1650	1650
2.	RST BANK	650	650
3.	PEOPLES BANK	790	790
4.	BANK OF NORTH INDIA	279	279
5.	MARVEL ORGANICS LTD	136	136
6.	JSEW LTD	20	20
7.	GSES	1.20	1.20
8.	PUBLIC DEPOSITORS	45	45
9.	CUSTOMS & EXCISE	2	2
10.	EPF DUES	12	12
11.	XI MAO	15	15

REPORT CERTIFYING CONSTITUTION OF COMMITTEE OF CREDITORS

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

COMPANY APPLICATION NO. (IB) _____ (ND)/2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED.....CORPORATE DEBTOR

ON BEHALF OF

RST BANK.....FINANCIAL CREDITOR

**LIST OF CREDITORS UNDER REGULATION 13(2)(D) OF IBBI (INSOLVENCY RESOLUTION
PROCESS FOR CORPORATE PERSONS) REGULATIONS BY AMIT THAKUR UNDER THE
INSOLVENCY AND BANKRUPTCY CODE 2016.**

The application for Corporate Insolvency Resolution Process filed by RST Bank, Financial Creditor, under Section 7 of the Insolvency and Bankruptcy Code read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 was admitted by New Delhi Bench vide order no N/A dated 05.04.2017 wherein Amit Thakur, the undersigned was appointed as Interim Resolution Professional who is directed to take necessary actions in accordance with the relevant provisions of the Insolvency and Bankruptcy Board of India.

In Compliance with Regulation 17(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016 a report Certifying the Constitution of Creditors is enclosed at Annexure A in quadruplicate.

INTERIM RESOLUTION PROFESSIONAL

In the matter ofNew Age Technology Limited
(Amit Thakur)

Registration Number: RP- 583952

Place: New Delhi

Date: 23.04.2017

ANNEXURE A

REPORT CERTIFYING THE CONSTITUTION OF COMMITTEE OF CREDITORS

1. The application for Corporate Insolvency Resolution Process filed by RST Bank (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 was admitted by New Delhi Bench vide order no N/A dated 05.04.2017 wherein Amit Thakur, the undersigned was appointed as Interim Resolution Professional who is directed to take necessary actions in accordance with the relevant provisions of the Insolvency and Bankruptcy Board of India.
2. The registered office of the New Age Technology Limited is situated at A-112, Vikram Vihar, New Delhi.
3. In Compliance with Section 13, Section 15 and other applicable sections of the Code read with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (here in after called 'Regulations'), a public announcement
 - a. intimating the commencement of Corporate insolvency Resolution Process against New Age Technology Limited and
 - b. calling the creditors to submit the proof of claims was made on 07.04.2017 in The Hindu dated 07.04.2017 and in Hindustan.
4. The last date of submission of claims was 21.04.2017.
5. The public notice sought proof of claims from financial creditors in form C as stipulated in Regulation 8. Till the last date of claim (i.e. 21.04.2017) the undersigned interim professional has received claims from the following financial creditors

S. NO.	NAME OF CREDITORS	AMOUNT CLAIMED	DETAILS OF SECURITY INTEREST
1.	INDO BANK	1650	NA
2.	RST BANK	650	NA
3.	PEOPLES BANK	790	NA
4.	BANK OF NORTH INDIA	279	NA

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

5.	MARVEL ORGANICS LTD	136	NA
6.	PUBLIC DEPOSITORS	45	NA

6. The public notice sought proof of claims from operational creditors in form B as stipulated in Regulation 7. Till the last date of claim (i.e. 21.05.2017) the undersigned interim professional has received claims from the following operational creditors.

S. NO.	NAME OF CREDITORS	AMOUNT CLAIMED	DETAILS OF SECURITY INTEREST
1.	GSES	1.20	NA
2.	XI MAO	15	NA
3.	EPF DUES	12	NA
4.	JSEW LTD.	20	NA
6.	CUSTOMS & EXCISE	2	NA

7. The public notice sought proof of claims from operational creditors in form D/Form E as stipulated in Regulation 9. Till the last date of claim (i.e. 21.05.2017) the undersigned interim professional has received claims from the following workman /employee/Authorised representative of workmen and employees.
8. The undersigned interim Resolution professional has duly verified the claims of the aforesaid creditors.
9. The list of creditors was filed with Hon'ble National Company Law Tribunal Delhi in compliance with Regulation 13 (2)(d).
10. In compliance with Section 21(1) of the Code the undersigned interim resolution professional certifies the constitution of the Committee of Creditors which consists of the following creditors:
- a) INDO Bank

- b) RST Bank
- c) Peoples Bank
- d) Bank of North India
- e) Public Depositors
- f) Marvel Organics Ltd.

NOTICE OF FIRST MEETING OF THE COMMITTEE OF CREDITORS

NOTICE

Notice is hereby given that the 1st Meeting of the Committee of Creditors of New Age Technology Limited will be held on April 29, 2017 at 11:00 a.m. at A-112, Vikram Vihar, New Delhi to transact the following business:

1. Chairman (Interim Professional) to preside over the Meeting.
2. To ascertain quorum for the meeting.
3. To consider and take note of the list of Creditors.
4. To discuss and deliberate on the statement of claim submitted by interim Resolution Professional.
5. To discuss and deliberate on the Information Memorandum.
6. To ratify the expenses incurred by the interim professional.
7. To ratify the expenses incurred by Applicant of CIRP.
8. To ratify the remuneration paid to interim professional.
9. To appoint Resolution Professional (either interim professional or other resolution professional as the case may be).
10. To approve the following agenda:
 - a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;
 - b) create any security interest over the assets of the corporate debtor;
 - c) change the capital structure of the corporate debtor, including byway of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;
 - d) record any change in the ownership interest of the corporate debtor;
 - e) give instructions to financial institutions maintaining accounts of the corporate debtor

for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;

- f) undertake any related party transaction;
- g) amend any constitutional documents of the corporate debtor;
- h) delegate its authority to any other person;
- i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;
- j) make any change in the management of the corporate debtor or its subsidiary;
- k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;
- l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or
- m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

11. To discuss on the Information Memorandum.

12. To discuss such other matters with the permission of majority of Members of the Committee of Creditors as may be deemed necessary for the smooth functioning of the corporate insolvency resolution process.

A statement of claim as on 05.04.2017 is enclosed for your reference.

Notes:

1. A Member of the Committee of Creditors entitled to attend and vote at the Meeting is entitled to appoint its/his authorised representative to attend and vote instead of itself / himself. Such member shall inform IRP 48 hours in advance of the meeting along with identity of authorized representative and such authorized representative shall carry is valid identity card.
2. The Members of suspended Board of Directors of Corporate Debtor and operational creditors or their representatives if any are not entitled to vote at the meeting.

3. The vote of members of the Committee shall not be taken at the meeting unless all members are present at the meeting and are ready for voting
4. If all the members are not present at a meeting, a vote shall not be taken at such meeting and the resolution professional shall circulate the minutes of the meeting by electronic means to all members of the committee within forty eight hours of the conclusion of the meeting; and seek a vote on the matters listed for voting in the meeting, by electronic voting system where the voting shall be kept open for twenty four hours from the circulation of minutes.
5. Members of the Committee of Creditors can participate through video conferencing and audio visual means. If so, the same may be intimated to the interim resolution professional 48 hours before the meeting at the amitthakur.rp@gmail.com.

MINUTES OF COC MEETING HELD ON APRIL 29, 2017

Meeting Held at:

A meeting of New Age Technology Limited was held at A-112, Vikram Vihar, New Delhi on April 29, 2017.

Attendees:

- Indo Bank
- RST Bank
- People's Bank
- Bank of North India
- Marvel Organics Ltd.
- Authorised Representative of Employees of New Age Technology Ltd.
- Deposit Trustee on behalf of Public Depositors
- JSEW Ltd.
- GSES
- Central Board of Excise & Customs
- Xi Mao
- Radha Hospitalisty Services Pvt. Ltd. [RHPL]

Business proposed to be transacted in the meeting:

During the meeting the following points were discussed:

1. Chairman (Interim Professional) to preside over the Meeting.
2. Ascertainment of quorum for the meeting.
3. Discussion on the valuation of assets of the Corporate Debtor.
4. Consideration of the list of Creditors- accepted the list prepared by the IRP after receiving and verifying all the claims and authorize the IRP to present the list before the Tribunal
5. Discussion and deliberation on the statement of claim submitted by Interim Resolution Professional.
6. Appointment of Resolution Professional

7. Ratification the remuneration paid to interim professional
8. Discussion and deliberation on the Information Memorandum- asked the RP to prepare the IM

Business transacted in the Meeting:

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

Proposed by: Mr. Amit Thakur (IRP)

Seconded and agreed by: The members of the Committee unanimously accepted Mr. Amit Thakur, the IRP to preside over the meeting as the Chairman.

Agenda 2: Ascertainment of quorum for the meeting

Ascertained by: Chairman

Agenda 3: Valuation of assets of the Corporate Debtor

Proposed by: Bank of North India

That the valuation of the assets of the Corporate Debtor is irregular as according to Regn. 27, of CIRP Regulations, the IRP should appoint two registered valuers to determine the liquidation value of the Corporate Debtor's assets. However, in the instant case, during the valuation process it was found that M/s AKP Valuers was a related party to the Debtor. Thereafter the valuation was completed by only M/s KGB Valuers which is in contravention of the CIRP Regulations. Thus, fresh valuation must be done.

Seconded and agreed by: People's Bank, Indo Bank, Employees & Public Depositors

Objected by: IRP, RST Bank & Marvel Organics Ltd.

The valuation done in the instant case does not suffer from the vice of irregularity as no prejudice has been caused to the parties. Rather, by not letting related party of the Corporate Debtor to determine the liquidation value, the IRP has ensured that biasness is ruled out and provisions of the Code and CIRP Regulations are complied with. Henceforth, by giving schematic interpretation to the provisions and objective of the insolvency law, it is humbly submitted that a minor irregularity in the procedure of valuation does not render the valuation irregular in its entirety, as no prejudice has been

caused to the parties involved.

Decision made: Fresh valuation of Corporate Debtor's assets is not required.

Agenda 4: 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 5: Discussion and deliberation on the statement of claim submitted by IRP

[A] The claim filed by People's Bank and Marvel Organics Ltd. is escalated.

Proposed by: RST Bank

The principal amount owed by Corporate Debtor to People's Bank was Rs. 500 crore but the financial creditor inflated the amount to Rs 790 Crore. Such escalation is unexplained considering the good payment record of the Corporate Debtor in past years.

Similarly, Marvel Organics Ltd., has claimed an amount of Rs. 136 crore in as outstanding debt in lieu of the principle amount of Rs. 20 Crore. But it has failed to file any documents in support to substantiate and justify its claim.

Seconded and agreed by: Bank of North India, Indo Bank, Employees & Public Depositors

Objected by: People's Bank & Marvel Organics Ltd.

That the code prescribes for the mechanism to ascertain the claims of the parties and thus, IRP has the power to verify the claims after considering the documents attached. Further, the documents to justify claim can be produced till the acceptance of the Resolution Plan. Thus, rejection of claim at this stage is irregular and arbitrary.

Decision made: No escalation has been done by People's Bank; however, Marvel Organics Ltd. is directed to produce documents in order to justify its claim.

[B] The erstwhile the management of Corporate Debtor has transferred the assets of the company for their personal gains.

Proposed by: People's Bank

In the instant case such frauds can be elucidated by the fact that the sale of the Mumbai House to the Managing Director is speculatively, for an amount much lesser than the market value and also amount of Rs. 6.5 Crore has been transferred to RHPL, owned by promoters, without being due

Seconded and agreed by: All the members.

Decision made: The members of the Committee unanimously accepted and directed the Insolvency Professional to file an application before the Tribunal to initiate enquiry against the Directors, Promoters and Group Companies of the Corporate Debtor for misfeasance and siphoning of funds.

Agenda 6: Appointment of Resolution Professional

Proposed by: Chairman

The IRP be continued as Resolution Professional.

Seconded and agreed by: Indo Bank, Bank of North India & People's Bank

Objected by: RST Bank, Marvel Organics Ltd, Employees & Public Depositors

Decision made: Mr Amit Thakur will not continue as the Resolution Professional. Mr. Divesh Sharma is appointed as Resolution Professional.

Agenda 7: Remuneration paid to the IRP

Decision made: All the members ratified to pay Rs. 2 Lakhs as remuneration to be paid to the IRP.

Agenda 8: Discussion and deliberation on the Information Memorandum

Proposed by: Chairman

Decision made: The RP is directed to prepare the Information Memorandum as per the provisions of Insolvency Law.

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 New Age Technology Limited

(Amit Thakur)

Registration Number: IRP- 583952

Part –B: Several Applications filed before NCLT during insolvency proceedings

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

COMPANY APPLICATION NO. (IB) _____ (ND)/2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED.....CORPORATE DEBTOR

ON BEHALF OF

RST BANK.....FINANCIAL CREDITOR

**APPLICATION BY RHPL FOR REPRESENTATION, PARTICIPATION AND VOTING RIGHT IN
COC.**

RELEVANT FACTS

- a. That the insolvency proceedings were initiated against the Corporate Debtor through the order dated 05.04.2017, passed by the learned Tribunal. Subsequently, all the claims were duly received by the Insolvency Professional and the list of creditors was duly filed before the learned Tribunal on 23.04.2017. Committee of Creditors was constituted on 22.04.2017.
- b. That the applicant was not included in the Creditor's Committee.
- c. Thus, aggrieved by such unreasonable exclusion of the applicant from the committee by the RP, the Applicant has appeared before the learned Tribunal.

GROUND OF CLAIM

1. THAT RHPL HAS THE BUYOUT RIGHT IN CASE OF CORPORATE DEBTOR'S INSOLVENCY

It is humbly submitted before the Ld. Tribunal that RHPL has the buyout right in the case of insolvency of the Corporate Debtor. It is pertinent to note that the Corporate Debtor entered into a JV Agreement with RHPL to develop a hotel on Raipur land whereby RHPL would construct the hotel and commercial tower on the land by contributing 50% cost while the Corporate Debtor would pay for the balance in cash and kind.¹⁵¹

High reliance is placed on the case of *Northrop Grumman Tech. Serv. Inc. v. The Shaw Group Co.*¹⁵², wherein the JV agreement provided that a bankruptcy filing by or against any member was an event of default and gave the non-defaulting members the right to buy out the defaulting member's economic interest at a price specified in the agreement. It also gave each member a right of first refusal in the event that any other member wanted to transfer its rights to a non-affiliated third party. After filing for bankruptcy, the debtor sought court authority to assign its rights under the agreement to a non-affiliated third party. The two non-debtor JV members objected, claiming, among other things, that their buyout rights were triggered by the debtor's default and that they should be allowed to exercise their right of first refusal. The non-affiliated third party countered that the right of first refusal in the JV agreement was invalid under §365(f) because the provision impermissibly restricted or conditioned assignment, even though it did not prohibit assignment outright. On appeal, the district court affirmed the bankruptcy court ruling that the buyout provision was an unenforceable *ipso facto* clause and held that the assignment of the JV agreement to the non-affiliated third party was subject to the other members' right of first refusal under applicable Delaware law.¹⁵³

Hence, it is contended that despite of being an affiliated party in the JV Agreement, RHPL has been denied its right to buyout the JV property. Thus, by refusing the right of first refusal to the non-debtor JV member, grave injustice has been done against RHPL. It is therefore pleaded that RHPL be given an opportunity to raise its claim through a right to representation, participation and voting in the CoC.

¹⁵¹ Moot Proposition, p. 2 ¶ 2.

¹⁵² *Northrop Grumman Tech. Serv. Inc. v. The Shaw Group Co. (In re The IT Group Inc.)*, 302 B R 483 (D Del. 2003).

¹⁵³ Andrew J. Currie & Kristen Burgers, *Bankruptcy Issues Affecting Joint Ventures*, XXIX ABI JOURNAL (2010).

2. THAT RHPL IS NOT A RELATED PARTY OF THE CORPORATE DEBTOR.

It is humbly submitted that RHPL is not a related party of the Corporate Debtor and thus, is not barred from participating in the CoC. It is pertinent to note that RHPL does not fall under the definition of ‘related party’ enshrined in §5(24) of the Code. In 2015, the promoters of Corporate Debtor diversified into hotel and real estate business and they set up RHPL.¹⁵⁴ This clearly establishes that it is the promoters of the Corporate Debtor and not RHPL who is a related party. Thus, by the virtue of not being a related party of the Corporate Debtor, participation of RHPL in CoC is not barred by the proviso to §21(2) of the Code.

PRAYER

Thus, it is humbly pleaded before the Ld. Tribunal that the application by Radha Hospitality Pvt. Ltd. be accepted and the Resolution Professional be ordered to include it in the Committee of Creditors as it has the right to representation, participation and voting in the committee.

¹⁵⁴ Moot Proposition, p. 2 ¶ 2.

APPLICATION TO THE ADJUDICATING AUTHORITY FOR NON-COOPERATION BY PERSONNEL

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

COMPANY APPLICATION NO. (IB) _____ (ND)/2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED.....CORPORATE DEBTOR

ON BEHALF OF

RST BANK.....FINANCIAL CREDITOR

**APPLICATION U/S 19(2) & 19(3) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016
("CODE") FOR ISSUANCE OF NECESSARY DIRECTIONS TO THE MANAGING DIRECTOR OF THE
RESPONDENT TO COMPLY WITH THE INSTRUCTIONS OF THE APPLICANT AND HAND OVER
THE POSSESSION OF APARTMENT OWNED BY RESPONDENT IN JUHU, MUMBAI.**

Most Respectfully Showeth:

1. That the instant petition has been filed by RST Bank, hereinafter referred to as the "Financial Creditor u/s 7 of the Code read with rule 4 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, for initiating Corporate Insolvency resolution Process ("CIRP") against New Age Technology Ltd., hereinafter referred to as the "Corporate Debtor", claiming the dues amounting to Rs. 65,00,00,000 (Six hundred and fifty crore) owed to RST Bank by the New Age Technology Ltd.
2. That the aforesaid petition was heard on 05.04.2017 by the Hon'ble National Company Law Tribunal, Delhi Bench (hereinafter referred to as the "Hon'ble Bench") and upon the said hearing, the Hon'ble Bench was pleased to pass an order on 05.04.2017 appointing the Applicant as the Interim Resolution Professional to carry out the functions

mentioned under the Code. A copy of the order dated 05.04.2017 is enclosed herewith as **Annexure-1.**

3. That pursuant to the receipt of the aforesaid order on 07.04.2017, the Applicant made a Public Announcement in accordance with Section 15 of the Code read with Regulation 6 of Chapter III of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in the newspapers viz. The Economic Times and also on the website of the Corporate Debtor and the Insolvency and Bankruptcy Board of India. A copy of the aforesaid Public Announcement is enclosed herewith as **Annexure-2.**
4. That the Applicant also intimated the Directors/Employee(s)/ Officer(s)/ Manager(s) of the corporate debtor about the initiation of Corporate insolvency Resolution Process (CIRP) against the corporate debtor and appointment of the Applicant as the Interim Resolution Professional. The copy of the aforesaid intimation is enclosed herewith as **Annexure-3.**
5. That the Applicant submits that the Managing Director of the Corporate Debtor is having the possession of the residential apartment owned by the corporate debtor in Juhu, Mumbai. In accordance with the provisions of section 19 of the code, the Applicant sent a notice to the Managing Director asking him to hand over the possession of the abovementioned property to the applicant. However, The Managing Director has neither replied to the notice nor has he handed over the possession of the property. The Managing Director is not extending assistance and co-operation to the Applicant which is imperative for the Applicant to manage the affairs of the Corporate Debtor. The Applicant further submits that under the circumstances the Applicant is not able to carry out his duties and responsibilities as Interim Insolvency Professional as mandated under the law. The copy of the aforesaid intimation sent to the Managing Director is enclosed herewith as **Annexure-4.**
6. The Applicant further submits that the present application is made bonafide and in the ends of justice.

PRAYER

In the aforesaid facts and circumstances, it is most humbly and respectfully prayed that this Hon'ble Bench may graciously be pleased to:

- a) Issue necessary directions to the Managing Director of the New Age Technologies Ltd. To transfer the possession of Apartment located in Juhu, Mumbai. Further, to

extend assistance and co-operation to the Applicant which is imperative for the Applicant to manage the affairs of the Corporate Debtor and to carry out his duties and responsibilities as Interim Insolvency Professional as mandated under the law;

- b) Pass such other order/directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case.

And for this act of kindness, the applicant as in duty bound, shall ever pray.

Applicant

Amit Thakur,

Interim Resolution Professional

R/O at A-112, Vikram Vihar, New Delhi

Place: New Delhi

Date: 15.04.2017

ANNEXURE 1: COPY OF ORDER DATED 05.04.2017

NOT AVAILABLE

ANNEXURE 2: PUBLIC ANNOUNCEMENT (FORM A)

[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 New Age Technologies Ltd.

RELEVANT PARTICULARS	
Name of the corporate debtor	New Age Technologies Ltd.
Date of incorporation of corporate debtor	02.05.2007
Authority under which corporate debtor is incorporated/registered	Registered with Registrar of Companies in accordance with provisions of the Companies Act, 1956
Corporate Identity Number of Corporate Debtor	L17110MH1973PLC019876
Address of Registered Office of Corporate Debtor	A-112, Vikram Vihar, New Delhi.
Insolvency Commencement date	05.04.2017
Estimated date of closure of insolvency resolution process	02.10.2017
Name, address, email address and the registration number of the interim resolution professional	Name - Amit Thakur Address- C-112, Vijay Vihar, New Delhi Reg. No. - IRP- 583952
Last date for submission of claims	21.04.2017

Notice is hereby given that the National Company Law Tribunal has ordered the commencement of a corporate insolvency resolution process against the New Age Technologies Ltd. on 05.04.2017.

The creditors of [the New Age Technologies Ltd., are hereby called upon to submit a proof of their claims on or before 21.04.2017 to the interim resolution professional at the address mentioned against item 8.

The claims may be submitted in their specified Forms B, C, D and E in terms of Regulation 7, 8 and 9 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by the Operational Creditors except Workmen and Employees, Financial Creditors, Workmen or Employees and Authorised Representatives of Workmen and Employees, respectively, as the case may be.

The financial creditors shall submit their proof of claims by electronic means only. The operational creditors, including workmen and employees, may submit the proof of claims by in person, by post or electronic means.

Submission of false or misleading proofs of claim shall attract penalties.

Amit Thakur

Interim Resolution Professional

Date and Place: 07.04.2017 and New Delhi

ANNEXURE 3: INTIMATION TO THE EMPLOYEES OF THE CORPORATE DEBTOR

Date: 07.04.2017

To,

The employees of New Age Technology Limited

Dear Sir/Madam,

Subject: Intimation to the Employee(s)/ Officer(s)/ Manager(s) of initiation of Corporate Insolvency Resolution Process (CIRP) against New Age Technology Limited and appointment of Interim Resolution Professional

I hereby intimate you that CIRP has been initiated in respect of New Age Technology Limited under the provisions of Insolvency and Bankruptcy Code, 2016 ("Code) by an order of National Company Law Tribunal ("NCLT") with effect from 05.04.2017.

As per section 17 of the Code, the powers of the Board of Directors of New Age stands suspended, and such powers shall be vested with me, Amit Thakur, having IP Registration no.- IRP- 583952, appointed as the Insolvency Resolution Professional.

It may further be noted that as per the stipulations contained in Section 17 of the Code, once the Interim resolution Professional has been appointed:

- a) The management of the affairs of the corporate debtor is taken over by him;
- b) The powers of the Board of Directors or the partners of the Corporate Debtor, as the case may be, are suspended and be exercised by the IRP;
- c) The officers and managers of the corporate debtor shall report to the IRP and co-operate with him in providing access to documents and records of the corporate debtor;
- d) The financial institutions maintaining accounts of the corporate debtor shall furnish all information relating to the corporate debtor available with them to the IRP.

In accordance with the above mentioned provision you are advised to co-operate with me in providing access to documents and records pertaining to New Age Technology Limited as

and when requisitioned by me for the smooth conduct of the corporate insolvency resolution process.

The instant intimation w.r.t. initiation of CIRP and appointment of Interim Resolution Professional is for your information.

Thanking you,

Yours faithfully,

Amit Thakur

IP Registration no- IRP- 583952

Enclosed:

- c) A copy of the NCLT order dated 05.04.2017
- d) A copy of the Public Announcement made under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

ANNEXURE 4: INTIMATION TO THE MANAGING DIRECTOR OF THE CORPORATE DEBTOR

Date: 18.04.2017

To,

The Managing Director,

New Age Technology Pvt. Ltd.

Dear Sir

Subject: Intimation of initiation of Corporate Insolvency Resolution Process (CIRP) against New Age Technology Pvt. Ltd. and appointment of Interim Resolution Professional. Further, request to transfer the possession of apartment located in Juhu, Mumbai, currently possessed by you.

I/We hereby intimate you that CIRP has been initiated in respect of New Age Technology Pvt. Ltd under the provisions of Insolvency and Bankruptcy Code, 2016 by an order of National Company Law Tribunal with effect from 07.04.2017.

As per section 17 of the Code, the powers of the Board of Directors of stands suspended, and such powers shall be vested with me, Amit Thakur, having IP Registration no: IRP- 583952, appointed as the Insolvency Resolution Professional.

It may further be noted that as per the stipulations contained in Section 17 and 19 of the Code, once the Interim resolution Professional has been appointed:

- a) The powers of the Board of Directors of the Corporate Debtor are suspended and be exercised by the IRP and the management of the affairs of the corporate debtor is taken over by IRP.
- b) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets.

In accordance with the above mentioned provision you are advised to:

- a) Transfer the possession of the Juhu (Mumbai) apartment owned by New Age, which is currently under your possession, in favour of the Company. Also, to co-operate

with me in providing access to documents and records pertaining to New Age as and when requisitioned by me for the smooth conduct of the corporate insolvency resolution process. The instant intimation w.r.t initiation of CIRP and appointment of Interim Resolution Professional is for your information.

Thanking you,

Yours faithfully,

Amit Thakur

Registration no: IRP- 583952

Enclosed:

- a) A copy of the NCLT order dated 05.04.2017
- b) A copy of the Public Announcement made under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

COMPANY APPLICATION No. (IB) _____ (ND)/2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED.....CORPORATE DEBTOR

ON BEHALF OF

RST BANK.....FINANCIAL CREDITOR

PUBLIC DEPOSITORS THROUGH DEPOSIT TRUSTEE.....APPLICANT

APPLICATION TO THE ADJUDICATING AUTHORITY AGAINST REJECTION OF CLAIM BY IRP

RELEVANT FACTS

- a) That the Corporate Debtor invited public deposits for its working capital needs.
- b) That due to its financial crunch the Corporate Debtor failed to service the interest to the public depositors.
- c) That public depositors filed their claim before the IRP. However, the IRP rejected their claims on the ground that the public depositors do not fall within the purview of operational creditors.
- d) Thus, aggrieved, the public depositors have approached this Ld. Tribunal seeking an order to the IRP for admission of their claims.

GROUND OF CLAIM

1. THAT PUBLIC DEPOSITORS FALL UNDER THE DEFINITION OF OPERATIONAL CREDITORS.

It is humbly submitted before the Ld. Tribunal that the public depositors fall under the definition of operational creditor, whereby the amount due against the public deposits falls

under the definition of operational debt.¹⁵⁵ The failure to service the interest has given rise to a debt in respect of the repayment of dues arising under the Companies (Acceptance of Deposits) Rules, 2014.¹⁵⁶ Therefore, it is pleaded that the IRP be ordered to accept the claim.

2. IN ARGUENDO, PUBLIC DEPOSITORS BE CONSIDERED AS FINANCIAL CREDITORS.

It is herein submitted that public deposit falls under the definition of financial debt u/s 5(8)(a) of the Code whereby it is a debt along with interest which is disbursed against the consideration for the time value of money and includes money borrowed against the payment of interest. According to Companies Act, 2013, deposit includes any receipt of money by way of deposit or loan or in any other form by a company.¹⁵⁷

The terms ‘loans’ and ‘deposits’ are not mutually exclusive. Reliance is placed on the case of *Abdul Hamid Sahib v. Rahmat Bi*¹⁵⁸, wherein it was held that both loans and deposits are debts repayable. A loan is repayable the minute it is incurred, while the repayment of deposit will depend upon the maturity date fixed therefore or the terms of the agreement relating to the demand, on making of which the deposit will become repayable.¹⁵⁹ In other words, unlike a loan there is no immediate obligation to repay in the case of a deposit.¹⁶⁰

In the instant case, Corporate Debtor invited public deposits for its working capital needs and could not service the interest on the same, giving rise to a financial debt. Therefore, it is submitted that the public depositors be treated as financial creditors¹⁶¹ and their claim be accepted by the Ld. Tribunal.

¹⁵⁵ §5(21), the Code.

¹⁵⁶ Rule 2(c), Companies (Acceptance of Deposits) Rules, 2014.

¹⁵⁷ §2(31), Companies Act, 2013 (Act No. 18 of 2013).

¹⁵⁸ *Abdul Hamid Sahib v. Rahmat Bi*, AIR 1965 Mad 427.

¹⁵⁹ *Sharda Talkies (Firm) v. Smt. Madhulata Vyas*, AIR 1966 MP 68.

¹⁶⁰ *V.E.A. Annamalai Chettiar & Anr. v. S.V.V.S. Veerappa Chettir & Ors.*, AIR 1956 SC 12; See also *Ram Janki Devi & Anr. v. M/S Juggilal Kamlatpat*, AIR 1971 SC 2551; *Durga Prasad Mandelia & Ors. v. Registrar of Companies, Maharashtra*, (1987) 61 CompCas 479.

¹⁶¹ *Mehta & Sons (HUF) & Ors. v. M/S AMR Infrastructure Ltd.*, C.P No. (ISB)-03(PB)/2017.

PRAYER

It is humbly prayed before the Ld. Tribunal that an order be passed by this Tribunal directing the IRP to accept the claim of the public depositors.

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI

COMPANY APPLICATION No. (IB) _____ (ND)/2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED.....CORPORATE DEBTOR
ON BEHALF OF
RST BANK.....FINANCIAL CREDITOR

**APPLICATION TO INITIATE ENQUIRY AGAINST DIRECTORS AND PROMOTERS OF THE
CORPORATE DEBTOR FOR MISFEASANCE AND SIPHONING OF FUNDS**

It is humbly submitted before the learned Tribunal that from the preliminary enquiry of the affairs of the corporate debtor and its flow of funds, sufficient evidence are available to point towards possibility of misfeasance and fraud being committed by the promoters and the management of the corporate debtor. It is pertinent to mention that the promoters of Corporate Debtor diversified into the hotel and real estate business by setting up a new company RHPL and also purchased THSPL, a Singapore based company. Thus, they have fraudulently transferred the funds of Corporate Debtor for the expansion of their personal business, resulting in insolvency of the Corporate Debtor and huge losses to its creditors. The detailed pleadings are mentioned hereunder:

1) THAT THE PROMOTERS AND MANAGEMENT HAVE COMMITTED MISFEASANCE.

It is humbly submitted that misfeasance refers to any act of promoters, directors etc. which causes loss to the company or undue gain to directors, promoters or any other person.¹⁶² In this case there exist instances of intentional and deliberate conduct on the part the promoters

¹⁶² Hanuman Bank Ltd. *In re*, (In liquidation), (1964) 34 Com Cases 640. (Mad.)

and management to satisfy the essentials of misfeasance.¹⁶³ Certain acts are mentioned hereunder:

- a) That at the time when the Corporate Debtor was already defaulting in paying the installments of loans and other outstanding liabilities, the management of the corporate debtor transferred the hefty amount of Rs. 6.5 Crore to RHPL, company owned by promoters of Corporate Debtor, on account of completing construction work. However, it is pertinent to mention that this amount was scheduled to be paid in March 2018. Thus, early payment of such huge amount to the company owned by the promoters in the situation when the company is defaulting in paying its outstanding debt directly calls into question the financial prudence of the management and points towards transfer of funds for personal benefit, amounting to misfeasance. High reliance is placed on the case of *Scanwell Logistics (India) Pvt. v. M/c.Blaiklock Compass World*¹⁶⁴ where the Hon'ble court ordered for investigation by the official liquidator to investigate in the formation of second company, formed by some directors of the company in liquidation. The allegations of fraud, misfeasance and transfer of assets of the company in liquidation were made against such directors.
- b) Further, realizing the possibility of initiation of insolvency proceedings, the property of the Corporate Debtor (Juhu Apartment) was sold to the Managing Director at an under-valued price, that too was not paid by such Managing Director. Thus, the management kept aside the provisions of company law and acted beyond the power conferred to the management with intention to cause wrongful loss to the Corporate Debtor and wrongful gain to the Managing Director.

Thus, it is submitted that the above-mentioned instances are sufficient to point towards commission of offence of misfeasance mentioned u/s 340 of the Companies Act, 2013. Further it is submitted that misfeasance proceedings may be initiated against the directors of a company in relation to a breach of his duty to consider the interests of creditors when the company was insolvent.¹⁶⁵

¹⁶³ Official Liquidator v. L.G. Vardharajulu, (2011) 161 Com Cases 293 (Mad.)

¹⁶⁴ 2010 Madras HC.

¹⁶⁵ West Merica Safetywear Ltd. v. Dodd, (1988) BCLC 250 (CA).

- 2) THAT THE PROMOTERS HAVE WRONGFULLY TRANSFERRED THE ASSETS OF COMPANY TO THE COMPANIES PERSONALLY OWNED BY THEM.

It is brought to the notice of the learned Tribunal that the promoters of the company have been acting fraudulently in order to hamper the interest of the creditors and have wrongly transferred the money of the company to different business ventures owned by them, instead of paying it to the creditors. Reliance is placed on *Chamundi Chemicals & Safetywear Ltd. v. Cherian (MC)*¹⁶⁶ in which it was held that:

“If the company was not solvent at that time, then the duty of the directors to the company is principally to consider the creditor’s interest, since it is their money which is now at risk, rather than the shareholder.”

Thus, it is submitted that the promoters of the company have diverted the funds of the Corporate Debtor to the companies personally owned by them, resulting in insolvency of the Corporate Debtor. Thus, they have intentionally caused losses to several creditors and shareholders of the Corporate Debtor.

- 3) That Corporate Veil should be lifted to investigate siphoning of funds by promoters and management of the company.

It is submitted that the management and the promoters of the Corporate Debtor have used the funds of the Corporate Debtor for establishing and running their personal business due to which the creditors of the Corporate Debtor are bound to suffer huge losses. Thus, it is pleaded that corporate veil of RHPL and THSPL must be lifted so that the money belonging to the Corporate Debtor can be brought back.

PRAYER

Hereby, it is humbly prayed that learned Tribunal may kindly consider the submissions and order that:

- a) That the conduct of the management & promoters amount to misfeasance and fraud.

¹⁶⁶ *Chamundi Chemicals & Safetywear Ltd. v. Cherian (MC)*, (1993) 77 Com Cases 1 (Kar).

- b) That detailed scrutiny of transactions between the corporate debtor and promoters must be ordered. Also, the corporate veil of RHPL and THSPL must be lifted to determine actual persons operating these companies.
- c) That the directors and management of the Corporate Debtor be order to compensate the amount fraudulently taken by them, causing losses of the Corporate Debtor.
- d) That properties owned by RHPL and THSPL be attached, as they belong to the Corporate Debtor.

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

COMPANY APPLICATION No. (IB) _____ (ND)/2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED.....CORPORATE DEBTOR

ON BEHALF OF

RST BANK.....FINANCIAL CREDITOR

NEW AGE TECHNOLOGY LIMITED.....APPLICANT

**APPLICATION TO THE ADJUDICATING AUTHORITY AGAINST TERMINATION OF THE LEASE
OF HYDERABAD GUEST HOUSE OF NEW AGE BY THE RP**

RELEVANT FACTS

- a) That the Corporate Debtor has a guesthouse in Hyderabad, which was taken on lease for three years in 2014. The lease could be extended by another three years at the option of the lessor.
- b) That RP received a notice from the lessor, stating that the lease was coming to an end and lease renewal was subject to 30% increase in the rent.
- c) That the RP chose not to renew the lease and terminate it w.e.f. 31.03.2017, *i.e.* prior to the date of termination.
- d) Thus aggrieved Corporate Debtor has approached the Tribunal against the act of RP.

GROUNDS OF CLAIM

1. THAT THE RP DOES NOT HAVE THE POWER TO TERMINATE A CONTRACT.

It is humbly submitted that the RP has transgressed his power by doing an act which he was not authorized to do. §25 of the Code states the duties of the RP. The power of RP is

restricted to take immediate custody and control of all the assets of the Corporate Debtor. In the instant case, the RP chose not to renew the lease and terminate the lease w.e.f. 31st March, 2017, *i.e.* prior to the termination date.¹⁶⁷ Also, the termination of lease contract by the RP has resulted in financial loss to Corporate Debtor along with loss of goodwill. In this regard, high reliance is placed on *Starlog Enterprises*¹⁶⁸, in which the Hon'ble Appellate Tribunal condemned the IRP for his misconduct and ultimately, removed him from the post of an IRP. Thus, it is humbly pleaded that the Tribunal sets aside the termination of the lease by the RP.

2. THAT RP TERMINATED THE LEASE WITHOUT PRIOR CONSENT OF CoC OR THE TRIBUNAL.

It is herein submitted the act of RP to terminate the lease has brought material change in the assets of the Corporate Debtor. According to the Code, such changes shall be made with prior consent of the CoC or the adjudicating authority.¹⁶⁹ Moreover, insolvency law requires secured creditors to be notified of any proposed disposal of an asset and have an opportunity to object.¹⁷⁰ However, leave aside consent, no notice has been given either to CoC or the Tribunal by the RP before the termination of the lease. It can, therefore, be safely concluded that the RP is absurdly misusing his position.

3. THAT TERMINATION OF LEASE BY RP IS IN VIOLATION OF THE PRINCIPLE OF MORATORIUM.

§14(1)(b) of the Code prohibits transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein after declaration of moratorium. In the instant case, it was declared on 5.04.2017.

Moreover, for the purpose of selling or disposing the assets of the Corporate Debtor, It is required that the stay is be lifted or modified by the Tribunal.¹⁷¹ However, the RP did not fulfil this requirement so as to legally terminate the lease during the moratorium period. Hence, the termination of the lease deed by the RP, violates the principle of moratorium.

¹⁶⁷ Moot Proposition, p. 9 ¶ 3.

¹⁶⁸ M/s. Starlog Enterprises Limited v. ICICI Bank Ltd., 2017 (7) TMI 74.

¹⁶⁹ § 28, the Code.

¹⁷⁰ UNCITRAL Legislative Guide, p. 107.

¹⁷¹ SUMANT BATRA, CORPORATE INSOLVENCY: LAW & PRACTICE 262 (1st ed. 2017).

PRAYER

It is humbly prayed before the Ld. Tribunal that an order be passed by against the unjust and illegal action taken by the RP, thereby directing him to get the transaction annulled.

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI

COMPANY APPLICATION No. (IB) _____ (ND)/2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED.....CORPORATE DEBTOR
ON BEHALF OF
RST BANK.....FINANCIAL CREDITOR

APPLICATION FOR RECOGNITION OF FOREIGN PROCEEDINGS

It is brought to the kind perusal of the Ld. Tribunal that TSHPL, a group company of New Age Technology Ltd., is a company registered in Singapore and operates in hotel business. The insolvency proceedings have been initiated against THSPL in Singapore and I have been appointed as the office holder of THSPL. Through this application, in accordance with the provision of Section 15 of UNICITRAL Model law on cross border insolvency, I hereby request you to recognize the insolvency proceeding as foreign main proceedings. The detailed arguments are mentioned hereunder:

I. CENTER OF MAIN INTEREST LIES IN SINGAPORE

It is submitted that THSPL is a company registered in Singapore and its entire business is located in Singapore. It is to be noted that all business operations of THSPL and its sister company AFB Investment Pte. are regulated and supervised from Singapore only. The centre of main interest corresponded to the place where the debtor conducted the administration of its interest on a regular basis and therefore ascertained by the third party¹⁷² and the place of the registered office is presumed to be the centre of main interest in absence of proof to the

¹⁷² Geveran Trading Co. Ltd. v. Skievesland, (2003) B.C.C. 209.

contrary. By placing high reliance on *Re Daisytek-ISA Ltd. & Ors.*¹⁷³ It is submitted that proceedings initiated in Singapore be recognized as Foreign Main proceedings as centre of main interest

2. THAT THSPL IS OPERATING INDEPENDENTLY

It is submitted that though THSPL is a subsidiary company of NEW Age Technologies Ltd., however it is operating independently from its parent company and managing its business operations from Singapore. Strong Reliance is placed on principle settled by Grand Chamber in the Eurofood IFSC Ltd.¹⁷⁴, i.e.:

“Where a company carries on its business in the territory of the Member State where its registered office is situated, the mere fact that its economic choices are or can be controlled by a parent company in another Member State is not enough to rebut the presumption laid down by that Regulation.”

“On a proper interpretation of the first subparagraph of Article 16(1) of Regulation No 1346/2000, the main insolvency proceedings opened by a court of a Member State must be recognised by the courts of the other Member States, without the latter being able to review the jurisdiction of the court of the opening State.”

Thus it is humbly pleaded that the insolvency proceedings initiated against THSPL be recognized as foreign main proceedings as THSPL has centre of main proceedings in Singapore.¹⁷⁵

If insolvency proceedings are opened against a company that is in some way related to another company the former company is considered to be a separate debtor in accordance with the rule that every legal person is a single debtor under the application of the Insolvency Regulation.

3. THAT ASSETS OF NEW AGE BE SUBJECTED TO THE RESULT OF SINGAPORE PROCEEDINGS.

It is pleaded that the Ld. Tribunal be obliged to grant the relief mentioned under provisions of UNICITRAL Model Law, subsequent to the recognition of foreign proceedings initiated against the corporate debtor. These reliefs are listed hereunder:

¹⁷³ *Re Daisytek-ISA Ltd. & Ors.*, [2003] B.C.C. 562.

¹⁷⁴ *Re Eurofood IFSC Ltd.*, [2006] All ER (D) 20 (May).

¹⁷⁵ Art. 2(b), UNCITRAL Model Law on Cross-Border Insolvency, 1997 (*hereinafter*, **Model law**).

- d) Execution against debtor's assets be stayed.¹⁷⁶
- e) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.¹⁷⁷
- f) Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities.¹⁷⁸
- g) Entrusting the administration or realization of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court.¹⁷⁹

¹⁷⁶ Art. 20 (b), Model Law.

¹⁷⁷ Art. 20 (c), Model Law.

¹⁷⁸ Art. 21 (1) (a), Model Law.

¹⁷⁹ Art. 21 (1) (e), Model Law.

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

COMPANY APPLICATION No. (IB) _____ (ND)/2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED.....CORPORATE DEBTOR

ON BEHALF OF

RST BANK.....FINANCIAL CREDITOR

**APPLICATION TO THE ADJUDICATING AUTHORITY AGAINST REJECTION OF APPLICATION
FOR SEEKING INFORMATION MEMORANDUM BY RP.**

RELEVANT FACTS

- a. That the insolvency proceedings were initiated against the Corporate Debtor through the order dated 05.04.2017, passed by the learned Tribunal. Subsequently, all the claims were duly received by the Insolvency Professional and the list of creditors was duly filed before the learned Tribunal on 23.04.2017.
- b. That the applicant filed an application before the Resolution Professional to obtain the copy of the Information Memorandum in accordance with provisions of section 29 of the Code. However the RP rejected the application mentioning that the Applicant is a non-serious party.
- c. Thus, aggrieved by such arbitrary and unreasonable rejection of the application by the RP, the Applicant has appeared before the learned Tribunal.

GROUND OF CLAIM

1. THAT THE RP HAS WRONGFULLY REFUSED THE INFORMATION MEMORANDUM TO JKL PVT. LTD.

It is humbly submitted before the Ld. Tribunal that the RP has wrongly refused to provide the

Information Memorandum (IM) to JKL Pvt. Ltd (hereinafter referred to as “JKL”) on the ground that it was not a serious party.¹⁸⁰ The conclusion drawn by RP that JKL is not a serious party is erroneous and unjust. The veracity of the above-stated claims can be substantiated by the following contentions.

A. JKL IS A SERIOUS PARTY.

When a corporate entity enters into an insolvency proceeding, there are essentially two possible outcomes – the continuation of or sale of all or part of the existing business as a going concern (known as insolvency resolution) or the winding up and liquidation of the company and a distribution of its assets to creditors and other stakeholders. The first one essential deals with corporate restructuring.

Also, § 25(1)¹⁸¹ casts a duty upon the RP to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor. This shows that the primary objective of insolvency resolution process is restructuring rather than liquidation to ensure continued business of the corporate debtor. The latter comes into picture only when the former fails. Therefore, the RP shall also abide by the objective of the code of corporate restructuring and provide equal opportunities to all the parties to participate in restructuring of the company by providing them with the IM.

In the instant case, JKL is considering corporate restructuring. It can be by any of the various modes such as merger, acquisition, etc. Before making such a huge investment decision any prudent business men will require all relevant information regarding the business to be considered for restructuring so as to consider whether it will be a profitable venture for it or not. Therefore, JKL sort IM from the RP so that it can prepare a resolution plan if the IM is lucrative enough for JKL’s business expansion. But the RP refused IM to JKL on the ground that it is not serious party.

JKL is the fourth largest manufacturer of solar panels in India.¹⁸² And, New Age is the fourth largest manufacturer of solar panels in the world and the largest in India.¹⁸³. Therefore, both

¹⁸⁰ Moot Proposition, p. 10 ¶ 3.

¹⁸¹ § 28, the Code.

¹⁸² Moot Proposition, p. 10 ¶ 3.

¹⁸³ Moot Proposition, p. 1 ¶ 1.

the companies deal with the same business. This means JKL is in a better position to understand the business of New Age and accordingly suggest a better resolution plan than those business men who are new to this line of business.

Therefore, it can be concluded that JKL is an interested and a serious party and may even propose a better plan than other parties due to its experience in the same field.

B. IT IS DUTY OF RP TO PROVIDE IM TO ALL THE RESOLUTION APPLICANTS.

§ 29 states that the resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form.¹⁸⁴ Therefore, it becomes duty of the RP to provide IM to all the resolution applicants.

§ 5(25) defines resolution applicant as any person who submits a resolution plan to the resolution professional. As resolution plan can be submitted, after the concerned person gets details of the business and prepares viable plan from the relevant information contained in IM. Therefore, the ambit of definition of resolution applicant is wide enough to include the pre resolution plan submission stage. Such wider interpretation of resolution applicant includes JKL within its ambit because it also proposes to file a resolution plan after analyzing the details of the business from the IM.

If the code has given a wider interpretation to the term resolution applicant then the RP has no power to narrow the scope of this term by misinterpreting it.

Reliance is placed on the case of *Alpha & Omega Diagnostics (India) Ltd. v. Asset Reconstruction Company of India Ltd. & Ors.*¹⁸⁵, the Hon'ble appellate authority observed that there are recognised canons of interpretation. Language of the Statute should be read as it existed. This is a trite law that no word can be added or substituted or deleted from the enacted Code duly legislated. Every word is to be read and interpreted as it exists in the statute with the natural meaning attached to the word. The above-stated principle was reaffirmed by the appellate authority in the case of *Schweitzer Systemtek India Pvt. Ltd. v. Phoenix ARC Pvt. Ltd. & Ors.*¹⁸⁶

¹⁸⁴ § 29, the Code.

¹⁸⁵ *Alpha & Omega Diagnostics (India) Ltd. v. Asset Reconstruction Company of India Ltd. & Ors.*, Company Appeal (AT) (Insol.) No. 116 of 2017

¹⁸⁶ *Schweitzer Systemtek India Pvt. Ltd. v. Phoenix ARC Pvt. Ltd. & Ors.*, Company Appeal (AT) (Insolvency) No. 129 of 2017.

Therefore, the RP shall interpret the term resolution applicant in a wider sense as per the provisions of the code instead of narrowing down its scope. Hence, JKL shall also be provided with the copy of IM by the RP.

PRAYER

Thus, it is humbly pleaded before the Ld. Tribunal that the application by JKL Pvt. Ltd. be accepted and the Resolution Professional be ordered to provide a copy of the Information Memorandum to the Applicant.

Part C: Preparation of Resolution Plan

THE BLUE PLAZA

56 Moo 5, Koh Yao Noi, Ko Yao District,
82160, Thailand

T : +66 7724 5678
E : contact@blueplaza.com

APPLICATION TO RECEIVE INFORMATION MEMORANDUM

[Under Section 29 of the Insolvency and Bankruptcy Code, 2016]

Date: 30.06.2017

To,

Mr. Divesh Sharma

The Resolution Professional,

C-112, Vijay Vihar, New Delhi, India (110005)

Dear Sir,

Subject: Application to receive the Information Memorandum

I hereby intimate your good office that The Blue Plaza is submitting this application for the purpose of receiving the Information Memorandum prepared by you in the case of New Age Technology Ltd. The Blue Plaza is a Thailand based hotel and is interested towards submitting the draft of resolution plan for the debt ridden corporate debtor. As per our knowledge, the New Age Technologies Ltd. is an Indian Company, incorporated in 2009 under the Companies Act, 1956 with the object of manufacturing the solar panel. Further the promoters of the company extended the scope of business and entered into hotel development and management business through joint venture agreements. However, due to increased debts and reduced sources of income, the company failed to meet the demand of the creditors and resultantly the insolvency proceeding were initiated against the company

through the order dated 05.04.2017 passed by the National Company Law Tribunal and subsequently all claims were received and verified by you.

Thus, I request you for the issuance of the copy of information memorandum, prepared by you in accordance with Section 29 of the Insolvency Code, 2016, with the intent to formulate a resolution plan for New Age Technology Ltd.

Thanking you,

Yours faithfully,

Ittiphat Ching,

Managing Director

The Blue Plaza

NEW AGE TECHNOLOGY LIMITED

(Registered Under Companies Act, 1956)

(CIN No. -L17110MH1973PLC019876)

Reg. Office - A-112, Vikram Vihar, New Delhi

Email: support@NATL.com

APPLICATION TO RECEIVE INFORMATION MEMORANDUM

[Under Section 29 of the Insolvency and Bankruptcy Code, 2016]

Date: 30.06.2017

To,

Mr. Divesh Sharma

The Resolution Professional,

C-112, Vijay Vihar, New Delhi, India (110005)

Dear Sir,

Subject: Application to receive the Information Memorandum

We, the promoters of New Age Technology Ltd., hereby intimate your good office that we are submitting this application for the purpose of receiving the Information Memorandum prepared by you in the case of New Age Technology Limited. We intend towards submitting the draft of resolution plan for the debt ridden corporate debtor. The New Age Technologies Ltd. is an Indian Company, incorporated in 2009 under the Companies Act, 1956 with the object of manufacturing the solar panel. Further the promoters of the company extended the scope of business and entered into hotel development and management business through joint venture agreements. However, due to increased debts and reduced sources of income, the company failed to meet the demand of the creditors and resultantly the insolvency proceeding were initiated against the company through the order dated 05.04.2017 passed by the National Company Law Tribunal and subsequently all claims were received and verified by you.

Thus, we request you for the issuance of the copy of information memorandum, prepared by you in accordance with Section 29 of the Insolvency Code, 2016, with the intent to formulate a resolution plan for New Age Technology Ltd.

Thanking you,

Yours faithfully,

Promoter Group,

New Age Technology Ltd.

JKL PVT. LTD.

2nd Stage, Nagarbhavi, Bengaluru,
Karnataka 560072

T : + 80 2358 0264
E : contact@jkl solar.com

APPLICATION TO RECEIVE INFORMATION MEMORANDUM

[Under Section 29 of the Insolvency and Bankruptcy Code, 2016]

Date: 01.07.2017

To,

Mr. Divesh Sharma

The Resolution Professional,

C-112, Vijay Vihar, New Delhi, India (110005)

Dear Sir,

Subject: Application to receive the Information Memorandum

I hereby intimate your good office that JKL Pvt. Ltd. is submitting this application for the purpose of receiving the Information Memorandum prepared by you in the case of New Age Technology Ltd. JKL Pvt. Ltd. is the manufacturer of solar panels in India. It is interested towards submitting the draft of resolution plan for the debt ridden corporate debtor. As per our knowledge, the New Age Technologies Ltd. is an Indian Company, incorporated in 2009 under the Companies Act, 1956 with the object of manufacturing the solar panel. Further the promoters of the company extended the scope of business and entered into hotel development and management business through joint venture agreements. However, due to increased debts and reduced sources of income, the company failed to meet the demand of the creditors and resultantly the insolvency proceeding were initiated against the company through the order dated 05.04.2017 passed by the National Company Law Tribunal and subsequently all claims were received and verified by you.

Thus, I request you for the issuance of the copy of information memorandum, prepared by you in accordance with Section 29 of the Insolvency Code, 2016, with the intent to formulate a resolution plan for New Age Technology Ltd.

Thanking you,

Yours faithfully,

Jayesh Shah,

Managing Director

JKL Pvt. Ltd.

RESOLUTION PLAN FOR NEW AGE TECHNOLOGY LTD.

(SUBMITTED BY BLUE PLAZA)

To

Mr. Amit Thakur

The Interim Resolution Professional,

C-112, Vijay Vihar, New Delhi

RELEVANT FACTS

New Age Technologies Ltd. is an Indian Company, incorporated in 2007 under the Companies Act, 1956 with the object of manufacturing the solar panels. Further the promoters of the company extended the scope of business and entered into hotel development and management business through joint venture agreements. However, due to increased debts and reduced sources of income, the company failed to meet the demand of the creditors and resultantly the insolvency proceeding were initiated against the company through the order dated 05.04.2017 passed by the NCLT and subsequently all claims were received and verified by insolvency professional. On 30.06.2017, the Applicant filed an application before the insolvency professional for the issuance of the copy of information memorandum, prepared by the insolvency professional in accordance with section 29 of the Insolvency Code, 2016, and showed its interest towards submitting the draft of resolution plan for the debt ridden corporate debtor. The applicant as accepted by the insolvency professional and draft of the IM as issued to the resolution applicant on 06.07.2017. Thus, the resolution applicant hereby proposes the possible resolution plan to determine the future course of actions to be taken to manage the corporate debtor.

CURRENT POSITION OF BUSINESS OF CORPORATE DEBTOR

The corporate debtor is a large scale manufacturer of solar panel and is regarded as 4th largest solar panel manufacturer in the world. The Corporate Debtor has adopted excellent growth strategies and was successful in receiving supply contracts from several major companies of international repute dealing in solar energy products. However, due to certain unforeseeable business events, there was sudden fall in the demand of the products manufactured by the

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

Corporate Debtor and resulting in sudden decline in profit to meet the expenditure. The promoters of the Corporate Debtor decided to diversify the business operations of Corporate Debtor in the hotel and real estate business. The object of diversification was achieved through the under-mentioned business transactions:

- a) Entered into joint venture with RHPL to develop a hotel and a commercial tower in Raipur. (Contribution by Corporate Debtor amounting to 50% of total expenditure.
- b) Purchased THSPL, a Singapore based company which owns a 5 Star hotel, the Davisson Continental in Singapore.

LIST OF CLAIMS RECEIVED AGAINST CORPORATE DEBTOR

S. NO.	NAME OF CREDITORS	AMOUNT CLAIMED (IN CRORE)
1.	INDO BANK	1650
2.	RST BANK	650
3.	PEOPLES BANK	790
4.	BANK OF NORTH INDIA	279
5.	MARVEL ORGANICS LTD	136
6.	JSEW LTD	20
7.	GSES	1.20
8.	PUBLIC DEPOSITORS	45
9.	CUSTOMS & EXCISE	2
10.	EPF DUES	12
11.	XI MAO	15
	Total	3600.2 Crore

LIST OF ASSETS OF CORPORATE DEBTOR

S. NO.	PROPERTY IDENTIFIED	PROPOSED PURCHASE PRICE
1.	Davisson Continental, Singapore	450 Crore
2.	Raj Vilas Hotel, Jaipur (owned by RHPL)	160 Crore

INSOLVENCY AND BANKRUPTCY MOOT COURT COMPETITION, 2017

3.	Proposed hotel in Raipur (Under Construction)	130 Crore
4.	Registered office in New Delhi	20 Crore
5.	Corporate Office in Mumbai	30 Crore
6.	Sales Office, Jaipur	10 Crore
7.	New Age House, Jaipur	20 Crore
8.	Gujarat Plant	300 Crore
9.	Karnataka Plant	400 Crore
10.	Total Value of plant and machinery owned by New Age.	800 crore
	Total	2320 Crore

RESOLUTION MODEL PROPOSED

1. SALE OF CERTAIN ASSETS TO MEET THE CURRENT DEBT REQUIREMENT OF THE CORPORATE DEBTOR.

That the Corporate Debtor requires some amount of cash or cash equivalents to meet the outstanding interest liability of financial creditors and to settle the outstanding amounts of operational creditors to resume the supply of raw material to ensure continuation of production activities. Thus, it is proposed that the resolution applicant is willing to purchase the diversified business dealing with hotel and real estate properties owned by the corporate debtor and its promoters. The details of proposal to purchase are mentioned hereunder:

S. NO.	PROPERTY IDENTIFIED	PROPOSED PURCHASE PRICE
1.	Davisson Continental, Singapore	\$ 75 Million
2.	Raj Vilas Hotel, Jaipur (owned by RHPL)	\$ 25 Million
3.	Proposed hotel in Raipur (Under Construction)	\$ 25 Million
	Total	\$125 Million

Thus, the Resolution Applicant is ready to purchase the abovementioned properties for the aggregate of \$ 125 Million. Through this amount the Corporate Debtor shall be able to meet its immediate debt liability and initiate production.

2. MECHANISM TO MANAGE THE BUSINESS OF CORPORATE DEBTOR.

That the Corporate Debtor is primarily engaged in business of manufacturing of solar panels and it was successfully managed by its management until the business was adversely hit due to the changed economic scenario and market conditions. However, it is merely transient in nature and the business can be revived by looking for the alternate buyers of the solar panels, apart from the Dan Morris Energy Inc. and Texas Power International. Thus, affairs of the company should be transferred back to the management of Corporate Debtor and the timelines be decided to pay the outstanding debt to the financial creditors in installments.

Time line: The time line to repay the outstanding amount to the below mentioned banks shall be 5 years.

- RST Bank.
- Indo Bank
- Bank of North India
- Peoples Bank

3. POLICIES FOR REDUCTION OF COST MUST BE ADOPTED.

The Corporate Debtor must reduce the cost of production and management of trading operations. Further the amount spent in providing facilities to its top level management must also be reduced. Some important recommendations are:

- a) Immediate termination of lease of guest house and no such guest house should be hired till the time company is not in the position to ensure timely payment of debt.
- b) Residential apartment purchased of executive managers and director of the company must be immediately sold.
- c) No amount should be invested to purchase expensive vehicle for the management of the company.
- d) The compensation given to the management must be reduced severely.

CONCLUSION

Thus, through this plan the Resolution Applicant undertakes to fund the immediate cash requirement of the Corporate Debtor to meet its unavoidable outstanding liabilities and enable continuity of business operations of the Corporate Debtor.

RESOLUTION PLAN FOR NEW AGE TECHNOLOGY LTD

(SUBMITTED BY PROMOTERS OF NEW AGE)

To

Mr. Amit Thakur

The Interim Resolution Professional,

C-112, Vijay Vihar, New Delhi

RELEVANT FACTS

New Age Technologies Ltd. is an Indian Company, incorporated in 2007 under the Companies Act, 1956 with the object of manufacturing the solar panels. Further the promoters of the company extended the scope of business and entered into hotel development and management business through joint venture agreements. However, due to sudden unforeseeable decline in demand of solar panels in the international market there was temporary reduction in the income earned by the company resulting in failure to meet the demand of the creditors and consequently the insolvency proceeding were initiated against the company through the order dated 05.04.2017 passed by the NCLT and subsequently all claims were received and verified by insolvency professional. On 30.06.2017, the Applicant filed an application before the insolvency professional for the issuance of the copy of information memorandum, prepared by the insolvency professional in accordance with section 29 of the Insolvency Code, 2016, and showed its interest towards submitting the draft of resolution plan for the Corporate Debtor. The applicant as accepted by the insolvency professional and draft of the IM as issued to the resolution applicant on 06.07.2017. Thus, the resolution applicant hereby proposes the possible resolution plan to determine the future course of actions to be taken to manage the corporate debtor.

CURRENT POSITION OF BUSINESS OF CORPORATE DEBTOR

The corporate debtor is a large scale manufacturer of solar panel and is regarded as 4th largest solar panel manufacturer in the world. The Corporate Debtor has adopted excellent growth strategies and was successful in receiving supply contracts from several major companies of international repute dealing in solar energy products. However, due to certain unforeseeable business events, there was sudden fall in the demand of the products manufactured by the Corporate Debtor and resulting in sudden decline in profit to meet the expenditure. The promoters of the Corporate Debtor decided to diversify the business operations of Corporate Debtor in the hotel and real estate business. The object of diversification was achieved through the under-mentioned business transactions:

- c) Entered into joint venture with RHPL to develop a hotel and a commercial tower in Raipur. (Contribution by Corporate Debtor amounting to 50% of total expenditure.
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	Total	3600.2 Crore

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S. NO.	PROPERTY IDENTIFIED	PROPOSED PURCHASE PRICE
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4.	Registered office in New Delhi	20 Crore
5.	Corporate Office in Mumbai	30 Crore
6.	Sales Office, Jaipur	10 Crore
7.	New Age House, Jaipur	20 Crore
8.	Gujarat Plant	300 Crore
9.	Karnataka Plant	400 Crore
10.	Total Value of plant and machinery owned by New Age.	800 crore
	Total	2320 Crore

RESOLUTIONS PLAN: INTRODUCTION

New Age Technology Limited is pleased to present our 2017 Resolution Plan. This plan is our road map for how our core businesses and operations would continue to operate in an orderly manner, in a resolution event without jeopardizing the economy or global financial markets, or requiring any extraordinary government assistance or taxpayer support. Our resolution plan shows how this can be achieved for New Age.

A. *We are strong enough to withstand a market crisis.*

The first step to ensuring resolvability is to minimize the risk of a systemically important solar panel manufacturer, fourth largest in the world and the largest in India, failing. Over past many years, we have completed many initiatives that have substantially strengthened our firm's financial resilience and further reduced the possibility that our firm would fail in a financial crisis. The company started with one plant in Gujarat and due to its huge success, the company set up two more plants in Karnataka. This has dramatically enhanced our resiliency in the face of potential financial stress. In addition, we have diversified into the

hospitality and real estate business. These and many other initiatives that we have undertaken, significantly reduce the chance that we could fail in a crisis scenario

B. We are prepared and have sufficient capabilities to successfully implement our resolution plan.

We believe that our ability to successfully execute our resolution plan depends on being prepared and having sufficient capabilities on the following fronts:

- legal issues and governance;
- financial resources;
- operational capabilities; and
- management information systems

SUMMARY OF OUR PREFERRED RESOLUTION STRATEGY:

Our preferred resolution strategy is to ensure that, even after a very significant idiosyncratic loss event and severe liquidity outflows, the company could continue to operate for a long period of time. As a result of the preparations that we have made, we believe that we could achieve this goal by focusing on our capital and liquidity resources, so they could be sold or wound down in an orderly fashion.

Each of the options for resolution set forth below is theoretically available for the company; however, we have highlighted those that are, in our opinion, the most reasonable and executable alternative options. The following is the list of potential actions we could take in the lead-up to resolution to bolster the financial strength of the company:

i. Sale of “New Age House” property in Jaipur

To meet the immediate fund requirements and to pay the immediately due installment, New Age plans to sell “New Age House” situated in Jaipur. This asset is not used by the company for its own business but is given on lease. Hence, sale of the property will not hinder regular operations of the business but will bring handsome amount of money to the company to honour its commitments and resume its business of solar panel manufacturing.

- ii. Proposal to the lenders for reduction/hair-cut by 45% in the amount payable to the lenders with 10 years repayment schedule.

The company plans to pay its debts due to the lenders after reduction of 45% in the amount. The company at this financially weak point of time cannot honour its debt in full. The amount claimed by the lenders is inclusive of the principal debt, interest amount and the penalty. But the company is not in a position to pay the full amount as payment of the claimed amount will inevitably lead to liquidation of the company and the assets of the company are not sufficient to pay back its debt. Hence, liquidation is neither in the interest of the lenders nor the company. On the other hand, if the company goes on it will pay the proposed amount out of its profits.

The applicant suggests the way out which insures the return of the amount invested by the financial creditors without adversely affecting the future of the company. Therefore, after making due calculations we have concluded that payment of 55% of amount will ensure that the lenders do not suffer loss of the principal amount and they have to forego the profits as the company is not in a position to pay it.

Therefore, the company will pay the principal amount of debt to the lenders after the reduction of 45% over a period of 10 years.

- iii. Payment to Operational Creditors within three years.

The company proposes to pay the amount owed to the operational creditors in full over a period of three years. The payment schedule can be decided after discussion with operational creditors.

- iv. Payment of 60% CIRP cost.

We appreciate the efforts of RP to bring the company out of the liquidity issue after striking a balance between the interest of both the debtors and the creditors. Therefore, the company proposes to pay 60% of CIRP cost as the amount charged by the RP as CIRP costs is exorbitantly high and the company lacks sufficient funds to pay the whole amount of the cost. The company is facing liquidity issues and it would not be feasible for the company to pay such an exorbitant amount of money as CIRP cost. So, the company after making due calculations has reached a conclusion that it can pay 60% of the cost. The company, before concluding the amount, ensured that the CIRP does not suffer any loss and does not pay the cost out of his pockets but the company cannot pay for the exorbitant fees.

Therefore, the company will pay 60% of CIRP cost.

v. *Sale of part of shares of New Age in Seven Points Hotel at Raipur.*

The company plans to pay the above-stated debts out of the amount generated by sale of its shares in its recent venture. The sale would not affect profits of solar panel business as this is an additional business of New Age. Hence, sale of this asset will provide funds for payment of this year's installment and will provide enough funds to the company to meet its working capital requirements and to recover from present liquidity issues, thereafter, the company will be in a position to honour its debts out of its profits.

WORKABILITY OF THE PROPOSED PLAN:

Our resolution plan preserves significant flexibility in connection with our resolution strategy, financial resources and operational capabilities.

- *Allocating the firm's financial resources based on the projected needs of the company.*

We have estimated the capital and liquidity amount that the company would need in a resolution scenario, and decided to maintain an appropriate balance of projected resolution liquidity and capital resources with the company.

- *Maintaining alternative strategies, contingency actions or exit plans for key service providers.*

We have established an exit plan or alternative strategy to ensure that the company finds suitable buyers to sell its products and earn revenue. We are targeting potential clients as the immediate issue arose not because of inefficiency of New Age but due to impediments faced by its two major clients in USA. Hence, we are ensuring that such situation does not arise again.

We believe that New Age is currently highly resolvable and can be satisfactorily resolved through the above proposed resolution plan, we are nevertheless continually focused on initiatives to further enhance our resolvability and the optionality available.

CONCLUSION

Thus, through this plan the Resolution Applicant undertakes to fund the immediate cash requirement of the Corporate Debtor to meet its unavoidable outstanding liabilities and enable continuity of business operations of the Corporate Debtor through our management policies.

NOTICE OF MEETING OF THE COMMITTEE OF CREDITORS

NOTICE

Notice is hereby given that the Meeting of the Committee of Creditors of New Age Technology Limited will be held on August 01, 2017, at 11:00 a.m. at A-112, Vikram Vihar, New Delhi, to discuss the resolution plan submitted by the promoters of New Age Technology Limited & Blue Plaza.

Notes:

1. A Member of the Committee of Creditors entitled to attend and vote at the Meeting is entitled to appoint its/his authorised representative to attend and vote instead of itself / himself. Such member shall inform IRP 48 hours in advance of the meeting along with identity of authorized representative and such authorized representative shall carry a valid identity card.
2. The Members of suspended Board of Directors of Corporate Debtor and operational creditors or their representatives if any are not entitled to vote at the meeting.
3. The vote of members of the Committee shall not be taken at the meeting unless all members are present at the meeting and are ready for voting.
4. If all the members are not present at a meeting, a vote shall not be taken at such meeting and the resolution professional shall circulate the minutes of the meeting by electronic means to all members of the committee within forty eight hours of the conclusion of the meeting; and seek a vote on the matters listed for voting in the meeting, by electronic voting system where the voting shall be kept open for twenty four hours from the circulation of minutes.
5. Members of the Committee of Creditors can participate through videoconferencing and audio visual means. If so, the same may be intimated to the interim resolution professional 48 hours before the meeting at the diveshsharma.rp@gmail.com.

RESOLUTION PROFESSIONAL

In the matter ofNew Age Technology Limited

(Divesh Sharma)

Registration Number: IRP- 694063

Place: New Delhi

Date: July 24, 2017

MINUTES OF COC MEETING HELD ON AUGUST 01, 2017

Meeting Held at:

A meeting of New Age Technology Limited was held at A-112, Vikram Vihar, New Delhi on August 01, 2017.

Chaired by: Divesh Sharma

Attendees:

- Indo Bank
- RST Bank
- People's Bank
- Bank of North India
- Marvel Organics Ltd.
- Peg Developers Lt
- Authorised Representative of Employees of New Age Technology Ltd.
- Deposit Trustee on behalf of Public Depositors
- JSEW Ltd.
- GSES
- Central Board of Excise & Customs
- Xi Mao
- Radha Hospitalisty Services Pvt. Ltd. [RHPL]

Business proposed to be transacted in the meeting:

- a) To consider and approve the proposed resolution plan.
- b) To accept and verify the claims raised by PEG Developers.

Business Transacted in the Meeting:

Agenda 1: To consider and approve the proposed Resolution plan.

Proposed by: Divesh Sharma (RP)

He explained that the RP received two Resolution plan i.e. Resolution plan by New Age (through its promoters) and Resolution plan of Blue Plaza. The copy of both these plans and the objections raised by me were sent along with the notice to all members of CoC. Later, after considering the objections, the Promoters of New Age Agreed to amend the proposed

plan in accordance of the proposed changes. Thus, I have shortlisted the plan proposed by the Promoters of New Age for the consideration and discussion of Committee. My reasons for proposing this plan are mentioned hereunder:

- a) That allowing the erstwhile management of the company to regain the control will be advantageous to the company considering their immediate and intimate knowledge of its business and the industry within which it operates.
- b) That the plans proposes the map to pay the outstanding amount to all creditors in phased manner and with minimum possible haircut in the outstanding liability.

Plan seconded and agreed by:

- INDO BANK
- MARVEL ORGANICS LTD

Objections to the plan:

- RST Bank- That the period suggested to pay back the outstanding loan amount is very long, considering the changing time value of money and the proposed haircut in the amount due.
- Operational Creditors – That no immediate payment mechanism has been provided to pay the long outstanding dues of the operational creditors which makes it difficult to ensure continued supply of raw material to the Corporate Debtor.
- Bank of North India – That there has been the excessive reduction in the amount payable to the financial creditors and cause huge loss to the financial creditors. Thus. Vitiating the entire resolution process.

Voting and decision

The proposed resolution plan could not receive the assent of the requisite majority and thus, the plan is sent back to the Promoters of New Age to consider the proposed objections and amend the plan addressing the concerns raised in the meeting.

Agenda –II: To accept and verify the belated claim raised by PEG Developers Ltd., a financial Creditors.

Proposed by: Divesh Sharma, RP

He mentioned that the Company named as PEG Developers Ltd. has raised a claim amounting to Rs. 15 crore as a financial creditor through its application received on 20th July

2017. However, the last date of submission of claim was 21st of April 2017. Thus, this claim is a belated claim and requires discussion relating to its maintainability.

On the issue of maintainability of the claim, the applicant has reasoned that according to Regn. 12 of the CIRP Regulations, if a creditor fails to submit proof of claim within the time stipulated in the public announcement made by the IRP, it may submitted such proof to the IRP or to the RP at any stage till the approval of a resolution plan by the CoC. In the instant case, according to the public announcement, the last date for submission of such claim was 22nd April, 2017. Howbeit, as on the date of submission of the claim by PEG Developers Ltd., i.e. 20th July, Resolution plan was not approved by the CoC. Thus, in the light of CIRP Regulations, the claim of PEG Developers is admissible.

Claim Supported by:

- Bank of North India- The applicant is a foreign company and has the reasonable justification to delay in application. Mere delay cannot be the ground to reject the claim which is otherwise maintainable. It is further permitted by the Code.

Objection to acceptance of claim

- RST Bank: that acceptance of such claim at this stage will violate the specific time period prescribed under the code. Further, the acceptance will result in several changes in the information memorandum and the proposed resolution plan. Also, as the applicant is a financial creditor, it has to made part of CoC and the voting rights have to be redistributed.
- Indo Bank: Acceptance of belated claims will slow down the resolution process and will result in delay in completion of resolution process.

Voting and Decision

Result of voting- The application of PEG Developers Ltd. received the consent of 78% of the committee members, present and voting, and thus passed by the requisite majority. The RP has been directed to register its claim and make the necessary changes.

Next Meeting:

To finalise the resolution plan the next meeting is scheduled on September 28, 2017 at 11:00 a.m. at A-112, Vikram Vihar, New Delhi.

RESOLUTION PROFESSIONAL

In the matter ofNew Age Technology Limited

(Divesh Sharma)

Registration Number: RP- 694063

EVALUATION OF RESOLUTION PLAN SUBMITTED BY PROMOTERS OF CORPORATE DEBTOR

The information memorandum (IM) prepared by the RP in accordance with § 29 of the Code, was requested by JKL Pvt. Ltd. (fourth largest manufacturer of solar panels in India), The Blue Plaza (a Thailand based Hotel) and the promoters of New Age, i.e. the Corporate Debtor. It was refused to JKL Pvt. Ltd. as it was not a serious party, while a copy of the IM was provided to The Blue Plaza and the promoter group. Thereafter, the promoter group [hereinafter referred to as **“Resolution Applicant-1”**] and The Blue Plaza [hereinafter referred to as **“Resolution Applicant-2”**] submitted the respective Resolution Plans. It is submitted that the criteria to evaluate the relevant plan is provided under § 30 of the Code. It mandates that the Resolution Plan:

- a. provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;
- b. provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under § 53;
- c. provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- d. the implementation and supervision of the resolution plan;
- e. does not contravene any of the provisions of the law for the time being in force;
- f. conforms to such other requirements as may be specified by the Board.

These requirements are required to with read with Regn. 38 of the CIRP Regulations which reads as follows:

(1) A resolution plan shall identify specific sources of funds that will be used to pay the -

- (a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;
- (b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and
- (c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.

(2) A resolution plan shall provide:

- (a) the term of the plan and its implementation schedule;
- (b) the management and control of the business of corporate debtor during its term; and
- (c) adequate means for supervising its implementation.

The Plan submitted by the Resolution Applicant-1 has been evaluated in accordance with the criteria to evaluate the relevant plan as provided under § 30 of the Code read with Regn. 38 of the CIRP Regulations, under the following heads.

Repayment of the debts of dissenting Creditors

A resolution plan shall identify specific sources of funds that will be used to pay the liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.¹⁸⁷ However, in the instant case, the Resolution Applicant-1 has failed to identify such sources and also the Plan does not mention repayment of debts to the dissenting creditors prior to the other financial creditors. Thus, it does not conform to the mandatory requirement of a Resolution Plan.

Payment of debts to the Operational Creditors

A resolution plan shall identify specific sources of funds that will be used to pay the liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority.¹⁸⁸ However, the Resolution Applicant-1 has proposed such payment to be done over a period of 3 years. Thus, in order to ensure conformity to the insolvency law, and also to guarantee that the supplies from the Operational Creditors are resumed, it is required that such provision of immediate repayment of operational debt be incorporated in the Resolution Plan.

Policy for reduction of cost

The Resolution Plan must ensure that the Corporate Debtor reduces the cost of production

¹⁸⁷ Regn. 38(1)(c), CIRP Regulations

¹⁸⁸ Regn. 38(1)(a), CIRP Regulations

and management of trading operations. Further the amount spent in providing facilities to its top level management must also be reduced. Some important recommendations are:

- a) Immediate termination of lease of guest house and no such guest house should be hired till the time company is not in the position to ensure timely payment of debt.
- b) Residential apartment purchased of executive managers and director of the company must be immediately sold.
- c) No amount should be invested to purchase expensive vehicle for the management of the company.
- d) The compensation given to the management must be reduced severely.

Conclusion

The Resolution Applicant-1 has provided necessary insolvency resolution scheme in the Resolution Plan as it has to confirm the conditions laid down under §30(2) of the Code.¹⁸⁹ Howbeit, the Insolvency Professional recommends that the above changes be incorporated in the Plan to ensure that it is free of defects and guarantees efficient resolution of insolvency of the Corporate Debtor.¹⁹⁰

¹⁸⁹ §30(3) IBC

¹⁹⁰ David K. Spiro, Robert S. Westermann and Sheila deLa Cruz, "Summary of Chapter 11 Procedure and Process"

EVALUATION OF RESOLUTION PLAN SUBMITTED BY THE BLUE PLAZA

The RP proposed by Blue Plaza has been evaluated in accordance with the criteria to evaluate the relevant plan as provided under § 30 of the Code read with Regn. 38 of the CIRP Regulations, under the following heads.

Debt satisfaction in general

As per the table containing the list of claims received against Corporate Debtor, the liabilities are to the tune of Rs. 3600.20 crore. With the purpose of meeting the liabilities of the Corporate Debtor, the Resolution Applicant-2 has offered to purchase the Jaipur, Raipur and Singapore hotels for an amount of USD 125 million, i.e. Rs. 800.4 crore, with a repayment plan of 5 years. However, this amount is not sufficient to meet the total liability of the Rs. 3600.20 crore.

Moreover, it is pertinent to note that the Raipur Hotel is part of the JV Agreement between the Corporate Debtor and RHPL. The JV requires that RHPL will receive revenue from the hotel, while Corporate Debtor from commercial tower.¹⁹¹ Thus, Resolution Applicant-2 cannot purchase the Raipur Hotel, as Corporate Debtor is not an independent owner of the same.

Similarly, The Davisson Continental hotel in Singapore is owned by THSPL, which is acquired by the promoters of the Corporate Debtor, and not the Corporate Debtor itself.¹⁹² Thus, the amount of purchase will be payable to the promoters and not the Corporate Debtor. Moreover, insolvency proceedings have been initiated against THSPL in Singapore¹⁹³ and thus, its properties cannot be transacted during the proceedings.

Thus, debt satisfaction scheme as determined by the Resolution Applicant-2 in the Resolution Plan is not workable.

Insolvency Resolution Process Cost

The Resolution Applicant-2 has failed to provide for the criteria through which it will meet the cost of resolution process. It has neither acknowledged such costs nor has it provided for

¹⁹¹ Moot Proposition, p. 2 ¶ 3.

¹⁹² Moot Proposition, p. 3 ¶ 3.

¹⁹³ Moot Proposition, p.9 ¶ 4.

the same in the timeline for payment in priority to the repayment of other debts of the corporate debtor presented in the Plan. Thus, the plan does not conform to §30(a) of the Code nor to Regn. 38 of the CIRP Regulations.

Repayment of the debts of Operational Creditors

The §30(b) of the Code requires that the Resolution Plan should provide for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation¹⁹⁴ of the corporate debtor under §53. However, the timeline for the repayment as presented in the Plan, does not include payment of operational debts. Thus, the plan has failed to specify the manner and timeline for payment of the operational debts of the corporate debtor.

Repayment of the debts of dissenting Financial Creditors

A resolution plan shall identify specific sources of funds that will be used to pay the liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.¹⁹⁵ However, in the instant case, the Resolution Applicant-2 has failed to identify such sources and also the Plan does not mention repayment of debts to the dissenting creditors prior to the other financial creditors. Thus, it does not conform to the mandatory requirement of a Resolution Plan.

Management of the affairs of the corporate debtor after approval of the Resolution Plan

The Resolution Plan formulated by the Resolution Applicant-2 has specifically mentioned the mechanism to manage the business of Corporate Debtor.¹⁹⁶ It has suggested transferring the affairs of the company back to the management of corporate debtor after approval of the plan. However, it has failed to elaborate as to how the main business of the Corporate Debtor, i.e.

¹⁹⁴ UNCITRAL Legislative Guide, p. 210.

¹⁹⁵ Regn. 38, CIRP Regulations, 2016.

¹⁹⁶ Chapter 11, US Bankruptcy Code.

manufacturing solar panels, will be managed.¹⁹⁷ Thus, the Resolution Plan is incomplete in that regard.

Conclusion

The Insolvency Professional has suggested these requirements to the Resolution Applicant-2, and these recommendations should be incorporated in the plan to ensure that it is free of defects and guarantees efficient resolution of insolvency of the Corporate Debtor. However, it is to be noted that if the failure to incorporate the mandatory provisions in the Resolution Plan subsist, such plan cannot be submitted for the perusal and approval of the CoC, as it has to confirm the conditions laid down under §30(2) of the Code.¹⁹⁸

¹⁹⁷ David K. Spiro, Robert S. Westermann and Sheila deLa Cruz, “Summary of Chapter 11 Procedure and Process”

¹⁹⁸ §30(3), the Code.

RESOLUTION PLAN BY PROMOTERS OF NEW AGE

(As amended according to the changes suggested by COC)

To

Mr. Divesh Sharma

Resolution Professional,

C-112, Vijay Vihar, New Delhi

Proposed amendment in the plan

It is submitted that the Resolution Professional and CoC have suggested certain changes in the proposed plan. Thus, after considering all the suggestions, the followings changes are made in the proposed plan.

1) Source of Funds for the repayment of the outstanding debtors

It is proposed that the company should sell out its assets used in non- core business operations to meet the immediate need of cash. The proposed property to be sold are listed below:

S. NO.	PROPERTY IDENTIFIED	PROPOSED SALE PRICE (IN RS.)
1.	Proposed hotel in Raipur (Under Construction)	133 Crore
2.	New Age House, Jaipur	22 Crore
	Total	155 Crore

Thus, by selling the abovementioned properties, the company will be able to arrange for Rs. 155 Crore, which can be used to pay the dissenting creditors and also to ensure continued supply of requisite raw material.

2) Repayment period of outstanding debts

The company will pay the agreed amount to the financial creditors within the period of 5 years and shall accordingly prepare the repayment schedule.

3) Management and supervision of the Corporate Debtor after completion of resolution plan.

The erstwhile management of the company to regain the control of the company considering their immediate and intimate knowledge of its business and the industry within which it operates. However an insolvency representative must be appointed by the Ld. Tribunal, how shall supervise the implementation of the plan and keep in check, the conduct of the management.

The other conditions/proposals of the plan shall remain the same and are mentioned hereunder:

RELEVANT FACTS

New Age Technologies Ltd. is an Indian Company, incorporated in 2007 under the Companies Act, 1956 with the object of manufacturing the solar panels. Further the promoters of the company extended the scope of business and entered into hotel development and management business through joint venture agreements. However, due to sudden unforeseeable decline in demand of solar panels in the international market there was temporary reduction in the income earned by the company resulting in failure to meet the demand of the creditors and consequently the insolvency proceeding were initiated against the company through the order dated 05.04.2017 passed by the NCLT and subsequently all claims were received and verified by insolvency professional. On 30.06.2017, the Applicant filed an application before the insolvency professional for the issuance of the copy of information memorandum, prepared by the insolvency professional in accordance with section 29 of the Insolvency Code, 2016, and showed its interest towards submitting the draft of resolution plan for the Corporate Debtor. The applicant as accepted by the insolvency professional and draft of the IM as issued to the resolution applicant on 06.07.2017. Thus, the resolution applicant hereby proposes the possible resolution plan to determine the future course of actions to be taken to manage the corporate debtor.

CURRENT POSITION OF BUSINESS OF CORPORATE DEBTOR

The corporate debtor is a large scale manufacturer of solar panel and is regarded as 4th largest solar panel manufacturer in the world. The Corporate Debtor has adopted excellent growth strategies and was successful in receiving supply contracts from several major companies of international repute dealing in solar energy products. However, due to certain unforeseeable business events, there was sudden fall in the demand of the products manufactured by the Corporate Debtor and resulting in sudden decline in profit to meet the expenditure. The promoters of the Corporate Debtor decided to diversify the business operations of Corporate Debtor in the hotel and real estate business. The object of diversification was achieved through the under-mentioned business transactions:

- a) Entered into joint venture with RHPL to develop a hotel and a commercial tower in Raipur. (Contribution by Corporate Debtor amounting to 50% of total expenditure.
- b) Purchased THSPL, a Singapore based company which owns a 5 Star hotel, the Davisson Continental in Singapore.

LIST OF CLAIMS RECEIVED AGAINST CORPORATE DEBTOR

S. NO.	NAME OF CREDITORS	AMOUNT CLAIMED (IN CRORE)
1.	INDO BANK	1650
2.	RST BANK	650
3.	PEOPLES BANK	790
4.	BANK OF NORTH INDIA	279
5.	MARVEL ORGANICS LTD	136
6.	PEG DEVELOPERS LTD. ^	15
6.	JSEW LTD	20
7.	GSES	1.20
8.	PUBLIC DEPOSITORS	45
9.	CUSTOMS & EXCISE	2
10.	EPF DUES	12
11.	XI MAO	15
	Total	3615.2 Crore

LIST OF ASSETS OF CORPORATE DEBTOR

S. NO.	PROPERTY IDENTIFIED	PROPOSED PURCHASE PRICE
1.	Davisson Continental, Singapore	450 Crore
2.	Raj Vilas Hotel, Jaipur (owned by RHPL)	160 Crore
3.	Proposed hotel in Raipur (Under Construction)	130 Crore
4.	Registered office in New Delhi	20 Crore
5.	Corporate Office in Mumbai	30 Crore
6.	Sales Office, Jaipur	10 Crore
7.	New Age House, Jaipur	20 Crore
8.	Gujarat Plant	300 Crore
9.	Karnataka Plant	400 Crore
10.	Total Value of plant and machinery owned by New Age.	800 crore
	Total	2320 Crore

RESOLUTION PLAN:

INTRODUCTION

New Age Technology Limited is pleased to present our 2017 Resolution Plan. This plan is our road map for how our core businesses and operations would continue to operate in an orderly manner, in a resolution event without jeopardizing the economy or global financial markets, or requiring any extraordinary government assistance or taxpayer support. Our resolution plan shows how this can be achieved for New Age.

A. *We are strong enough to withstand a market crisis.*

The first step to ensuring resolvability is to minimize the risk of a systemically important solar panel manufacturer, fourth largest in the world and the largest in India, failing. Over past many years, we have completed many initiatives that have substantially strengthened our firm's financial resilience and further reduced the possibility that our firm would fail in a financial crisis. The company started with one plant in Gujarat and due to its huge success, the company set up two more plants in Karnataka. This has dramatically enhanced our resiliency

in the face of potential financial stress. In addition, we have diversified into the hospitality and real estate business. These and many other initiatives that we have undertaken, significantly reduce the chance that we could fail in a crisis scenario

B. We are prepared and have sufficient capabilities to successfully implement our resolution plan.

We believe that our ability to successfully execute our resolution plan depends on being prepared and having sufficient capabilities on the following fronts:

- legal issues and governance;
- financial resources;
- operational capabilities; and
- management information systems

SUMMARY OF OUR PREFERRED RESOLUTION STRATEGY:

Our preferred resolution strategy is to ensure that, even after a very significant idiosyncratic loss event and severe liquidity outflows, the company could continue to operate for a long period of time. As a result of the preparations that we have made, we believe that we could achieve this goal by focusing on our capital and liquidity resources, so they could be sold or wound down in an orderly fashion.

Each of the options for resolution set forth below is theoretically available for the company; however, we have highlighted those that are, in our opinion, the most reasonable and executable alternative options. The following is the list of potential actions we could take in the lead-up to resolution to bolster the financial strength of the company:

i. Sale of “New Age House” property in Jaipur

To meet the immediate fund requirements and to pay the immediately due installment, New Age plans to sell “New Age House” situated in Jaipur. This asset is not used by the company for its own business but is given on lease. Hence, sale of the property will not hinder regular operations of the business but will bring handsome amount of money to the company to honour its commitments and resume its business of solar panel manufacturing.

- ii. Proposal to the lenders for reduction/hair-cut by 45% in the amount payable to the lenders with 5 years repayment schedule.

The company plans to pay its debts due to the lenders after reduction of 45% in the amount. The company at this financially weak point of time cannot honour its debt in full. The amount claimed by the lenders is inclusive of the principal debt, interest amount and the penalty. But the company is not in a position to pay the full amount as payment of the claimed amount will inevitably lead to liquidation of the company and the assets of the company are not sufficient to pay back its debt. Hence, liquidation is neither in the interest of the lenders nor the company. On the other hand, if the company goes on it will pay the proposed amount out of its profits.

The applicant suggests the way out which insures the return of the amount invested by the financial creditors without adversely affecting the future of the company. Therefore, after making due calculations we have concluded that payment of 55% of amount will ensure that the lenders do not suffer loss of the principal amount and they have to forego the profits as the company is not in a position to pay it.

Therefore, the company will pay the principal amount of debt to the lenders after the reduction of 45% over a period of 5 years.

- iii. Payment to Operational Creditors within three years.

The company proposes to pay the amount owed to the operational creditors in full over a period of three years. The payment schedule can be decided after discussion with operational creditors.

- iv. Payment of 60% CIRP cost.

We appreciate the efforts of RP to bring the company out of the liquidity issue after striking a balance between the interest of both the debtors and the creditors. Therefore, the company proposes to pay 60% of CIRP cost as the amount charged by the RP as CIRP costs is exorbitantly high and the company lacks sufficient funds to pay the whole amount of the cost. The company is facing liquidity issues and it would not be feasible for the company to pay such an exorbitant amount of money as CIRP cost. So, the company after making due calculations has reached a conclusion that it can pay 60% of the cost. The company, before concluding the amount, ensured that the CIRP does not suffer any loss and does not pay the cost out of his pockets but the company cannot pay for the exorbitant fees.

Therefore, the company will pay 60% of CIRP cost.

v. *Sale of part of shares of New Age in Seven Points Hotel at Raipur.*

The company plans to pay the above-stated debts out of the amount generated by sale of its shares in its recent venture. The sale would not affect profits of solar panel business as this is an additional business of New Age. Hence, sale of this asset will provide funds for payment of this year's installment and will provide enough funds to the company to meet its working capital requirements and to recover from present liquidity issues, thereafter, the company will be in a position to honour its debts out of its profits.

WORKABILITY OF THE PROPOSED PLAN:

Our resolution plan preserves significant flexibility in connection with our resolution strategy, financial resources and operational capabilities.

- *Allocating the firm's financial resources based on the projected needs of the company.*

We have estimated the capital and liquidity amount that the company would need in a resolution scenario, and decided to maintain an appropriate balance of projected resolution liquidity and capital resources with the company.

- *Maintaining alternative strategies, contingency actions or exit plans for key service providers.*

We have established an exit plan or alternative strategy to ensure that the company finds suitable buyers to sell its products and earn revenue. We are targeting potential clients as the immediate issue arose not because of inefficiency of New Age but due to impediments faced by its two major clients in USA. Hence, we are ensuring that such situation does not arise again.

We believe that New Age is currently highly resolvable and can be satisfactorily resolved through the above proposed resolution plan, we are nevertheless continually focused on initiatives to further enhance our resolvability and the optionality available.

CONCLUSION

Thus, through this plan the Resolution Applicant undertakes to fund the immediate cash requirement of the Corporate Debtor to meet its unavoidable outstanding liabilities and enable continuity of business operations of the Corporate Debtor through our management policies.

NOTICE OF MEETING OF THE COMMITTEE OF CREDITORS

NOTICE

Notice is hereby given that the meeting of the Committee of Creditors of New Age Technology Limited scheduled for September 28th, 2017, at 11:00 a.m. at A-112, Vikram Vihar, New Delhi to discuss the amended resolution plan submitted by the promoters of New Age Technology Limited. The amended plan incorporates all the changes discussed and suggested by the Committee in the meeting held on August 1st, 2017.

Notes:

1. A Member of the Committee of Creditors entitled to attend and vote at the Meeting is entitled to appoint its/his authorised representative to attend and vote instead of itself / himself. Such member shall inform IRP 48 hours in advance of the meeting along with identity of authorized representative and such authorized representative shall carry a valid identity card.
2. The Members of suspended Board of Directors of Corporate Debtor and operational creditors or their representatives if any are not entitled to vote at the meeting.
3. The vote of members of the Committee shall not be taken at the meeting unless all members are present at the meeting and are ready for voting.
4. If all the members are not present at a meeting, a vote shall not be taken at such meeting and the resolution professional shall circulate the minutes of the meeting by electronic means to all members of the committee within forty eight hours of the conclusion of the meeting; and seek a vote on the matters listed for voting in the meeting, by electronic voting system where the voting shall be kept open for twenty four hours from the circulation of minutes.
5. Members of the Committee of Creditors can participate through videoconferencing and audio visual means. If so, the same may be intimated to the interim resolution professional 48 hours before the meeting at the diveshsharma.rp@gmail.com.

RESOLUTION PROFESSIONAL

In the matter ofNew Age Technology Limited

Place: New Delhi

(DiveshSharma)

Date: 23.07.2017

Registration Number: IRP- 694063

MINUTES OF COC MEETING HELD ON SEPTEMBER 28, 2017

Meeting Held at:

A meeting of New Age Technology Limited was held at A-112, Vikram Vihar, New Delhi on September 28, 2017.

Chaired by – Divesh Sharma, RP

Attendees:

- Indo Bank
- RST Bank
- People's Bank
- Bank of North India
- Marvel Organics Ltd.
- PEG Developers Ltd.
- Authorised Representative of Employees of New Age Technology Ltd.
- Deposit Trustee on behalf of Public Depositors
- JSEW Ltd.
- GSES
- Central Board of Excise & Customs
- Xi Mao
- Radha Hospitalisty Services Pvt. Ltd. [RHPL]

Business proposed to be transacted in the meeting:

- a) To consider and approve the amended Resolution Plan.
- b) To authorize the RP to submit the approved plan before Ld. Tribunal.

Business Transacted in the Meeting:

Agenda 1: To consider and approve the proposed Resolution plan.

Proposed by: Divesh Sharma (RP)

He explained that the Promoters of the Corporate Debtor have accepted the changes suggested by the CoC and addressed all other concerns raised by the stakeholders. The copy of the amended plan was forwarded along with the notice of the meeting to the all creditors. Thus, the plan amended plan be considered for approval by the CoC.

Plan seconded and agreed by:

- INDO BANK
- MARVEL ORGANICS LTD

Voting and decision

The proposed resolution plan was accepted by all the members of CoC and it also authorized the RP to submit the approved plan before the LD. Tribunal for its final approval.

RESOLUTION PROFESSIONAL

In the matter ofNew Age Technology Limited

(Divesh Sharma)

Registration Number: RP- 694063

STAGE III: PROCEEDINGS FOR APPROVAL OF RESOLUTION PLAN

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI

COMPANY APPLICATION NO. (IB) _____ (ND)/2017

IN THE MATTER OF

NEW AGE TECHNOLOGY LIMITED.....CORPORATE DEBTOR

ON BEHALF OF

RST BANK.....FINANCIAL CREDITOR

APPLICATION U/S 30(6) OF THE CODE TO SUBMIT THE RESOLUTION PLAN AS APPROVED BY
THE COMMITTEE OF CREDITORS BEFORE THE LD. TRIBUNAL

The brief facts resulting in filing of this application is mentioned hereunder for the kind perusal of the learned Tribunal.

- a. That the insolvency proceedings were initiated against the Corporate Debtor through the order dated 05.04.2017, passed by the learned Tribunal. Subsequently, all the claims were duly received by the Insolvency Professional and the list of creditors was duly filed before the learned Tribunal on 23.04.2017.
- b. That the Information Memorandum was duly issued to the serious parties and the resolution plans were filed by the under-mentioned parties:
 - Promoters of New Age Technology Ltd. (copy of RP is annexed as **Annexure No.- 1**)
 - Blue Plaza Ltd. (copy of RP is annexed as **Annexure No.- 2**)
- c. That the above mentioned resolution plans were duly considered by me along with other experts and accordingly certain objections were raised in these plans. The objections were accordingly conveyed to the respective resolution applicants. The copy of the objections raised is annexed as **Annexure No.-3**.

- d. The Suggestions made to the plan presented by promoters of New Age Tech Ltd. were duly accepted by the resolution application and they submitted the revised plan to me. The copy of the amendment is annexed as **Annexure No.-4**. Further, complying with the procedure of the Code, I issued the notice to call meeting of Committee of Creditors to consider and approve the proposed Resolution Plan. The copy of the notice to call meeting of Committee of Creditors is annexed as **Annexure No.-5**.
- e. The meeting of Committee was convened on 28.09.2017, in which the resolution plan was tabled for discussed before the members. After several negotiations and deliberations, the Resolution Plan was unanimously accepted by all the members of the Committee and I was authorized to submit the plan before the learned Tribunal. The Copy of the minutes of the meeting of the Committee is annexed as **Annexure No.-6**.

GROUNDS TO PLEAD ACCEPTANCE OF PLAN.

1. That the resolution plan has been unanimously consented by all committee members in the time bound manner and the plan is technically viable.
2. That the plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor.
3. That the plan provides for the repayment of the debts of operational creditors in 3 years, which is not less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53.
4. That the plan provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan.
5. That the implementation and supervision of the resolution plan and does not contravene any of the provisions of the law for the time being in force.
6. That liquidation is not the appropriate remedy in the instant case as the Corporate Debtor has been a profit making enterprise, having wide asset base and employees more than 3000 people. It is merely facing the transient liquidity problem due to sudden change in market conditions. Thus, liquidating this company will defeat the very purpose of the Insolvency Code¹⁹⁹ which objects to protect the business and simultaneously protecting interest of the creditors.

¹⁹⁹SUMANT BATRA, CORPORATE INSOLVENCY: LAW AND PRACTICE (1st ed. 2017).

7. The Moreover, there are a number of decisions of the Indian courts that hold that the courts should not examine the merits of such plans.²⁰⁰ Thus, in the light of §31 of the Code, the NCLT has to first satisfy that the resolution plan as approved by the CoC under §30 and thereafter pass an order approving the Resolution Plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Plan. Howbeit, the NCLT is not expected to reject a plan in the ground that it is not feasible or possible to implement the plan from a practical or economic point of view.²⁰¹

PRAYER

It is pleaded that the learned Tribunal adjudicate that:

- a. The resolution plan filed by the RP be accepted to complete the insolvency process of the Corporate Debtor.
- b. That management of company be transferred to the promoters, in accordance with the terms mentioned in the plan, and all others conditions of the plan are abided.
- c. That the moratorium period be ceased with the completion of the insolvency process.

RESOLUTION PROFESSIONAL

In the matter ofNew Age Technology Ltd.

(Divesh Sharma)

Registration Number:IRP- 694063

Place: New Delhi

Date: 05.10.2017

²⁰⁰ Hindustan Lever Employees Union v. Hindustan Lever Ltd., AIR 1995 SC 470; *In re*, Re. Maknam Investments Ltd., (1995) 4 Comp LJ 330 (Cal); Bahoo J. Coyajee v. Shanta Genevieve Prommeret Parulekar, (1991) 3 Bom LR 319; Jitendra R. Sukhadia v. Alembic Chemical Works Co. Ltd., (1987) 3 Comp L.J 141 (Guj).

²⁰¹ SUMANT BATRA, CORPORATE INSOLVENCY: LAW AND PRACTICE (1st ed. 2017).