

**NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD AT

10.30 AM ON 16th March 2021

PRESENT: Shri. Ashok Kumar Borah, Member (Judicial)

APPLICATION NUMBER	:	
PETITION NUMBER	:	IA(IBC)/61/KOB/2021 IN IA(IBC)/13/KOB/2021 IN TIBA/11/KOB/2019
SECTION	:	Rule 154
NAME OF THE PETITIONER(S)	:	BIJOY PRABHAKARAN PULIPRA (ERSTWHILE RP OF PVS MEMORIAL HOSPITAL PVT LTD
NAME OF RESPONDENTS	:	IN THE MATTER OF PVS MEMORIAL HOSPITAL PVT LTD

**Counsel for the petitioner(s):**

Name of Counsel	Designation	Phone No.	Email	Signature

**Counsel for the Respondent(s):**

Name of Counsel	Designation	Phone No.	Email	Signature

**Office Notes****Video Conference****16<sup>th</sup> March 2021****ORDER**

IA(IBC)/61/KOB/2021 IN IA(IBC)/13/KOB/2021 IN TIBA/11/KOB/2019

Learned erstwhile RP Shri Bijoy Prabhakaran Pulipra appeared through VC. This IA is filed under Rule 154 of NCLT Rules, 2016 for rectification of Order passed in IA(IBC)/13/KOB/2021.

Heard and perused the records. The rectification of error (a) to (c) in the order dated 22.02.2021 is allowed. Registry is directed to carry out necessary corrections in the order dated 22.02.2021 in **IA(IBC)/13/KOB/2021 IN TIBA/11/KOB/2019** as sought for in the prayers (a) to (c) of this IA and issue a corrected certified copy of the order to the applicant. As regards to prayer (d) of the IA, it is clarified that "the Monitoring Committee can nominate any person from the Monitoring Committee in the matter of execution of deed of transfer/conveyance/settlement at the Jurisdictional Sub Registrar in the Kerala State or execution of similar documents for the effective implementation of the Resolution Plan". This direction will form a part of the order of this Tribunal approving the Resolution Plan in IA(IBC)/13/KOB/2021 in TIBA/11/KOB/2019.

**With the above, IA(IBC)/61/KOB/2021 IN IA(IBC)/13/KOB/2021 IN TIBA/11/KOB/2019 stands disposed of.**

Certified to be True Copy-

*Ashok Kumar Borah*  
Deputy Registrar  
National Company Law Tribunal  
Kochi Bench  
18/03/2021

Sd/-

Ashok Kumar Borah  
Member (Judicial)





**IBA/28/KOB/2019**

M/s. OCS Group (India) Private Ltd ]  
Regd Office: A-501, 5<sup>th</sup> Floor, Thane one ]  
DIL Complex, Ghodbunder Road ]  
Majiwade, Thane West, Thane. ] Operational Creditor  
MH - 400610. ]

**Vs.**

PVS Memorial Hospital Private Ltd., ]  
No.XXIV/1484, Kaloor, ] Corporate Debtor  
Ernakulam, Kerala 682 017 ]

**Appearance:**

For applicant/RP - Shri Bijoy Prabhakaran Pulipra  
Appeared in person

For Corporate Debtor - Shri Millu Dandapani, Advocate

1. This is an Application filed under Section 30(6) and 31(1) of the Insolvency and Bankruptcy Code, 2016 (the Code) by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant, M/s Lissie Medical Institutions, a Trust registered in India under the Indian Trust Act, 1882 with registration No.327/IV/90-EKM, and is having its principal office at Lissie Hospital, Ernakulam, Kerala.



2. The facts leading to the Application are as under.

(a) The application for Corporate Insolvency Resolution Process (CIRP) filed by Dr. N P Kamalesh & Ocs Group (India) Private Limited (Operational Creditor) against M/s. PVS Memorial Hospital Private Limited (Corporate Debtor) under Section 9 of the Insolvency and Bankruptcy Code read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 was admitted on 16.10.2019 by this Tribunal vide order in TIBA/11/KOB/2019 & IBA/28/KOB/2019 wherein, Mr. Bijoy P Pulipra, the applicant herein, was appointed as Interim Resolution Professional ("IRP"). The IRP was reappointed as the Resolution Professional ("RP") by the members of the Committee of Creditors at their first meeting held on 17th December, 2019.

(b) The Applicant/RP in compliance with the provisions of the Code and Rules framed thereunder conducted the CIRP of the Corporate Debtor.

3. As per the report of the Applicant/RP, the total claims received and admitted by the RP are as follows:



<b>CREDITORS</b>	<b>Amount claimed (Rs in lakhs)</b>	<b>Amount admitted (Rs in lakhs)</b>
Financial Creditors	1,47,51,03,967	1,46,11,02,741
Operational Creditors	88,32,55,927	38,74,01,219
Employees/Workmen	21,60,12,987	11,15,22,943
Other Creditors	6,09,58,568	4,46,27,450
<b>TOTAL AMOUNT</b>	<b>2,63,53,31,450</b>	<b>2,00,46,54,353</b>

4. During the period of CIR Process, the RP made public announcement in Form G on 28.02.2020 inviting Expressions of Interest (EOI) from Prospective Resolution Applicants (PRAs). The last date of submission of the EOI was on 14.03.2020 and the submission of Resolution Plan was on 28.04.2020. The Applicant received Eois from three PRAs, out of which only one Eoi met the eligibility criteria laid down by the CoC, the details of which are as follows:

<b>Sl. No.</b>	<b>Prospective Resolution Applicants</b>	<b>Whether Eligible/Ineligible</b>
1	Lissie Medical Institutions	Eligible
2	P.V. Chandran and P.V. Gangadharan (Suspended Promoter Directors of the Corporate Debtor)	Ineligible
3	P.V. Nidhish and P.V. Hemalatha (Suspended Promoter Directors of Corporate Debtor)	Ineligible



Prospective Resolution Applicant No 2 and 3 have failed to submit the Earnest Money Deposit of Rs. 5,00,00,000/- (Rupees Five Crore Only) each as mandated by the Committee of Creditors and also had not submitted the documents called for by the Applicant for the purpose of conducting the due diligence. The Applicant had issued the provisional list of eligible prospective resolution applicants to all the prospective resolution applicants on 24th March, 2020. As per Regulation 36A (10), the prospective resolution applicants marked as "ineligible" can raise objections together with supporting documents within 5 (five) days from the date of issue of provisional list i.e., 29th March, 2020. However, during the continuation of the said process, on 24th March, 2020, the Hon'ble the Prime Minister of India had announced a nation-wide lock down due to the outbreak of the pandemic Covid-19. The Applicant issued the final list of Prospective Resolution Applicants as specified in Regulation 36A(12) of the CIRP Regulations to the Committee of Creditors on 11.09.2020. Accordingly, the eligible Resolution Applicant, Lissie Medical Institutions had submitted the Resolution Plan to the Applicant as per Section 30 of the Insolvency and Bankruptcy Code, 2016 on 01.10.2020. The CoC had negotiated the Plan Consideration as well as several other matters based on the queries raised by the RP. Based on outcome of meetings, the Resolution Applicant (RA) submitted the Final Resolution Plan on 22.12.2020.



5. The CoC in its 27<sup>th</sup> meeting held on 26.12.2020, after due deliberation, approved the Resolution Plan of Lissie Medical Institutions with 100% voting share. Accordingly, a Letter of Intent (LOI) dated 28.12.2020 was issued by the Applicant to the Successful Resolution Applicant (RA) and requested him to submit the Performance Bank Guarantee ("PBG") within five working days of receipt of the same. The RA vide letter dated 29.12.2020 accepted the Letter of Intent unconditionally and subsequently furnished the Performance Bank Guarantee of Rs.60/- crores, which is around 50% of the Resolution Amount.
  
6. It is worthwhile to mention that this Tribunal, in respect of the timelines of the CIRP of the Corporate Debtor, has passed the following orders:
  - (a) The period of 32 days, which was lost due to the Order passed by NCLAT in Appeal Nos.1130 of 2019 and 1131 of 2019, was excluded from the CIR Process vide order dated 05.03.2020 in MA/20/KOB/2020, thus extended the CIRP period upto 15.05.2020.
  - (b) Excluded the lock down period from 15.05.2020 to 18.10.2020 vide order dated 27.8.2020 in MA/72/KOB/2020.
  - (c) An extension of 90 days from 18.10.2020 to 16.01.2021 was allowed vide order dated 02.11.2020 in IA/74/KOB/2020



## 7. Details of Resolution Applicant

- (a) Lissie Medical Institutions ("Resolution Applicant") Lissie Hospital, founded in 1956, is a charitable Institution and is the living expression of the apostolic concern and social responsibility of the Archdiocese of Ernakulam-Angamaly. The hospital, as the project of Lissie Medical Institutions (a registered charitable organization), is managed by a Trustee registered under the Indian Trust Act, 1882, The Trust is also registered under section 12AA of the Income Tax Act 1961 under the name "Lissie Medical Institutions". It is situated in the heart of the City of Kochi. The Lissie Medical Institutions and its multi-specialty facilities are renowned for its services. It has more than 1850 employees, 200 doctors, inpatient and outpatient capabilities, more than 750 beds, medical laboratories, diagnostic facilities etc. In terms of credit facility the Resolution Applicant is currently banking with banks, namely State Bank of India, YES Bank, Federal Bank, etc. The Resolution Applicant has obtained various credit facilities, and to date there has been no default in its obligations. The Resolution Applicant has consistently maintained a controlled liquidity position and efficiently





managed its funds by controlling the debtors and expenses meticulously. Total revenue from operations of the Resolution Applicant for the financial year 2019-20 is Rs. 26,514 lakhs. The Resolution Applicant is making a healthy surplus over the years with EBITDA for the financial year 2019-20 at Rs. 6,310 lakhs. The Resolution Applicant's liquidity position is strong as cash accruals for the financial year 2019-20 is Rs. 5,914 lakhs. The Resolution Applicant has a strong net worth of Rs.27,283 lakhs as at the end of the financial year 2019-20 against which, long term borrowings are to the tune of Rs.2,330 lakhs. Debt Equity Ratio of the Resolution Applicant is at a healthy level of 0.16 (provisional figure) as at the end of the financial year 2019-20, indicating that the Resolution Applicant has a comfortable margin for taking further long-term debt.

**(b) Rationale**

It is pertinent to note that both the Corporate Debtor and the Resolution Applicant are operating in the same field, and there will be better synergies by an amalgamation of the Demerged Properties of the Corporate Debtor with the Resolution Applicant as contemplated in the Plan. The Corporate Debtor and the Resolution Applicant are located in the same neighbourhood.



**8. The salient features of the Resolution Plan:**

- (a) Under the terms of the Plan, the Demerged Properties will effectively demerge in full and amalgamate with the Resolution Applicant's hospital and activities on the Effective Date. Demerged Properties shall mean all business and assets, both tangible and intangible of the Corporate Debtor on a going concern basis, which includes, various permits/licenses/approvals from Governmental Authorities (including but not limited to Medical Counsel, Pharmacy, Authorities Drugs Control Department, DNB Board, Universities etc), Data, Intellectual Property Rights, software, knowhow, systems, processes, properties including movable (as listed in the Information Memorandum provided by the Resolution Professional prior to the date of submission of the Plan), bank accounts, security deposits, pre-deposits, receivables/sundry debtors, advance payments etc. and/or account right for the same, and immovable properties (inter alia including immovable properties listed in Schedule 4 of the Resolution Plan) of the Corporate Debtor without any Encumbrances or liabilities or penalties or Claims. The Resolution Applicant will use the Demerged Properties as an annex to the existing multi-specialty facility renowned for its capabilities



and services by using the Resolution Applicant's existing employee strength and doctors to enhance inpatient and outpatient capabilities. The Resolution Applicant also expects to generate additional employment and serve healthcare requirements and medical relief of the poor by utilizing the Demerged Properties.

**(b) Plan Consideration**

The Demerged Properties shall stand transferred and shall stand amalgamated with the Resolution Applicant for a total and maximum consideration of Rs.1,25,00,00,000/- (Rs one hundred and twenty-five crores only) to be paid by the Resolution Applicant ("Plan Consideration") on or before the Effective Date as per terms of the Plan. The value assignable for distribution from the Plan Consideration to the unsecured financial creditors and operational Creditors and other remaining Creditors are "nil". However, in order to ensure the balancing of the interest of all shareholders, over and above the Plan Consideration, the Resolution Applicant will pay an amount of Rs.1,00,00,000/- (Rs One Crore Only) to the Escrow Account for the benefit of the unsecured financial creditors and operational creditors only. The same shall be distributed by the



Monitoring Agent to the unsecured financial creditors and operational creditors on a pari passu basis based on their Verified Amounts. The said eligible distribution amount to unsecured financial creditors and operational creditors shall be paid in priority as required under the Code. The Total Plan Consideration is Rs.126 crores (Rs one hundred and twenty-six crores only).

- (c) The Distribution waterfall for the payment of Rs.1,25,00,00,000/- (Rupees one hundred and twenty-five crores) to the Creditors as approved by the CoC are given below:

Sl. No.	Particulars	Distribution Waterfall (in INR)
	<b>Plan Consideration</b>	<b>1,25,00,00,000</b>
1	Less: Tax Deducted at Source @ 0.75%	93,75,000
	Less Insolvency Resolution Process Cost of the Insolvency Professional	75,00,000
2	Workmen due for 24 months & Employees Dues for 12 months, preceding the CIRP commencement date	9,79,00,996
	<b>Amount available to Secured Creditors</b>	
3	A. LIC HOUSING Finance	1,11,17,29,548
	B. Axis Bank Ltd	2,07,59,314
	C. South Indian Bank	80,09,128
	D. ICICI Bank Ltd	41,01,014
4	Workmen dues prior to 24 months & Employee Dues prior to 12 months preceding the CIRP Commencement date	-
5	Kuriland Private Ltd (Unsecured Financial Creditor)	-



6	Operational Creditors	-
7	Other Creditors	-
8	Preference Shareholders	-
9	Equity Share Holders	-
	<b>Grand Total</b>	<b>1,25,00,00,000</b>

(d) Distribution of Resolution Plan Proceeds of Rs.126 crores as approved by CoC are as follows:

Sl.No.	Category of Creditor	Amount Claimed (in Rs)	Amount Admitted (in Rs)	Distribution Amount (in Rs)
1	CIRP Cost	-	-	75,00,000
2	Secured Financial Creditors	1,42,76,59,367	1,41,79,01 684	1,14,45,99,004
3	Workmen and Employees (other than dues to the related parties)	17,20,77,120	9,86,05 476	9,79,00,996
4	Operational Creditors (other than dues to the related parties)*	87,94,95,288	38,36,40 580	89,87,890
5	Unsecured Financial Creditors	4,74,44,600	4,32,01.057	10,12,110
6	Other Creditors	6,09,58,568	4,46,27 450	-

\*As per Annexure 12 of the Resolution Plan.



(e) **Feasibility and Viability of the Plan**

The Resolution Applicant has mentioned its Revival Plan and Rationale for the Resolution Plan in Clause 4.2 and 4.3, respectively, of the Resolution Plan. Further, the Resolution Applicant has given its definitive proposal for payment of Plan Consideration towards acquiring absolute ownership and possession of Demerged Properties within the Term of the Plan. The Resolution Applicant has proposed the distribution of the Plan Consideration as per the order of priority as permitted under the Code in the Resolution Plan. Accordingly, CoC, after taking into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor, shall be entitled to decide the Distribution Waterfall as per provisions of the Code. On the Effective Date, the following can be performed sequentially:

- (i) Transfer of Plan Consideration to the Escrow Account by the Resolution applicant;
- (ii) Execution of Deed Transfer of Demerged Properties in the name of Resolution Applicant;



(iii) Distribution as per Resolution Plan.

**A. Closing Action Notice and Effective Date:**

The Resolution Plan envisages the date on which all relevant actions as envisaged under Schedule 1 for payment of Plan Consideration is consummated and all requirements for transfer/conveyance/amalgamation of Demerged Properties of the Corporate Debtor with the Resolution Applicant is to be completed, which includes vesting of the possession, absolute ownership and title of the Demerged Properties and its related documents with the Resolution Applicant, which shall be not later than the 60<sup>th</sup> Business Day (or such extended dates as approved by the Monitoring Committee provided the same with an affirmative vote of nominee of CoC) from the date of receipt by the Resolution Applicant the certified copy of the Order of this Tribunal approving the Resolution Plan.

★ B. ~~C.~~ **Going Concern:**

Post completion of the Effective Date, the Resolution Applicant intent to immediately use the Corporate Debtor's all assets and properties



(ie. Demerged Properties) on a going concern basis for expanding operations of the Resolution Applicant.

**Payment under the Plan:**

Resolution Plan contemplates the following Distribution Waterfall for the Plan Consideration of Rs.125 crores:

Distribution Waterfall		Realisation
<b>Firstly towards</b>	Insolvency Resolution Process costs of the Resolution Professional	100%
<b>Secondly towards</b>	Workmen's dues for the period of twenty-four months preceding the CIRP commencement date. Workmen and employees will get payment at this level	9,79,00,996/- (does not include Related Party Claim*)
	Debts owed to a secured creditor. The Secured Financial Creditors will get the payment at this level in priority based on their security interest	As illustrated in 10(c) above
<b>Thirdly towards</b>	Wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the CIRP commencement date. *Note: Related Party claim will not be eligible under this head	Already provided as second item
<b>Fourthly towards</b>	Financial debts owed to unsecured creditors	Nil
	Any amount due to the Central Government and the State Government including the amount to be received on account of the	Nil





<b>Fifthly towards</b>	Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date.	
<b>Sixthly towards</b>	Any remaining debts and dues	<b>Nil</b>
<b>Seventhly towards</b>	Preference shareholders, if any	<b>Nil</b>
<b>Eighthly towards</b>	Equity shareholders or partners, as the case may be	<b>Nil</b>

~~D.~~ **E. Monitoring Committee:**

The Resolution Plan provides for appointment of a Monitoring Committee on approval of the Resolution Plan by this Tribunal. The Committee of Creditors shall constitute the Monitoring Committee, which comprises of one representative of the Resolution Applicant and one Representative from the CoC and a monitoring agent. The said Committee shall monitor the implementation of the plan.

~~E.~~ **F. MANAGEMENT AND CONTROL OF THE CORPORATE DEBTOR**

Management and Control of the Business of the Corporate Debtor from NCLT Approval Date till the Effective Date envisaged in the Resolution Plan are as under:



- (a) On the NCLT Approval Date, the Resolution Professional Mr. Bijoy P. Pulipra, who was acting as RP and, therefore, experienced in managing the affairs during the CIRP Process, to act as a monitoring agent ("Monitoring Agent") on such remuneration as may be mutually agreed between the Monitoring Agent and the Resolution Applicant till completion of the Term, subject to the approval of the said remuneration by the Monitoring Committee. In the event, Mr. Bijoy P. Pulipra refuses to or is unable to continue post-approval of this Plan by the NCLT, or if the Resolution Applicant seeks for a change, at its sole discretion, the Monitoring Committee shall appoint an independent person to act as the Monitoring Agent, and such person shall discharge all functions of the Monitoring Agent as envisaged under the Plan.
- (b) On and from the NCLT Approval Date till the Effective Date ("Monitoring Period"), the Monitoring Agent, acting on the sole instructions of the Monitoring Committee, shall perform duties, inter alia, similar to that of a Resolution Professional under the CIRP and shall have powers similar to that of a resolution professional under the CIRP.



(c) During the Monitoring Period, a monitoring committee shall be constituted ("Monitoring Committee") which during the period between the NCLT Approval Date until the Effective Date, shall comprise of 1 (one) representative of the Financial Creditors, 1 (one) representative of the Resolution Applicant and the Monitoring Agent. During the Monitoring Period, the Resolution Applicant shall also have the right to appoint observers on the Monitoring Committee who will be entitled to receive all notices, agendas, explanatory statements, minutes of meetings sent to the members of the Monitoring Committee, and participate in all meetings of the Monitoring Committee but not vote in any such meetings.

(d) During the Monitoring Period: (i) the Monitoring Committee shall monitor the implementation of the Plan; (ii) the Monitoring Committee may decide to appoint advisors, legal and technical consultants, etc. as may be required; and (iii) the management and operations of the Corporate Debtor shall be undertaken, by the nominees of the Resolution Applicant on the Monitoring Committee along with the Monitoring Agent who will be subject to the guidance of the Monitoring Committee, in the ordinary course and on a going concern basis, and the promoters or the existing promoter group or their nominees or persons shall not, during such period, participate in the Corporate Debtor's management.



(e) On and from the NCLT Approval Date till the Effective Date, all the decisions which could otherwise have been taken by the Corporate Debtor's board or shareholders shall be taken by the Monitoring Committee and that the Corporate Debtor's board or shareholders shall have no authority whatsoever to conduct the business of the Corporate Debtor as the same shall remain suspended. Any decision taken by the Corporate Debtor's board or shareholders during the period between the NCLT Approval Date and Effective Date shall be null and void and not be binding on the Monitoring Committee and/or the Corporate Debtor/Resolution Applicant. All decisions of the Monitoring Committee shall be by way of a majority vote of all members present and voting.

(f) Without prejudice to the foregoing, it is hereby clarified that all costs and fees relating to any pending disputes, ongoing litigations or appeals filed on or prior to the Effective Date, where such disputes/ litigations pertaining to the Corporate Insolvency Resolution Process of the Corporate Debtor and/or the Resolution Plan, and wherein the Resolution Professional is or has been made a party, such costs and expenses shall be borne out by the committee of creditors.



- (g) Further, the Monitoring Committee shall be required and entitled to do all such acts, deeds, matters and things as may be necessary, desirable or expedient to supervise the implementation and give effect to this Plan in accordance with its terms and shall act under the Ultimate supervision of the NCLT.
- (h) Upon the NCLT Approval Date and till the Effective Date, the Monitoring Committee shall be considered authorized by the NCLT to implement the Plan according to its terms. The Monitoring Committee or its members or the entities nominating such members shall not in any manner be implicated in, or in any manner adversely affected by, or have any liability in relation to any actions and/or omissions.
- (i) The existing board of the Corporate Debtor ("Suspended Board") shall be and remain suspended and removed from the Board post the NCLT Approval Date, and all powers and duties of the board shall vest with the Monitoring Committee.
- (j) In accordance with the Clauses above, the Monitoring Committee shall be deemed to have been carrying on and shall carry on activities to implement the Resolution Plan through the Monitoring Agent.



- (k) Until the Effective Date, the Corporate Debtor shall not make any payments (including interest) to the Financial Creditors, Operational Creditors or the Other Creditors.
- (l) The Corporate Debtor and all its facilities shall continue to receive the supply of essential supplies, goods and services (as defined in the IBC and the CIRP Regulations) on an uninterrupted basis. The Monitoring Committee shall be entitled to make an application to the Adjudicating Authority directing local law enforcement authorities and local district administration authorities to maintain law and order regarding the various premises owned and/or used by the Corporate Debtor and assist in the implementation of the Plan.
- (m) The existing promoters/promoter group of the Corporate Debtor shall do all such acts, deeds and things required by the Monitoring Committee, including executing any and all documents as may be required for the purposes of implementation of the Plan.
- (n) The Suspension Period, as commenced on the Insolvency Commencement Date, shall continue to be in effect till the Effective Date.



(o) Upon and with effect from the Effective Date, the Corporate Debtor is deemed to be extinguished of all liabilities including share capital and all assets and business of the Corporate Debtor stands transferred to Resolution Applicant, the name of the Corporate Debtor shall be struck off/removed from the register of Companies by virtue of the operation of this Plan.

(p) For the purposes of removal of the name of the Corporate Debtor from the registrar of Companies, if any approval of shareholders or directors is required under the 2013 Act or any other law for the time being in force for the implementation of such an action under the resolution plan, such approval shall be deemed to have been given, and it shall not be a contravention of that act or law.

(q) All approvals required under Applicable Law (including the 2013 Act and the Code) for the removal of the name of the Company from the Register of Companies shall be deemed to be given pursuant to the approval of this Resolution Plan by the NCLT.

(r) This Resolution Plan shall be binding on all stakeholders as provided under section 31 of the Code. Further, approval of this Plan by NCLT shall be a



direction to the Registrar of Companies for removal of the name of the Company from the Register of Companies on the Effective Date.

- (s) Upon and with effect from the Effective Date, the enterprise of the Corporate Debtor, i.e., the Demerged Properties will function with the Resolution Applicant in an amalgamated manner as contemplated in this Plan.
- (t) The Monitoring Committee will be dissolved on the Effective Date or on a later date as decided by the Resolution Applicant.

★ F. **G. SUPERVISING RESOLUTION PLAN & ITS IMPLEMENTATION:**

The Monitoring Committee shall supervise the implementation and execution of Resolution Plan. The Implementation schedule envisaged in the Resolution Plan is as follows:





S. No	Activity	Indicative Timeline	Responsibility
<b>Phase I- Approval Process of Resolution Plan</b>			
1.	Approval of Plan by CoC including distribution entitlements to Creditors in compliance with section 30(4) of the Code after taking into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor in line with the Code	A	CoC / Resolution Professional
2.	Application to NCLT for approval of Resolution Plan	B	Resolution Professional
3.	Approval by NCLT of the Resolution Plan and receipt of the certified copy of the order by the Resolution Applicant	C	Resolution Professional
4.	Acceptance of Letter of Intent	A + 1 Business Days	Resolution Applicant



S. No	Activity	Indicative Timeline	Responsibility
5.	Submission of Performance Guarantee	LOI received under para 4 above plus + 5 Business Days	Resolution Applicant
6.	Notice on the Corporate Debtor's website	Within C + 5 Business Days	Resolution Professional
7.	Intimation to the Governmental Authorities, if required in terms of the Applicable Law		Resolution Professional
8.	Intimation to all creditors, existing shareholders and any other stakeholder of the Corporate Debtor (if any as required under the Code)		Resolution Professional
<b>Phase II- Implementation of Plan</b>			
1.	Appointment of the Monitoring Agent under the sole guidance and instruction of the Monitoring Committee until the Effective Date	On and from B	Monitoring Committee/ Resolution Applicant



S. No	Activity	Indicative Timeline	Responsibility
2.	Execution of material agreements such as escrow agreement, agreement with monitoring agent, giving effect to the Plan.	On and from B	Monitoring Committee / Resolution Applicant
3.	Execution of material agreements for transfer to the Resolution Applicant the Demerged Properties, giving effect to the Plan.	On or before the Effective Date	CoC, / Resolution Professional / Monitoring Agent / Monitoring Committee / Resolution Applicant
4.	Payment of Plan Consideration and Execution of Material Agreements.	On or before the Effective Date	Resolution Applicant
5.	All required process as contemplated in this Plan in relation to the Corporate Debtor and the Demerged Properties	On or before the Effective Date	Monitoring Committee / CoC, / Resolution Applicant



S. No	Activity	Indicative Timeline	Responsibility
6.	Payment to the eligible Creditors in accordance with the Plan	Effective Date	Monitoring Agent/ Monitoring Committee/ CoC/ Resolution Applicant

★ 9/10  
17/3/2021

6. (H) The Resolution Applicant will bear all costs and expenses related to the documents required for giving the effect to transfer conveyance/assignment/ vesting/settlement/mutation (as may be applicable) or such similar document/s as required by the Resolution Applicant to record the transfer conveyance/ assignment/ vesting/ settlement/ mutation (as may be required) for perfecting the title of the Demerged Properties to the for Resolution Applicant in the manner required by the Resolution Applicant on or before the Effective Date. Other than the cost aforesaid the Resolution Applicant's total outlay shall not exceed the Plan Consideration and the amount mentioned in clause 5.1.18.3 of the Resolution Plan. The terms of this Plan shall be binding on all stakeholders as provided under section 31 of the Code.



★ H. (✓)  
17/3/2021

The Resolution Applicant shall be entitled to file for approvals and consents or intimate the Governmental Authorities as may be required to implement this Plan.

★ I. (✓)  
17/3/2021

**Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations:**

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (the Regulations) and has submitted his Form H under Regulation 39 (4). It is stated by the Resolution Professional that the Plan is in compliance with the provisions of the Code and the Regulations. It is further stated that the Resolution Applicant is not ineligible under Section 29A of the Code.

★ J. (✓)  
17/3/2021

**Performance Security:**

The Applicant submitted that in terms of the Request for Resolution Plan (RFRP), the RA has, on 29.12.2020, submitted a Performance Bank Guarantee of INR 60 crores.



9. The Applicant submitted that the Resolution Plan meets the requirement of Section 30 (2) of the Code in the following manner:

- A. Plan provides for the priority payment of CIRP costs in full from the fund to be infused by the Resolution Applicant.
- B. To pay the Operational Creditors of the Corporate Debtor in the manner indicated in Clause 5.1.18.1 of the Plan.
- C. The average Liquidation Value of the Corporate Debtor is INR 122,90,59,890/- and average Fair Value is INR 162,22,78,150/-.
- D. Provides management of the CD after approval of the resolution plan for operations of the Corporate Debtor in terms of Section 30(2)(c).
- E. Provides implementation and supervision of the Resolution Plan as per Section 30(2)(d).
- F. The Plan has been approved by CoC with 100% voting share.
- G. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force.



10. The Applicant has also submitted that the Plan is in compliance of Regulation 38 of the Regulations in view of the following:

- a) Payment to Operational Creditor will be made in priority over Financial Creditor – Clause 5.1.18.3.
- b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code.
- c) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan.

11. The Resolution Applicant has sought certain reliefs, concessions and waivers. This Tribunal, however, is not inclined to grant such concessions or waivers. The Resolution Applicant may approach the authorities concerned for permits, if required, and same would be considered on merits by the concerned authorities in accordance with law.

12. It is beneficial to refer to the observation of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.. t2019) SCC OnLine SC 1478* as under:



"67.

*A successful Resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove."*

★  
13.

11

In view of the above ruling of the Hon'ble Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to the orders passed herein. As already indicated the Resolution Plan has been approved by the CoC in its meeting held on 26.12.2020 with 100% voting right.

★  
14.

12

In **A. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257** (— (2019) 12 SCC 150) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percentage of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements





specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percentage of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

15. 18. In CoC of Essar Steel (*supra*) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

*"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra)."*

16. 14. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in



contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved and hence this Tribunal pass the following:

## ORDER

- i. The Application filed by the RP is allowed. The Resolution Plan submitted by the Resolution Applicant M/s Lissie Medical Institutions annexed to the Application is hereby approved. The Resolution Plan attached with this order shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities



concerned.

iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

iv. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred under para 10(e)(d) above. <sup>distribution amount</sup> ~~2(c)(d)~~ *17/3/2021*

v. The moratorium declared under Section 14 of the Code shall cease to have effect from this date.

vi. This Bench hereby discharges Shri Bijoy Prabhakaran Pulipra from the duties of Resolution Professional and the RP is directed to handover all records, premises and documents to the Monitoring Committee / Resolution Applicant to finalise the further line of action required for starting of the operation.



*★ Corrections have been carried out as per Order dated 16/03/2021 in IA(IBC)61/KOB/2021 in IA(IBC)13/KOB/2021. 17/03/2021. Deputy Registrar in TIBA/11/KOB/2019.*

The Resolution Applicant shall have access to all the records/premises/documents through the Monitoring Committee to finalise the further line of action required for starting the operation.

- vii.** The directions embodied and period of implementation provided herein above shall be effective from the date of this Order.
- viii.** The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Tribunal.
- ix.** Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Miscellaneous Application, if required, in connection with implementation of this Resolution Plan.
- x.** The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.

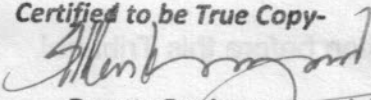


- xi.** The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.

With the above directions, the Resolution Plan of M/s. Lissie Medical Institutions is approved and IA(IBC)/13/KOB/2021 in TIBA/11/KOB/2019 stands Allowed.

Dated this the 22<sup>nd</sup> day of February 2021.

Sd/-  
Ashok Kumar Borah  
Member (Judicial)

Certified to be True Copy-  
  
Deputy Registrar 18/03/2021.  
National Company Law Tribunal  
Kochi Bench

